WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE ASSEMBLY

Thursday, 10 April 1997

Legislative Assembly

Thursday, 10 April 1997

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

PETITION - CLOSURE OF TAYLOR ROAD RESERVE

MR SULLIVAN (Mitchell) [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, strongly object to:

. the closure of Taylor Road reserve and associated land exchanges at Pelican Point in the City of Bunbury caused by the proposed Pelican Point sub-division and canal development at the mouth of the Collie River.

. this action by the City of Bunbury will lead to the loss of a valuable recreation reserve, an important plant and wildlife habitat, and a unique part of Bunbury's pioneering history.

. We also believe that the City of Bunbury's action in initiating this road closure is not in accord with the provisions of the Local Government Act.

. We ask that the road and reserves remain open and accessible to the general public forever.

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 72 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.

[See petition No 11.]

PETITION - PEDESTRIAN OVERPASS, MARMION AVENUE

MRS HODSON-THOMAS (Carine) [10.05 am]: I present the following petition -

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled.

We, the undersigned request that a pedestrian overpass be installed on Marmion Avenue between Beach Road and North Beach Road to provide safe passage across this dangerous road for children who:

. live in the Marmion/Waterman/North Beach area and attend Carine Senior High School, or

. live in Carine and cycle/walk to local beaches to swim and surf.

We also request that a footpath be installed on the western side of Marmion Avenue to service this overpass.

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

The petition bears 172 signatures and I certify that it conforms to the standing orders of the Legislative Assembly.

I also advise that a like petition bearing 2 714 signatures has been sent to the Minister for Transport.

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

[See petition No 12.]

LIMITATION AMENDMENT BILL

Second Reading

MR BARNETT (Cottesloe - Leader of the House) [10.07 am]: On behalf of the Treasurer, I move -

That the Bill be now read a second time.

Section 37A of the Limitation Act had always been thought to impose a 12 month limitation period upon the right to commence proceedings for the recovery of taxes and other imposts which had been paid pursuant to an Act which

was subsequently held to be invalid. However, a decision of the High Court, in the case of Commissioner of State Revenue v Royal Insurance Australia Ltd (1994), in relation to a comparable provision in the Victorian Limitation of Actions Act 1958, has cast doubt on whether section 37A has that effect.

In that case the High Court held that money paid by way of tax under a mistake as to one's obligations under the law was not paid "under the authority or purported authority of any Act", which are the words currently used in section 37A. The decision highlighted a potential risk to the revenue where an action is commenced to recover payments of taxes made under an Act which is subsequently held to be invalid, as well as where payments of taxes are made pursuant to a mistake of fact or law.

In the Royal Insurance case, substantial payments of stamp duty - nearly $2m - which had been made some five years earlier were sought to be recovered from the Victorian Commissioner of State Revenue. All other Australian jurisdictions have since amended their limitation legislation in response to the High Court's decision.

The purpose of the amendments to section 37A is therefore twofold. First, the Bill seeks to confirm what was always thought to be the effect of section 37A in relation to payments of taxes made pursuant to an Act which is subsequently held to be invalid. Secondly, the Bill seeks to apply the same 12 month limitation period to actions for the recovery of payments of taxes made pursuant to a mistake of fact or law.

The Bill is closely modelled upon the amendments introduced by the Victorian Legislature in response to the decision in the Royal Insurance case.

This Bill also proposes the inclusion of sections 37B and 37C in the Limitation Act. These sections will provide a "passing on" defence for the State against recoveries of taxes and other imposts even in the period not covered by the section 37A limitation. The passing on defence seeks to limit any refunds to imposts which the taxpayer can demonstrate have not been passed on, either directly or indirectly, to other persons. This will prevent the taxpayer from receiving a windfall gain from any refund. The passing on defence will apply only in court proceedings. Consequently it will not limit a refund from a government revenue authority under the relevant provisions of a revenue Statute, where the refund can be settled without resorting to the courts. Furthermore, where the taxpayer has charged an impost directly to other persons, the passing on defence will not limit a refund of the impost if the taxpayer reimburses the other persons.

The option for the taxpayer to reimburse the other persons and thereby claim a refund will not be available if the impost was charged indirectly to those persons, by incorporation in the price of or charge for any property or services. Nevertheless, even in these circumstances the passing on defence would not extinguish the taxpayer's right of recovery, but would limit it only to the amount of the impost which has actually been borne by the taxpayer. The proportion borne by the taxpayer could vary significantly from case to case. Most other States have already implemented a similar form of passing on defence.

The measures in this Bill will ensure greater certainty in state finances and thereby enable the Government to plan its delivery of public services with greater confidence. The need for such measures is highlighted by recent challenges in the High Court to state business franchise fees, including the Ha and Lim case in New South Wales in March this year. The litigants in that case argued that tobacco franchise fees are excises and therefore offend section 90 of the Constitution. If the litigants are successful in that case, and we will know whether that is the case by August this year, then Western Australia alone could be exposed to retrospective refunds of up to $600m per annum. This is our current annual revenue from tobacco, fuel and liquor franchise fees. That there is even the potential for the States to be exposed to such enormous refunds of revenues on which they have relied for many years highlights not only the urgency of the measures in this Bill but also the need for fundamental reform of the national tax system. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL

Second Reading

MR BARNETT (Cottesloe - Leader of the House) [10.12 am]: I move -

That the Bill be now read a second time.

The Bill seeks to revise the statute law by repealing spent, unnecessary or superseded Acts, and by making miscellaneous minor amendments to various Acts. Its aim is to make Parliament more efficient by reducing the number of amendment Bills dealing with relatively minor legislative amendments and repeals. Amendments and repeals included in the Bill are required to be short and non-controversial. In addition, they must not impose or increase any obligations or adversely affect any existing rights.

The Bill contains amendments and repeals initiated by Ministers and also contains recommendations by parliamentary counsel's office for miscellaneous clerical corrections and amendments discovered when drafting other Bills or compiling reprints of Acts.

Although the Bill is introduced on behalf of the Premier, it covers much legislation which is the responsibility of other Ministers. Therefore, subject to the orders and practices of the House, it may be possible for different Ministers to have responsibility for the legislation at different times during the Committee stage of debate.

This Bill is substantively the same as the Statutes (Repeals and Minor Amendments) Bill 1996 which lapsed on the dissolution of Parliament prior to the election. Parliamentary counsel has reviewed the Bill and made a number of minor amendments consequential to other legislative amendments and repeals that took place during 1996. A schedule showing the amendments will be made available to members to assist them in their deliberations on the present Bill.

I outlined some of the specific provisions of the Bill last year and for the benefit of new members will do so again: Clause 9 repeals the Iron Ore (Dampier Mining Company Limited) Agreement Act 1969, which is obsolete due to the agreement defined in section 1A of the Act being cancelled in 1988 under the terms of clause 4 of the sixth schedule to the Iron Ore (Robe River) Agreement Act.

Clause 11 repeals the State (Western Australian) Alunite Industry Act 1946. This spent Act is the vehicle under which the State of Western Australia continued an industry established under a repealed Act of 1942. What was regarded as a strategic industry during World War II has been defunct for many decades.

Clause 13 repeals the Wood Distillation and Charcoal Iron and Steel Industry Act 1943. The state run industry at Wundowie that was the subject of this Act was disposed of under the terms of the Wundowie Charcoal Iron Industry Sale Agreement Act 1974.

Clauses 40 and 41 deal with minor amendments to much more recent legislation; namely, the Consumer Credit (Western Australia) Act 1996 and the Consumer Credit (Western Australia) Code as set out in the appendix to that Act. When the legislation was passed, a section in each of the Act and the Code was amended in Committee. Later examination of the amendments revealed that they did not fully achieve the purposes intended at the time they were made, and that the terminology was not consistent with the rest of the Act. These amendments will rectify those inconsistencies and allow the affected sections to achieve their intended purposes.

As was done in 1996, explanatory notes have been prepared to explain briefly what each minor amendment or repeal entails. These explanatory notes have been amended to take into account the minor changes which I referred to earlier. Copies will be available to all members for their information. A further information package containing copies of relevant Acts or sections of Acts can also be made available as a reference tool. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

WATER LEGISLATION AMENDMENT BILL

Second Reading

DR HAMES (Yokine - Minister for Water Resources) [10.15 am]: I move -

That the Bill be now read a second time.

The Water Legislation Amendment Bill deals with two separate aspects of water supply management in Western Australia. Parts 2 to 4 seek to strengthen the provisions relating to water theft from the public water supply system while part 5 clarifies the by-law making powers relating to water restrictions. Part 6 deals with the consequential changes needed to the Water Services Coordination Act 1995 as a result of the amendments contained in the Bill.

Water theft is a major problem for the Water Corporation, costing an estimated $2m annually in lost water sales. A study undertaken in 1994 revealed that water theft from public supply systems occurs primarily in the metropolitan area, the irrigation districts of the mid-west and to a lesser extent in other parts of the State. The cost of these losses is absorbed in water charges and represents a direct burden on the rest of the community, which consumes water legitimately from the Water Corporation's supply systems. Farmers who fraudulently use water also enjoy an unfair advantage over other farmers and distort the price of farm produce in the State. Furthermore, there is a serious risk of contamination to water supplies arising from the use of unauthorised fittings and interference with the corporation's services. The management of scarce water resources in irrigation areas could be seriously jeopardised if this activity continued unchecked.

The successful prosecution of offenders has been severely constrained in the past due to limitations inherent in existing legislation. The act of interfering with Water Corporation services and fittings is an event that is rarely witnessed since the offender naturally seeks to avoid detection. In the absence of direct evidence, a confession remains the only viable option for a successful prosecution. However, this is becoming increasingly difficult to obtain and the only basis to sustain a prosecution is circumstantial evidence, which has proved unsatisfactory as it is insufficient for the purpose of obtaining a conviction.

Other Australian public utilities have resolved this problem by obviating the need to rely on confessional evidence. This has been achieved by providing for prosecutions to proceed on the basis of prima facie evidence and without the need to obtain a confession. Additionally, a "deeming clause" has been provided under which it is presumed, unless the contrary is proved, that any unlawful use or taking of water - or energy - was caused by the owner or occupier of the land.

The Water Legislation Amendment Bill provides for such a deeming clause to be included in the appropriate state legislation to enable prosecutions to proceed on the basis of prima facie evidence. This will ensure that the Water Corporation is provided with the effective means to deal with this problem. It is proposed to include the deeming clause in the following Acts: Metropolitan Water Supply, Sewerage and Drainage Act 1909; Country Areas Water Supply Act 1947 and Rights in Water and Irrigation Act 1914.

The Bill also revises the monetary penalties and prison sentences applicable to such offences and aligns these with levels applicable in other States. Currently the maximum penalty in Western Australia is $2 000, which compares with fines of up to $20 000 in New South Wales. Higher penalties are also provided in cases where the offence is committed by a body corporate in view of the potential for larger amounts of water to be used than in the case of an ordinary residential customer.

The process for recovering costs incurred by the utility in connection with the loss of water and for prosecuting offenders is also simplified in the Bill.

Part 5 of the Bill deals with the issue of water restrictions. At present the power to impose restrictions in the metropolitan area is contained in section 146(5) of the Metropolitan Water Supply Sewerage and Drainage Act which provides for by-laws to protect and prevent and remedy the waste, misuse, undue consumption, fouling or contamination of water contained in or supplied from the water works or otherwise under the control of the corporation. It is arguable that the use of water, contrary to restrictions, constitutes waste or misuse or that restrictions imposed for the purpose of reducing use are within the spirit of this section.

The position in the country is also unsatisfactory. Although the Country Areas Water Supply Act contains by-law making powers it does not specifically include a provision relating to water restrictions.

The proposed amendment to section 34 of the Water Agencies (Power) Act 1984 will provide the Minister with unambiguous authority to make by-laws to prohibit, impose restrictions on or otherwise regulate the use of water throughout the State or specified parts of the State. I commend the Bill to the House.

Debate adjourned, on motion by Mr McGowan.

LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Committee

Resumed from 9 April. The Deputy Chairman of Committees (Mr Osborne) in the Chair; Mr Kierath (Minister for Labour Relations) in charge of the Bill.

Progress was reported after clause 6 had been agreed to.

Clause 7: Sections 78, 79 and 80 inserted -

Mr KOBELKE: I take the opportunity to debate some of the general provisions picked up in proposed new sections 78, 79 and 80. These proposed new sections relate to the failure to comply with an order and other matters dealt with in section 77 of the principal Act which contains the proceedings for a breach of duty under section 74. Section 74 of the Act deals with certain obligations of finance officials and employees. Section 77 sets out the proceedings for a breach of duty with certain penalties attached. A person who fails to comply with an order under section 77(2)(e) is guilty of an offence and liable to a penalty of $5 000 and a daily penalty of $500. Section 77(2)(e) provides that on the hearing of an application under section 77(1) the Industrial Magistrate's Court may, if the contravention or failure to comply is proved, order the respondent to do any specified thing or to cease any specified activity. This section could apply from a technical breach through to some form of corruption or an offence under the Criminal Code, and the court may issue a caution, impose a penalty on the respondent not exceeding $5 000, order the

respondent to pay compensation, order the restitution or forfeiture of any pecuniary advantage or order the respondent to do any specified thing or cease any specified activity.

Clearly, the Minister wishes to improve the enforcement measures available. One can understand that and a rational argument can be held about whether the existing provisions work and whether a case can be made for increasing the penalties to provide more effective enforcement. However, in all these matters it is crucial to strike a balance. Through this legislation the Minister is seeking to interfere directly in a process which has a long history and for which there are well-established precedents. The penalty of a $5 000 fine and a daily penalty of $500 have the potential to stop the whole system working. The Minister certainly likes to be very heavy-handed and appears not to be conscious of the way his interference, meddling, and dictatorial approach could lead to the destruction of the whole system.

Under section 74 a person who is a paid employee of a union - that person may be on a very meagre wage - could be regarded as a finance official. That person could be found to have contravened some of the requirements of the section and an order could be made against that person in accordance with section 77(2)(e). Failure to comply could result in the penalty referred to.

Mr BROWN: I refer to the proposal to insert new section 78, which will include a provision in the Act whereby a person found guilty of an offence under section 77(2)(e) may be liable to a penalty of $5 000 and a daily penalty of $500. Section 77(2)(e) provides that a person may have an order placed on him by an industrial magistrate to do any specified thing or to cease any specified activity. Proposed new section 78 is designed to enable a penalty to be imposed on a person who fails to comply with such an order. All this is in the context of the financial obligations of finance officials working in organisations. By virtue of the amendments passed in this place yesterday, this section now applies to employees of those organisations. It is important to consider the implications of those penalties. It can be seen from section 74 that finance officials - it now includes employees - have an obligation to act honestly at all times in the performance of their functions, to exercise a reasonable degree of care and diligence at all times in the performance of their functions, and to ensure that the organisation keeps and maintains accounting records in accordance with other requirements of the Act. More importantly, a finance official must advise the organisation of any personal material interest he has in a matter that may come before the committee of management for consideration. A person who does not comply with those requirements is liable to a $5 000 fine.

If a director attends a directors' meeting and has a pecuniary interest in contracts for consideration before the board he is required to declare that interest and to absent himself from the decision making process. Various case laws exist under the Companies (Western Australia) Code in relation to that. That is fine; I do not quarrel with that so far as officials are concerned. However, this legislation will now apply to employees who are not on the management committee of the organisation and who do not have an influence in what the management committee decides because they do not have a vote. Yet if the management committee of an organisation makes a decision to enter into a contract for services with a company or group of which an employee of that organisation happens to be a director, technically that employee will be in breach of this legislation for failure to disclose, even though the employee was not part of the decision making process and did not know the matter was before the committee of management. This is harsh legislation. It is not a question of exercising due diligence, but of being totally excluded from the decision making processes and caught and prejudiced by the decisions of others. It is grossly unfair and unjust.

Mr KOBELKE: I am not a lawyer and I know the Minister is not. I thought he might have had advisers with him today so he could give fuller answers than he was able to give last night on some technicalities of the legislation. Section 77 of the principal Act already contains a penalty, although not for the same offence. The wording of the Act is that it is a penalty not exceeding $5 000, whereas the wording in new section 78 is that the person is liable to a penalty of $5 000 and a daily penalty of $500. Does being liable to a penalty carry the same imputation as a penalty not exceeding $5 000? Does a greater propensity exist for a magistrate to impose the full penalty in that case - if it is mandatory the penalty must be the full amount - as opposed to the other wording which means that any amount up to $5 000 could be imposed?

Mr Kierath: They are the words chosen by parliamentary counsel. This query was raised by the Government on another issue. They advised the Government that the sentencing provisions were at the discretion of the magistrate. When a penalty is set in legislation, the rough rule of thumb is that for the first offence around 10 per cent of the maximum penalty is imposed.

Mr KOBELKE: The Minister has not answered the question. The amounts in the two pieces of legalisation are the same: One states the penalty will not exceed $5 000, whereas the other states that if the person is guilty of an offence he is liable to a penalty of $5 000. If case law can be used, is the interpretation in the courts of the two sets of words different?

Mr Kierath: No, not that I am aware of.

Mr KOBELKE: Therefore, the provision in new section 78 is not mandatory for the full amount and the magistrate has discretion to apply a penalty of any amount up to $5 000?

Mr Kierath: Yes.

Mr KOBELKE: A person who is given an order to do, or cease doing, a specified act and is found not to have complied with that will face an additional penalty of $5 000 and a $500 daily penalty. That is excessive. I have argued in this place in previous years about a well known Perth identity, the city's biggest builder, who has breached a set of laws. The penalties for such flagrant breaches of the law of this State are of this size or less. Part of the reason that person gets away with them is because the enforcement provision means that the person must be dragged through the courts. However, the Industrial Relations Commission can get people up for judgment much more easily. It is a more effective mechanism, not only because of the structure of the law, but because the people to whom these provisions apply do not have the financial resources to mount a major defence. They cannot use lawyers to uphold their rights in the way a major industrialist or property owner in this State can. They are subject to the court and must lay out their case with minimal support, from perhaps their employer. We know they cannot get legal aid, yet they will be subject under this legislation to a penalty of $5 000 and a daily penalty of $500.

Mr Kierath: The daily penalty will apply only if they thumb their nose at an order of the court.

Mr KOBELKE: I realise the court has discretion. One hopes that if it were a minor offence or involved a technicality which was difficult to overcome, the court would take account of that. However, I see no justification for placing in the legislation penalties of this severity, if there is a need for penalties at all.

Mr Kierath: There is some nexus between the daily penalty and the overall penalty; that is, the daily penalty is 10 per cent of the overall penalty. The reason for the daily penalty is that a magistrate could issue an order and a person could thumb his nose at that. If no daily penalty exists, the alternative is that the person will be charged with contempt of court and will go to gaol, which is inappropriate.

Mr KOBELKE: The Minister is so obsessed with cracking down on unions that he fails to have any balanced view of what this legislation is about.

Mr BROWN: I find it amazing that under this legislation penalties of this nature will be imposed. The Minister may be aware of the state of affairs in the enforcement of fines and the collection of debts. Under the Fines, Penalties and Infringement Notices Enforcement Act thousands of warrants of execution are outstanding. These warrants are the last gasp before someone is imprisoned for the non-payment of a fine. The Opposition said this would happen when the legislation was passed.

Mr Bloffwitch: I know lots of people who have lost their licence and have been upset about it. But as for people going to gaol, most people have a driver's licence or a vehicle licence which is affected first. I think you are dramatising the situation.

Mr BROWN: If the member for Geraldton is interested, he can ask the Attorney General.

Mr Bloffwitch: They are the people who did not pay fines in the first place. That is why the legislation was brought in.

Mr BROWN: The member can ask the Attorney General about those issues. If the Attorney General is honest with the member, he will tell him that thousands of people now face warrants of execution - that is, prison sentences - for the non-payment of a fine. Those warrants are not being enforced by the Ministry of Justice because the prisons are full. The Government is now including in legislation provisions for more fines. This is ludicrous. I do not understand it.

Let us consider whether the $5 000 penalty is appropriate. The Government is allegedly concerned about road traffic issues and the number of people killed and injured on the roads. What is the penalty for driving with a blood alcohol level over 0.05? It is $100. I think that driving with a blood alcohol level of over 0.08 attracts a heavier penalty of $1 000 and the suspension of one's driver's licence for three months.

Mr Riebeling: It is not that high.

Mr BROWN: Certainly a person who is well and truly drunk and cannot keep the vehicle on the road will attract a penalty of about $4 000 or $5 000. However, the penalty in this clause is greater than the penalty for driving one's car when he is drunk.

Mr Bloffwitch: But he is a corrupt person.

Mr BROWN: The problem is the member for Geraldton has not read the legislation. I am happy to take intelligent interjections, but he should read the legislation.

Mr Bloffwitch: Getting fined for nothing - he has not contravened the legislation.

Mr BROWN: Perhaps we should either draw pictures for the member for Geraldton or speak very slowly. I will put it in simple terms so that a three year old would understand: I am drawing attention to the appropriate level of penalty in this clause compared with the appropriate level of penalty prescribed in other legislation.

Mr Kierath: You know the penalties in this Bill are consistent with penalties in other Acts.

Mr BROWN: That is right, but I am suggesting that the other penalties in the Act equally are inconsistent with the penalties prescribed in other legislation.

Mr KOBELKE: The penalties, as well as being in excess, must be seen in the context of what the Minister is doing. The member for Geraldton does not understand that. We are not talking about the union or someone who has lots of money, but employees who are probably poorly paid. They are not doing anything corrupt. If they did, they would be caught by other Acts.

Mr Kierath: That is not true.

Mr KOBELKE: I know they can be caught by both.

Mr Kierath: They have to be directly involved in the financial affairs.

Mr KOBELKE: Let me make my point. We are dealing with someone who could be an employee involved in financial matters within the union who has not fulfilled the list of stringent requirements under section 74 of the Act. In other words he has failed in his duty. The Minister is not content to allow the union, as the employer to discipline that person and simply take management procedures. The difficulty is that it is much easier to get this case up to the judicial level than it is in other areas. I regularly have people come to me with major cases of theft or fraud because they have been to the police, who say it is too hard. Where someone is seen on a prima facie case to have done something wrong, it is difficult to bring him to justice.

In this situation, under section 77 of the Act, lowly paid employees can be very easily brought into the judicial system and a range of possible actions can be taken against them, one of which is these orders to do specified things. If through a miscarriage of justice they are not able to comply or it is totally unjust, we now load on them this ridiculously high penalty. The union is not caught by this clause. If someone has done something improper against the Criminal Code, it can be caught under another jurisdiction. There is no need for these penalties and for that reason I move -

Page 4, lines 5 to 8 - To delete the lines.

Mr BROWN: I support the amendment and draw the Committee's attention to the Police Act. There is an offence in the Police Act under the heading "valueless cheques"; that is, cheques which cannot be honoured. A finance officer could commit that offence either advertently or inadvertently. Nevertheless, it would be an offence for not taking due care. The penalty under the Police Act is a fine not to exceed $500. If one wanted to be pernicious about it one could make a decision not to use the Police Act in the case which involves a union official because under that Act it must be proved beyond reasonable doubt. Instead one could use this legislation because there is an easier test of proof and the penalties are 10 times higher than the penalties which attach to the Police Act.

Mr Kobelke: It is another example of one law for unionists and another for everyone else.

Mr BROWN: There is no question about that. There has been no attempt to measure this legislation against other legislation.

Mr Kierath: That argument has gone. There is a provision in the Act in relation to penalties and you know that. Section 77 includes the penalties.

Mr BROWN: The Minister is worsening that by virtue of the inclusion of this penalty. He is prolonging a wrong; he should be righting a wrong.

Mr Kierath: We are including a daily penalty and the choice of jurisdiction. Also, it covers the situation where someone fails to comply with an order. If that occurs, there must be a penalty. It is an order of the courts, not an order of the Minister. If it has been before the court and if the court orders them to cease doing something and they thumb their noses at it, there must be a daily penalty.

Mr BROWN: There are provisions in other Acts for situations where people do not comply with a court order. I do not dispute that. The nature of my dispute is that, firstly, this will be an onerous provision for employees who are not members of management committees but could be caught on a technicality and have a severe penalty imposed on them; and, secondly, the penalty is extreme in comparison with other legislation.

Mr Kierath: That has already been decided. Section 77 includes the penalties. That was decided last time. This is consistent with that part. If other Acts are deficient, we should amend them.

Mr BROWN: I recollect it was the Liberal Party that was reluctant to amend the Road Traffic Act to lower the blood alcohol level to 0.05 and I would be interested to see what it does in that respect. It is slow to increase penalties that could affect people aligned to its side of politics. There is a great rush of blood to the head when it comes to increasing penalties which are disproportionate to penalties in other legislation, particularly when people who are not on management committees of organisations and have no control over what they do are now caught by these provisions.

Mr RIEBELING: I will follow the line pursued by the member for Bassendean. This penalty provision is really out of kilter with what the community considers to be a reasonable penalty. The Minister has put this "heinous" offence into the same category as being a dealer in cannabis. Does the Minister know the penalty for being a dealer in cannabis?

Mr Kierath: No.

Mr RIEBELING: It is $3 000 or three years' imprisonment for someone caught suppling cannabis to young children. The Minister is broadening the definition within the provision so it will catch many more people.

Mr Kierath: It is consistent with the penalties already in the Act.

Mr RIEBELING: It is a matter of deliberately broadening the net to catch more people so it covers almost everyone working within the union movement. The Minister has included a penalty in the Bill which is out of kilter with community expectation as it exceeds by $2 000 the penalty for cannabis supply.

The member for Geraldton interjected earlier that a $100 penalty for false pretences was grossly inadequate. If that is the Government's view, it should bring in legislation to amend the Act; it should not introduce legislation which has the highest penalty in the land because the Minister wishes to drive unions into the ground.

Mr Kierath: It is only consistent with the penalty already in the Act.

Mr RIEBELING: What would happen if the penal provision applied to a director of a company which went bankrupt? Does the Minister encourage that sort of thing?

Mr Kierath: No.

Mr RIEBELING: The Minister wants the union movement to be subject to the highest penalty in the land as a result of his hate for unions.

Mr Kierath: I do not have a responsibility for that corporate area.

Mr RIEBELING: This legislation is clear.

Mr Kierath: The amendment is consistent with the Act. We have had this debate previously - it is consistent.

Mr RIEBELING: We will continue to have the debate until the Minister and the Government see some commonsense. This amendment, which will impose a penalty of $5 000 and a daily penalty of $500, is excessive in the extreme when dealing with employees. Even if it were to apply to union organisations, those penalties are exceptionally high. Such penalties are usually reserved for, and designed to have an impact on, corporate bodies in relation to offences of this nature. A penalty of $5 000 on an individual union employee would not have a similar impact as it would send that person broke. The provision does not apply what many people consider to be the principle of sentencing. Perhaps the Minister has not reached that section in pursuit of his law degree; however, the penalty provisions of this legislation should not be designed to be so punitive that they destroy a person. Maybe that is the Minister's intention.

This penalty is out of kilter with public perception; it is unnecessary and the Minister know it. He has inserted the penalty so he can grind the union movement out of existence. In the fullness of time, I hope that the more moderate members opposite will withdraw their support for the Minister and the legislation in consideration of what he is trying to do to the work force of the State.

Amendment put and a division taken with the following result -

Ayes (17)

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

Noes (28)

Mr Ainsworth	Mrs Holmes	Mr Omodei
Mr Baker	Mr House	Mrs Parker
Mr Barnett	Mr Kierath	Mr Pendal
Mr Board	Mr MacLean	Mr Shave
Mr Bradshaw	Mr Marshall	Mr Sullivan
Dr Constable	Mr Masters	Mr Sweetman
Mr Cowan	Mr McNee	Mr Trenorden
Mr Day	Mr Minson	Dr Turnbull
Dr Hames	Mr Nicholls	Mr Bloffwitch *(Teller)*
Mrs Hodson-Thomas		

Pairs

Ms MacTiernan	Mr Johnson
Mr Thomas	Mr Wiese

Amendment thus negatived.

Mr KOBELKE: Clause 7 contains a new section 79. Given the time limits, I will not spend the time I would like in going through the implications of the proposed section. In part, it seeks to lay out more clearly the area of jurisdiction in respect of the magistrate's court and other areas, and how matters might be handled.

In some specific ways it restricts the ability for a person to be hit with double penalties for exactly the same failure to meet the requirements of section 74. In some ways it might be seen as an improvement on the current situation. However, the current situation is grossly unfair because a union official who is involved in the financial affairs of a union has to meet not only the requirements of another person who is looking after money belonging to someone else, but also meeting these quite stringent requirements. They will be treated unfairly because they will be dealt with under two different jurisdictions. However, proposed section 79 tidies up that "double jeopardy" to which such people may be subjected. I move -

Page 5, line 16 to page 6, line 6 - To delete the lines.

Under proposed section 80 an official who has had an order made against him under section 77(2) will be disqualified from holding or acting in any office in the organisation during such period of not more than three years. This person could be an employee who earns a minimal wage working for one of these organisations. I am not talking about criminal activity, although it is possible that this legislation could be applied in that area - one assumes that would be dealt with in a different jurisdiction. The employee may have been involved in a misdemeanour and someone in the same organisation may wish to get at him. He will end up in the judicial system simply because someone else in the organisation has complained about him. That is all section 77 requires. If that person fails to follow the direction of the court, he can be barred from holding a position with that organisation for up to three years.

When one reads this legislation - obviously members on the government side have not - one can see how malicious it is. It is not about good management; it is not about financial propriety; and it is not about ensuring that unions have good financial management. It is about putting in place a complex structure of draconian measures that can be used against members of unions. If members opposite take the time to read the provisions from section 74 to proposed section 80, they will draw no other conclusion than that someone is out to get people in unions. That is what this legislation is about. It is not about good management. If it were, the Minister would be putting in place different procedures. He would work cooperatively so that the internal controls and management in unions were improved and people could be brought to justice if that were required. That is not what this legislation is about and that is why I have moved to delete proposed section 80.

Mr RIEBELING: I support the amendment. My reading of proposed subsection 79(5) indicates that criminal proceedings are not a deterrent from prosecution for offences under proposed section 77. In fact proposed subsection

(5)(b) indicates that once criminal procedures have finished action will be taken under proposed section 80. It is a double jeopardy situation.

This proposed section to which the amendment refers is the section to which I referred in the second reading debate. It is clear that the Minister has included this provision so that effective union officials can be replaced by someone of lesser calibre and with less experience. This proposed section will allow not only the removal of a person from his position for three years, but also proposed subsection (2) will allow another person to be appointed to fill that vacant office. That person may not be the person whom members of the union want in that position. That will be done by making application to the registrar of the court who will then recommend who should replace the official in the union movement. This person could be a clerk in the union movement who had some sort of financial dealing. This provision does not put in place a democratic system to replace a union employee; it gives the court the power on an application of the registrar to appoint somebody who may have no relevance to the union from which the person has been removed. A member of another union which is seeking to take control of the members off that union could get the nod to take the top job or any job within the union movement. What right does a Government have to put in place legislation that will remove a union's ability to employ and operate efficiently? This legislation will allow this Government to pick out officials that it wants to remove by dreaming up dodgy offences under the financial management provisions and proceeding with actions against them to have them banned for three years. The Minister through his department will be able to target specific people within the unions.

Mr KIERATH: We have to consider all these clauses in context. These clauses impose financial obligations on people in unions whose function it is to discharge the financial affairs of the union. We were talking previously about participation directly in the financial management of the union. These provisions are a last resort. Let us use as an example someone who was in charge of the financial affairs of the union and was putting money into a place to which he was not entitled and was being dealt with by the Industrial Magistrate's Court.

They continued to thumb their noses and penalties were imposed. Basically, the disqualification provisions to which this amendment relates are a last resort. When everything else has failed - the person has been fined and convicted and they continue to offend - as a last resort there is the power to disqualify them from holding office for three years. It is not about someone doing something off their own bat: It is about someone who has totally disregarded orders of the court. Obviously, in that case we need some other penalty. It may be that the person is prepared to cop the fines because the financial gain is greater than the fines that have been imposed.

Mr Riebeling interjected.

Mr KIERATH: We could be talking about large amounts of money; in some cases this involves millions of dollars. This relates to a person who has decided that it is financially worthwhile to cop the fines and continue to offend despite court orders. It is not a first resort but a penalty when everything else has failed.

Mr BROWN: I was particularly interested in the Minister's comment to my colleague that proposed section 80 is included as a last resort; that is, once a person has been convicted of a breach under existing section 77, if they are still not complying, this provision is available. Perhaps the Minister can explain where that is provided for in the legislation. Proposed section 80(1) provides -

> If an order is made against an officer of an organisation under section 77(2)(b), (c), (d) or (e), the industrial magistrate's court may, on the application of the Registrar, order -

There is nothing constraining the registrar from making that application.

Mr Kierath: An order must be made; the person must have an order against them to begin with.

Mr BROWN: But the Minister said it is a last resort.

Mr Kierath: Someone has an order from the court against them and then the registrar may make an application to have them disqualified. The magistrate would take into account the person's actions - what he has been doing, whether he has been obeying the orders and so on.

Mr BROWN: It does not say that.

Mr Kierath: They are the factors that the Industrial Magistrate's Court currently takes into account. When the court invokes a penalty it looks at whether it is a first offence, whether orders have been ignored -

Mr BROWN: The Minister said this was a penalty of last resort. I understand he said that in the context that if someone is acting in breach of an order and they continue to do so, this action could be taken as a last resort.

Mr Kierath: The breach may be so bad that it should be taken into account as well.

Mr BROWN: This legislation provides that, once an order is made against a person under section 77(2) and the relevant paragraphs, the registrar can exercise a discretion as to whether to bring an application to have this further sanction imposed on the officer. It can be done at the same time; that is, the order is handed down by the magistrate and the registrar takes the view that this official is causing pain to the Government and he should be removed. If the magistrate can now take this action, that person can be removed from office.

Mr Kierath: Existing paragraphs (b) and (c) refer to orders of the Industrial Magistrate's Court, paying compensation, ordering the restitution or forfeiture of any pecuniary advantage or ordering the respondent to do any specified things. They already have an order from the court on them.

Mr BROWN: That is right; I accept that. Proposed section 80 gives to the registrar a discretion -

Mr Kierath: To the magistrate.

Mr BROWN: No, it gives the registrar a discretion to make an application -

Mr Kierath: He can apply, but the magistrate makes the decision.

Mr BROWN: Yes, but the registrar exercises the discretion. It is interesting that that discretion cannot be exercised by anyone else. We all know that under the Public Sector Management Act a registrar can be given the flick at any time by the Minister.

Mr Kierath: You know the registrar has many functions like this.

Mr BROWN: We know how this Minister deals with heads of departments. His behaviour in the Health portfolio is detailed in *Hansard* and the reports. We know about the pressure he put on these people. The register can be very easily reminded that he can be given the flick at any time by the Minister. The registrar is there at the Minister's whim and the Minister can get rid of that person very easily.

Mr Kierath: I have no powers over them; the member knows that.

Mr BROWN: The Minister can do that very easily.

Mr Kierath: The Public Sector Management Act prevents that.

Mr BROWN: He knows what he did when he was the Minister for Health and he pressured the head of the department to sack those people.

Mr RIEBELING: I was quite amazed by the Minister's response to my comments in relation to proposed section 80. The Minister quite clearly stated that this is a last resort provision. He has now tried to backpedal from that statement. This clause does not refer to a continuing breach.

Mr Kierath: It is a matter of whether one trusts the magistrate.

Mr RIEBELING: No, is a matter of whether the community trusts the Minister. He said it is clear that this is a last resort provision. If that is the case, it is not very well worded. The Minister also stated that the magistrate had the discretion to proceed. Does this indicate that the registrar has no discretion to make an application?

Mr Kierath: They have the discretion to make the application -

Mr RIEBELING: So he was wrong in relation to that provision as well.

Mr Kierath: But the application is judged by the magistrate and he makes the decision whether -

Mr RIEBELING: That is obvious. We are talking about the application of the registrar, and he has discretion.

Mr Kierath: That is what it says.

Mr RIEBELING: No, it does not.

Mr Kierath: It says that he may make -

Mr RIEBELING: No, the magistrate may, but on the application of the registrar. If a person is convicted or an order is made under existing section 77(2)(b), (c), (d) or (e), is the registrar compelled to make an application?

Mr Kierath: I am not aware of where the registrar would be compelled to make the application.

Mr RIEBELING: Was the Minister involved in the drafting?

Mr Kierath: The member misunderstands -

Mr RIEBELING: I am trying to get to the bottom of this section.

Mr Kierath: There is an existing section 77.

Mr RIEBELING: I know that. This relates to disqualification for breach of duty. It is like the suspension of a driver's licence after a person has been convicted of drink driving.

Mr KIERATH: Section77(1) states that if a person who is or has been a finance official of an organisation contravenes or fails to comply with section 74, the organisation may apply in the prescribed manner to an industrial magistrate. Therefore, the registrar has some discretion.

Mr RIEBELING: The Minister would have no objection to amending the clause to give the registrar a discretion as to an application?

Mr Kierath: It is already there in the Act.

Mr RIEBELING: It is not. The Minister is putting in a new section under which, as night follows day with the suspension of a driver's licence after a conviction for drink driving, the registrar would make an application, if a person is convicted under those sections the clause describes. I hope the Minister is right.

Mr Kierath: It is in the Act.

Mr RIEBELING: Proposed section 80 is not yet in the Act.

Mr Kierath: Section 77 is.

Mr RIEBELING: I know what the offence provisions are. This is a penalty provision.

Mr Kierath: Do you want me to answer or not? Section 77(1) -

Mr RIEBELING: We are talking about subsection (2).

Mr Kierath: I will walk you through it slowly. Subsection (2) reads that on the hearing of an application under subsection (1), which means we have go back to look at subsection (1), which reads "may apply in the prescribed manner to an Industrial Magistrate's Court". If that is not giving a discretion, I do not know what is.

Mr Kobelke interjected.

Mr Kierath: You are being smart. I was trying to give a sensible answer.

Mr RIEBELING: The Minister is not being very smart. It amazes me that the Minister does not have a lawyer sitting next to him who could answer our questions.

Mr Kierath: I do not know where the person is.

Mr RIEBELING: The Minister's workers have not turned up because they might be on strike. I do not blame them for not wanting to sit next to him. However, it makes it difficult to get an answer from a Minister who does not understand the legislation.

Mr Kierath: I have given an accurate answer.

Mr BROWN: I will walk the Minister through this because it is an important point. The member for Burrup asked the Minister if under new section 80 the registrar has a discretion as to whether to make an application to the magistrate's court. The Minister said in response that the registrar has a discretion which arises out of an interpretation of section 77.

Mr Kierath: It is not an interpretation; it links up with it.

Mr BROWN: Section 77 provides the opportunity for a range of people to make an application. Proposed section 80 does not provide the same range of options or people who may bring this type of action.

Mr Kierath: Out of the five categories listed, only one may take action, and that is the registrar.

Mr BROWN: That is right. I interpret that to mean parliamentary counsel has deliberately narrowed this down and redrafted it to ensure it sits exclusively of section 77 because it does not use the same phraseology or involve the same level of people who can make an application.

Mr Kierath: Section 77(1) allows those five parties, as it were, to apply in the prescribed manner; there is no doubt about that, and that is in the current Act. Proposed section 80 refers to the application of the registrar in relation to section 77(2)(b) to (e). Therefore, we come back to the registrar and the point that he may make an application.

Mr BROWN: The Minister's interpretation is that the registrar has a discretion as to whether to make an application once an order is made.

Mr Kierath: Yes.

Mr BROWN: I may not agree with that interpretation, but let us leave that for the moment. Proposed section 80(1) states that "the Industrial Magistrate's Court may". We all know that in some legislation "may" means "shall", because in some areas it is a compulsory word, although "shall" never means "may".

Mr Kierath: I previously explained that it was considered to be an additional option. That is why it has been worded in that way. The industrial magistrate will take all those factors into account in deciding whether the provision will apply. In normal sentencing circumstances one would expect it to apply in only flagrant breaches of orders. The industrial magistrate will decide that on the basis of the facts before the court. My view, the advice and the directions given to parliamentary counsel are that it should be a discretion.

Mr BROWN: The intent is to give a discretion to the magistrate to impose a penalty or not.

Mr Kierath: To impose a disqualification - other penalties may well apply.

Mr BROWN: What tests will the magistrate use when determining that matter? Set out there are tests for other breaches but not for this breach. Will the Minister identify the tests that the magistrate will take into account when determining whether to exercise the discretion?

Mr RIEBELING: The Minister has conceded that the word "may" in this clause refers directly to the magistrate. However, the Minister commented originally that it was a last resort clause for people who are not complying with orders made under this clause, who are referred to in section 77(2)(c) to (e), because the disqualification is for continuing offences, as the Minister put it, under this clause. However, it does not follow that because the court has the discretion to put in place a suspension, the same discretion is in the hands of the registrar. The Minister has gone to great lengths to point out that this legislation is separate and should not be considered with other pieces of legislation. The Minister is putting much higher penalties in place because this is separate legislation and must be handled differently. However, in this clause the Minister is saying that the magistrate's discretion will be looked at in the light of previous offences and the like. Maybe the Minister will direct me to what the magistrate should be looking at when deciding whether a suspension is in place. There is no instruction as to what criteria the registrar should consider before making an application before a magistrate.

Mr Kierath: Obviously the registrar has responsibilities under this Bill. The registrar must believe that action should be taken, and the magistrate will then make a judgment on the application. How far should we go?

Mr RIEBELING: I am after some guidance for the courts when they are considering offences under this legislation, so that if they do not understand what this proposed section means, they can go to the record of this debate to find out whether they should impose a penalty.

Mr Kierath: I have done that already.

Mr RIEBELING: If I thought the Minister had done that, I would not be asking. What criteria will the registrar use to determine whether an application should be made? The Minister says the registrar has discretion. I do not think he has. Where in this Bill does the registrar have discretion?

Mr Kierath: He would use the same discretion that he has in other areas of the Bill with regard to penalties.

Mr RIEBELING: Is the Minister saying the registrar should not take action merely because there was a conviction under those proposed sections?

Mr Kierath: The registrar would take action where he thought there was a serious intention to breach the intent of this part of the legislation. It would not be frivolous -

Mr RIEBELING: Does the Minister think there should be two types of convictions, one for a serious intention and the other for a non-serious intention to breach the rules?

Mr Kierath: It is intended that this provision be used when someone is either ignoring orders or -

Mr RIEBELING: Ignoring orders, and serious breaches.

Mr Kierath: I do not want to impose constraints on either the registrar or the magistrate. This would be used as a last resort. If other penalties were not having the desired effect on individuals, a magistrate might consider that this was the appropriate penalty. It is not my judgment. Ultimately, the magistrate will make the decision.

Mr RIEBELING: I understand how the magistrate makes the decision. I am trying to find out how the application will get before the magistrate. The Minister said earlier that serious breaches would attract an application. I thought any breach would be determined to be serious.

[The member's time expired.]

Mr BROWN: The more we go into this, the more complex it becomes. According to the Minister, the registrar is required to exercise -

Mr Kierath: Are we debating the clause or the amendment?

Mr BROWN: We are debating the amendment. With regard to the disqualification for breach of duty, the registrar is required, according to the Minister, to exercise a discretion about whether to make such an application. He can exercise that discretion only when a person has had an order made against him under proposed sections 77(2)(b),(c),(d) or (e). Section 77 provides that a number of penalties can be imposed against a person who is found to be at fault: A penalty of $5 000; a penalty to pay compensation to an organisation for any loss or damage; and a penalty to pay restitution or forfeiture for any pecuniary advantage obtained. There is an additional penalty with regard to non-compliance.

Mr Kierath: I know we are not debating the Act, but section 77(3) states that only one penalty can be imposed on the respondent under subsection (2)(b) in respect of contraventions or failure to comply arising out of one course of conduct.

Mr BROWN: Yes, under subsection (2)(b). That is with regard to a fine for one course of conduct, otherwise a person could engage in conduct this morning, later today and this evening, and all of that conduct would constitute different offences.

Mr Kierath: The member is trying to say that it is cumulative. It is not.

Mr BROWN: Section 77(2) states that on the hearing of an application under subsection (1), the Industrial Magistrate's Court may, if the contravention or failure to comply is proved, do any one or more of the following.

Mr Kierath: We are debating the Act again rather than the amendment. That is already part of the Act.

Mr BROWN: A range of penalties can be imposed, and the court does not have to choose between them. A court can impose a number of penalties for the one offence. It is not constrained by subsection (3). In addition, the Minister is proposing to include a further sanction. I am trying to work out how the industrial registrar will exercise his discretion about whether to bring an application under section 80.

Mr Kierath: He already has that discretion. That is in the Act.

Mr BROWN: This is the section 80 that is proposed.

Mr Kierath: Section 80 applies to the industrial magistrate. The discretion for the registrar is under section 77, which is already part of the Act.

[The member's time expired.]

Mr RIEBELING: Is the Minister saying that under proposed section 80, industrial magistrates will be quite happy for the registrar to exercise the discretion that this section gives him?

Mr Kierath: How can I comment on whether the industrial magistrate is happy? Be reasonable about this.

Mr RIEBELING: The Minister is saying that he has the discretion.

Mr Kierath: The Bill states that the Industrial Magistrate's Court "may, on the application of the registrar". The application is confined to the registrar. The registrar does have discretion. Once the application comes before the magistrate, even if the registrar thinks that something should happen, it is not up to the registrar. The industrial magistrate will make a judgment on it. If the registrar did not apply, it would not get before the industrial magistrate.

Mr RIEBELING: Is it the Minister's intention, after a conviction under section 77(2)(b)-(e), that the registrar does not in every case proceed with an application?

Mr Kierath: Yes.

Mr BROWN: The Minister is now on record as saying that he does not expect the registrar to exercise a discretion on each occasion.

Mr Kierath: I did not say that. I said that I expected the registrar to have the discretion to make an application. The member for Bassendean is putting a different slant to my words.

Mr BROWN: What tests should the registrar apply to himself to determine whether he makes an application?

Mr Kierath: That is already part of the Act.

Mr BROWN: Proposed section 80 is not part of the Act. The Minister is asking the registrar to make an application.

Mr Kierath: No, proposed section 80 does not do that.

Mr BROWN: What does "on the application of the registrar" mean?

Mr Kierath: Proposed section 80 says that the industrial magistrate may make an order on the application of the registrar. The registrar already has that discretion. His criteria for that application is in the Act.

Mr BROWN: Section 80 is a new section, so nothing in the Act at the moment gives to the Industrial Magistrate's Court the power to disqualify a union official from holding office in these circumstances.

Mr Kierath: Section 80 will.

Mr BROWN: There is nothing in the Act at the moment. The industrial magistrate can exercise that power only if there is an application from the registrar. That is not an application that the registrar can currently make.

Mr Kierath: No; however, the registrar's discretionary powers are in the Act.

Mr BROWN: What discretion can the magistrate exercise? Where in the Act is that discretion spelled out?

Mr Kierath: The industrial magistrate's discretion in a range of penalty provisions is already contained in the existing Act.

Mr BROWN: Where?

Mr Kierath: In a range of sections for proceedings like deregistration and other issues. I presume that the member for Bassendean has read the Act.

Mr BROWN: One would have thought that the responsible Minister of the Crown would be on top of this issue, particularly when that Minister chooses to come into Committee without an adviser. The Opposition does not have the Minister's bureaucratic backup. As individual members we try to come to grips with this complex legislation. It is most frustrating when one asks the Minister fairly basic questions about proposed sections of the Act and the response is, "Oh well, it's in the Act somewhere and it's up to you to find it."

Mr Kierath: Don't be silly.

Mr BROWN: Where is it? Can the Minister point to the section?

Mr Kierath: The registrar's discretion is under section 77(1) of the Act.

Mr BROWN: Section 77 deals with breaches of duty in relation to five matters. The breach and the penalty we are referring to is dealt with in proposed section 80. I give up! Congratulations, the Minister has successfully exhausted members of the Opposition in their attempts at getting an answer. Had we asked the wall we would have received a more intelligent answer. It is appalling when we come in here as legislators and we cannot get from the Minister, who is supposed to be competent in these matters, decent answers to questions. It is no wonder this Parliament and the courts are held up to ridicule by the people of this State when even before we pass legislation we cannot get the Minister to explain what it is about. We are told in a cavalier fashion that it is in the Bill somewhere! That is appalling. The standard of the Minister's answers and the way in which he has dealt with these matters has shown the most gross incompetence and his cavalier way of treating this Parliament.

Mr RIEBELING: Under proposed section 80 an order has already been made under section 72(b)-(e) and the industrial magistrate may then exercise discretion. The order is in existence; it is not a situation where an application comes before the registrar or an industrial dispute is reported to the registrar, the court has made an order. Proposed section 80 then says it is possible, after application by a registrar, that the Industrial Magistrate's Court may exercise discretion. It is not like all other industrial procedures because it relates to an order of the court and what flows from that. The Minister has thrown his hands up in despair and said it is obvious because it happens all the time. It does not; it is rare. I doubt whether a registrar would ever interfere with the discretion of a magistrate's court. I have not heard of a provision where, in an action to flow from conviction or an order, the registrar would not be forced to comply. The Minister says that the Act provides that the registrar is not forced to comply, and the registrar has a discretion. The discretions in this Act are not as a consequence of an order.

Mr Kierath: The member has misunderstood me. The discretion of a magistrate is contained in proposed section 80 and the discretion of the registrar is in section 77 which is part of the Act.

Mr RIEBELING: That does not relate to an order of a court. The other discretions to which the Minister referred are for procedural matters up to an order. The status changes once an order is made.

Mr Kierath: A magistrate has other powers to enforce other sections of the Act in the Industrial Magistrate's Court.

Mr RIEBELING: Upon application to the registrar, but this provision does not require application from a third party to the registrar to instigate action. It requires the registrar to make a decision. When would the registrar use that discretion? The way the proposed section is worded, and because this will be the result of an order, the registrar will be compelled to proceed in every situation.

Mr KOBELKE: It is deplorable that the Minister has no adviser or technical expert to assist in answering a simple question which was raised about half an hour ago. The Minister has it wrong. This is complex legislation, and any of us could make a mistake, just as the Minister has, but the Minister does not recognise that. We have been trying to identify whether the registrar has the ability to make a determination under proposed section 80.

Mr Kierath: I said that the registrar has discretion to make an application. I pointed to the Act.

Mr KOBELKE: When we asked for some support for that statement, the Minister referred to section 77 of the principal Act, which relates simply to the beginning of the procedure which brings us to proposed section 80, which does not provide that power of discretion to the registrar. Section 77 provides that if a person who has been a finance official of an organisation contravenes or fails to comply with various things, action can be taken by a range of people including the registrar. A member of a union can take that action. We cannot apply those powers to proposed section 80.

Mr Kierath: Your colleague agreed that was not the case. We have a rift here.

Mr KOBELKE: That is nonsense. The Minister cannot sit and listen to debate. He must try to score political points, to avoid our specific questioning. This point could have been dealt with in five minutes.

Mr Kierath: When you left the Chamber, we agreed on that point.

Mr KOBELKE: When I returned to the Chamber I spoke to my colleague. The Minister should not try to mislead the Chamber. Union officials could get into difficulty, considering section 74 which provides that if a finance official fails to exercise a reasonable degree of care and diligence at all times in the performance of the functions of his office or employment, he becomes subject to certain penalties. The Minister is failing to exercise a reasonable degree of care and diligence in the performance of his duties. He has no adviser to assist him. He cannot argue the merits of the legislation. It is a minor exercise to understand the implications of proposed section 80.

We cannot delay this Chamber. We are under threat of the guillotine so we cannot debate the matter fully. Either through incompetence or a simple wish to be obdurate, the Minister does not wish to address a matter of some complexity relating to what the registrar may do. Through the efforts of the members for Burrup and Bassendean we have been able to determine the matter, but it took half an hour. The Minister cannot see that. He tries to score political points instead of facing up to the substance of the legislation.

Mr RIEBELING: I turn to proposed section 80(2) and seek clarification regarding applications by the registrar for the appointment of a person to replace an officer whose office has become vacant under an order. How will the application be made? How will the list of names of persons to replace the officer be obtained? Will the union affected by the order be requested to offer a list of replacements? Will the registrar be supplied with a list from, say, the Chamber of Commerce and Industry or the Minister's office? This provision will allow political interference by the conservative side of politics in the running of unions. What right has any industrial court to appoint a person who has not been elected to a position within the union movement? What is the reason for this provision? The Minister should not say that this is a last resort, or that basically if the unions do not obey the rules, after numerous attempts this provision will be used. This measure will allow the Minister to interfere with the running of the union movement. How will the list of names be compiled? On whose advice will the list be determined? Perhaps the Minister can point to which section in the Act this information may be found. I cannot find it. Perhaps the Minister will admit that he has made a mistake by providing powers to appoint a person rather than leaving it to an election.

Mr KIERATH: The wording is clear. Proposed section 80 refers to the Industrial Magistrate's Court. It does not refer to the Minister or the registrar. This provision relates to an industrial magistrate sitting in court, independent of conservative Governments, Labor Governments or any others. A magistrate is appointed until retirement age. It is a lifetime appointment. On opening day, the Chief Magistrate told me that even if magistrates opposed his views he had no power to direct them.

Mr Riebeling: I have no argument with that.

Mr KIERATH: When making judgments, magistrates are independent of political interference. They have obligations under the Act. I have not heard any allegations of magistrates being political or favouring Governments of the day. Magistrates have been held in high regard by both sides of politics. The clause provides that the Industrial Magistrate's Court will make the decision. That is, the Industrial Magistrate's Court may include in an order under subsection (1) any provision that the court considers necessary to ensure the operation of the order and to provide for the election or appointment of a person to replace the officer whose office becomes vacant under the order. I understand it may not be necessary to do that to ensure the order is carried out. If there were another suitable person in the organisation it would be up to the magistrate to decide whether that person had the necessary ability. The provisions are discretionary but that discretion is with the magistrate, not with the Minister or the registrar. The magistrate might ask the registrar or the organisation concerned to provide a list.

Mr RIEBELING: The Minister does not understand what the legislation says. I repeat for the Minister's edification the proposed subsection -

(2) The industrial magistrate's court may include in an order made under subsection (1) . . .

Proposed subsection (1) provides that the Industrial Magistrate's Court may, on the application of the registrar, make an order. An order in relation to the appointment of a person under proposed subsection (2) no doubt would be included in an application by the registrar. The Minister may glibly say the magistrate has discretion. However, in most situations no doubt the magistrate will not be able to compile lists. Ninety per cent of the time that will be done by the registrar's office in an application.

Mr Kierath: You of all people know how the magistrates' courts work. The magistrate often asks the parties what they have to say. Suggestions are made and then he makes a decision.

Mr RIEBELING: That is why the Minister's answer was ludicrous. He was saying that the registrar, the applicant in that situation, would not put forward the information on which the magistrate would make an order. Of course he would. The Minister knows that. He would put forward an application to remove a person for say three years and would also nominate a person to replace the ousted person. The magistrate does not, for example, telephone organisations and ask who they want on lists.

Mr Kierath: The magistrate has the discretion to seek information from any source.

Mr RIEBELING: The application comes from the registrar, who would do that.

Mr Kierath: I am referring to the application to commence this procedure.

Mr RIEBELING: Why does the Minister not admit that what I am saying is right? An appointed person would be on a list compiled by the registrar and therefore be included in the application.

Mr Kierath: I cannot put words into the magistrate's mouth.

Mr RIEBELING: Does the Minister consider that a registrar would not provide names and that it would be the job of the magistrate?

Mr Kierath: The member for Burrup is missing the point. It is not for me to consider, it is for the magistrate to decide whether he wants a list from the organisation, the registrar or anyone else.

Mr RIEBELING: Would it be incorrect for the registrar to compile a list within the application referred to under proposed subsection (1)?

Mr Kierath: It is possible that the registrar could compile a list. I have said all along that the discretion is with the magistrate, who can seek names from the registrar, organisations or any other party.

Mr Riebeling: We do not have to debate again whether the magistrate has discretion. We are talking about who compiles the list of replacements. The minister's response was that the magistrate would have discretion.

Mr Kierath: There is nothing in this Bill that requires that someone must compile a list of replacements.

Mr RIEBELING: Where would the names come from?

Mr Kierath: It would be up to the magistrate to decide.

Mr RIEBELING: It would not be in the registrar's application?

Mr Kierath: The magistrate could ask the registrar for some suggestions. He could ask the organisation concerned. If I were the magistrate, I would ask the organisation first. If it were not forthcoming or if there was something unsatisfactory about its answer, I would turn to the registrar or some other party. This Bill puts the discretion in the hands of the magistrate.

Mr RIEBELING: The Minister is saying that the discretion is with the magistrate. However, he goes further and says that the registrar also has discretion.

Mr BROWN: I am indebted to my colleague, the member for Burrup, for pointing out this issue. It is something I missed on reading the provision. I cannot believe it is proposed to put in a Bill a provision for a court to appoint an elected officer of an organisation. My God! Do members know what this means? It means that if three or four members of the committee of management failed in their duties in this respect, the magistrate could replace them. How on earth can a body or organisation represent the interests of its members if the people who are running the show have been appointed by a magistrate?

Mr Kierath: Proposed subsection (2) is self-explanatory. It says that the Industrial Magistrate's Court may include in an order under subsection (1) any provision that the court considers necessary to ensure the operation of the order and to provide for the election or appointment of a person to replace the officer whose office becomes vacant under the order.

Mr BROWN: I could understand if it provided for the election where someone may be disqualified from holding office and an organisation is now without a president or secretary. Under union rules it would be necessary to hold an election and to appoint a returning officer, etc. However, we are talking about the court appointing a person to an elected officer's position. This legislation is supposed to be about democracy, about members of organisations taking responsibility for themselves. Next we will find that the Minister will be able to appoint union officials. From where will the list come, the Department of Labor Relations? What is the purpose of the appointment?

Mr KIERATH: If a union refused to fill a position where an officer of the union had thumbed his nose at the authorities and the magistrate's court ordered that person be disqualified from office - he would not be under an order unless he were in breach of orders - the union would be able to frustrate the court order by its not being able to appoint somebody to replace the official. It reads "may include in an order under subsection (a) any provision that it considers necessary to ensure the operation of the order."

Mr BROWN: It says, "and to provide for the election or appointment."

Mr Kierath: The member should read the last words. It says "becomes vacant under the order".

Mr BROWN: The order says that a person who is disqualified can no longer hold office. They are gone for, say, three years. If the union did not move to fill this position, a member could apply under section 66 of the Act to the President of the Industrial Relations Commission to force the union to fill the position. The Act already provides a range of sections to cover that situation. However, nowhere in the Act is there provision for a body to appoint a person, who may not even be a member of the union, to hold an elected officer's position. What a nonsense. How could that situation occur? It is unbelievable that proposed subsection is included in legislation which the Minister claims is about democracy.

Mr RIEBELING: I do not think the Minister wants this legislation to work in any way. He sees it as a means of getting into the union movement and destroying it. If he were serious about the proper operation of unions, proposed section 80(2) would finish after the words "for the election". The Minister wants to meddle in the affairs of unions and that is the reason for allowing the appointment of a person who has not been elected.

Mr Kierath: It is not me; the magistrate has the discretion.

Mr RIEBELING: This provision will allow another body to meddle in the operation of the union. The Minister has spoken about the efficient running of unions and he is giving the court the ability to remove elected officials. Will the Minister explain why it would be necessary to go further than to order an election?

Mr Kierath: We have gone through a situation where there may be circumstances in which an election is not satisfactory to the court. In that case, it would make an appointment.

Mr RIEBELING: An election of another officer might not be suitable to the court?

Mr Kierath: No, it is not me who decides, it is the magistrate.

Mr RIEBELING: It is the Minister's legislation.

Mr Kierath: Yes, but I am not the decision maker.

Mr RIEBELING: There must be a reason.

Mr Kierath: It is to enable the court to enforce its orders.

Mr RIEBELING: Surely all that is necessary is to enforce an election.

Mr Kierath: I am advised this is needed also.

Mr RIEBELING: Does the Minister have the drafting instructions and advice with him?

Mr Kierath: No.

Mr RIEBELING: Does he remember what they were?

Mr Kierath: I remember the general instructions.

Mr RIEBELING: What was the general instruction about including the provision to allow the appointment?

Mr Kierath: To allow the magistrate enough flexibility to have the order carried out. The magistrate will sit in judgment and will do only what is necessary to carry out the order. It would be done only in the case of a person or organisation thumbing its nose at the Industrial Magistrate's Court. That person or organisation would already have defied the court and this provision will give the court power.

Mr RIEBELING: We have already covered that.

Mr Kierath: It relates to the order of the industrial magistrate.

Mr RIEBELING: It gives the court the power to remove a democratically elected person. The Minister has been rabbiting on in public about this being an opportunity to allow union members to have a say in their unions. However, he proposes to remove a democratically elected person and replace that person with a dictator who has not been elected.

Mr Kierath: The first point mentioned is for the magistrate to order an election. It then provides for the appointment of a person to replace the officer. If I were a magistrate, I would order firstly that an election be held but, if that were not satisfactory, I would look at the other options.

Mr RIEBELING: The order in which the options are given does not denote their priority. The magistrate has two options and it does not mean he must take the first one first.

Mr Kierath: I said that is what I would do if I were the magistrate.

Mr RIEBELING: The point of this proposed section is to enable the court to remove a democratically elected person from his position in the union.

Mr BROWN: I must say in the strongest possible terms that this is anti-democracy. This condition does not apply to any other group in our society. If an attempt were made to apply it to any other group, there would be absolute outrage. If the Government tried to apply it to the corporate sector, whereby a court could appoint directors to run companies, it would be absolutely outraged.

Mr Kierath: Courts can make orders to do all those things. The member does not understand these matters.

Mr BROWN: I understand them only too well. Courts can appoint temporary administrators. This legislation will allow the court to appoint a person to an elected position for three years. The Local Government Act allows the appointment of a temporary officer, but not one for three years.

Mr Kierath: The provision refers only to the carrying out of the order.

Mr BROWN: Yes, and the order is that an officer may be disqualified from holding office for a period of up to three years. If a person were elected for four years, and after six months he was disbarred by the court, an appointment could be made for the remaining period.

Mr Kierath: Only for up to three years.

Mr BROWN: The person might be appointed for three years. The people who elected their official in that organisation may have made a mistake, but under democratic principles they should be given the right to elect another person.

Mr Kierath: We would expect that to be the case.

Mr BROWN: Why include provision for the appointment?

Mr Kierath: In case that prevents the order from being carried out.

Mr BROWN: How does it do that?

Mr Kierath: By a whole range of circumstances. The Industrial Magistrate's Court may impose an order but before it reaches that stage the official must have breached the order. That person can be disqualified and the court can appoint someone in their place or order an election, to ensure the operation of the order. It is quite straightforward.

Mr BROWN: The only saving grace about this debate is that the Opposition's concerns can be placed on the record. I accept that the proposed new section will allow people to be suspended for up to three years and that the office should be filled when that happens. I accept that the vacancy should be filled by an election in that organisation. In the same way as it happens in companies, there may be a close balance of power within a union and the magistrate will be allowed to appoint a person to an elected officer's position to determine significant matters.

Mr Kierath: It is only in relation to the order.

Mr BROWN: Once appointed, the person will have the same responsibilities and the same powers as an elected officer. The Minister allegedly has an interest in the democratic process, but this legislation will allow the court to appoint a person who may or may not be a member of the union. The person appointed could be a member of a rival union or might be nominated by anybody. He will allegedly work for the best interests of the people paying the fees in that organisation and, even though he will not have been elected, may not be a member of the union, and may not know anybody, he will be told to represent the members of that union. According to the Minister, that is a democratic process.

Mr Kierath: It is about carrying out the order of the court.

Mr BROWN: This is unbelievably undemocratic.

Progress

Progress reported.

[Continued on page 1544.]

STATEMENT - MEMBER FOR THORNLIE

Schools

MS McHALE (Thornlie) [12.20 pm]: I make this statement on behalf of a number of schools in my electorate. Given the continued commitment of the Premier to deliver on his social dividend to my community I call on the Government to respond to two issues. First, Langford Primary School, a small school of 124 children, suffered an arson attack on Maundy Thursday evening. Langford Primary School has strong support from the majority of its parents, particularly the Aboriginal community. Approximately 45 per cent of the children are Aboriginal and the school is recognised for its innovative programs aimed at delivering a culturally sensitive curriculum. It was distressing for the school to experience the arson attack. It is interesting to note that acts of arson and other crimes against school property increased by 18 per cent during 1995. I call on the Government to study through its Youth Advisory Council and the Education Department the increase in arson and its relationship to truancy and other dysfunctional activities to help schools like Langford cope with this serious concern and reduce the incidence of those activities.

My second demand relates to the Government's commitment to provide $2.8m to schools for the provision of shade through tree planting programs and to erect covers over sandpits in preprimary schools. I have surveyed the schools in my electorate and five are in need of covers for their sandpits. My demand is that these five schools receive their social dividend. I call on the Government to ensure this is not another broken promise.

STATEMENT - MEMBER FOR SOUTHERN RIVER

Livingston Estate - Code it for Keeps Program

MRS HOLMES (Southern River) [12.22 pm]: I make this statement on behalf of my constituents in Southern River who live in the Livingston Estate in the suburb of Canning Vale. The Western Australia Police Service in partnership with the Community Policing Crime Prevention State Council of Western Australia, Neighbourhood Watch, the Livingston residents committee, the City of Canning and Amex Corporation Pty Ltd have offered the Livingston residents the opportunity to be involved in a national pilot scheme called Code It For Keeps. The program involves every one of the 500 households in the Livingston Estate marking property for the purpose of deterring would-be criminals and aiding in the recovery of stolen property. As a national pilot project this program is offered at a considerably subsidised rate for the exclusive benefit of the Livingston Estate. Usually property marking of this

calibre would cost the householder $40. Funds have been raised to reduce the cost for each household to $10 for this pilot scheme. Each household will receive stencils to mark 10 household items most appealing to would-be thieves; for example, televisions, videos, stereos, computers and musical equipment. They will also receive stickers and signage for their properties to let would-be thieves know the property is marked. The entrance to the estate will also bear large signage that states "This estate is coded for keeps". It is hoped this pilot scheme will be a catalyst for the State.

STATEMENT - MEMBER FOR MIDLAND

Nightclubs and Restaurants - Regulation

MRS ROBERTS (Midland) [12.24 pm]: I will speak about an issue that I have raised in this Parliament since I was elected in 1994; namely, the ability to deal with activities such as the Slic Chix restaurant in Mt Hawthorn and some of those kinds of activities that are proposed for Midland, such as at a nightclub, and also at a restaurant in Fremantle. I asked the Minister for Local Government in September 1994 whether he proposed to introduce amendments to the Local Government Act that would effectively regulate the activities of premises such as the Slic Chix restaurant. The Minister said: "I will introduce provisions for councils to have the option of making by-laws to regulate these kinds of activities." We then saw under that legislation provision to make local laws. I questioned the then Attorney General, the member for Kingsley, and also the Minister for Local Government about the effectiveness of these local laws and how they would help local communities to regulate these kinds of activities.

I am not talking about nudity or striptease, but deplorable acts. It seems that three years later the Government has failed to act to put communities in a position to be able to reject these kinds of activities. Local councils want to be in a position to be able to reject them. I am unaware of any provisions of local laws which enable communities to reject them.

STATEMENT - MEMBER FOR BUNBURY

Youth Affairs Councils

MR OSBORNE (Bunbury) [12.26 pm]: I want to inform the House of the result of a visit the Minister for Works, Services, Multicultural Affairs and Youth made to Bunbury last Thursday, 3 April. We engaged a range of functions to do with the Minister's portfolio, including inspecting the performing arts centre at the Bunbury Senior High School and Bunbury Regional Hospital, which is a great example of the success of the Government's contracting out to the private sector. We addressed a forum of the Bunbury migrant group and the Minister was able to work on his Welsh language skills at that function.

Most importantly, in the afternoon and evening we attended a series of youth-related events. One was a meeting of the Bunbury City Council's Youth Affairs Council. We visited BUNYAP's youth homelessness project, which has received funding of $250 000 from the Federal Government.

In the evening the members for Mitchell and Vasse and Councillor Cameron Eglington organised the inaugural South West Youth Forum. The Minister addressed 45 young people from Harvey, Busselton and Bunbury. He gave them the message that the Government was interested in talking to young people who had good stories to tell. He told them the Government was interested in responding to the real expressed needs of young people and would do so through a series of youth affairs councils throughout Western Australia.

Bunbury leads the way and I advise the Minister that it was reported in today's *South Western Times* in an article headed "Bunbury leads in youth set up". I look forward to the Minister establishing a series of youth affairs councils throughout Western Australia; the inaugural one of those being in Bunbury.

STATEMENT - MEMBER FOR ROCKINGHAM

Railway Service, Rockingham

MR McGOWAN (Rockingham) [12.27 pm]: I inform the House of a matter of importance to my electorate. It is a subject I have raised previously and it concerns transport services to the south western corridor. In my electorate the most important issues are public transport and the freeway extension. The most important aspect of public transport is the construction of a railway line. A railway line to the south western suburbs, including Kwinana, Rockingham, Cockburn and Jandakot and extending through to Fremantle is well overdue.

The Government's plans for the extension of the railway line in 2015-20 are unacceptable to the people in that area. The south western corridor area has an expanding population, particularly of aged people. An extremely high proportion of residents in that area are over 65 years. Compared with the average for the rest of the Perth metropolitan area, the electorate of Rockingham has twice the number of people in that age group. Many people in

the area are on pensions and many of them are unable to drive cars. They need the services that would be provided by a railway line.

The south western corridor is the one remaining area of Perth which is not serviced with a railway line and it is something the Labor Opposition was committed to before the last election.

STATEMENT - MEMBER FOR GERALDTON

Delta Program

MR BLOFFWITCH (Geraldton) [12.29 pm]: My statement concerns licensing of firearms and the proposal under the Delta program to have new licensing divisions located in regions rather than in a central location.

I give the example of a Mr Elliott who is a professional shooter. He has a station in Meekatharra and between him and his son they have three high calibre rifles. One of the rifles was damaged and he returned it to the police station and asked whether it could be replaced. Some nine weeks later he is still waiting for the gun. He says that if he is shooting and one of his rifles jams, he does not have a spare rifle to make his commercial kill worthwhile and to remove vermin.

I ask that the Minister for Police have a look at the case of professional people who are honourable within our community so that they are not penalised by the new licensing system. Although I do not want carte blanche, these people had the guns before and only ask for them to be replaced. It is a very worthy cause.

VISITORS AND GUESTS - HON DR FRANK MADILL, MLA

THE SPEAKER (Mr Strickland): On members' behalf, I welcome to our Parliament in the Speaker's Gallery, Hon Dr Frank Madill, MLA, Speaker of the Legislative Assembly in Tasmania.

[Applause.]

[Questions without notice taken.]

Sitting suspended from 1.00 to 2.00 pm

APPROPRIATION (CONSOLIDATED FUND) BILL (No 1)

Second Reading

MR COURT (Nedlands - Treasurer) [2.00 pm] I move -

> That the Bill be now read a second time.

In doing so I present the Budget for 1997-98. From the outset I would like to say that this has been the most difficult Budget to frame during my four years as Treasurer. There have been four predominant factors -

> first, demand for services, particularly infrastructure services is increasing strongly because of our robust economic growth;
>
> second, the State's own revenues to fund these increasing services are not growing at the same rate as the economy;
>
> third, this revenue shortfall has been seriously compounded by significant cutbacks in commonwealth government grants which account for about 36 per cent of recurrent budget funds; and
>
> fourth, in total, state revenues are falling in real terms by 1.7 per cent.

In the past, high inflation rates often gave the illusion of large growth in revenues and expenditures. We must now adjust our thinking to low inflation levels. The serious reduction in commonwealth funding has been of major concern because Western Australians are now generating record tax revenues for Canberra. We are creating the wealth but we are not equally sharing in it.

More than $1.5b of taxes that are being raised by the Commonwealth Government from Western Australia now stays in Canberra and is not returned to the State in the form of funding for services. The cuts in commonwealth funding have been savage over recent years. If the States obtained the same share of commonwealth revenues that they did 10 years ago, WA would be receiving $700m more each year. In addition to these cuts, cumulative losses in our share of commonwealth grants since 1993-94 alone have been $543m.

Western Australia is the economic jewel in the crown of the Australian economy but we are being used as a cash cow. The "grab for cash" attitude which prevails in Canberra is short- sighted and, if left unchecked, will ultimately cause the breakdown of the Federation. Western Australians should not and will not accept being financially penalised unduly by a central government at a time when they are generating record levels of wealth. That is not how the Australian Federation should work. If Western Australians were able to obtain a greater share of the wealth they created, they would be enjoying significantly higher living standards.

While framing this Budget we felt in some ways some empathy with the American colonists who resented paying unfair new taxes on tea. They vented their feelings with the now famous Boston Tea Party which led to independence. In Western Australia we have not had a Boston Tea Party but, if we continue to be treated unfairly, there will certainly be electoral backlash against Canberra. This Budget is a testament to the growing financial injustice in our Federation - a Federation being strangled by centralised fiscal control which is financially penalising the best performing state economy in Australia.

BUDGET STRATEGY

The coalition will continue to follow the financial strategy which we undertook during our first term in government. To underpin this financial strategy we must ensure that we do not borrow money to pay for current expenditures and that we continue to reduce the burden of interest payments on our Budget.

I am pleased to announce that the 1997-98 Budget achieves both these objectives. It will be the fourth successive balanced state Budget. By adhering to this financial strategy Western Australia has now regained its reputation for sound and responsible financial management. The State is again held in high regard internationally as a reliable trading partner and an excellent place to conduct business. As part of our fiscal management we have:

published forward estimates, which is the strategic framework to give Western Australia balanced or surplus Budgets beyond the year 2000; and

reduced net debt and will continue to do so as a percentage of gross state product.

As a result of this responsible management, Moody's credit rating agency has reinstated us to a AAA credit rating, which was lost in the quagmire of WA Inc. Our approach to budgeting and our policy of a more productive public sector means we can deliver more and improved services at a lower cost.

ECONOMIC PERFORMANCE

Western Australia is clearly the nation's strongest economy. Output is estimated to grow by 6 per cent in real terms in 1997-98 compared with 5 per cent in 1996-97. Growth in Western Australia's economy has averaged 5.9 per cent per annum since 1992-93, compared with growth of 4 per cent nationally. This growth has been based on strong private sector investment which has almost doubled in value since 1991-92.

Employment is expected to grow by 3 per cent in 1997-98, following growth of 2.25 per cent in 1996-97. This will keep pace with further strong growth in the labour force. As a result, the unemployment rate in Western Australia, which has consistently been the lowest in Australia, is estimated to fall to 7 per cent in 1997-98. Annual price growth of just 2.75 per cent confirms Western Australia as a low inflation economy. This compares with an average inflation rate over the 1980s of some 8 per cent.

This strong economic performance did not happen by accident. It was made possible because the coalition Government produced the right mix of policies and the right environment to attract investment and development. The success of these policies can be measured by the 116 900 new jobs created since February 1993. In recent years we have consistently had the lowest unemployment rate in the nation. Jobs are a major social dividend critical to the quality of life of all Western Australians.

The picture for future prosperity is even more promising. In addition to specialist manufacturing, downstream processing is set to usher in the much awaited value added era which is being made possible in part through deregulation of the State's energy markets. The mighty resources industry remains the power house behind the Western Australian economy. It is a massive network of exploration, mining and processing operations spanning the State. Many of these projects are in distant and isolated places, requiring the State to fund a growing infrastructure base.

Western Australia's additional billion dollar roads program is upgrading substandard roads and building new ones, improving the prospects for exploration in the hinterland and stepping up opportunities for tourism. Regrettably, this huge demand upon our finances excites little sympathy from the Federal Government.

Good infrastructure, combined with cheaper power generation, is vital in the pursuit of new downstream processing projects.

The deregulation of the gas industry has resulted in more competitive energy prices in the marketplace. Gas charges in the Pilbara have been slashed by up to half. A more competitive gas market will continue to provide incentives for new developments in the north, in the goldfields and the south west.

The sale or partial sale of the Dampier to Bunbury Natural Gas Pipeline should be completed during this budget period.

The big ticket items are not restricted to the resource sector.

Jervoise Bay is a microcosm of the State's high tech industry. Magnificent passenger ferries and luxury yachts are being built there and sold around the world. They are now becoming a feature of the European shipping lanes. These modern, state-of-the-art vessels typify the across-the-board quality and design of our industrial sector. You, Mr Speaker, may think that I am Canberra bashing, but I cannot let the Jervoise Bay story pass without mentioning the shipbuilding bounty. We are still fighting to have this industry compete on the same basis as our international rivals. The Jervoise Bay industry cannot compete on fair terms with the European shipyards which have been guaranteed double our support for three additional years. It comes as no surprise that the major builder in this State and the industry in Tasmania have few orders beyond December this year because of this unfair situation. An industry tragedy is in the making. Unless the Commonwealth comes good, the jobs of 2 300 WA shipyard employees and $400m of export earnings are at risk. I have again written to the Prime Minister expressing our concern about the handling of this matter.

It is ironic that while we are being forced to negotiate with the Federal Government over a 5 per cent subsidy for an export success story, the non-competitive car industry has ongoing protection in excess of 15 per cent.

There is growing demand for the construction, fit-out and maintenance of large offshore structures and the Government will work closely with the private sector to ensure the planning and provision of adequate infrastructure to facilitate the growth of this industry.

THE 1997-98 BUDGET

Mr Speaker, I will now turn to the detail of the 1997-98 Budget. As I have already mentioned, this Budget has revenue growth estimated at 1.7 per cent less than the inflation rate. Commonwealth recurrent grants in the Budget fall by 1.6 per cent in real terms. The Budget will remain in balance, however, because we have cut our cloth to meet our circumstances. Recurrent outlays will grow by 0.1 per cent in real terms and capital outlays will fall by 8.1 per cent real. In total, outlays will be $7.05b in 1997-98.

I have foreshadowed that a number of revenue measures will be necessary in 1997-98. The measures we have taken have been designed to enhance the equity of the tax system, to broaden the base of the system and to spread the burden as fairly and as widely as possible. We have taken the following measures.

Debits Tax

This tax currently applies to withdrawals from accounts which include, or are linked to, cheque facilities. The rates for debits tax in WA are 50 per cent lower than those in all other mainland States. In view of the penalties inflicted upon us by the Commonwealth, we have been forced to increase the debits tax up to the same level as the other States. This step is consistent also with the move being pursued by most States for national uniformity in this type of tax. This increase will become effective from 1 July.

Motor Vehicle Licence Fees

Licence fees on family and light commercial vehicles will go up by approximately 20 per cent from 1 July to raise an estimated $14m. This money will be used exclusively by the Main Roads Trust Fund.

I should point out that even with this increase, licence fees for family vehicles in WA will still be the lowest in Australia. For a six-cylinder family car, both licence fees and third party insurance, the two major costs of vehicle registration, will remain the lowest of all States and Territories. After the increase announced in this Budget, the annual licence fee in WA for a typical six-cylinder family car will be $86.50 compared to $169 in New South Wales and $140 in Victoria. For third party insurance, it will cost $192.25 for the six-cylinder vehicle in WA compared to $496 in New South Wales and $299.20 in Victoria.

In Western Australia, a recording fee is also payable for vehicle registrations. This charge will rise by $2.20.

Traffic Infringement Fines

Increases in these fines are overdue and many of them will be doubled from 1 July. Similar moves are occurring in the Eastern States. This measure will raise revenue, but it is a double-edged strategy. We believe that the substantial increase will make offenders think again and not break the road rules. This, in turn, will reduce the chance of road accidents and the incidence of road trauma. Some of the revenue raised by increasing fines will be diverted into road safety programs.

Tariffs

Electricity: For the first time in five years, residential electricity tariffs will increase 3.75 per cent, or $21 a year for the typical metropolitan household, from 1 July 1997.

Tariffs for Western Power business customers will not change. However, a $22 fee for establishing electricity accounts for businesses will be introduced in line with domestic customers.

Gas: Some natural gas prices will rise from 1 July 1997. Residential gas accounts will increase by an average of 3 per cent, but will vary according to the amount of gas used. Residential customers whose quarterly account is under $60 will see no change. Customers whose quarterly account is between $60 and $150 will see a maximum quarterly increase of $3.72. Residential customers whose quarterly account is over $150 will see a maximum increase of 6 per cent in their quarterly bills.

Business customers will not be affected. There will be no change to the daily supply charge introduced last year.

Water: Water, sewerage and drainage rates will, in general, rise by 4 per cent. Restructuring of tariffs to remove business cross-subsidy of households is continuing. The Water Corporation will also continue its capital expenditure program on major infrastructure projects throughout WA.

Public Transport Fares: Currently, the fares collected cover only 28 per cent of the operating costs of our public transport system while a typical international level is over 40 per cent. Our long-term goal is to narrow that gap and, over the next four years, we want to bring concession fares to 50 per cent of the full fare which is generally accepted as an industry standard. Standard adult fares will increase on average by 9 per cent with two zone fares up by 20¢ from $2.10 to $2.30.

Drivers' Licences The cost of drivers' licences will also rise. A one-year licence will increase by $4 on 18 April and a five-year licence by $5 from 1 July.

Payroll Tax

Several changes will be made to payroll tax with effect from 1 July 1997. The changes will be revenue neutral in 1997-98.
The payroll tax base will be expanded to take in all employee benefits, including superannuation and non-cash benefits except for the major fringe benefits paid in remote areas.

Two new exemptions will be provided, for travel and accommodation allowances up to prescribed levels and exempting wages for services rendered outside Western Australia. To keep the total package revenue neutral in 1997-98, all payroll tax rates will be reduced by at least 0.3 percentage points, and the threshold before which payroll tax is payable will be increased by $50 000 to $675 000.

Gold Royalty

The Government will phase in a gold royalty in 1998. It is important to note that the Grants Commission already operates on the assumption that we collect a gold royalty. In other words, the Commonwealth effectively penalises us by allocating $70m of our grants to other States because it says we have the ability to apply a royalty. We have always been extremely reluctant to introduce a royalty for gold, but our current revenue position has left us with few other options. Accordingly we will phase in a low rate royalty from 1 January 1998, but the first 1 000 ounces of production from each project will be exempt.

We will be consulting with the industry in the forthcoming months to determine the final framework of the royalty.

Timber Royalty

Negotiations are currently underway with the timber industry on the payment of increased royalties. Any revenue derived from this purpose will be used to manage native forest reserves and to undertake major tourism, recreation and conservation projects.

REFORMS

Competition

A more competitive Western Australian economy continues to be a driving objective of the Government. Competition policy reforms are essential to this objective. The coalition will continue its reforms to modernise the way the Government does business.

For generations, taxpayers often complained that the public sector was incapable of matching private enterprise in the quality and delivery of service and could not compete in the open market. That situation has changed dramatically over the past four years. Rationalisation, competitive tendering, contracting out, new purchasing practices and the requirement for agencies to act commercially have all played their part in lifting the level of government services - and they will continue to do so.

Systems and practices introduced in our first term of government are fair and equitable to everyone in the community. Any company or individual with the right credentials can compete for government work on a fair basis. This is already spreading the wealth and spreading the opportunities.

The 1996 Fielding review, which reviewed the Public Sector Management Act and the machinery of government, recommended, among other things, the streamlining of agencies. This process began last week with the creation of the Department of Culture and the Arts. The coordination of the arts organisations, the library and the museum will eliminate duplication and free up funds for service delivery. The legislative framework formalising the new structure will be introduced to Parliament shortly.

A committee of senior public servants, chaired by the Under Treasurer, is examining the machinery of government. It reports directly to the Premier and will recommend machinery of government changes.

Financial Management Reform

Substantial progress is being made with the Government's financial reform agenda to seek better value for the taxpayers' dollars spent. Over the next two years, we will be building on this program by completing the implementation of output and outcome based management in accordance with accrual accounting principles. For the first time this year, the budget papers provide information on what government agencies actually produce. Budgets, departmental spending and revenue raising will be managed under improved accrual accounting practices. The planned initiatives will place Western Australia at the forefront of financial management reform.

Fiscal Planning and Targeting

A new fiscal planning and monitoring framework will be set up to ensure medium term financial goals are met. This will enhance the accountability of the Government and the State itself, because actual performance can be measured against previously announced targets. Through this process, everyone can be fully informed about the State's financial position and the future outlook.

OUTLAYS

While framing this Budget we have had one overriding protocol. We want the people of this State to receive the best possible services. During the recent election campaign, I told the people of this State that there would be no extravagant promises. We tailored our pledges accordingly and have included them in the 1997-98 Budget and the forward estimates for the next three years. These promises will be met from productivity savings made possible by our ongoing financial reform agenda.

The election commitments will cost approximately $352m over four years, and we will begin implementing them this year with an allocation of $60m. This is a major social dividend for all Western Australians. A further $86m has been earmarked in the 1998-99 estimates and $103m in 1999-2000, and the program will be completed in the year 2000-01 when a further $103m will be spent. The $60m in this Budget will be spread across a range of agencies. Education with an allocation of $11.8m, Health with $6.8m, and Primary Industry with $6.4m will benefit the most.

Education

Funding for Education in this Budget will be boosted by $49m to $1.3b - an increase of 3.8 per cent. The Government wants Western Australians to enjoy a world class education system. An investment in education is an investment in the future. It is essential we stay on the pace and give our young people proper access to modern technology and science. Initiatives address literacy, truancy, students with disabilities, vocational education, teacher conditions, school environments, scholarships, quality early childhood education and ethical standards and good conduct.

The new Curriculum Council will set a mandatory curriculum framework for all students from kindergarten to year 12. The estimates reflect our commitment to education and include our election pledges, such as -

funding for new technology in schools will increase significantly with an allocation of $1.9m in 1997-98 and a total of $17.8m over four years. At least 5 000 additional computers will be provided to schools with extra funding of almost $11m over the four year period under the Computers in Classrooms program. There will be appropriate access to the Internet for all students;

funding for special programs to improve student learning will receive a $6.3m boost over the next four years with $1.3m in 1997-98;

an inclusion program enabling students with intellectual disabilities to attend their local schools will be implemented with an allocation of up to $3.6m;

an amount of $250 000 to enable quality vocational education to be provided to remote Aboriginal communities; and

planned expansion of technical and further education-industry-school links will be undertaken with an allocation of $3.7m to fund a program that will enable about 18 000 year 11 and 12 students to participate in vocational programs with structured workplace learning and training at TAFE while still at school.

The number of students enrolling in TAFE courses continues to grow. Over the next three years there will be a small increase in the contributions TAFE students make towards the cost of their training.

Health

The Government will provide $1.6b for health services in 1997-98. This significant sum of money is the single biggest allocation for any government funded service in the 1997-98 Budget. It represents a 3.5 per cent increase on last year's budget allocation and a 15.3 per cent increase on the amount provided in the 1995-96 Budget.

The State has again ensured health services throughout the State - both in metropolitan and regional areas - have received funds to enable more efficient and effective service delivery to all Western Australians.

The capital works budget for Health is set at $80.1m this financial year, with country health services targeted to receive a significant boost in capital spending this year. A major feature of the capital works planned by the Government is an $18m allocation for the new Bunbury health campus. Other major commitments include -

an amount of $1.8m for the development of a new adolescent health service at Princess Margaret Hospital for Children, which will be the first facility dedicated to providing a service customised to meet the needs of adolescents, linking them with mainstream health, welfare and education systems;

an increase of $1.2m in the annual funding level for the training of country doctors and the provision of locums in country areas, as well as training for other rural and regional health workers; and

an amount of $1.3m over the next four years to expand the current rural surgical service by getting specialists into country areas to reduce the number of patients having to travel to Perth for treatment.

In addition, a further $8m has been provided in 1997-98 for the implementation of the mental health plan, boosting the annual funding level for the plan to $14m.

Family and Children's Services

Additional funding has been injected into the Department of Family and Children's Services to expand a wide range of services. These measures provide tangible evidence of the Government's recognition of the family unit as the essential component of community life.

The department recently received the inaugural Prime Minister's Award for its New Directions in Child Protection and Family Support program. This Budget provides funding for the expansion of this program. One of its aims will be to determine whether the needs of children affected by marriage breakdown are being met. There will be increased services for couples experiencing relationship difficulties, including counselling, education and group work.

There will be an increase in the allocation of resources to the rural and regional areas including more qualified financial, marriage and family counsellors. The protection and care of children and families will be centralised and funding for initiatives against domestic violence are other measures to be undertaken. Women's refuges and outreach support services, safety accommodation and the family conferencing system are all earmarked for expansion and improvement.

An additional $250 000 has been included to identify "at risk" children under the age of 10.

Law and Order

The $18m vehicle immobiliser subsidy scheme, announced in December, is being launched this week. This is a major initiative to reduce car theft which is worse in Western Australia than in any other State. Last year alone, 17 500 vehicles were stolen. In this Budget, $2.25m has been allocated as an incentive to people to instal approved immobilisers in private family vehicles. They will receive a $30 rebate provided by the Government.

An additional $2.45m has been provided for victims of crime comprising $1m for increased support, compensation and restitution for crime victims, $1.2m for victim support in major regional centres and $250 000 to extend victim mediation services.

Work is currently underway to construct new police facilities in 12 centres, with a further three to commence in 1997-98. Modernisation of the Western Australia Police Service through the Delta program will result in greater productivity and efficiency. Delta gives police more decision making responsibilities within individual communities and districts. Planning is already underway for the construction of the new, state-of-the-art Police Academy.

OTHER BUDGET INITIATIVES

Other key expenditure initiatives taken in the 1997-98 Budget include -

$3.5m to the Department of Agriculture for the expansion of quarantine, protection, surveillance activities and for emergency funding;

a further $2m to the Fisheries Department for aquaculture planning and development;

provision of $500 000 for disabled or elderly persons to receive subsidised respite services;

an additional allocation of $500 000 for the Domestic Violence Unit;

a provision of $250 000 to establish a Youth Advisory Council and Regional Youth Network; and

an additional $1m to provide LandCare traineeships for 200 young people in rural areas.

There is also provision for some modest wage growth in this Budget and across the forward estimates.

Superannuation and Insurance

The reductions in net debt which have been achieved over the past four years have considerably reduced the burden of interest payments on the Budget. I will return to the issue of debt management later but, at this point, it is sufficient to note that, at current interest rates, the State's debt position is well in hand. The Government is, however, commencing on a strategy to fund the liabilities of the State's superannuation arrangements. These liabilities have been allowed to build up over many years and the Government now is able, as a result of its careful financial management, to address the matter. It is a problem which needs to be addressed. At 30 June 1996, the State's unfunded superannuation liability was projected to be $4.8b and, if left unchecked, will grow to exceed $6b in 10 years. This is not a legacy we can or should leave our children. Accordingly, the Government will implement, from 1997-98, a program to fund the accruing superannuation liability. This program will be phased in and will cost $237m across the forward estimates, including $20m in 1997-98.

The Government is also moving to restructure its insurance arrangements to bring them into a more sustainable and modern basis which will enhance the insurance coverage at a modest additional cost. The new RiskCover scheme has been developed by the State Government Insurance Commission and the Treasury, and further details of these arrangements will be made available through the SGIC.

CAPITAL WORKS PROGRAM

Essential social and economic infrastructure is provided by a number of government agencies, including the large government trading enterprises such as Western Power and the Water Corporation which are outside the Consolidated Fund. In 1996-97 and 1997-98 the total public sector's capital work program, including the large trading enterprises, will be at historically high real levels. This program demonstrates the Government's intention to provide the infrastructure required to support its social and financial objectives. Key features of the 1997-98 capital program include -

expenditure of $513.3m by Western Power including $346.5m for the continuation of the program for new generation capacity and upgrade of existing plant;

a public housing expenditure program of $479.4m including $319m for Homeswest's Keystart, Real Start and Good Start home loan assistance schemes to assist 3 600 applicants;

expenditure on roads totalling $365.7m, including $81m for the City Northern Bypass Burswood Bridge and Road project as well as $29.9m to construct and seal the Ripon Hills route from the Marble Bar Road to the Telfer turnoff;

the $275m Water Corporation program includes $70m for infill sewerage projects and $47m for improving waste water treatment plants throughout the State;

expenditure of $151.7m by Westrail includes $38.9m for the replacement of 30 locomotives and $18.6m for the continued expansion of the suburban passenger electrical railcar fleet;

planned expenditure of $82.7m by AlintaGas which includes $17.7m for the completion of stage 2 of the enhancement of the Dampier to Bunbury natural gas pipeline;

over the next four years, $35m will be provided to tackle the State's massive salinity problem; and

over $20m will be provided in 1997-98 for new and upgraded police stations.

This substantial infrastructure program will provide benefits to the Western Australian community and economy for many years. It is appropriate therefore that some of the program is financed through borrowings. Accordingly, in both 1996-97 and 1997-98, the State's net debt will increase slightly before declining again in 1998-99 once the peak in the capital program is passed. It will continue to decline as a percentage of State output and, in 1998-99, is estimated to account for only 10.1 per cent of gross state product compared with 19.9 per cent in 1992-93.

The Government remains committed to reducing the burden of interest costs on the Western Australian community. Future asset sales will ensure that occurs. However, at the same time sensible decisions must be taken on funding essential infrastructure and the Government will ensure those decisions are made.

CONCLUSION

Mr Speaker, this Budget has been framed in a climate of strong economic growth not matched by corresponding state revenue growth. The Commonwealth must change its approach to commonwealth-state finances and the Government will lead the battle to secure that change.

The Budget continues the coalition's responsible financial management at the same time as providing for new and improved services to the people of Western Australia. Our commitment to all Western Australians is to be fair and equitable in our policies and this Budget honours that pledge. I now turn to the formal purposes of the Appropriation Bills which seek the sums required for services in the coming financial year. Appropriation Bill No 1 is for recurrent services and Appropriation Bill No 2 is for capital services. The recurrent expenditure estimates of $6 567 600 000 include a sum of $1 046 684 000 permanently appropriated under special Acts, leaving an amount of $5 520 916 000 which is to be appropriated in the manner shown in the schedule to Appropriation Bill No 1.

The capital expenditure estimates and financing transactions of $481 200 000 comprise a sum of $69 800 000 permanently appropriated under special Acts and an amount of $411 400 000 which is to be appropriated in the manner shown in the schedule to Appropriation Bill No 2.

Before tabling the documents which are part of the Budget, I take this opportunity to publicly thank the Under Treasurer, John Langoulant and the Assistant Under Treasurer, Mike Harris, both of whom are in the Speaker's Gallery today, and all the team in Treasury who do a professional job. This year we have had difficult financial revenue circumstances and these people have a huge responsibility to make sure they can implement the Government's strategy. To the team within Treasury, I say a very special thanks.

I commend the Bill to the House and, in doing so, seek leave to table -

Budget Speech - Budget Paper No 1
Budget Statements Nos 1 and 2 - Budget Paper No 2
Economic and Fiscal Overview - Budget Paper No 3

Leave granted.

[See papers Nos 337 to 340.]

Debate adjourned, on motion by Mr Cunningham.

APPROPRIATION (CONSOLIDATED FUND) BILL (No 2)

Second Reading

MR COURT (Nedlands - Treasurer) [2.40 pm]: I move -

That the Bill be now read a second time.

The budget speech dealing with the consolidated fund estimates outlined details of both recurrent and capital outlays. I do not intend therefore to say more at this stage.

The Bill seeks supply and appropriation from the consolidated fund for the capital services and purposes during the 1997-98 financial year as expressed in the schedule to the Bill and as detailed in the agency information in support of the Estimates in the 1997-98 budget statements.

Included in the capital expenditure and financing transactions estimates of $481.2m is an amount of $69.8m authorised by other Statutes, leaving an amount of $411.4m which is to be appropriated in the manner shown in the schedule to Appropriation (Consolidated Fund) Bill (No 2). I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Mr Baker) in the Chair; Mr Kierath (Minister for Labour Relations) in charge of the Bill.

Clause 7: Sections 78, 79 and 80 inserted -

Progress was reported on the clause after the following amendment had been moved -

Page 5, line 16 to page 6, line 6 - To delete the lines.

Amendment put and a division taken with the following result -

Ayes (17)

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

Noes (31)

Mr Ainsworth	Mr House	Mr Pendal
Mr Barnett	Mr Kierath	Mr Prince
Mr Board	Mr MacLean	Mr Shave
Mr Bradshaw	Mr Marshall	Mr Sullivan
Mr Court	Mr Masters	Mr Sweetman
Mr Cowan	Mr McNee	Mr Trenorden
Mr Day	Mr Minson	Mr Tubby
Mrs Edwardes	Mr Nicholls	Dr Turnbull
Dr Hames	Mr Osborne	Mrs van de Klashorst
Mrs Hodson-Thomas	Mrs Parker	Mr Bloffwitch *(Teller)*
Mrs Holmes		

Pairs

Ms MacTiernan	Mr Johnson
Mr Marlborough	Mr Omodei

Amendment thus negatived.

Clause put and a division called for.

Point of Order

Mr COWAN: The standing orders make it very clear that where there is only one voice there cannot be a division. I have tolerated the fact that for the past three questions there has been only one voice recorded for the noes yet a request for a division has been granted. I ask for a ruling on the issue.

Mr BROWN: Given that today is budget day, I am happy to chip in for a hearing aid for the Deputy Premier. I heard the member for Nollamara call and I called at the same time.

Several members interjected.

Mr BROWN: We might need to get some additional hearing aids for members on that side.

Mr Barnett: You are not normally known for your soft voice.

Mr BROWN: What?

Several members interjected.

Mr Prince: That was your best effort this week.

Mr BROWN: It was not bad. I know that the Government and Deputy Premier are getting a bit touchy about this, but there were two voices. If the member wants to raise points of order, he should listen more carefully to the debate.

The DEPUTY CHAIRMAN (Mr Baker): I heard two clear calls for a division. A division has been called and it stands.

Committee Resumed

Bells rung and the Committee divided.

The division resulted as follows -

Ayes (31)

Mr Ainsworth	Mr House	Mr Pendal
Mr Barnett	Mr Kierath	Mr Prince
Mr Board	Mr MacLean	Mr Shave
Mr Bradshaw	Mr Marshall	Mr Sullivan
Mr Court	Mr Masters	Mr Sweetman
Mr Cowan	Mr McNee	Mr Trenorden
Mr Day	Mr Minson	Mr Tubby
Mrs Edwardes	Mr Nicholls	Dr Turnbull
Dr Hames	Mr Osborne	Mrs van de Klashorst
Mrs Hodson-Thomas	Mrs Parker	Mr Bloffwitch *(Teller)*
Mrs Holmes		

Noes (17)

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

Pairs

Mr Omodei	Ms MacTiernan
Mr Johnson	Mr Marlborough

Clause thus passed.

Clause 8: Consequential amendments to sections 81A and 81CA -

Mr KOBELKE: I will speak very briefly against this clause and, therefore, cast my vote for its deletion.

Points of Order

Mr COWAN: It has been common practice in this place when the House is in Committee for the Chair not to accept a motion for the deletion of a clause but to direct that the Committee should merely oppose the clause. In other words, rather than move that the clause be deleted, the question should be that the clause as printed be passed. This is simply repetition. At some stage during the course of the Committee a motion is put for the clause as it stands to be deleted. That is defeated and immediately the question becomes that the clause as printed be agreed to - they are one and the same. I seek a ruling in order to expedite the opportunity for us to deal with this legislation in Committee.

Mr KOBELKE: The Deputy Premier in most, if not all, of what he said is correct. I submitted the 12 pages of amendments in a rush. The clerks had some difficulty and therefore did not delete items that should appear as indications of what I intend to do. This is not a device to move to delete a clause and vote again. I will not be moving what appears on the Notice Paper; I will simply speak against the clause and so vote.

The DEPUTY CHAIRMAN (Mr Baker): The amendment on the Notice Paper I have relates to a partial deletion of the lines in question rather than a total deletion. Accordingly, it is not simply a matter of voting against or in favour of the clause as a whole.

Mr KOBELKE: I accept the ruling. I will proceed to do exactly what I said I would do; I will not move that amendment, although it appears on the Notice Paper. I will simply speak very briefly to the clause. We will then vote - I do not intend to call for a division - and we will then move on.

Mr COWAN: Mr Deputy Chairman, although you have ruled in this case, I do think it would be appropriate for you to rule, at least for the time that you are in the Chair, with regard to those amendments which call for deletion, which are all-embracing.

Mr KIERATH: I think the Deputy Premier is referring to the amendment to clause 11, which is "To oppose the clause", and to the stream of similar amendments that follow. Mr Deputy Chairman, if you were to rule that you will not put those and will just put the clause, I think that would overcome the problem to everyone's satisfaction.

Mr Kobelke: I give an undertaking that I do not intend to move those amendments.

The DEPUTY CHAIRMAN (Mr Baker) The member for Nollamara has indicated that he does not propose to move those amendments; as such, they are on the Notice Paper purely for the advice of members. I thank the Deputy Leader for those remarks.

Committee Resumed

Mr KOBELKE: I do not intend to use any trick or device to move those amendments, and if it appears from my comments that I am moving them, I am sure the Chair will draw that to my attention.

Clause 8 seeks to amend section 81A, which is about the establishment and jurisdiction of the Industrial Magistrate's Court. That court will have jurisdiction to make determinations to disqualify an office holder - that is, someone involved with the financial affairs of a union - for a period of not more than three years. That is totally unnecessary. It is born out of the Minister's desire to intrude into the workings of unions in a way that will improve neither the function of unions nor the conduct of industrial relations in this State. We totally reject that and will vote against this clause.

Clause put and passed.

New clause 9 -

Mr KOBELKE: I move -

Page 7, after line 1 - To insert the following new clause -

Section 41 amended

9. Section 41 of the principal Act is amended by inserting the following new subsection after subsection (3) -

" Before registering an industrial agreement the Commission may, where the parties agree, make provision in that agreement for terms and conditions in relation to pre-strike ballots. ".

The intent of this new clause is the same as that stated for clauses 9 and 10, but it uses a totally different mechanism to achieve the stated aim of the Minister and his Government. The Minister has said that unions should be able to use pre-strike ballots, but he has adopted a mechanism that is not workable. We have no problem with pre-strike ballots. The Leader of the Opposition made it absolutely clear in 1996 that the Opposition supported pre-strike secret ballots. We support secret ballots for the election of union officials and we have no difficulty with putting in place mechanisms which provide for secret ballots before a union can take industrial action. However, we have great difficulty with this proposed section and the ones that follow because they do not allow unions to hold a pre-strike ballot which is effective or will enable them to uphold the rights of their members.

My amendment will meet the stated needs of this Government. I am told that it is endorsed formally by the Trades and Labor Council. It is broadly accepted across Western Australia that a union that wishes to take industrial action can hold a pre-strike secret ballot. That is what is contained in this simple amendment to section 41. Section 41 deals with industrial agreements. Some industrial agreements already allow for pre-strike ballots. An agreement may be reached between an organisation of employees and an employer that they will sit down and try to resolve their disputes and differences of opinion through a set of procedures. If through that set of procedures they reach the stage where accommodation cannot be reached and the work force wishes to go on strike, they are then required to conduct a secret ballot. Those procedures may provide for scrutineers so that an employer who feels that the ballot is not being conducted correctly can have someone oversee the ballot to ensure it is a secret ballot. Simple and effective procedures exist already that allow unions to conduct a pre-strike ballot should the negotiations reach the stage where a strike or industrial action seemed inevitable.

We do not need the proposed sections that follow this section. All we need is this new subsection. The 10 pages of detailed requirements that the Government proposes will make it impossible for a union to function and hold an effective pre-strike ballot. If the Minister really believed in pre-strike ballots, rather than in attacking unions, he would accept this amendment, which is a simple way of dealing with this matter, or accept it with some further amendment if he wants to pick holes in it. We are not concerned about the exact details of the device that will enable a pre-strike ballot to be conducted. We simply want a device for pre-strike ballots that will work. The Minister's proposals will not work.

Mr BROWN: I support the amendment, because it will enable a pre-strike ballot to be held by means of a simple process. This Bill is designed not to encourage the use of secret ballots but to set up such a complex and convoluted procedure that people will be discouraged from holding secret ballots.

In due time I will go through the various provisions which set up this complex web of processes and procedures which must be followed. Getting permission from the Industrial Relations Commission to hold a pre-strike ballot is an exceptionally drawn out process; so there is a significant time between the calling of a secret ballot and it being held. It has been argued that if people are upset or concerned about an issue they do not need to vote on a particular day. They can vote some other time, and if they are not so concerned at another time, they were not so concerned on the particular day. That line of argument can be used. However, if people are frustrated because they are unable to make decisions quickly, and realise they are powerless to do anything about their concerns, they will turn to other measures to give vent to their anger. It is significant that where the industrial relations system has been destroyed in Victoria, and workers are at the mercy of the marketplace, the level of violence in workplaces has increased in the past three years, according to most recent reports. Therefore we are aware of what can happen.

The fact that we introduce very harsh and oppressive legislation which may result in lower levels of industrial action, will not achieve greater productivity or significant benefits. If people feel powerless and imposed upon because they are powerless, they will find other, more surreptitious means to exercise their anger. It does not matter whether people are unionised; one can pick it up from workplace to workplace. In some workplaces where morale is high and the management is good, one can note a high level of good spirit. In other workplaces where morale and management is poor one can note the high level of frustration and a greater propensity for people to take industrial action if they are union members.

For democratic and productivity reasons and for the general reasons of good health, if it is considered appropriate to hold a pre-strike ballot on every occasion - and the Government is wedded to that position - the proposal promoted by the member for Nollamara will allow that to occur.

Mr RIEBELING: The Minister has claimed that the implementation of pre-strike ballots will be a simple process taking three days. However, this so-called simple process in clause 10 is covered by 14 pages of instructions to the parties who may be involved in a pre-strike ballot. The Opposition's proposal is a truly simple system, once the parties agree to conduct a pre-strike ballot. The secret ballots run by the Electoral Commission at state elections are nowhere near as complex as the system the Minister seeks to impose on the union movement. Clause 10 contains the most amazing descriptions of offences under the Act. For instance, proposed clause 97B(2) reads -

If an organization of employees or an officer or employee of an organization of employees -

(a) incites, encourages or assists a member of the organization to participate in a strike in contravention of subsection (1) . . .

If a strike were being considered in a workplace, one would be hard pressed not to contravene that proposed clause. This provision is designed so that the Minister can eliminate or pursue any union member. The penalty for contravention of this new provision is $1 000 and a daily penalty of $200, in the case of an individual; and in any other case it is $5 000 and a daily penalty of $1 000.

Our amendment seeks to put in place a simple and workable process. I urge the Minister to give it fair consideration. Whether he likes it or not, most industrial disputes are solved very quickly. However, the Minister seeks to impose a time consuming system to resolve the simplest industrial dispute. Some disputes take an hour to resolve. A quick stop work meeting might take 15 minutes, or even an hour and a half, but the problem is solved. However, the Minister is insisting on a process which in his estimation will take three days, and in our estimation seven weeks.

Mr KOBELKE: Earlier the Minister suggested that perhaps I should explain my earlier remarks in support of this amendment. Clauses 9 and 10 seek to put in place a complex procedure for pre-strike ballots. No-one has made a ruling on this point, but I think it is appropriate at this stage to allow me to refer to clause 10 because those provisions are crucial to my argument in support of my proposed new clause.

If the Minister accepts this amendment, the Opposition will move to delete the Government's provision because we would not want to end up with a Bill that had two different systems - one a straightforward system that allowed people to involve themselves in industrial action after pre-strike ballots, and another by the Minister that contains so many arrangements to tie down the functioning of unions that it makes it impossible to conduct a proper pre-strike ballot. A little later we will raise opinions of which the Minister will be aware that show it is likely that these pre-strike ballot conditions are contrary to the freedom of association convention of the International Labour Organisation. The Minister is aware of the convention because it was presented to the select committee in the other place when it reviewed the earlier Bill. Many provisions in the Minister's proposal are cumbersome and draconian and do not allow for freedom of association as it is generally understood under the International Labour Organisation convention.

The Opposition proposes a system that is already in place. When a dispute occurs that is likely to lead to industrial action, the Opposition proposes that the union be required to conduct through the registered industrial agreement a secret ballot of its members. That agreement can contain details about the scrutineers, the conditions that should apply and how the action can be called in a way that is agreed to between the workers and the employer. We do not need the highly intrusive approach this Minister has taken. We do not need to tell employers that they must have their employees hold a ballot according to this complex procedure in the legislation. The feedback I have received is that major employers - I am not talking about employer organisations - do not want the provisions in this legislation. If we asked those people whether they wanted pre-strike ballots, most would say yes. There is no difficulty with that and I hope the Minister will not continue to misrepresent the Opposition's position.

Opposition members have no problem with pre-strike ballots. The Trades and Labor Council has no difficulty with the proposal I have moved. In fact, I have framed it to fit in with the TLC's motion, so it will not disagree with it. The Minister will know that some unions might not like it. I am not saying that every union agrees to it. Some individuals I know are very much opposed to pre-strike ballots. However, that is not the position of the Trades and Labor Council or the State Parliamentary Labor Party. This amendment is a simple, effective way of enabling industrial disputes that look like going to industrial action to have a pre-strike secret ballot. If the Minister does not support this amendment or give a reasoned argument why he cannot accept it or modify it to make it work according to his wishes, it will show that he is not about pre-strike ballots, but some other agenda.

Mr KIERATH: I cannot agree to something quite so complicated. However, I give the Chamber an undertaking that these provisions put by the Opposition will be examined by parliamentary counsel by the time the Bill leaves this Chamber. If they contain provisions that could improve secret ballots - it is my wish to have an effective secret ballot system - I will consider their inclusion. I am not outwardly rejecting them. However, the member for Nollamara is asking me to place my faith in the people advising the Opposition as against the people advising the Government on this system; namely parliamentary counsel and crown counsel. The member will also know that a number of legal issues must be considered carefully. I have sought extensive legal advice on some of these provisions to ensure they do not contravene any other obligations. I expect that it would take a week or so to get that advice back from the appropriate departments.

I cannot accept the amendment on the floor of the Chamber. However, I undertake to have the Opposition's provisions examined. If the amendment can be inserted without going against the thrust of the legislation, I will try to have it included. I cannot accept some of the provisions in the Opposition's amendment. However, I take them

in the spirit in which they were intended. They were put forward as a viable alternative. I will have them considered and, if appropriate, inserted before the Bill reaches the other Chamber.

Mr KOBELKE: It is pleasing to hear a slightly more accommodating tone from the Minister. However, he has not grasped what is proposed in this amendment. The Opposition proposes a method that provides for secret ballots. That method is radically different from the Minister's. It is not a matter of amending the final detail of the Minister's total proposal for secret pre-strike ballots. The view of the Opposition, and of almost anyone who has looked at the legislation, is that the Minister's proposal is so intrusive and dictatorial on the fine detail people must jump through that it is unworkable, if not contrary to ILO conventions. It will be impossible for it to work. The Opposition cannot amend that, and that is not what it is trying to do. The Opposition wants to step aside from the Minister's system completely.

This amendment states that pre-strike ballots will be put into industrial agreements, which means we do not need all the detail the Minister tries to put in place. We do not need to lay down draconian penalties that will apply if people slip up on some procedures. The Minister's proposal is so definitive and its penalties are so heavy that people could be tripped up on the technicalities on the way through and end up in court and have penalties applied to them. That is not what secret ballots are about. They are about an effective, fair, honest and secret way of ensuring that employees in the workplace can have their view on industrial action considered and acted on. That will need some measure of technical support, but it does not need anywhere near the detail and heavy penalties the Minister has included in the Bill. It should be left to the workers and their employers to sort out in their agreement. Agreements are registered practically every day of the week across this nation. Let us not meddle in the employer-employee relationship, which I thought was one of the Minister's strong debating points. He said time and time again that we should let the employer-employee relationship dominate and other people should not interfere in it.

The Minister does not seem to want to hold to that view in a pre-strike ballot. The Opposition wants a simple system by which employees organised through a union, as they normally would be, can make a detailed agreement with an employer on the pre-strike ballot. It is that simple. If the Minister feels he needs more power and needs to expand the provision, the Opposition will certainly listen to any changes he wants to make which build on that simple approach of leaving the matter to an industrial agreement between both parties. It will work.

If the Minister wants to put belts and braces on the amendment - to use the term of the former member for Applecross - the Opposition will support it. I cannot speak for the Trades and Labor Council, which supports this proposal before the Chair. However, the Minister would have the organisation backed into a corner if he reasonably and logically added to the proposal. It is a way of overcoming the Minister's current totally unacceptable provision. The Minister's repeatedly stated objective is to give power back to the employees to make a strike, and this amendment would do that. The Minister's current legislation would not do that.

It could be argued that the Minister's Bill meets that objective to an extent, but our proposal would do it better. Our proposal leaves the matter for employees and employers to sort out. It gives them the power to which the Minister has referred. It would give every employee a right to have his or her say without intimidation. We will look to the accommodation provided by the Minister as it may allow secret ballots to work. The Minister's current proposal will not do that.

Ms McHALE: I wonder whether the Minister is in a bit of a quandary at the moment. The amendment, as proposed by the member for Nollamara, delivers to the Minister his stated election platform, and its simplicity is one of its strongest qualities. Having studied the Minister's other proposals and legislation, this Bill is not one of his simplest. The Minister's other legislation is based on simple concepts and this amendment provides a number of opportunities for the Minister. It will ensure that his election policies of the 1992 and 1996 elections can be implemented. It introduces in a perfectly simple form the opportunity for the stakeholders to choose what they want for their enterprise.

Also, unlike the Minister's proposal, it would remove external interference from the process. It would bring the process down to the employer, the employees, with the relevant unions, to discuss what they want to achieve for the organisation. It would remove the external interference which the Minister has deliberately or unwittingly included in his proposal. For example, under the Bill the Minister may direct the commission to order a pre-strike ballot; the commission may order a pre-strike ballot; or other parties may request a pre-strike ballot. If the Minister is trying to achieve an environment which minimises interference, with respect, the Minister's proposal does not meet that objective. It does the opposite by introducing other steps into the process. The amendment in its simple form removes that interference.

The Bill contains a number of other critical issues. We have read much about pre-strike ballots in the print media and have been warned about the industrial action which will occur in opposition to this confrontationist legislation. This amendment provides another opportunity for the Minister to accommodate all the key interests; namely, the

Government in meeting its policy, the employer who wants some form of pre-strike ballot, and the union movement, which is totally opposed to the anti-collective bargaining and confrontationist legislation. Unions have stated that they will accommodate some form of agreement regarding pre-strike ballots.

The Minister has an ideal opportunity to find a compromise, although not consensus, which will free the State from the most horrendous industrial action, which no-one wants. The amendment provides for pre-strike ballots. The Minister said he was prepared to consider any amendment which would improve on the legislation. What criteria would he apply to parliamentary counsel in making that assessment? It seems on the one hand the Minister could say he wanted prescriptive legislation which provided for different means of interference with pre-strike ballots, or on the other hand he could say he wanted a clause with maximum flexibility and choice. This would depend upon the criteria the Minister provided when considering our amendment's improved position. I am curious about those criteria.

Mr KIERATH: I was previously trying to deal with both of the listed amendments, but turning to the amendment before the Chamber, section 41 is to be amended. It states that section 41 be amended by inserting a provision that before registering an agreement, the commission "may" do certain things. The Government believes secret ballots should be held - it should not be a discretion. It provides the protection the parties want; we will give it to them.

The amendment refers to the parties making provision, but that could be done under the current clause - it is not giving anything new. The key part of the amendment is the next ballot provisions, which I could not accept. I do not want to reject it at the outset, but the theme through the amendment indicates a problem. Parliamentary counsel is looking at the amendments at the moment, and I cannot get the informed comments for Committee debate. Rather than reject this amendment I am prepared to look at it. If it does not contravene government policy, I am prepared to accept it. If it guts the provision, I could not accept it.

Mr Pendal: Do you mean between Houses?

Mr KIERATH: Yes. Before this legislation reached this stage, it was the subject of two Bills and much scrutiny. An upper House legislation committee held extensive hearings and received submissions. I gave an undertaking to the members for Nollamara and Rockingham that I would seek Crown Law advice to ascertain whether changes were necessary in light of freedom of speech and international obligations. If any doubt arose, amendments were made.

The provisions in our Bill have been extensively examined on those aspects. However, this amendment has come out of the blue and not been looked at in that light and I do not have the same degree of confidence about it.

It would be easy to say, "That is your system and here is ours. We should go with ours." I am not rejecting the amendment outright. I need time for Crown Law and parliamentary counsel to look at it. I am trying to give guidelines. If the amendment supports the general thrust, I will support it. If it guts the Government's Bill, I will not support it.

It says that the commission may impose secret ballots. It appears from the Fielding report that the commission has had the option of using that provision for a long time, but it has been used very rarely, perhaps on one or two occasions. The commission has not really taken to it or decided to use it. We have said that before people take industrial action for the protection of individuals, it should be compulsory to have a ballot. If we are to abandon that and go to a voluntary situation, I will not support it. I have learned from past experience, and I do not want to reject a proposal out of hand. In the first round of industrial reforms, the TLC put up suggestions. It is very easy to wipe our hands and say that the TLC does not know what it is talking about and reject its suggestions. Often it raises very good points and when we consider them, we may think they deserve some attention. I do not want to reject this amendment at the outset, but I want the right to have it examined by the appropriate people and to have them provide me with advice. If it can be accommodated, I will do my level best to get as much of the amendment in the legislation as I possibly can. However, the proviso is that if it goes against the spirit of what we are trying to do, I will not accept it.

Mr PENDAL: Like most people, I support the notion of secret ballots. That is what this Bill seeks to do. I know members are not permitted to talk about matters included in clause 10 while we are debating this clause; therefore I will not. However, it is difficult to avoid alluding to that when one is arguing about the merits of the amendment of the member for Nollamara. The Minister's attitude as has been expressed in the past couple of minutes is a helpful one. It says, on the record, that there is a preparedness to look at what the member for Nollamara is proposing. In fact, were I to be handling the Bill, that is what I would do; in other words, the clause would be passed in this House in the form I wanted, but if there was something in the amendment that allowed me to achieve my ends without, to use the Minister's words, the provisions being gutted, that could be done in the upper House. That is a big concession the Opposition has won in this debate.

Although I will not allude to clause 10, I cannot avoid referring to some of the matters contained in it. If we go down the Minister's path - I hope the Minister will take this matter seriously and look at it for when it resurfaces in the other place - we will have no fewer than 12 pages dealing with one procedure. The older I get, the more suspicious I become of over-legislating. Someone once put to me the proposition that we should have a law, for example, that prohibits fraud; that people cannot do fraudulent things. The courts will then decide what is fraudulent behaviour. In Australia in this jurisdiction in recent times we have tended to cross every "t" and dot every "i" so that no eventuality can possibly escape the law. Of course, being what they are, people find opportunities to get around the law; people are very inventive. When we over-legislate, we run that risk.

Although I am a supporter of secret ballots, I am not sure they will work in many circumstances. It appals me to think we need 12 pages of a Statute to tell us how to conduct a secret ballot. That is why I think this is legislative overkill. Because I cannot discuss the other matters that will back up my argument further, I will wait until we debate clause 10. I hope the committee will not spend much time on this clause. There are quite repugnant things in the proposed clause 10. Even if my first criticism is that we have over-legislated by having 12 pages in a Statute dealing with this one issue - it could be cut back to nine by taking out some of the very repugnant things; that is something to be dealt with later - that is where we should be heading in the debate now. Perhaps the Committee should accept that the Minister has given quite a serious concession that he may well go down the path put forward by the Opposition when the legislation reaches the other place, provided the proposition of the member for Nollamara does not gut the provisions in this clause. For the time being, at least, I will support the Government because I believe in secret ballots, and in the knowledge that when we get to clause 10 I will give reasons for opposing those procedures, firstly, because they are legislative overkill and, secondly, because of some repugnant words within that clause.

Mr BROWN: I support this amendment because it is simple and enables a secret ballot to be conducted. If one genuinely believes in secret ballots, it is important to determine these issues. In my view there is a very significant similarity between what is proposed in the Government's Bill for a very convoluted and complex process, and the type of secret ballot that occurs in industrial relations in the United States of America. I will just draw the parallel. In the United States to have what are called organised shops or union shops there must be a secret ballot of the employees of the workplace. That secret ballot can take place only if employees sign what are called tickets, and at least 50 per cent of the employees are interested in becoming union members. In the United States many of the unions - the number of unions is declining significantly - will not make an application for a postal or secret ballot until about 80 per cent of employees have signed a ticket.

Once the application is made, the unions know every device will be used to prevent the ballot taking place. There are now firms of lawyers and labour relations consultants, generally called union busters, that do nothing other than be engaged by companies for the purpose of ensuring either, firstly, the ballot for which a petition has been lodged never takes place or, secondly, it results in failure. These union busters use a variety of tactics and strategies to drag out the process to such an extent that people lose faith in it. The process in this legislation is designed very much to achieve that end.

Despite the very conciliatory words heard from the Minister this afternoon, I doubt that the proposed amendments will be picked up. They would provide a simplified and quick process to achieve the same result. If nothing else, this legislation does not want that to happen. It wants a very complex, convoluted, difficult process, one with many hooks and barbs to stretch it out over such a long time that people will say that it is a ridiculous process, will lose faith in it and will take action contrary to the proposed section. That would give the Government and the Minister an opportunity to bleat to this Parliament and publicly about unions acting unlawfully and not complying with the provisions covering secret ballots.

That is the real intent of this legislation; it is not about providing secret ballots, but rather providing a proposition that all people know is very complex, convoluted and unworkable and, therefore, they will not go through the process anyway. It will enable the Minister and the Government to prosecute, to impose fines, to deregister unions, to put in unelected officials that unions do not want, and to do all the other undemocratic things that are provided under this legislation.

The Government can do this in a way which gathers public support because it hopes the public will see some odious union which has not gone though the complex and convoluted provisions of these clauses. As the member for Perth has said, when we get to part 10 I will detail the complexities of the process. I will show that the Minister's time lines, mentioned in his second reading speech, are just so far off the mark that he either has not read the Bill or has been given bad advice. Be that as it may, we are proposing now a very simple procedure which enables decisions to be made by way of secret ballot. If the Government were really interested in putting in a simple secret ballot process, it would accept the amendment.

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

Ayes (16)

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

Noes (31)

Mr Ainsworth	Mrs Hodson-Thomas	Mr Pendal
Mr Baker	Mrs Holmes	Mr Prince
Mr Barnett	Mr House	Mr Shave
Mr Board	Mr Kierath	Mr Sullivan
Mr Bradshaw	Mr MacLean	Mr Sweetman
Dr Constable	Mr Marshall	Mr Trenorden
Mr Court	Mr McNee	Mr Tubby
Mr Cowan	Mr Minson	Dr Turnbull
Mr Day	Mr Nicholls	Mrs van de Klashorst
Mrs Edwardes	Mrs Parker	Mr Bloffwitch *(Teller)*
Dr Hames		

Pairs

Ms MacTiernan	Mr Johnson
Mr Graham	Mr Omodei
Mr Marlborough	Mr Wiese

New clause thus negatived.

New clause 9 -

Mr KOBELKE: I move -

Page 7, after line 1 - To insert the following new clause -

Part VIB inserted

9. After Part VIA of the principal Act the following Part is inserted -

" PART VIB -- PRE-STRIKE BALLOTS

Pre-Strike Ballots ordered by Commission

97 Commission may order secret ballot

(1) Where -

(a) an organisation is concerned in an industrial dispute with which the Commission is empowered to deal (whether or not proceedings in relation to the dispute are before the commission); and

(b) the commission considers that the prevention or settlement of the industrial dispute might be helped by finding out the attitudes of the members, or the members of a section or class of the members, of the organisation or a branch of the organisation in relation to a matter;

the Commission may order that a vote of other members be taken by secret ballot (with or without provision for absent voting), in accordance with directions given by the commission, for the purpose of finding out their attitudes to the matter.

(2) Where it appears to the Commission -

(a) that industrial action is being taken or the taking of industrial action is threatened, impending or probable; and

(b) that finding out the attitudes of the members, or the members of a section or class of the members, of the organisation concerned or a branch of the organisation, in relation to the

matter, might help to stop or prevent the industrial action, or might help the settlement of the matters giving rise to the industrial action;

the Commission may order that a vote of the members be taken by secret ballot (with or without provision for absent voting), in accordance with directions given by the commission, for the purpose of finding out their attitudes to the matter.

(3) If -

(a) the Commission is required under this Part to be satisfied that a valid majority of persons employed at a particular time whose employment is or will be subject to an agreement have genuinely made the agreement or given an approval; and

(b) the Commission is not so satisfied;

then -

(c) the Commission may order that a vote be taken by secret ballot (with or without a provision for absent voting), in accordance with directions given by the Commission, of persons employed at the time of the ballot whose employment is or will be subject to the agreement to determine whether they would make the agreement or give the approval; and

(d) if a majority of the validly cast votes is in favour of making the agreement or giving the approval, the Commission is taken to be satisfied of the requirement.

(4) If it appears to the Commission that -

(a) industrial action is being taken or the taking of industrial action is threatened, impending or probable; and

(b) finding out, in relation to a matter, the attitudes of the employees whose employment will be subject to the proposed agreement concerned might help to stop or to prevent the industrial action, or might help the settlement of the matters giving rise to the industrial action;

the Commission may order that a vote of the employees be taken by secret ballot (with or without a provision for absent voting), in accordance with directions given by the Commission, for the purpose of finding out their attitudes in relation to the matter.

(5) The powers of the Commission to make an order under subsection (1) or (2) and to revoke such an order, are exercisable only by the Full Bench.

Chief Commissioner

97A Application by members of organisation for secret ballot

(1) Where -

(a) the members, or the members of a section or class of the members, of an organisation or branch of an organisation are directed or requested by the organisation or branch to engage in industrial action; and

(b) the members directed or required are, or include, members (in this section called the ***relevant affected members***) who are employed by a particular employer at a particular place of work;

application may be made to the Commission, by at least the prescribed number of relevant affected members, for an order under subsection (2).

(2) Subject to this section, the Commission shall order that a vote of the relevant affected members be taken by secret ballot (with or without the provision for absent voting), in accordance with directions given by the Commission, for the purpose of finding out whether or not those members support the industrial action.

(3) If the Commission considers that the application should be refused because -

(a) finding out the attitudes of the relevant affected members would not help -

(i) to stop or prevent the industrial action; or

(ii) to settle the matters giving rise to the industrial action;

(b) the industrial action has stopped or is about to stop; or

(c) the industrial action is not likely to happen;

the Commission shall -

(d) if the Commission is constituted by the Chief Commissioner or a Full Bench - refuse the application; or

(e) if the Commission is not constituted by the Chief Commissioner or a Full Bench - refer the application to the Chief Commissioner.

(4) If the Application is referred to the Chief Commissioner, the Commission shall deal with the application.

(5) The powers of the Commission to make an order under subsection (2), and to revoke an order under that subsection, are exercisable only by a Chief Commissioner or a Full Bench.

(6) Where 2 or more applications are made to the Commission under subsection (1) in relation to a particular place of work or a group of employees of a particular employer, the Chief Commissioner may assign the applications to one Commissioner or a Full Bench.

(7) Where, in considering an application under subsection (1), it appears to the Commission that, in all the circumstances, it would be appropriate to make an order for a secret ballot under subsection 97 (1) or (2) rather than under subsection (2) of this section, the Commission may act accordingly.

(8) Where -

(a) the Commission has made an order for a secret ballot under subsection (2) of this section or under subsection 97 (1) or (2); and

(b) before the vote is taken, the Commission forms the view that the secret ballot should not be proceeded with because -

(i) the industrial dispute has been made, or is about to be, settled; or

(ii) the industrial action has stopped, is about to stop or is not likely to happen;

the Commission shall revoke the order.

(8A) If -

(a) the Commission has made an order for a secret ballot under subsection 97(2)(a); and

(b) before the vote is taken, the Commission forms the view that the secret ballot should not be proceeded with because it has satisfied itself that the requirement mentioned in paragraph (a) of that subsection has been met;

the Commission must revoke the order.

(8B) If -

(a) the Commission has made an order for a secret ballot under subsection 97(2)(b); and

(b) before the vote is taken, the Commission forms the view that the secret ballot should not be proceeded with because it has satisfied itself that -

(i) the matters giving rise to the industrial action have been, or are about to be, settled; or

(ii) the industrial action has stopped or been prevented, or is about to stop or be prevented;

the Commission must revoke the order.

(9) For the purposes of this section, a direction or request to members of an organisation or branch of an organisation that is given or made by or on behalf of -

(a) the committee of management of the organisation or branch;

(b) an officer, employee or agent of the organisation or branch acting in that capacity;

(c) a member or group of members of the organisation or branch authorised to give the direction or request by -

(i) the rules of the organisation or branch;

(ii) the committee of management of the organisation or branch; or

(iii) an officer, employee or agent of the organisation or branch acting in that capacity; or

(d) a member of the organisation or branch, who performs the function of dealing with an employer on behalf of the member and other members of the organisation or branch, acting in that capacity;

shall be taken to be a direction or request by the organisation or branch, as the case may be.

(10) In this section -

place of work, in relation to a group of employees of an employer, includes any place at which the employees included in the group are required to report (whether in person, by telephone or by any other form of communication) for the purpose of being allocated work by the employer or for any other purpose connected with the carrying on of the business of the employer;

prescribed number, in relation to members of an organisation or branch of an organisation employed by a particular employer at a particular place of work, means -

(a) if there are less than 80 members of the organisation employed by the employer at the place of work - 4;

(b) if there are not less than 80, but not more than 5,000 members of the organisation or branch employed by the employer at the place of work - 5% of the number of members so employed; or

(c) if there are more than 5,000 members of the organisation or branch employed by the employer at the place of work - 250.

97B Scope of direction for secret ballots

(1) Directions given by the Commission under subsection 97 (1), (2), (2)(a) or (2)(b) of 97A(2) shall provide for all matters relating to the ballot concerned, including the following matters:

(a) the questions to be put to the vote;

(b) the eligibility of persons to vote;

(c) the conduct of the ballot generally.

(2) Before giving a direction relating to the conduct of the ballot, the Commission shall consult with the Industrial Registrar or, if the ballot is to be conducted by the West Australian Electoral Commission, with the Electoral Commissioner.

97C Conduct of ballot

(1) Where, under section 97 or 97A, the Commission orders the holding of a secret ballot, the Commission shall, by order -

(a) direct the organisation concerned to make arrangements for the conduct of the ballot by a person approved by the Industrial Registrar; or

(b) direct the Industrial Registrar to make arrangements for the conduct of the ballot;

and may give any further directions that it considers necessary for ensuring the secrecy of votes and otherwise for the purposes of the conduct of the ballot or the communication of the result to the Commission.

(2) A direction shall not be given under paragraph (1)(a), if the order for the holding of the secret ballot concerned was made under subsection 97A(2).

(3) Where a direction is given under paragraph (1)(a), the State is liable to pay to the organisation the reasonable costs of the conduct of the ballot concerned as assessed by a Registrar.

(4) Where a direction is given under paragraph (1)(b), the Industrial Registrar shall conduct the ballot concerned or make arrangements for its conduct, in accordance with the direction.

(5) Where the result of a ballot conducted under an order under section 97 or 97A is communicated to the Commission, the Commission shall cause the Industrial Registrar to inform each of the following persons, by written notice, of the result -

(a) the persons who were eligible to vote in the ballot;

(b) the organisation (if any) to which those persons belonged, and the employers by whom those persons were employed, when those persons became eligible to vote in the ballot.

(6) Where the Commission forms the view that the results of a ballot conducted under an order under subsection 97A(2) show that the majority of the members of an organisation, or a branch of an organisation, who recorded a valid vote in the ballot were not in favour of engaging in the industrial action concerned, the Commission shall cause the Industrial Registrar to include in each notice issued under subsection (5) in relation to the ballot a statement of the view formed by the Commission.

97D Commission to have regard to result of ballot

In any conciliation or arbitration proceeding before the Commission in relation to a matter in relation to which the attitudes of persons have been expressed in a ballot conducted under an order under subsection 97(1), (2) or (2B) or section 97A, the Commission shall have regard to the result of the ballot.

97E Certain members not required to obey directions of organisation

(1) Where a notice under subsection 97C(5) in relation to a ballot that is issued to a member of an organisation, or a branch of an organisation, includes a statement that the Commission has formed the view that the results of the ballot show that the majority of the members of the organisation or branch who recorded a valid vote in the ballot were not in favour of engaging in the industrial action concerned, then, in spite of any rule or practice of the organisation or the branch, the member is not required to obey any direction or request given or made by the organisation or branch in relation to engaging in, or supporting in any way, the industrial action.

(2) For the purposes of subsection (1), a direction or request to members of an organisation or branch of an organisation that is given or made by or on behalf of -

(a) the committee of management of the organisation or branch;

(b) an officer, employee or agent of the organisation or branch acting in that capacity;

(c) a member or group of members of the organisation or branch authorised to give the direction or request by -

(i) the rules of the organisation or branch;

(ii) the committee of management of the organisation or branch; or

(iii) an officer, employee or agent of the organisation or branch acting in that capacity; or

(d) a member of the organisation or branch, who performs the function of dealing with an employer on behalf of the member and other members of the organisation or branch, acting in that capacity;

shall be taken to be a direction or request by the organisation or branch, as the case may be. ".

At least the Minister has been willing to acknowledge that he should perhaps look at a simpler model. I gather that he wants more detailed requirements in the legislation. He wants the condition of a pre-strike ballot to be compulsory. That opens up a whole lot of problems which are evident in the proposals put forward by the Minister.

If we want to coerce people, we end up, as the member for South Perth said; crossing every "t" and dotting every "i". The end result is interfering in a totally unreasonable way with the process. That is totally contrary to the Minister's statements over many years that the employer and employee should determine the relationship. The Minister does not seem to be able to help himself in this area; he wants to get in and tie down very fine detail as to how pre-strike ballots will work.

My amendment offers a system based very closely on the contents of the commonwealth legislation. I have simply taken the commonwealth legislation and amended it in minor ways so that it will fit into this clause. I am not saying that it is the Rolls Royce and the best possible system. The Minister can go away and get plenty of advice from people who see advantages and disadvantages in the commonwealth system for pre-strike ballots, and difficulties where the system has failed to work. It gives a workable system which meets the Minister's other criteria of detail in the Bill. The amendment will place considerable detail in how the pre-strike ballot process is to work. If the Minister wishes to have other needs in his legislation we can look to amending it. However, if the Minister requires coercion of the workers in the workplace and that they must come up to the fine detail of all the provisions so that he can force them to have a pre-strike ballot in every single case, then the commonwealth proposals will not work. Nobody believes, other than the Minister, that we should have that level of coercion in the workplace requiring a pre-strike ballot. It tries to skew the whole conduct of industrial relations by getting in there and interfering in that way.

I hope the Minister will comment on the proposal. I do not expect him to go through chapter and verse the detail of the amendment. Knowing that it reflects very clearly what is currently in commonwealth law, the Minister can comment on what he sees as the advantage or disadvantage of the commonwealth approach and whether he might be willing to take that on board as a solution to the problem. The problem is that we are talking about the provision of pre-strike ballots. If the Minister has another agenda, then clearly we will not reach accommodation. If the Minister is really about destroying unions, then proposals in the Bill may be effective. That is not my agenda. I will not countenance the possibility of putting in a whole lot of complex legislation which has, as a real underlying goal, the destruction of the union movement. If the Minister is about only what he has stated publicly, which is providing pre-strike ballots to ensure that people are not intimidated and can genuinely decide whether to take industrial action, then this proposal will work.

The Minister's advisers could improve the wording if the Minister felt it was necessary. This new clause is a constructive way to address the Minister's stated aims.

Mr KIERATH: I made some general comments on this during debate on clause 7. It will not be an effective mechanism if we give the commission the discretion to order a ballot. The intent of the legislation is that if industrial action is to be taken, there shall be a ballot. When industrial action is taken there are no winners, only losers. The worker loses through lost wages; the employer loses through lost profits; and the community loses through lost production. The Government is putting in place a regime of ballots so that instead of industrial action being the circuit breaker to the impasse, the ballot will be. I do not have the advantage of any preliminary advice on the commonwealth provisions, other than what I can glean from looking at them myself. The member for Nollamara knows I was here last night and for most of today, so it is fairly difficult to get advice. However, the commonwealth provisions say that in any conciliation or arbitration proceeding the commission shall have regard to the result of the ballot. This legislation provides a mechanism, so that industrial action shall not take place unless there is a yes ballot. That is different from the spirit of the commonwealth provisions. On that basis alone the commonwealth provisions would not be acceptable. However, they are extensive provisions and some of them might be better than ours. Where they are superior, or even in some cases equal, I will endeavour to include them. However, where they go against the principles in this legislation, I could not accept them. The comments that I made during debate on the previous clause apply to this clause as well. Some provisions in the commonwealth legislation may be taken on board but only if they are consistent with what we are trying to do and not totally opposed to it.

Mr KOBELKE: I will take up some of the points of principle raised by the Minister. He suggests that the difficulty he might have with my proposal is that it would not be compulsory. The Minister's own proposal applies to a strike as defined in clause 35 as any action by two or more employees, or by an organisation of employees, that involves a stoppage of, or ban or limitation on, the performance of work required under an employee's contract of employment. That is not a strike in the sense that is commonly understood, where people lay down tools and walk off the job. A secret ballot is required for any form of stoppage, ban or limitation by two or more people. The Minister proposes to force people to have a ballot because two people have a disputation which leads them to put some limitation on their work. That is ludicrous.

Two people in a workplace might see some hazard and decide that they will not continue working in that hazardous situation. They do not walk off the site or refuse to work for the rest of the day; they simply say that they will not continue to do a particular job, for example, until a fire extinguisher is fixed or a safety shield is installed. Under the Minister's legislation they will be caught up in this draconian legislation because they have been involved in a

strike according to the Minister's definition. It is even more sinister than that. If those two employees were not union members, they would not be considered to be on strike and the Act would not affect them. However, if they were members of a union, there is the potential to throw the book at them. All these draconian measures and penalties can be laid on them because according to the Act they were on strike, whereas they simply spoke to a manager and said, "Until that fire extinguisher is in place or that cover is replaced on the machine we cannot continue to work." If the Minister wanted to pursue those people, they could be caught up in this Act, declared to have held an illegal strike and their union - which might not have known about it - would be caught up in a range of legal procedures. That is the result of the Minister's principle of compulsion.

The Minister is defining a strike so broadly that it picks up any industrial action of union members no matter how minor, and specifies there must be a compulsory pre-strike ballot. It is not workable. The motion I have before the Committee provides a mechanism which will work. However, if the Minister is tied to this compulsion proposal, it will not work. If the Minister's definition were not so ridiculous, he could propose a pre-strike ballot for certain classes of strikes.

This Bill locks employees into a process along the lines the Minister has evolved. At the end of that process, if all the requirements of the law had been met and the vote gave a clear majority in favour of a strike, the Minister should provide some form of protection as there is in the British system. There should not still be a liability for the range of penalties because strike action was taken, perhaps disadvantaging someone. The British system, which the Minister continually refers to, contains a form of protection if one goes through the pre-strike ballot and moves to industrial action. However, this Minister has one principle: The pre-strike ballot must be compulsory, regardless of how minor the industrial dispute is, and then there is no protection. That is not workable or logical.

Mr RIEBELING: I urge the Minister to consider seriously what we have proposed. The amendment is constructive. The member for Nollamara touched upon the Minister's definition of a strike as any industrial action involving two or more people. That is unworkable. It will involve a much greater time line for minor disputes. I have a problem not only with the provisions of clause 10, but also with the definition of strike, which we will probably not get to given the time constraints on this legislation. I refer to that issue now in relation to the requirement for a pre-strike ballot. It is important that the courts know what is in the Minister's mind on this issue. Would a stop work meeting be covered by this legislation?

Mr Kierath: Yes.

Mr RIEBELING: If a simple stop work meeting were called for a matter that would take an hour, which often happens, is it his intention that this legislation would operate?

Mr Kierath: I said yes.

Mr RIEBELING: The Minister is happy to extend a dispute for three days that could be solved in an hour?

Mr Kierath: The awards contain dispute settling procedures so they should be followed. Safety issues are exempted under the Act.

Mr RIEBELING: I did not mention safety.

Mr Kierath: All state awards now have dispute settling procedures.

Mr RIEBELING: At the moment, as the Minister is aware, many of those dispute resolution procedures require short, stop work meetings to put matters to members and the like.

Mr Kierath: Why do they have to have stop-work meetings? Why can the workers not meet at other times of the day?

Mr RIEBELING: If a dispute concerned production, no doubt it would be between management and workers. Why should it not be during work hours?

Mr Kierath: If a dispute involved one or two or a group of workers a set of procedures must be followed. Usually the union meets with management and if it cannot be resolved -

Mr RIEBELING: Have streams of employers told the Minister that short, stop-work meetings are counterproductive and they want them stopped? Is that why this clause is in the Bill?

Mr Kierath: I have had people say that stop-work meetings often disrupt work.

Mr RIEBELING: Have they said that the use of stop-work meetings has also solved problems quickly?

Mr Kierath: I am sure they do. If they use their dispute and grievance settling procedures the dispute could be resolved.

Mr RIEBELING: I think most unions do that and use the stop-work meetings as advisory meetings.

Mr Kierath: If they do that they will not have problems with this provision.

Mr RIEBELING: Except now they must go through a secret ballot to hold a stop-work meeting.

Mr Kierath: Yes; if they intend to take industrial action. They do not need to have a stop-work meeting; they can meet during lunch or after work.

Mr RIEBELING: My fears about this definition have been confirmed.

Dr TURNBULL: As others have already mentioned, so much time has been spent on the first few clauses that we may not have time for productive discussion on this matter.

Mr Riebeling: That is the Government's fault.

Dr TURNBULL: It is the Opposition's place to decide how much time is spent on each clause. I want to clarify the status of stop work meetings. In areas involving shift work, such as power stations and hospitals, often people working can join in stop-work meetings or listen to meetings while continuing with their work. Those people on the shift may not need to totally abandon their responsibilities. I think we are all talking about the very wide range of situations in relation to many stop work meetings. They are not always all out-on-the-grass meetings.

Where a group of workers hold a stop-work meeting which most workers attend, but a few continue to work on essential services, I take it that that meeting would not fall into the category of a strike, unless the employer reported it to the Industrial Relations Commission. Surely a variety of meetings can occur but unless the employer or some person brings it to the attention of the Industrial Relations Commission and points out that it is outside the system, it does not fall within this requirement to hold a compulsory secret ballot prior to the meeting.

Ms McHALE: This debate is becoming more extraordinary and enlightening as we examine each clause. The reality of the legislation in regard to stop work meetings is becoming more clear. It is a bit like peeling an onion. We have moved from choice to compulsion within the workplace. We have gone from productivity and best practice to a process which will be time wasting and characteristically complex in the extreme.

This amendment would provide a range of opportunities if the Minister were receptive to them. He is unwilling to see that the spirit of our amendment is qualitatively different from the spirit of his proposal because it is necessary in order to compromise. The Minister's legislation is unwieldy and will not work. I would be interested if his definition of strike includes not only stop-work meetings but also an overtime ban.

According to the Minister's definition, anything that puts a limitation on the contract of employment is defined as a strike. We are now being told that not only paid and unpaid stop-work meetings, depending on the employer's view of the meeting - we must go through a process which is bizarre in the extreme - but also an overtime ban which, in the scheme of things does not cause a great deal of pain, could be subject to the provisions of the Minister's legislation.

In many organisations stop-work meetings produce very productive outcomes. Employers can also use stop-work meetings so that workers can discuss an issue. For instance, a paid stop work meeting may be necessary to enable the workers to understand the Labour Relations Legislation Amendment Bill. If the Minister wants to increase productivity and efficiency, again I suggest that he should stop looking at the legislation and think about the amendments being proposed. The logic that there must be a secret ballot and that industrial action is not a circuit breaker is fundamentally flawed. The industrial action in many instances can bring to the surface a grievance which has been bubbling under the surface for many months. Although industrial action may be painful, in many instances it is a short term action and it may be over in a relatively short time, putting an end to months of grievance and dissatisfaction. By pursuing this line of thought and logic, the Minister could be extending that grievance. I ask the Minister to go back to the definition of "strike" and think about an overtime ban, a stop work meeting, or anything putting limitations on employees. It is an unworkable and extraordinary definition because the logic is flawed. I ask the Minister to consider the amendment.

Mr KIERATH: I have some difficulty because before the Chair at the moment is the clause moved by the Opposition; we are not dealing with the remainder of the Bill. I am asked to comment on other parts of the Bill.

Mr Riebeling: What about the comments on strikes by the member for Collie?

Mr KIERATH: In most workplaces, if there is cooperation between the parties, they will come to their own arrangements for discussing issues. Almost all awards have dispute and grievance settling procedures. Obviously if they are available and all parties are happy with them, I see no problem. I cannot debate the remainder of the Bill, but if the Opposition finishes with this new clause we can go through the other provisions one by one.

New clause put and negatived.

Clause 9: Section 73 amended -

Mr KOBELKE: By its volume this appears to be an insignificant amendment, but it has considerable consequences. It will include in section 73(3) of the principal Act the provisions of proposed new section 97B(2). Section 73 deals with the deregistration of a union. The Bill provides that a union may be deregistered because of the provisions in the pre-strike ballots section of this Bill. We understand the dire consequences of that. The Minister did not reply to the queries raised by the member for Collie. He said that there would be no problem in workplaces where the parties were cooperative. Of course that is true. However, we are dealing with areas of conflict in which disputes cannot be resolved. In those circumstances there are likely to be strikes and people will stand on their rights. Clearly a minor event could lead to a strike about which the union knew nothing. If only two people in a workplace have done something they were not supposed to do under their contract of employment, it could be defined as a strike. The whole process set out in section 73 could be picked up, perhaps maliciously by a third party, and could result in a union being caught up under this proposed new section and deregistered. I am not suggesting that other complex circumstances are not involved, but if people want to create problems, this part of the Bill will give them every opportunity.

Mr Kierath: If that were the case, clearly when the Minister tried to make an application he would not succeed.

Mr KOBELKE: I did not mention the Minister. The Minister may have had that on his mind and perhaps it was a Freudian slip. I did not suggest the Minister would personally try to create havoc. This process could be stepped up to a stage at which a union would be deregistered following an event over which the union had no control. It could be a minor industrial dispute. I realise the Minister is addressing the bigger issues but the Opposition had to look at how the legislation could possibly be used and the potential outcomes. In extraordinary circumstances a minor industrial dispute has the potential to lead to the deregistration of a union. I find that totally unacceptable. It is another element of this whole concoction which is unworkable. The Government cannot hold deregistration over the heads of unions on the basis of a complex and unworkable system which does not give employees the opportunity to take up their case. The proposed secret ballots are not an effective resolution of employees' concerns and, therefore, it is not appropriate that a matter may be taken to deregistration in that way.

Mr KIERATH: This part of the Bill cannot be invoked unless proposed section 97B(2) is breached. There is a proviso in proposed section 97C(2) - unless it is proved that the officer or employee acted without the organisation's consent or connivance; and the organisation took all reasonable precautions and exercised due diligence to prevent the officer or employee so acting, having regard to all the circumstances.

Mr KOBELKE: I am no expert on the detail but that does not contradict what I am saying. I am not denying that the provisions exist, but this structure can capture people with a view -

Mr Kierath: You are back to the general provisions rather than the detail of this clause.

Mr KOBELKE: No, I am talking about the clear potential for this proposal, because of its complexity, to lead to a possible end point of deregistration of a union. The draconian nature and complexity of many of the provisions in the Bill provides the opportunity for people to be caught by this legislation. The legislation will apply in the case of only two employees taking minor industrial action. Therefore, the Minister is opening up a whole system which, while it involves various requirements, at the end of the day can lead to unions facing deregistration in many unnecessary situations. I do not disagree with the Minister's last comment, but he has simply drawn the attention of the House to a requirement I have alluded to in general terms.

Mr Kierath: The union official would have to actively incite people to breach this part of the Act for this provision to be implemented.

Mr KOBELKE: I come back to the point I made: Because the Minister is trying to catch the fine detail there are other implications he has overlooked. I am not saying that the examples the Opposition has given to explain how people could be caught up were necessarily the Minister's intention. Putting the best spin on it, perhaps the Minister's intention was to tie it down to fine detail.

The wording of the clause leaves open a whole lot of possibilities. The Minister might say I am putting the worst possible light on it, but we must consider what could happen with this legislation. If people are running political agendas - for example, a union wanting to take on another union or an employer who has a mad right wing ideological position and wants to destroy a union - they can use these provisions, with stooges and other means, to set up a range of processes. Even if the commissioner, as an independent arbiter, decided not to take action that appeared unwarranted he would, when presented with a whole range of situations, have to look to the provisions of this Bill.

He will find many things which open up the possibility for interpretation in ways I am sure the Minister does not intend. That is the difficulty the Opposition has with the Bill.

As the member for South Perth said, when we embark on this approach of trying to tie down every detail to make people go through the exact door one wants them to go through, wearing the clothes one wants them to and marching in step to one's music, one puts in place a system which does not work. The Minister should go back to his earlier principle of letting the employers and the employees work out their relationship and bring his legislation into play only when it is necessary for the broader parameters. When the Minister gets into the finer details of the Bill he will understand the problems I am alluding to in a very general way. Perhaps I am not making myself clear and, if that is the case, I apologise. This clause has the potential to put unions unfairly in a situation which could have them fronting up for deregistration and for that reason I oppose clause 9.

Clause put and passed.

Clause 10: Part VIB inserted -

Mr BROWN: I will go through the time lines in relation to this clause. The Minister said yesterday on radio and elsewhere that secret ballots can be carried out very quickly. I will go through this clause carefully to outline the complexities of complying with this provision to get a secret ballot. When the process of a secret ballot is commenced one must initiate an application to the Industrial Relations Commission under proposed section 97D. It is the commission that determines whether there will be a secret ballot.

The Minister said in his second reading speech that to make an application to the commission would take one day. I advise the Minister that one would be doing extremely well to make an application to the commission in one day, taking into account all the matters that the commission has to deal with. Let us look at the matters that the commission must deal with in the case of secret ballots because they must be set out in the application. They must be made very clear to the commission. Clause 97D(3) states -

> An application made under subsection (2) shall be -
>
> (a) in writing stating the reasons for the application and the facts relevant to the contemplated strike, including a description of the form of the contemplated strike;

Therefore, a person, when making the application, must state the reasons and the facts that are relevant to the contemplated strike as well as have an understanding of the form of the contemplated strike. In addition to that, a list of all persons who are contemplating or are believed to be contemplating taking strike action must be provided.

The importance of the application is emphasised by what is in proposed section 97E(6), which states -

> In dealing with an application and giving directions under this Part the paramount considerations of the Commission shall be the circumstances of the application and the provisions of this Part.

It is a significant clause and it says in effect that great weight is placed on the application. If the application does not set out clearly and concisely the matters contained in section 97D(3), it could be argued the application is deficient. The application must be very clear and concise and deal with difficult issues and include relevant detail.

Ms McHALE: The opposing views on the time line for effecting a pre-strike ballot now seem to be at issue and this is fundamental to the community's understanding of the legislation as well as that of the key parties. The Opposition has been arguing, and the Minister has been rejecting it quite vehemently, that the process will take weeks. We have referred to about seven weeks and the Minister has referred to a matter of days. The whole process will take a considerable time. Time periods for certain steps to be taken are written into the legislation. For instance, the declaration of the result of the pre-strike ballot must be made within 28 days. I have picked one element of the legislation. If we are looking for a method of trying to accommodate the pre-strike ballot notion, having a procedure with minimum time frames which elongate the whole process is totally counterproductive.

The resolution from the union committee of management is another level in the process which will delay the final outcome and make the process much more complicated. The union committee of management will have to apply to the commission for a pre-strike ballot. At the moment the workplace decides to take strike action. It seems eminently clear to me that a decision made in that context more appropriately meets the sentiments of the Minister's election promises, which focused on the employee-employer relationship. The Industrial Relations Commission must hear and determine the matter within five days. Can members imagine an organisation which is on the brink of taking industrial action - tempers are frayed and people are unhappy - having to sit around and wait for up to five days before the commission hears and determines the matter? That would be extraordinarily laborious and counterproductive.

The hearing and determination of the matter will be subject to the workload of the commission and other extraneous variables, and it could well be five days before a decision is made. That is only one step in the process. Then the employer or any other intervener - not necessarily the employer of the workers who are taking the industrial action - can appeal the decision within 48 hours. The process set up by the Minister, in all likelihood, will not take days, but, because of the way he has constructed the steps, will take weeks. The employers will not want that and it will not, by any stretch of the imagination, be helpful in resolving the dispute. This provision will enhance the conflict because it does not provide a quick and speedy resolution.

Dr TURNBULL: When legislation relating to the Fielding report is prepared, what does the Minister understand will be the requirements for pre-strike ballots? If the Industrial Relations Commission is able to enforce a negotiated or arbitrated result, will pre-strike ballots be redundant? The Minister said he could see a pre-strike ballot being a trigger for producing a resolution rather than the industrial action being the trigger for the resolution. I have seen a number of very long and protracted industrial disputes. The first occurred not long after I became the member for Collie and involved a dispute at the Collie power station. The issue dragged on for about 13 months. It eventually culminated in industrial action, and finally was resolved. The other dispute that we all remember was the teachers' strike. That dispute, despite many rolling stoppages, took a very long time to produce a resolution. Does the Minister agree that, until we have the reforms recommended by Fielding, disputes such as these may not be resolved despite a yes vote in a pre-strike ballot; even if the deterrents and the fines are sufficient to ensure that the pre-strike ballot occurs? If the vote is a yes vote and there is still no resolution despite industrial action, what happens?

Mr KIERATH: Before I get to the member for Collie I will deal with the technicalities. I am sure the member for Bassendean is aware that section 26(1)(a) provides that the commission will not become too dependent on technicalities and legal form. We believe that the application will be handled similar to that of a section 44 conference. A date will be set and all the parties will come along with all the information they are required to produce and, unless there were unusual circumstances or the dispute involved people who are scattered throughout the State, that resolution should be fast and efficient and most of the requirements of these provisions could be fulfilled at the one time. We see it as being a lot faster than what has been suggested by the Opposition.

If a union takes industrial action even now, the union would know why it is taking industrial action and have some idea of the form the action will take - whether it will be a strike or a bans limitation - and which employers will be involved; in other words, which sites it will involve. Most unions would know that. This provision requires that to be stated as part of the application because when the okay is given for the action, it will be restricted to those employees. If the reasons change, the union might have to make a new application. There is also an obligation on the commission in these provisions to act as quickly as practicable and it shall endeavour to make a decision within five days.

We have clearly set guidelines for the commission that it should go as fast as possible and do everything to achieve a fast turnaround. Section 44 conferences can work very effectively and quickly. Once people are aware of the procedures -

Mr Brown: That is a hearing.

Mr KIERATH: It is often very similar. All the information required will be brought along and most of the business can be transacted in the hearing. What the member is referring to is in the existing regulations. However, we have the prescribed regulations that we believe will make it faster and more efficient.

Mr Brown: We do not know what they are.

Mr KIERATH: That is true, but this House will see them.

Mr Brown: After the legislation has been passed.

Mr KIERATH: That is normal for any regulation making power; it is the procedure of the House.

The member for Collie raised the more general issue of the Fielding reforms. I intend to introduce another Bill before the year is over encompassing most of the Fielding reforms. That legislation will also give teeth to the commission's decisions and provide it with more enforcement procedures than it has at the moment. It will also reduce the reliance on the secret ballot provisions, but not limit them.

I still believe the secret ballot provisions are required to give people protection. I see a situation where the emphasis might change and the secret ballot provisions will be less prominent. In the bigger scheme of things, I am sure some people will try to frustrate the provisions. By and large, provided we get the procedures right, most people will use these provisions when they want to take industrial action, and most union members will want them for protection.

Mr BROWN: In his reply to my first point, the Minister has not reiterated his statement that it will take only a day to draw up an application. I assume that is still his position.

Mr Kierath: I addressed those issues in terms of why, what form, what employers are involved and so on. It is straightforward.

Mr BROWN: One does not normally know before a meeting what the result will be; that is the reason for holding it. One will be required to do a bit of mind-reading to put that in the application. Some people in this State will rely on significant technicalities in this legislation - sometimes unions and sometimes employers.

I will outline how long this process will take. First, one must draw the application, and that must be done very carefully. It is impossible to do it in a day; even the most experienced practitioner will not be able to do that. Secondly, under proposed section 97E(2)(b), the commission must, before it starts hearing the matter, ensure that all the parties are involved. The Minister said in his second reading speech that the commission has five days to hear the matter after it receives an application. It does not start hearing the matter the day after it is lodged; it must let other parties know that it has been lodged. Those parties must have an opportunity to be heard. That means they must obtain a copy of the application. If it is to be done in one day, the legislation imposes an obligation on the applicant, whoever that might be, to provide the application to the other parties on the same day they lodge it with the commission. Even if they lodge it with the other parties on that day, the Minister cannot expect people to be represented the next day in the tribunal - they must have some time to consider it. If that is not done, there will be all sorts of screams from advocates, employers and everyone else. It will take some time before people can put their point of view.

The legislation provides that the commission has five days to determine the matter. The Minister has given the commission five days to determine a range of issues, including who are the parties to be notified under proposed section 97E(2)(b). If someone takes issue with the commission, the commission must determine whether the matter has gone through the dispute settlement procedure. All sorts of technical arguments can be used to show that one point in the procedure was not followed. According to this legislation, if the process is not followed, the parties can be made to start again.

The commission must also determine the question of contemplation. It must look at what the definition means within the law and how it has been interpreted by other courts. Under proposed section 97F(1)(3), the commission must determine who will get a vote. It must also determine who will carry out the ballot.

The Minister has said that the commission will deal with those issues in five working days, notwithstanding its existing workload, whether a commission is available and whether full bench proceedings or commission in court session proceedings have been established and are tying up all members of the commission. It will not happen. The one thing the Minister does not say in relation to the time limit is that there is then an appeal to the full bench. If someone takes the appeal to the full bench, will it be constructed the following day? Of course not.

The Minister then says that it will take one day for unions to draw up a list. Unless the list is perfect in every sense - financial members in and non-financial members out - parties can seek injunctive relief. Membership fees coming in that very morning must be checked, otherwise the list can be deemed invalid. The list is then given to the person conducting the ballot and that person must verify that the list is correct. That person then conducts the ballot. What happens if the members are all over the State? The Minister said that that will be done in three days. How? Will the legislation allow one day for the return of ballot papers? Will they be delivered to people's homes? How will it be conducted in three days?

Mr KOBELKE: I will take up one point raised by the member for Bassendean that was reflected upon by the Minister some days ago. There is difficulty in ensuring that one has an up to date list of members and their addresses, which is required in the legislation. The Minister said that that will not be a problem because many unions have members paying their dues from their salary by bank deduction. However, if a union signs up members who pay their dues by direct deduction, it has a bigger problem because it will not necessarily have a record of their home addresses. The deduction comes from their workplace or their bank and that is the relevant address.

Mr Kierath: Unions must keep a register of names and addresses of members under the Act.

Mr KOBELKE: The Minister is saying that this can be done in days. The maintenance of records of addresses is extremely difficult and requires enormous effort. One need look only at the imminent local government elections and the accuracy of the electoral rolls. One has no problem finding the names of deceased people on the roll. Local government does not commit the huge resources required to maintain an up to date electoral roll. Unions will not ring every member every day to see whether they have changed their address, and that is what the Minister requires. The Minister's suggestion that if someone is paying their membership fee by direct debit there is therefore an up to date list of addresses, is not correct. It is more likely to be out of date because the money is being paid automatically

and the union may not have heard from that member. An industrial officer may not have spoken to the member or visited their work place for some time, but the deductions keep coming through. We have a very mobile population; and a member may have moved and forgotten to advise the union. That sort of thing happens quite regularly. As members of Parliament we often receive updates to electoral rolls, and those records are changed only when people go to the trouble of changing the details of their electoral enrolment.

Many people do not even do that. The Minister expects unions to have an up to date list of addresses of all their members and that they can snap their fingers and the next day use that list as part of these procedures. That is not the case. The member for Bassendean alluded to that when he suggested that there were more difficulties than the Minister was willing to countenance.

The example that the Minister gave does not make sense. The Minister said that if people were paying their union dues by direct debit, the union would have an up to date list of addresses. It would not. I was on a direct debit for an organisation that I was supporting. I changed my address, and a year or two later I realised that a small amount was still going out of my bank account every quarter to that organisation; I had forgotten about it. Although that money was still coming out of my bank account, the organisation did not know my new address. The Minister cannot assume that those procedures will be in place. To require that the addresses be kept up to date will necessitate a large amount of work and financial commitment by the organisation.

Mr KIERATH: I will deal with the last point first. Currently, registered organisations have an obligation to maintain a register of their members' names and addresses. Obviously if they were contemplating industrial action it might become more important that their membership lists were kept up to date. The bottom line is that they might have to improve their records in order to meet these requirements.

I found it fascinating that the member for Bassendean said that he does not believe the commission can act swiftly. Most section 44 conferences are conducted urgently. A good example was the teachers' dispute, where the chief commissioner suggested to the parties that they meet on various days. I think sometimes they met on a Saturday because something had happened on a Friday afternoon. That is why we have left it to the commission, because it can act swiftly. We have provided a general obligation that the commission must act as quickly as is practicable and use its best endeavours, rather than prescribe how it must act.

The chief commissioner had suggested that the ballot could be conducted by telephone. Apparently, Telstra can use pin numbers of the people who will vote and tick them off when those people have cast their vote.

Mr Brown: Who will pay for that? In many cases the organisation will have to pay.

Mr KIERATH: Of course. It is certainly cheaper than taking industrial action and losing a day's pay. A telephone call beats the loss of pay any day. The chief commissioner said that most people on the 800 teacher sites in this State, which are spread across the State, often in very deserted areas, would have access to a telephone. The whole exercise of secret ballots by the use of telephones and pin numbers could be carried out in two days. The ballot does not have to be conducted by post; it can be conducted by a range of means. So long as the ballot has integrity, whatever facilities are available can be used.

We know what the commission can do with section 44 conferences. Sometimes it rings up the parties to notify them that a conference has been scheduled in an hour, and the parties get down there. It does not take a long time to do those things. I grant that in some cases, people use procedures to try to delay things. That is why we have put the obligation onto the commission. In conjunction with its obligation to not place undue emphasis on technicalities and legal form, the commission must act as quickly as is practicable and use its best endeavours. Once people get used to the procedures, they will know what is required and they will have done much of that preparation before they get to the commission

Mr BROWN: I am glad the Minister said that with a smile on his face, because it is very disingenuous. These arrangements are very tight. What blows the Minister's argument right out of the water is his inclusion of proposed section 97I, which allows any party to get injunctive relief from the Supreme Court where a party does not comply with the procedure. If three members said they did not get a ballot paper and could not vote, an employer could go to the Supreme Court and hold up the process. Section 97I(1) states -

> The Supreme Court may, on an application under this section, grant an injunction in such terms as the Supreme Court thinks fit where the Supreme Court is satisfied that a person -
>
> (a) has engaged, or is proposing to engage, in conduct that amounts to, or would amount to, a breach of section 97B(1) or (2).
>
> (b) is involved in a breach of section 97B(1) or (2).

Section 97B provides that a person would be in breach if certain things did not happen. A pre-strike ballot must be conducted in accordance with this part. That does not mean roughly in accordance with this part. Every member who is entitled to vote must be given a vote. Participation in the strike must be endorsed by the ballot. These provisions are very tight.

I agree that many times the commission does act quickly and brings about a resolution, without a secret ballot. However, when people do take technical points to the commission, and technical points are taken by all parties, this procedure may drag on for weeks and weeks. On some occasions, the union, the employees, the employers and any one else who is affected will be more than happy to see a secret ballot go ahead, but on other occasions, one group or the other will not want to see a ballot take place and will use this section to stretch out the matter, and the section can be used in such a way because it is complex and convoluted.

If the Minister's genuine desire was to make this process easy, he would not allow for injunctive relief in the Supreme Court, or he would allow for injunctive relief before someone had taken strike action, but after the ballot had been conducted. The purpose of this section is to frustrate the process and to make sure that if one person out of 1 000 people who are entitled to vote does not get a vote, an application can be made for an injunction. As soon as a matter was before the Supreme Court by way of injunction, we could forget about conducting a ballot this year. One would need to have a memory like an elephant once a matter got into the Supreme Court, because it would drag on and on.

The other reason for getting a matter into the Supreme Court is that many workers have a spare $300, $500, $1 000 or $2 000 to engage counsel to go to the Supreme Court. Of course everyone knows that many ordinary workers have that amount of money in their back pocket, just waiting to spend it on going to the Supreme Court! Of course they will think this is a great opportunity! What a lot of rubbish. Workers will be denied access to the Industrial Relations Commission, but be invited to go into an area where they cannot go, and where even unions have difficulty going. The Minister seeks to destroy the process in an intimidatory fashion. That is the purpose of the provision.

Mr KOBELKE: I would like to take up that matter with the Minister. He is working on the premise that if people cooperate, they can cut through this system. He is right. I apply that to the time requirements of the provisions in these sections. If there is a cooperative arrangement, a bit of luck with the distribution of the work force, and the necessary technology, the process could be resolved in a week. But we are not talking about an area of cooperation; we are talking about disputation, where people are in conflict, and this process is supposed to assist the resolution of that conflict. There are usually more than two parties involved in that conflict - the employer, the employees and the union. There are often different factions or subgroups in the union, some for and some against, who cannot agree on what should be done. Then there is the Government, and the possibility of other business interests. All those parties surround the conflict. Will they try to expedite the matter? On occasions they might, but one cannot expect them to. They will be seeking to further their interests in the disputation; whether that be a quick resolution or a continuance of the dispute.

The member for Bassendean has outlined the opportunity for any one of the two to five different parties, who have varied interests in the disputation, to assert their interests to the disadvantage of others. That scenario would not allow the process to be wound up in the minimum time. It simply will not work that way. If the Minister were honest about it, he would acknowledge that. He simply cannot propose a procedure and say that it will work quickly. We will not have the best possible procedure other than in a very small percentage of cases, because in any disputation people will seek to use the Minister's laws for their own advantage. Those laws are so detailed, they try to cross every "t" and dot every "i", including the provision for injunction action which makes the process unwieldy.

The Minister should realise he has a major problem with the time frame. He should address that problem by deleting the injunction provision - along with other matters we may suggest later - or simply confirm that he is not concerned with secret ballots but has another agenda. That is, not to allow the unions to work efficiently on behalf of their members; he simply wants to destroy the unions. If the Minister is concerned only about secret ballots, he should not seek these provisions. His expectation of the time that will be taken is unrealistic and unachievable.

Mr PENDAL: The two members who have led the debate have a line of inquiry that they want to pursue. I want to raise a couple of matters to which I referred earlier in respect of proposed new section 97D, and then some of the subsequent proposed sections. I hope this comes back to the conciliatory remarks made by the Minister an hour or two ago, when I understood him to say that he would be prepared to see whether the Opposition's proposals might fit better once they arrive in another place.

This is the first, although not necessarily the most serious, of what one might regard as the more obnoxious procedures. For example, proposed section 97B(2) states that an organisation of employees - meaning a union or an employee of a union - will have contravened or failed to comply with this section if it does certain things. I want to dwell on that point. The Parliament should take a dim view of a union official who incites any person to strike. "Incites" is a strong word, and most people would have an understanding of its meaning. To incite someone to do

anything is to stir them up, to rouse them, perhaps to take advantage of their emotions. Incite is a nasty word, and it is intended here to describe a nasty or potentially nasty situation. I have no difficulty with that, but the same paragraph of the proposed section goes on to use other words and, for the life of me, I cannot understand why we would want to prohibit their use. For example, to encourage a person to participate in a strike is dealt with in the same proposed section.

There is a world of difference between inciting a person to riot or inciting a person to take part in a strike, and encouraging a person to riot or encouraging a person to take part in a strike. It becomes even more serious because there is a third active word that describes what a person may not do. For example, one might not assist a member of the organisation - the union - to participate in a strike. I put this scenario quickly: I was a member of a union before I came to this place, and I was happy to be one. If a unionist rings a union official and says that he wants an honest opinion because he is not sure whether he wants to strike, he may say, "I do not want you to incite me to reach a conclusion, but I want you to assist me." The giving of an opinion by the person under this proposed section would be a contravention of this part of the Act. That is thoroughly obnoxious.

Mr Kierath: I refer you to proposed subsection (4) which reads -

> For the purposes of subsection (2), ascertaining the views of members as to a contemplated strike, or providing advice or information on a contemplated strike, does not constitute incitement, encouragement or assistance, or concern or participation in a contravention of subsection (1).

Mr PENDAL: That begs the question: What is the reason for proposed section 97B? I will return to that part which reverses the onus of proof.

Mr BROWN: New section 97B(2) covers an organisation of employees or an officer or employee of an organisation of employees who incites, encourages or assists a member of the organisation to participate in a strike in contravention of new subsection (1). The Minister drew the attention of the member for South Perth to new subsection (4) and said that if one seeks a person's view, that is not assistance. However, if a person's fellow union member has been on strike for a week and is starving and if the person assists him with food or petrol or to feed his kids, that is deemed to be assisting him in relation to the strike. That is the purpose of this new section.

Mr Kierath: It relates to the organisation.

Mr BROWN: That is right. If the organisation provides food for the kids of the member when he is on strike, the organisation will be slammed. That is what this new section is designed to do. Under this provision every person must stand by himself and starve.

Mr Kierath: No, new section 97B covers what is in breach of the secret ballot provision; that is, engaging in a strike without taking due process. The areas the member is talking about relate to an organisation that breaches the pre-strike ballot provisions. If people have got through those provisions and they are on strike, these things do not count.

Mr BROWN: That is right if an organisation goes through all of these provisions and through the ballot - it is not in contravention of this new section. However, the member for South Perth asks what is the offence under this provision if that is not done. It makes it an offence to offer any assistance or encouragement.

Mr Kierath: No, it is to do with new section 97B(1) and (2). If industrial action is taken without a pre-strike ballot or the organisation incites people to break that provision of the law, an offence is committed. However, if people get off into the industrial action itself, the answer is no. The new section is strong to ensure that people go through the balloting provisions and do not thumb their noses at them; however, once they go through that process, they are clear. Once they get through to the industrial action, they can give all the help and assistance they like, but if they encourage people to breach those secret ballot provisions, which the Government considers important, tough provisions will apply.

Mr BROWN: That is right. If a person assists them in any way, he is in breach of the provision.

Mr Kierath: If he assists them to breach the pre-strike ballot provision.

Mr BROWN: If a group of people who have been unhappy take industrial action without going through the balloting process and the organisation has nothing to do with it, if the organisation assists, it is in breach of the provision.

Mr Kierath: New section 97C(2) basically deems the organisation to have taken part and it puts the obligation on the organisation, not the union.

Mr BROWN: I understand the intent of the legislation is to get the organisation, whether the executive of the organisation has been intimately involved or has had anything to do with the matter. I understand the intent is to destroy the organisation. That is why it is geared in that way.

Removal of Sessional Order

Mr BARNETT: In accordance with the sessional order for time management, I move -

That the Labour Relations Legislation Amendment Bill be no longer subject to an allocation of time.

I will explain the position the Government has taken. We made it clear at the beginning of this week that we would allow debate to continue through the week but that it was our intention to finish the legislation. In doing so we allowed three days and three nights of debate. We will still sit after dinner from 7.30 pm to 9.30 pm. We will return at 10.00 am on Tuesday and continue debate on this legislation. The Government will conclude this debate on Tuesday, however long that might take. I reserve the right to again make use of time management on Tuesday. In response to a request from the Leader of the Opposition the Government is willing to agree to a further day's debate on this legislation. Members are up to clause 10 of a Bill of some 40 clauses.
Serious debate has occurred. I do not think any attempt has been made to deliberately filibuster. I would like the debate to proceed more quickly and I hope it does, so that on Tuesday we can conclude debate on this Bill. With the cooperation of members on both sides I hope we can conclude debate by, say, 6.00 pm on Tuesday. That will allow the debating period to be extended a full day, plus the additional time tonight. I apologise to members on both sides. I realise that is inconvenient and may upset arrangements people have made for business or family. Nevertheless, this is significant legislation. It is attracting significant debate and community interest. Therefore, the Government will continue the debate on Tuesday at 10.00 am.

Question put and passed.

Committee Resumed

Mr PENDAL: I will now deal with the second obnoxious part of proposed section 97D. It follows the prohibition in the legislation of a person inciting, encouraging or assisting someone to take part in a strike. The "saving words" are that unless it is proved that certain things did not occur. I thought that in the first place that was a reversal of the onus of proof. However, it is not the only thing that is wrong with that part of the new section.

Before coming into Parliament I earned my living using words and I have never seen a word like "connivance" used in a Statute. Perhaps that does not matter, and breaking new ground should not put us off. However, it is strange parliamentary language to say that a person will be guilty of those things unless it is proved that the officer or the employee acted without the organisation's consent or, in this case, connivance. That is not one of the obnoxious things to which I take exception. However, it is an odd word to use. I am interested in the Minister's explanation because the term stands out in a way that requires explanation.

I return to my serious objection to this part of the clause. We are told that an employee or union will contravene the law if a union official incites, encourages or assists a member to take part in a strike. However, if that person can prove that that was not the case, and that he did not give his consent or was not conniving, he or she will not be guilty of anything.

That is a serious reversal. We have heard that argument many times in this place from successive Governments, and most people object to it regardless of the side of Parliament on which they sit. The only thing which changes is the Government, which then adopts what many people regard as an obnoxious principle and it is left to the other members in the Parliament of the day to take exception to it.

In summary regarding proposed section 97B, it is wrong to say in the same breath that the prohibition on inciting a person to do something is in the same category as assisting a person to do something. That is wrong. The reversal of the onus of proof is simply wrong, and may cause me to vote against the provision. Also, why do we see the interesting or unorthodox word "connivance" used in legislation?

Mr RIEBELING: I support the comments of the member for South Perth. I refer the Minister to proposed section 97B(2)(a). It is clear that the definition of the offence is all-encompassing as virtually any action will be covered under these two provisions. The member for South Perth indicated that if a person or employee incites, encourages or assists a member of an organisation to participate in the strike, or is involved in any way, directly or indirectly, by act or omission, he commits an offence. One is either involved or not involved. The clause then refers to acting knowingly. I do not know how one can indirectly or directly be knowingly involved.

The provision covers almost any state of mind or action which takes place when a strike is being considered. The member for South Perth also indicated a change of onus of proof. This is the insidious type of legislation which has crept in over recent years.

Mr Kierath: You will support the reversal of the onus of proof deeming provisions on unfair dismissal then, will you?

Mr RIEBELING: The onus of proof should not be changed in any legislation.

Mr Kierath: I look forward to your support on that provision.

Mr RIEBELING: The onus of proof changed when amendments crept into the Police Act and the like. It was too difficult for the authority to prove small matters of law, so it changed the deeming provision to place the onus of proof on the accused person or defendant. This proposed section, as the Minister pointed out in support of his argument, contains an onus on the organisation to prove that its officer or employee acted without the organisation's consent or connivance. I do not know what the word "connivance" means in that context; presumably, it is some sinister plot. The organisation must show that it took all reasonable steps to ensure something did not happen, and I suppose what is "reasonable" will be determined by the courts.

Why is the onus of proof not on the prosecution to show that the organisation was actively involved in the action? Is it too difficult for the prosecution to produce that level of proof? Such sections are usually used only on matters of common occurrence, such as the onus of proof that one does not have a driver's licence. That onus of proof is within the traffic regulations because it is very difficult for the State to prove that a person does not have a driver's licence, and people previously used the defence that they had a driver's licence under a different name and the Crown could not be expected to know whether that was the case.

Under this legislation, the prosecutor would no doubt have proof that the organisation had some role to play. This would form part of the prosecution's case against a union or organisation. No great problem arises in prosecuting cases of this nature requiring the extra standard of proof to show that the organisation was knowingly involved in the offence. I do not say that I agree with the offence which the Minister has created, but if the offence is to stand, surely the normal onus of proof should apply.

Mr KIERATH: The member for Bassendean spoke about the Supreme Court, which has its own filter, but it is expensive and, consequently, it is not used by many. The member is right in that regard. The Supreme Court has a rule; namely, if someone makes a claim - I forget the correct term - that is of a vexatious nature or frivolous, costs can be awarded against that party. Its procedure can be used against someone who uses the court to frustrate this procedure. In 99 per cent of cases people will not access the Supreme Court.

These provisions refer to someone who does not hold a pre-strike ballot or incites somebody not to do so, and the key to the proposed section is that organisations undertake pre-strike ballots. If it is easy to get around that provision legally, certainly people would frustrate the intention of the Government in this way to avoid the pre-strike ballot. The member commented that the provisions are fairly tight on the organisation to ensure that it does not use time, money and efforts to discourage people from undertaking the pre-strike procedure. If someone is vexatious, he or she will find other legal quirks to take to the Supreme Court. I do not know whether the member remembers that Robe River found ways to take matters to the Supreme Court. If someone is of that mind, they will go to that court through other provisions in law.

Mr Kobelke: Why give them more?

Mr KIERATH: If some organisation tries to frustrate the procedure of the pre-strike ballot, these powers will take the matter to the Supreme Court to get an injunction. The success of this measure turns on organisations undertaking pre-strike ballots. That is why the toughest provisions are on this point to ensure compliance with the provision rather than avoidance. Undoubtedly, that is our intention.

Nothing in my notes indicates why parliamentary counsel used "connivance", except that the provision relates to an organisation which is using covert or overt means to avoid the provisions. We had an example not long ago in the north west where a group of people said, after Hamersley Iron took legal action through the Supreme Court, "We had better not recommend to workers go out on strike or we will face legal action. We will pass the word around and tell people privately they must vote to go out on strike but when we get up there we will say that because of the law we cannot do this." I think those words were used. The union used these tactics to indicate to everybody that it wanted them to go out. It merely said enough legally so the workers could carry out a strike. The deeming provisions and the reverse onus of proof is to stop that sort of action, so that the union cannot say that it put out a notice telling people not to strike, but behind the scenes it actively encouraged and connived to get people to breach the provisions. This applies to only those provisions about forcing the organisation to go through the balloting process. Yes, it is very tough because it is important to get people to go through the procedures. In other areas those penalties do not apply. Under the system we are putting in place it is crucial to get people to use the balloting processes so that the true feelings of the members about whether they want to engage in industrial action can be determined.

Dr TURNBULL: I refer to the fact that industrial action endorsed by the pre-strike ballot must not continue for more than 28 days. I alluded to this, in part, in my previous question; in particular, when issues drag on for a long time. As I said earlier, I have been associated with two disputes which dragged on for a very long time due to intransigence by both parties. This Bill addresses a total breakdown between the parties, which is exactly what we do not want in

our society. The Industrial Relations Commission must be reformed so that it has far more power to deal with dispute resolution by conciliation.

I refer to the Coal Mining Industry Tribunal, which has been very effective. Both the employees and the employers are prepared to attend before the tribunal and to accept its rulings. In the past few years on only a couple of occasions matters have gone before the tribunal when a strike was not averted; that is, when a number of days were lost while the parties were negotiating new work contracts. The Minister has indicated that under this legislation striking during the negotiation of contracts or workplace agreements is recognised as having some legitimate status.

We should definitely not be contemplating that any action which is being endorsed by the pre-strike ballot within the definition of a strike - it may be a go slow or a ban on handling certain types of goods - will go on for more than 28 days. The Industrial Relations Commission must have the power to ensure that either side cannot continue to drag out one of these disputes for 28 days or more. I presume that if there was no resolution of the matter and the workplace felt very strongly about the issue, it must hold another pre-strike ballot to continue industrial action for more than 28 days. Obviously we have not given the Industrial Relations Commission sufficient power to deal with the issue if it were to drag on for more than 28 days.

Mr KIERATH: The member for Collie is right. Let us say industrial action occurred over six months. An initial ballot is required to be taken and then a ballot is required to be taken every 28 days to keep the industrial action going any longer. It is not unreasonable to expect that in a long and bitter dispute. It will give an indication of how the work force is going and what is happening along the way. It may well be that the votes get stronger and the workers become more determined. To go to a dispute that is longer than 28 days, the feelings would be running very deep between the parties.

A deeply divided dispute will get through these provisions, whatever we do. We allow those to get through. However, we hope some of the other disputes might be resolved along the way before getting to that stage. In essence, if it is a deep dispute and it looks like going for a long time, it will get through these provisions.

Dr Turnbull: What about the reform of the Industrial Relations Commission?

Mr KIERATH: I have said that the next piece of legislation I intend to bring before the Chamber will include reforms to give the Industrial Relations Commission more teeth and more power to enforce its decisions. It is important to change the focus of the commission to one of conciliation. However, when it does move to arbitrate it needs extra teeth and extra power to bring about resolution of disputes. I give the member for Collie this assurance: It is not part of this Bill, but will be part of the next Bill I bring before the Chamber. I reiterate: The provisions are intentional; if a dispute continues for longer than 28 days, a ballot must be held every 28 days.

Mr PENDAL: Earlier I referred to proposed section 97D. I will make similar comments about proposed section 97C, a shorter section but one which has the same effect of reversing the onus of proof. It is headed "Responsibility of members and organizations". It states that for the purposes of this part, where a member of a union is also a member of its federal body and participates in a strike, unless the contrary is proved, that member is taken to have participated in the strike. That seems to me to be a clear case of reversing the onus of proof. Surely that member should not have to prove anything. Surely we should be legislating so that the person making an accusation should provide the proof, rather than the other way round. That provision is repeated in proposed section 97D, to which I have already spoken. The Minister has already acknowledged that reversal in proposed section 97D. I ask the Minister why it is necessary to reverse that process in proposed section 97C. Following his response, I will pursue a couple of other matters.

Mr KIERATH: Clearly this is designed to rope in a federal organisation. The best example I can give is that which happened not so long ago in the teachers' dispute. The matter was before the Industrial Relations Commission, which was trying to resolve it. In the end the school teachers' union, which was covered by a federal body, issued the industrial action order through its federal counterpart, rather than the state counterpart, to avoid the commission ordering the parties to do certain things. It was done clearly and openly. The action was taken on its own behalf first. When it found out it was in breach of the commission's ruling, it ceased that action and re-issued the industrial action order under the auspices of its federal counterpart. It was basically using its federal registration to slight the state law. We do not countenance that and that is the reason for this provision.

In many cases organisations run both state and federal registered bodies and they use the ability to switch between the two to avoid the processes of each jurisdiction. That is why this provision says that where a person is also a member of a related federal body participating in a strike, unless the contrary is proved, the member is taken to have participated in that strike.

Mr KOBELKE: I refer to the comments of the member for South Perth and to the response of the Minister. I say this in a considered way and not just as a cheap shot: I believe what the Minister has just said and what we see in

proposed new section 97C can be described in no other way than simply being vindictive. Let us take the example about which the Minister spoke, which he has raised in this debate at other times, so it is clearly on his mind - he must get the teachers' union.

Mr Kierath: No, it is not at all.

Mr KOBELKE: The Minister has raised this a number of times.

Mr Kierath: I am not out to get anybody; I am giving the example of the teachers' union that was participating in the state system and as soon as it realised it had overstepped the mark and would receive some penalty, it decided to take the action where it would not face those provisions. These bodies either operate under the rules, or they do not.

Mr KOBELKE: Trying to achieve this is perhaps not the best phrase to use, but the Minister has on his mind the fact that the teachers' dispute did not turn out the way he thought it should have done.

Mr Kierath: No.

Mr KOBELKE: That is what is driving the Minister. The Minister seems to think that we can put in place legislation so that if that situation arises again he will have more control.

Mr Kierath: We are happy with the outcome of the teachers' dispute. All the parties are happy with the end agreement.

Mr KOBELKE: That is exactly the point I was trying to make. The teachers' dispute was a real problem for this State. It caused a great deal of concern and many problems in our education system which cannot easily be fixed. I hope they will slowly ameliorate. They arose from the way in which the Government was handling the problem, and not the teachers. The teachers had a clear area of dispute relating both to conditions of teaching staff and a range of issues relating to the quality of government schools. They successfully tied the two together in a campaign which led to a 15 per cent pay increase. The public had overwhelming sympathy for the teachers, and so the teachers' union came out of it looking okay. That does not often happen with industrial disputation. What must be emphasised is the point that the Minister made; that is, there was a successful outcome. The Minister does not seem to be looking at the fundamental issues involved, which are that we wish to resolve industrial disputation and not drive people into it. However, that is what the Minister is doing with the content of the Bill, particularly with proposed section 97C. He is putting down many traps to try to impose on the industrial relations system a view of them and us.

Mr Kierath: Not at all.

Mr KOBELKE: How else can one read proposed section 97C? The onus of proof is on the people who take industrial action to show that they are not taking the form of action outlined in proposed section 97C.

Mr Kierath: To use the example of the teachers' dispute, which the member also raised, the final resolution was almost identical to that brokered by the chief commissioner. The teachers' union then used its federal body to avoid it. One could launch the argument that if the union were not able to escape, the dispute might have been resolved a lot earlier.

Mr KOBELKE: I doubt whether the teachers' union would agree with the Minister. The Government let that matter run for about 12 months. It clearly had no intention of settling it in that time. The teachers' union, with the overwhelming support of teachers, built up such huge public pressure against the Government that in the end a Minister who was very closely aligned to the Premier was basically sacked. The present Minister for Education was moved in to try to sort out the problem. The Minister is on very weak ground when putting in clauses primarily directed to or argued in favour of the basis of the teachers' dispute.

Mr Kierath: That is not the reason for it. I gave that as an example.

Mr KOBELKE: It is a very poor example, where industrial relations failed. The Minister should not be building his Bill on the basis of failed industrial relations. We should be building a positive and effective form of industrial relations in which strike action is ruled out because it is a last resort.

Mr BROWN: I will return to the question of time lines and the Minister's comments. I made the point that the Minister's expectation of the time lines was wrong. The Minister suggested that applications to the Industrial Relations Commission would be handled in a similar way to conference applications, which are very simple. People fill out a form and say they want a conference over X. On most occasions the Industrial Relations Commission will oblige and hold a conference. The legislation does not indicate that that type of approach will be taken here; an application for a secret ballot will be much more formal than other applications and a great deal more reliance will be placed on it.

Mr Kierath: We discussed the situation with some of the parties involved. The answer came back that it could be done that way if the regulations were drafted in that way.

Mr BROWN: I understand that. I do not know whether the regulations will be drafted in that way.

Mr Kierath: I give the member the undertaking that my intention as Minister is that the regulations will be drafted in that way.

Mr BROWN: Therefore, the regulations will be drafted to allow quite significant informality, to the degree it is permitted by the Bill, so that the matter can go quickly before the commission and therefore the prospect of taking technical points will be minimised.

Mr Kierath: Exactly.

Mr BROWN: Whoever is making the application then must ensure they comply with the provisions of proposed sections 97D(3) and 97E(6). Even complying with those two, one does not have to draft an application as carefully as I thought. I am not sure that it could be drawn in a day, as claimed by the Minister, but it could be drawn within probably a couple of days. Under these provisions the commission is then required to ensure that all the parties likely to be involved are given an opportunity to be heard. The commission cannot do that until it has received the application. Given that it would take a day, even on the Minister's interpretation - my view is two or three days - how long will the Minister allow for a copy of the application to be given to other parties and notice of when the commission will convene for a hearing?

Mr KIERATH: Obviously this depends on the size of the dispute and how many employers were involved. Under the current section 44 the commission representatives can simply ring the parties, and it can be as quick as that. I hate to drag it up but it is a dispute in which I would not be normally involved at that level. In the teachers' dispute and the dealings before conferences, notices and proposals were put around by the commission very quickly, usually within a matter of hours, and the parties were convened again to discuss it. Everybody was then ready for it and prepared.

In order for an issue to reach the conference stage it must have been through all the various procedures and in most circumstances the parties would know that it was coming and they would be prepared. They probably would have been fairly closely involved beforehand. I can only give the assurance that I have been given, that it is possible to draft regulations in such a way that the process to get the parties together is as expeditious as telephoning the parties or sending faxes. We have considered the outcomes of section 44 conferences and most parties agree the process is expeditious. I have heard many people claim that is a bit too fast.

Sitting suspended from 6.01 to 7.30 pm

Progress

Progress reported.

[Continued on next page.]

ACTS AMENDMENT (MARINE RESERVES) BILL

Council's Message

Message from the Council received and read notifying that it had agreed to the Bill and seeking the Assembly's concurrence.

Speaker's Ruling - Bill in Order

THE SPEAKER (Mr Strickland): If enacted, the Acts Amendment (Marine Reserves) Bill will, among other things establish a Marine Parks and Reserves Authority and a Marine Parks and Reserves Scientific Advisory Committee. At first glance, for the reasons I put forward in my ruling of 9 April 1997 in relation to the Gender Reassignment Bill, this Bill appears to appropriate revenue and therefore could not be introduced in the Legislative Council.

When looking at the matter I have had regard to what will be the effect of the Bill and the proposed authority and the committee. Following discussions with the Minister on what is a quite complex matter, and certainly not free from doubt, I formed a judgment that on balance it represents an internal rearrangement within the Department of Conservation and Land Management. In my view this is an unusual circumstance which will be differentiated from the establishment of other authorities and I caution Ministers that they should exercise the greatest care if they are considering introducing any Bill in another place which establishes any new board or authority, notwithstanding that some part or all of that function is being performed elsewhere.

On balance, I consider the Bill to be in order and it should be allowed to proceed.

It is worth spending a few moments looking at the long-term difference of view between this House's interpretation and the legalistic view which may be adopted if the question of what constitutes an appropriation were to go before a court. An abbreviated version of the common legal view is that an appropriation is the specific allocation of money for a particular use. This sort of interpretation would be applied to section 23 of the Financial Administration and Audit Act, which provides that subject to certain exceptions, "no monies shall be withdrawn from the public bank account for expenditure with respect to the consolidated fund except after the granting of supply and under appropriation made by an Act".

This basic provision is directed towards the relative powers of the Parliament and the Executive. In protection of the important power of Parliament rather than the Executive to appropriate funds, the courts have taken the view that clear and specific words are required in an Act in order to effect an appropriation. To determine otherwise would enable the Executive to avoid the Parliament on critical financial matters.

There is a vast distinction between that provision which is open to interpretation and enforcement by and through the courts and section 46 of the Constitution Acts Amendment Act which is directed towards the relative roles and capacities of the Houses and which is deliberately framed so that it is not open to intervention by the courts. What often happens is that observers outside the Parliament view the word "appropriation" as it might be viewed by the courts in quite different circumstances. It is easy to fall into the trap of applying the legalistic view with little thought to the constitutional considerations affecting the political structure of the Parliament and the powers of the two Houses.

Over a significant period, parliamentary drafters and others have gently railed at the parliamentary view of appropriations but they accept the rulings of Presiding Officers when deciding whether a message is required for a Bill because it appropriates revenue. Both they and legal advisers to the Executive naturally enough have tended to take the legalistic view of appropriations, and doubtless from the point of view of the drafters it would be far more simple for that to be done rather than to assess Bills on the basis of the directives of the House. Those external views, however, are no reason for the Legislative Assembly to alter the boundaries of relative financial power between the two Houses.

Of course, in almost all instances parliamentary counsel correctly interprets the view of the Assembly and advises accordingly that a message is required for a Bill. I hurriedly add that in no way am I reflecting on parliamentary counsel as they do an excellent job under considerable pressure. My point is that there is and there should continue to be a distinction between those sections dealing with the Parliament and executive relations and sections dealing with relations between the Houses.

Members should be aware that there are many facets to section 46. It affects the rights of the Houses, the capacity of government to control finance and the capacity of private members to have their legislation proceed through the House. Decisions, for example, on which Bills are appropriating Bills and should therefore not be introduced in the Legislative Council directly bear on the capacity of private members in the Assembly to have Bills introduced in the Legislative Assembly and have them proceed without the need for a message from the Governor. Speakers look to be consistent with previous practice of the House, as to do otherwise will alter the respective rights and obligations of various parties.

ACTS AMENDMENT (MARINE RESERVES) BILL

First Reading

On motion by Mrs Edwardes (Minister for the Environment), resolved -

That the Bill be now read a first time.

LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Mr Osborne) in the Chair; Mr Kierath (Minister for Labour Relations) in charge of the Bill.

Clause 10: Part VIB inserted -

Progress was reported after the clause had been partly considered.

Mr BROWN: A further matter not resolved in the earlier debate was the time necessary for the commission to advise all the parties with sufficient interest in the matter to give them an opportunity to be heard. The Minister has

suggested the parties can be notified by telephone. I suggest to the Minister that the normal practice when these conferences are set down for a particular day is that a number of days' notice is given to those who participate. Will that be the practice for applications lodged for a secret ballot, or will people be given brief notice of their opportunity to put a point of view in these proceedings? By virtue of this legislation and the provisions of proposed section 97D(2) a number of parties will have an interest and must be given an opportunity to be heard. In those circumstances what protection is there in the event that some of those parties are not given notice? An employer who will be, or may be, affected by the strike is entitled to be heard. It seems that the process will take some time and it will not be a matter of making a couple of telephone calls for the commission to determine which of the parties has a sufficient interest and which should be given notice that the matter will be called on for hearing and determination. Until the commission goes through that process, it cannot begin to hear the application. I seek an indication from the Minister of how long this process will take.

Mr KIERATH: When discussions were held with the commission about the procedures, the Government was informed that they could be completed as quickly as section 44 conferences are, and all the procedures could be prescribed. I have given an undertaking that they will be. I suspect it will not involve a wide number of parties, and the primary parties would be notified very quickly, perhaps by telephone. The conferences to which I refer are usually convened very quickly, often on the same day or the following day. I give that assurance.

Mr BROWN: There are different types of section 44 conferences. Some are held when there has been industrial action and they tend to be convened quickly. Other conferences do not involve industrial action and they are often convened within a week, fortnight or three weeks. In the case to which I am referring no industrial action will have occurred but someone may apply to go through the procedure. The commission will not be under pressure.

Mr Kierath: The commission will be under some pressure because it is required under proposed section 97D to endeavour to make a decision on the application within five days of the making of the application.

Mr BROWN: Does that include giving notification?

Mr Kierath: Yes.

Mr BROWN: It may take a day to draw up the application and to give notice, but I envisage that the minimum period will be two days. It is more likely to be three or four days. That is my experience.

Mr Kierath: We believe it can be done in one day.

Mr BROWN: That is not based on past experience. When the matter goes to the commission I understand it will be an informal, conference style proceeding.

Mr Kierath: Yes.

Mr BROWN: When the commission receives an application such as this and calls in the parties it must be satisfied that the applicable procedures for resolution of matters to which the contemplated strike relates have been complied with. The commission must ensure those dispute settlement procedures within the award have been complied with. Until it has done that, it cannot deal with any other matter.

Mr Kierath: Proposed section 97D(3)(b)(ii) states that the application must be accompanied by such other particulars as are prescribed. It may well be that the particulars prescribed are part of the application.

Mr BROWN: I give the following example: In the past six months Mt Newman Mining decided to sack many of its workers and put the work to contract. The workers had no advance warning and could not have gone through any dispute settlement procedure when the decision was made because the work force and unions did not know about it. In that case would the commission be able to deal with an application to hold a secret ballot although the proceedings for dispute settlement would not have been complied with?

Mr KIERATH: I am advised that the commission can override dispute settlement procedures if there are special circumstances, and that may well be a special circumstance.

Mr BROWN: New section 97E(1)(b) states that if those procedures have not been so complied with, exceptional circumstances justify the ordering of a pre-strike ballot. The commission is being asked to find whether there are exceptional circumstances. It will not be the case in every situation in which industrial action is imminent or appears to be imminent that exceptional circumstances exist. When action has been taken unbeknown to the work force or to a union organisation, in accordance with these provisions the commission will not deal with the matter until the matter that is the subject of the dispute has been through the dispute settlement procedures.

Mr Kierath: The legislation states that that is the case so far as it is practicable in the circumstances. The commission has the discretion if in its view there are exceptional circumstances. I thought that in a situation like that the commission might take the view that exceptional circumstances did exist.

Mr BROWN: What about a situation where three employees are sacked and the work force thinks their sacking is unjust and is agitating to take action over it?

Mr Kierath: We are not sitting as commissioners.

Mr BROWN: No, but we must know what this legislation means.

Mr Kierath: The discretion is with the commissioners. Obviously they will listen to what is put to them at the time. If they think the employees should have gone through the dispute settling procedures, they will not allow them to proceed. If they feel it was unreasonable to ask them to do that, they will be able to override that provision. In the end the commission has the discretion.

Mr BROWN: I give the following example: Three people are sacked because someone does not like of the colour of their eyes, for instance. The work force is upset about it and an application is made to the commission under these provisions. The argument is put to the commission that the union or work force concerned has not gone through the applicable procedures in the award. On the Minister's interpretation it is up to the commission to make a determination on that matter. The commission can say that the work force has not gone through the applicable procedures in the award and that it will not consider any application for a secret ballot until the work force has gone through those procedures. The Minister seems to confirm that is the case. In that circumstance it will probably take a week or a fortnight to go through the applicable procedures in the award. That will stretch out the process.

Mr KIERATH: I am advised that the commission can still go to a section 44 conference. Nothing in this legislation will stop it from doing that. It might do that to help it resolve the issue.

Mr BROWN: I accept that the commission could go to a section 44 conference to resolve the matter. That option is always open to it. The Minister has said inside and outside this place that it will take four or five days to go through these procedures. I am pointing out to the Minister that if people go through these procedures carefully, it will take a lot longer. The Minister is having great difficulty explaining that to the Committee. The commission has the discretion to determine whether a matter has been through the dispute settlement procedures. If the commission determines that a matter has not been through those procedures, and if it is a matter the work force or union did not know about and that has just arisen, the commission can say that it refuses to order a secret ballot on the matter until the union or work force goes through those procedures. In that eventuality it will take a week or a fortnight to go through those procedures. Is that correct?

Mr Kierath: I said it would probably be seven days, and I said it could be shorter or longer depending on the complexity of the matter.

Mr BROWN: There is no justification for the seven day minimum the Minister talks about. He now says it could be longer. He does not say how much longer. What he is really talking about is the six or seven weeks the Trades and Labor Council is talking about. If the commission will not order a secret ballot until the procedures have been gone through, it will take a minimum of a week to go through the procedures, considering some of the dispute settlement processes in awards and industrial agreements. One cannot start at different levels. If people take technical points on these issues, they can take them all the way through. People will do that under this provision.

Mr Kierath: People do it now and the commission deals with them in the normal way.

Mr BROWN: That is right, and if the commission tries to act in contravention of its Act it is taken upstairs to the Industrial Magistrate's Court where it is rapped over the knuckles. The process has become far more legalistic. There is far less discretion now and the game is played a lot harder. That is why these technical provisions will delay the process. Does the Minister concede that it is within the discretion of the commission to reject or decline to consider an application when it arrives at the view that the person or persons bringing the dispute have not been through the applicable procedures? The commission could decline to deal with an application until the person had gone through the procedures.

Mr Kierath: There will always be exceptions to the rule.

Mr BROWN: I am not asking whether there are exceptions to the rule, but whether the Minister concedes my point.

Mr Kierath: Obviously if people go to the commission without going through the dispute settling procedures, the commission has the discretion to order them to go through those procedures or has the power to override that if it thinks the circumstances are exceptional.

Mr BROWN: When the matter has not been through the dispute settlement procedures, the commission can decline to deal with it and there is an inbuilt delay because the procedures must then be gone through.

Mr Kierath: If you made the application and the commission said that you must go through the dispute settlement procedures, that would be the end of the application. If you went through those procedures and that did not work, you would make another application.

Mr RIEBELING: Over the past couple of hours we have managed to drag out of this Minister a concession that the pre-strike ballot could take six or seven days rather than one or two days as the Minister stated earlier.

Mr Kierath: The answer I gave in response to the second reading debate was that I thought on average it would take about seven days, not seven weeks. Some could be shorter and some could be longer, depending on the complexities of the cases.

Mr RIEBELING: I distinctly remember the Minister saying that he expected the ballot provisions to go through in three days.

Mr Kierath: You should check the uncorrected *Hansard*.

Mr RIEBELING: The Minister's definition of a strike is basically a stop work meeting. He knows perfectly well that stop work meetings often avoid industrial action and meetings that take one or two hours could avoid any strike action. The Minister has deliberately tried to stop the unions from operating in an efficient manner. He seeks to replace a two hour process with one that, in his own words, will take six or seven days. The Opposition thinks it is a lot longer than that and for the sake of absolutely no profitable result for either the employer or the union. Does the Minister stand by the point he made that a stop work meeting should be covered by this legislation?

It appears to me and everyone on this side, and I am sure the moderates on the Minister's side, that he is being pig-headed by insisting that stop work meetings will be covered by this legislation. If he is in the business of operating the State's economy efficiently, the quickest way to resolve a situation is the best way. If a union is forced to go through the hoops and obstacles this legislation puts in its way to have only a stop work meeting, the unions will not be conducting a ballot for a stop work meeting. They will take it to the next step in case they have to use it. What the Minister is trying to do with stop work meetings is wrong. The Minister knows it is designed to frustrate the union movement and to make the process through which disputes can readily be resolved as hard as possible. What does the Minister say about stop work meetings? Is he still of the view that they should be covered by this legislation?

Mr Kierath: I cannot quote from the second reading debate, but I did say it would take seven days from the date of application. Stop work meetings can be arranged at different times. The definition is whether it interrupts their performance at work or production. Meetings can be arranged at the convenience of the parties - before, during or after shifts.

Mr RIEBELING: The member for Collie asked a question about stop work meetings when the workplace is on continuous shifts and the Minister did not answer it. Under this new democratic rule what will those workers who are on shift do if a meeting is called? Will they have no say in the process? Are workers not allowed to go to meetings?

Mr Kierath: Of course they can go to meetings. There could be a number of meetings and a suitable time can be arranged by the parties involved.

Mr RIEBELING: The Minister said previously that they should have a meeting when nobody is working. These days many industries operate 24 hours a day. How can a meeting be held outside working hours?

Mr Kierath: Nobody works 24 hours a day.

Mr RIEBELING: How do the factories which work on a 24 hour basis have meetings?

Mr Kierath: They have a number of meetings.

Mr BROWN: The truth about the process is slowly coming out. We now have on the record these things: Day 1, the application. The Minister says it takes one day. I doubt it. It would probably take two or three days. The application goes to the commission and notice of one or two days is given to the parties. Again, that is quick. We then have the hearing. When that occurs, unless the commission is convinced that the procedures within the award or agreement have been followed, the process starts again. That involves the lodging of another application. That takes three or four days. It then takes 10 days to go through the procedure. That is 14 days and then one starts again. Under these provisions it is 14 days and not the seven days the Minister referred to in the second reading debate.

The case then goes before the tribunal and the question of whether the parties have been through the procedures is argued. Will this take the form of conference proceedings or formal hearings?

Mr Kierath: It has not been finalised, but the general intention is that they should be conference-type proceedings.

Mr BROWN: When there is a dispute between the parties about whether the applicable procedures have been complied with, how is that tested in a conference? What happens if the conference disagrees that the applicable procedures have been carried out? For example, the applicable procedures are that if a worker has a problem he must go to his supervisor, from the supervisor to the manager and then from the manager to the human resource manager. It could be argued that one of those steps has been missed; therefore, the applicable procedures have not been carried out. One could argue that what was raised with the supervisor is not the same thing that was raised with the human resource manager.

Mr Kierath: You would hope the parties had gone through the proper procedure before seeking a ballot.

Mr BROWN: I am talking about a position where tempers are warmed up in the workplace and not where all is nice and loving and everyone is happy - disputes do not occur in that environment. I am talking about where there is concern and it does not matter whether the workers are wrong, the company is wrong or the union is wrong. We can forget about that. I am talking about an environment where there is agitation and concern. If the case reaches the conference stage and there is disagreement, as sure as night follows day there will be disagreement about whether the procedures have been followed. How is that matter resolved? Is it resolved at a conference or does the commission go into a formal hearing and hear evidence and make a determination based on the evidence as to whether the applicable procedures have been followed? How does it resolve that matter if there is a dispute about it?

Mr Kierath: We will take advice on that.

Mr BROWN: The Minister wants this House to endorse this legislation tonight. He cannot say he will take advice and will come back next week and tell us the answer. That is fine; bring the parliamentary counsel back next week to give opposition members an explanation and then we will debate it. I will not vote for any proposition unless I get an explanation from the Minister on how it will work. I cannot get it from the Minister.

Mr Kierath: I said earlier that many of the procedures associated with this will be part of the regulations and they have not been drafted yet.

Mr BROWN: If it is going to happen in seven days, tell me.

Mr KIERATH: I gave the information put around by the Trades and Labor Council to parliamentary counsel and asked for advice. Its advice was it would take, on average, seven days - sometimes shorter and sometimes longer, depending on the complexity of the case. We had discussions with the commission on what sort of procedures can happen. They will be the ones who will be the subject of the regulations as to whether discussion between the parties will occur. The procedures will be prescribed by legislation as are other procedures.

Mr BROWN: I have difficulty debating these particular points because the Minister is telling me that he has taken advice from parliamentary counsel. I have no quibble with that. However, either parliamentary counsel should be here tonight to answer the questions I am asking or advice should be provided. I take issue with that advice.

Mr Kierath: I read out the content of the advice. It did not have the letterhead but it is in *Hansard*.

Mr BROWN: Was that in the Minister's reply to the second reading debate?

Mr Kierath: Yes. I itemised what they had written to me.

Mr BROWN: I have those comments highlighted in the Daily *Hansard* in front of me, and the Minister said that he asked parliamentary counsel for some idea on the time frame involved and they talked about seven days. He said it could be shorter, and it could be more complex.

Mr Kierath: I went through the number of days. Sometimes it will be cumulative and sometimes it will happen straight away. That was the extent of parliamentary counsel's advice.

Mr BROWN: It is not good enough.

Mr Kierath: Of course it is.

Mr BROWN: I am entitled to ask as a member of this House how it will work and put the proposal to scrutiny. It is not good enough for me to be told that somebody outside this place reached a conclusion.

Mr Kierath: Lots of people outside this place reach conclusions. Don't be ridiculous; it happens in every office in every department.

Mr BROWN: This is the Minister's legislation. The Minister is telling the people of Western Australia that the procedure can be resolved in seven days, yet when we ask him to explain it in detail he says he does not know. He said he received advice from somebody else. If the Minister knows, he should tell us about it. I do not know. I am asking a very direct and simple question: How will the commission deal with issues in which parties come before it and disagree that the applicable procedure has been complied with?

Mr KIERATH: It is simple; I told the member before. It will either make a decision to send them back to the dispute settling procedure or allow them to hold a ballot. It has the power to allow them to take a ballot without going back to the procedures. It refers to exceptional circumstances. The member cannot expect me to second-guess how the commissioners will judge. Obviously they will use their experience before becoming commissioners and experience as commissioners in determining the dispute. I cannot predict what they will say, but I can tell the member about the forms and procedures. The regulations will be worked out in conjunction with the commission. They have looked at the provisions and they believe the procedures could be fairly simple.

Mr BROWN: My experience, which is only about 15 years in dealing with tribunals, is that when commissioners deal with matters, they accept parties agreeing to a matter in a conference; if parties cannot agree, they make a decision by formal hearing. The Minister should ask his adviser sitting alongside him who is nodding about that. They have a formal hearing and take evidence, sometimes over many days. Advocates and lawyers are brought in and they sift through the evidence to reach a conclusion.

Mr KIERATH: The matters are fairly simple to determine. The commission could prescribe a lot of that information as part of the application.

Mr Brown: Do you know that?

Mr KIERATH: We have had discussion with the commission and they have said that that is what they can do. With all due respect, they run the commission day in, day out and year in, year out.

Mr BROWN: This is the Minister's Bill. I ask a question on how it will be done, and I am told that someone else will work it out.

Mr Kierath: It will be the subject of further regulation which will come before this House.

Mr BROWN: That is right. Someone else will work it out, but the Minister is on the public record as saying it can all be done in seven or 10 days - some very short time.

Mr Kierath: If you're upset at the time -

Mr BROWN: I want the Minister to tell the truth.

Mr Kierath: I told the truth. I got the information which the TLC put around and gave it to parliamentary counsel because I knew the member would not believe me. I sent it to parliamentary counsel and asked it to give me advice on a time frame. I have been through this before. I read the content of their advice, which is not normally done, into the *Hansard* so the member had access to it. You cannot get fairer than that. If you're asking me who the House should believe, TLC advice or parliamentary counsel's advice, I can tell you which one I would pick almost every time - parliamentary counsel's advice.

Mr BROWN: It is not just a question of parliamentary counsel providing advice. We all know that when decent counsel provides advice, it does not only provide the conclusion. It says why it reached that conclusion and systematically outlines how it reached the conclusion; it points out A, B, and C and the planks on which it reached that conclusion.

Mr Kierath: Three to six weeks of that in the dispute settling procedure was the union making up its mind.

Mr BROWN: No. The Minister has not told us on what basis parliamentary counsel arrived at those conclusions.

Mr Kierath: I said it excluded those two matters - dispute settling procedure and the union making up its mind, because that was part of the advice as well on the seven days. The record will show that.

Mr BROWN: If those two are excluded, where a dispute arises in which an employer has decided to sack some people without notification or decided to demote people without notification, the Minister and his provision state that one waits to go through all the dispute settling procedure.

Mr Kierath: I did not say that everything will take seven days. I said some will be longer and some shorter. We expect most on average - which means on average - will take about seven days. Of course, some complicated cases may take a little longer and some will be a little shorter. The words were "on average about seven days". Disagree with that if you like, but do not be pedantic and go over it again and again.

Mr BROWN: I am not being pedantic. It is not too much to ask in Parliament for the Minster to explain the matter. Tell me the rationale behind the conclusion. The Minister is putting these provisions in the legislation. When Bills were introduced by members from this side of the House, I remember the Minister saying, "Explain how it happens; explain how it works." That is fair enough when we introduce Bills, but in this case we are asking the Minister to explain his Bill.

Mr KIERATH: I explained it earlier. I said many of the functions and requirements can be done concurrently. In fact, much of it will be done before they even get there. I think that is the fourth time I have said that.

Mr Brown: You have repeated a lot of things.

Mr Kierath: Obviously you do not listen.

Mr BROWN: The Minister is very good at repeating things - they give lessons for that on his side of politics.

Mr Kierath: You keep asking the same questions.

Mr BROWN: That is because I cannot get the answers. I accept that the Minister does not want to say any more or does not know any more, so we will pass over that point.

The next point relates to proposed section 97F(1), which reads -

> In any order under section 97E (2) or (4) the Commission, having regard to which members are likely to participate in the strike, shall give directions as to which members, or members of a section or class of members, of the organization . . . will be entitled to vote in the pre-strike ballot.

I am keen to know how the commission will arrive at that conclusion. Will it do so based simply on the application or as a result of the conference which will be heard?

Mr KIERATH: Primarily it will be based on the information in the application. Obviously the parties can provide additional information.

Mr BROWN: I will continue with my questions about time lines. Proposed section 97E(8) provides that an applicant under 97D(2)(b) or an organisation of employees may, within 48 hours of being notified under subsection (7) of a decision or a direction under section 97F(1), appeal to the full bench. How long will a person be given to lodge an appeal? Will that person be required to lodge an appeal within the normal 14 days, or will there be a shorter period? How long will the full bench be given to hear the appeal? Will it be required to hear the appeal within a day or two, or a week or two of the lodgment? How long is it envisaged before the full bench will be required to hand down a decision on the appeal?

Mr RIEBELING: I thought the Minister would respond to that.

Mr Kierath: I was; I was just having a discussion with my adviser.

Mr RIEBELING: I reinforce what the member for Bassendean has been slowly extracting from the Minister. The Minister has told the Chamber that it will take six or seven days to process a pre-strike ballot; however, he does not know how that period is made up. He relies upon advice from someone from the parliamentary counsel's office. He does not pay this Chamber the courtesy of bringing along an expert so that questions about the advice we are given can be addressed. I wonder how the Minister expects people on this side of the Chamber, and the general public, to have any confidence in what he is stating, when he refuses to bring along to this place the experts who can confirm what he is saying.

It is blatantly obvious to everybody that the Minister is guessing the period will be seven days. He does not know how it is made up. I keep coming back to this point: This procedure is designed to replace a simple process that in some cases may take only an hour or an hour and a half to resolve. This Minister is deliberately putting in place a process which he knows will make the operation of the union movement and those businesses involved far less efficient, thereby weakening the position of the organisations that represent workers in this State. He continually goes on about democracy in the workplace. I ask him whether it is to the advantage of workers to prolong disputes. Surely it is a core of his philosophy that strikes do workers no good. However, this legislation prolongs industrial action, in my view, by at least six or seven days. It does not shorten it. The Minister has sat down with his experts and gone

through the legislation to try to find the worst possible set of rules to put in place to make the life of the unions as hard as possible.

Mr Kierath: You are entitled to your opinion, even if it is wrong.

Mr RIEBELING: I am giving the Minister my opinion, and he will listen to it. This legislation is designed to catch every possible scenario and penalise every person the Minister can possibly lay his hands on, right down to individual members of the unions, office bearers of the unions, and the unions. This clause contains so many hoops and obstacles that one could not possibly imagine how it could be made more difficult for a pre-strike ballot to occur. The Minister has been telling the public that there will be a simple process where people will have a say about a strike. He forgot to mention the 14 pages of provisions that cover how that pre-strike ballot will be conducted; that there are regulations. How many pages does the Minister envisage the regulations will comprise?

Mr Kierath: They have not yet been drafted.

Mr RIEBELING: In those regulations no doubt there will be certain time lines. Is that right?

Mr Kierath: There could be.

Mr RIEBELING: That is right. The regulations about which the Minister does not know a lot at this stage will include some sort of time line. The Minister is espousing that he knows what the duration of that will be. It is very difficult for people to understand this. If the Minister does not know what the regulations will contain, how can he say that the time line will be six or seven days? Is it hard for the Minister to understand that people will be concerned about that?

Mr Kierath: No; but it is not hard for me to understand that the information from the TLC says that in one case it takes four days to notify someone and in another it takes between one and four weeks. It is just a ridiculous time frame.

Mr RIEBELING: At least the TLC has put something down on paper so that the Minister can look at it. The Minister is asking this Parliament to believe him. To be perfectly frank, no-one believes what the Minister says any more. The TLC has put its position on paper and the Minister is standing in this place asking us to trust him because he knows what he is talking about.

Mr Kierath: I said that if it was just me, I could understand that. It is not. I told members opposite exactly what I did. I have talked to parliamentary counsel and we have talked to the commission.

[The member's time expired.]

Mr BROWN: I thought the Minister would tell us exactly how long it would take the full bench to deal with these matters.

Mr Kierath: I cannot direct the full bench.

Mr Kobelke: Come on; answer the question.

Mr Kierath: I cannot direct the full bench, but you have 48 hours in which to appeal.

Mr BROWN: That is right. Then the full bench must hear the matter. The 48 hours was not included in the time line given by the Minister in the second reading speech.

Mr Kierath: We do not believe most applications will end up as appeals.

Mr BROWN: I see; the Minister's time line is selective.

Mr Kierath: No. Most matters that come before the commission do not end up on appeal. Very few do.

Mr BROWN: So far, in all of this complicated process, we have only got to the pre-strike ballot procedures; we have not even got to the ballot itself. Let us say there is a ballot. The first thing is that a list of names and addresses of members who are entitled to vote as well as the names of their employers must be drawn up. As I understand it from the second reading speech, the Minister is saying that it takes one day to prepare such a list.

Mr Kierath: In regard to the 48 hours that the member is talking about, if the union gets approval for the ballot, why would it appeal? It refers to only the organisation or a member.

Mr BROWN: Who knows?

Mr Kierath: It is unlikely that it would want to appeal.

Mr BROWN: As I said, who knows? There might be all sorts of situations. An organisation may not want a vote.

Mr Kierath: In most cases we would not expect the applications to be appealed.

Mr BROWN: It may well not want to take a ballot. These are the Minister's provisions.

Mr Kierath: I am just pointing this out to you.

Mr BROWN: These are the provisions in the legislation.

Mr Kierath: The provision about the appeal to the full bench applies only to the organisation.

Mr BROWN: That might well happen. In any event, let us move on to the next point because I am trying to cover as many of the separate points in this complex web as possible. The Minister then says that it takes an organisation of employees one day to draw up a list of people who are entitled to vote in a ballot. Is one day the Minister's accurate assessment? Does he really think it will take one day to prepare a list for a vote where, unless the list is 100 per cent accurate, the applicant can be taken to the Supreme Court?

Mr Kierath: There is no point asking this over and over again. I have read out the advice of the parliamentary counsel. If you were to ask me to give you my advice, that would be a different kettle of fish. I read out to members opposite the advice of the parliamentary counsel, on which I based my information. I put it to you that if you were a Minister, you would base your information on it too.

Mr BROWN: I would not base my information in this matter on what I was told by parliamentary counsel. As a Minister, as someone who has been elected to this Parliament, I know the difficulty the Western Australian Electoral Commission has in putting rolls together. Through sheer commonsense, being a member of Parliament and having elections in my area, I know how difficult it is to form proper electoral rolls, and all the work that must be done to ensure that, when an electoral roll is drawn up, only those who are entitled to vote do so. I would not need to go to parliamentary counsel.

Mr Kierath: This is not an electoral roll. This is a membership list.

Mr BROWN: That is right; it is a membership list. And because it is a membership list, someone has to check at the time the list is drawn up whether people are financial, whether they are entitled to vote and whether their addresses have been changed.

Mr Kierath: Yes, and what does the provision say? It says "as accurately as practicable". Obviously, if it is not practicable, it does not have to be done.

Mr BROWN: Okay. What does that mean?

Mr Kierath: It means as reasonably practicable. It is not unreasonable to expect someone to do it and it is not unreasonable for an organisation to have a current membership list.

Mr BROWN: I am amazed the Minister does not have any experience in electoral matters like this. However, my experience is that if one takes due diligence in drawing up an electoral list, one will battle to do it in a day if one is seriously concerned about getting the names and addresses of people accurately recorded. We live in a very mobile society. People move. The Minister said it would take a day. He has not said how long it will take for the person conducting the ballot to verify the list. That is a requirement under section 97G.

The DEPUTY CHAIRMAN (Mr Ainsworth): Order! The member's time has expired.

Mr BROWN: Can I ask the Minister to comment on that. Proposed section 97G(9) requires the person conducting the pre-strike ballot to verify the list of names and addresses. How long does he say it takes the person conducting the pre-strike ballot to verify the list of names and addresses?

Mr KOBELKE: The proceedings of this Committee do not seem to be going very well. This is very complex legislation. On the advice of people such as the member for Bassendean, who has considerable experience in industrial legislation, and on the advice of others who deal every day with industrial matters, this process will take a very much longer time than the Minister is willing to agree to.

[Interruption from the gallery.]

The DEPUTY CHAIRMAN (Mr Ainsworth): Order! I will suspend the Committee until the ringing of the bells.

Sitting suspended from 8.33 to 8.49 pm

Mr KOBELKE: The point I was trying to make is that we on this side of the House, with the benefit of considerable expertise in industrial relations, have very serious concern about how this pre-strike ballot legislation will work. Our advice is that the time required for the ballot procedure is not realistic. In the light of those very genuine concerns about the Minister's timing, the Minister says, "I have had advice. I am told by the drafting counsel this is what it is." I put to the Minister that that is totally unacceptable. If the Minister cannot give a convincing rational argument as to the time schedule, we can only assume it is an absolute fraud and he cannot substantiate it. It does not fit in with the advice we have been given.

Mr Kierath: I gave you the time frame at the end of the second reading debate.

Mr KOBELKE: The Minister gave us what he always gives us - half the truth. When someone like the member for Bassendean tries to get the Minister to address substantive and clear questions, the Minister gives stock answers of half truth. In order to get this debate going forward, I would appreciate it if the Minister would stand when asked a question and do his best to try to answer it.

Mr BROWN: I did not get a response to my question of how long it takes a person who is to conduct the pre-strike ballot to verify the list of names and addresses he is given. Proposed section 97G(9) requires the person conducting the pre-strike ballot to take all reasonable steps to ensure that a list of names and addresses of members entitled to vote in the ballot is compiled as accurately as practicable before the ballot is held. This is a two step process: First, the union organisation compiles the list and, second, the person who is conducting the ballot verifies to the best of his ability the veracity of that list. Given the debate about time lines, how long is it expected that a person who is given a list will take to verify it?

Mr KIERATH: Currently proposed subsection (9)(a) states "as accurately as is practicable". We could have inserted a time line of, say, 24 hours. I thought it would not take very long to confirm it. It depends on the information provided in the first place. If accurate information is provided, I imagine it would be a fairly simple procedure to verify. When we look at the machinery associated with this, one of the considerations we have is whether to set a time line or whether to leave it to the discretion of the person conducting the ballot. It could be verified together with other things.

Mr BROWN: Proposed subsection (9) requires a person to "take all reasonable steps to ensure that". As I understand it, legislation is drafted on the basis that every word means something. I interpret "reasonable steps" to mean not just that a person has a list but that he must take reasonable steps to verify it, whatever that might mean. I do not know what it means. I was hoping for some explanation by the Minister, but the Minister does not seem to know what it means either. Certain steps must be taken. This looks like another non-answer.

Mr KIERATH: The question is quite ridiculous. The proposed subsection reads "all reasonable steps to ensure". It then reads "a list of the names and addresses of members entitled to vote in the ballot, and of the names of employers of those members, is compiled as accurately as is practicable before the ballot is held". If the person is reasonably confident that he has a list of members entitled to vote and employers involved, that is all it is. It could be quite simple.

Mr BROWN: Let us take an example. The union says, "Here is the list." This member's employer's name has to be on the list. The employer looks at the list and says, "No, there are more union members at my place because I deduct their union contributions. You are only putting people with left wing tendencies on the list." There is then a dispute about the list. How does that person carry out his statutory responsibilities to determine whether the list is valid?

Mr Kierath: If a group is trying to stack the list, one of the reasonable steps is to ensure that it is a valid list.

Mr BROWN: How does he check it and how long does it take?

Mr Kierath: A person has the responsibility to take all reasonable steps. I imagine that he would have the membership list and consult the employer. If it were felt that the list was okay, they would probably go ahead on that basis.

Mr BROWN: I suggest to the Minister that will take another day at the minimum. If it is a huge company with 3 000 employees, it would take a lot longer than a day.

Mr Kierath: If a company has 3 000 employees, most of the information would be obtained electronically, which is pretty swift.

Mr BROWN: That is right but they have to decide which list to use and hear argument on it. We then come to the ballot. The Minister says that they will conduct the ballot within three days. How will they do that?

Mr Kierath: I have given examples. It depends on how many sites and people are involved.

Mr BROWN: Let us say there are five sites and 20 people at each site throughout the metropolitan area. How would that be done?

Mr Kierath: It is up to the commission. They could have to have ballot boxes at the sites.

Mr BROWN: The Minister says that it takes three days. How does he arrive at that conclusion?

Mr Kierath: Other people have had experience and they estimate three days.

Mr BROWN: It takes three days for a ballot?

Mr Kierath: Yes.

Mr BROWN: I do not know of any ballot that is conducted over three days.

Mr Kierath: The chief commissioner offered to conduct a telephone ballot of 16 000 people over two days. If it is possible to do that, I imagine other things can be done. If it is a matter of putting a ballot in a box, that should be able to be done in a day.

Mr BROWN: A ballot involving 16 000 people can be done in one day?

Mr Kierath: No, not 16 000 people. If it involved 100 people and there were 20 sites, the ballot boxes could be delivered one day and collected the next.

Mr BROWN: They would take the ballot boxes to the sites.

Mr KIERATH: It could be a variety of arrangements. In the first version of the legislation, we tried to prescribe those details. We have not done that this time: We have left it to the discretion of the commission, and it can then use whatever methods are most suitable in the circumstances. If it is one extreme, with 800 different sites spread across the State, telephone voting might be the best method. If it were simply 20 people at one site, a ballot box would be the easiest method. If it were somewhere in between, a postal ballot might be the best method. It is conducted according to the discretion of the commission, which deals with these issues every day of the week, year in, year out.

Mr BROWN: I understand that the time frame for drawing up an application is one day. It should not be too difficult, although we are not sure what procedures will be followed. The Minister says that the parties should be notified at an early stage and that they should be given an opportunity according to the legislation. I do not know how long that will take, perhaps an afternoon or a day. The Minister also says that, if the commission is not satisfied that the parties have gone through the dispute settlement process, it can knock out the application and the parties must start again. I believe that will take 10 days, but the Minister is not sure about that, and it is unlikely that the matter will go to the full bench. The Minister is also not very sure about the provision of names and addresses and the verification process. Someone has told him that postal voting will take a few days. That is not very convincing.

Mr Kierath: The member may not like them, but they are the time frames that I gave him. He asked me for them and I provided them.

Mr BROWN: I agree that the Minister provided the time frames. I then asked for the basis upon which the Minister or others made those assessments. He simply said that other people had made the assessment. I asked for the basis upon which that assessment was made.

Mr Kierath: I told you it was made on the basis of their experience.

Mr BROWN: I cannot test that here. If the Minister's advisers were here, they could explain on what basis they arrived at that conclusion. That is not an unreasonable proposition in relation to legislation. Advisers provide the basis upon which they make certain assumptions. However, the Minister's advisers are not here and he does not know. We are asked to accept legislation based on assumptions which other people make and which are not explained to the Parliament.

Mr Kierath: All legislation has things like that.

Mr BROWN: I accept that people make recommendations and that they will come here -

Mr Kierath: You are repeating yourself.

Mr BROWN: I am not. The Minister has been emphatic about this on radio and television. When he is put to the test here - this is the only place he comes under scrutiny; it is not the 30-second grab where he makes a statement and runs -

Mr Kierath: I gave you the time frames for each process.

Mr BROWN: However, when we ask the Minister for an explanation of the basis of the assessment, he cannot provide it; he simply says that it is what he has been told.

Mr Kierath: I provided the details of the people who have told me.

Mr BROWN: The Minister says that it will be a very informal and rapid process and there will be no problems. However, this legislation contains a specific provision for the Supreme Court to issue injunctive relief if a procedure is not followed. Ordinarily, one would have no chance of getting the Supreme Court involved in these matters. This explicit clause provides that the Supreme Court should be involved directly to determine whether someone has followed a requirement. It is not a matter about which one would normally go for injunctive relief. However, this is an express provision requiring the Supreme Court to go in this direction.

Mr Kierath: It uses words such as "reasonable" and "practicable". It does not relate to a technical breach. Someone must have flouted the provision. Having listened to the member, I now understand that there might be people who go out of their way to flout provisions.

Mr BROWN: It does not refer to "reasonable" or "practicable".

Mr RIEBELING: How will disputes in remote country areas be affected by the time frame the Minister has proposed? Is it his view that, given that the resources boom that is supposed to be taking place in this State is occurring primarily in the Pilbara region -

Mr Kierath: I think you said that.

Mr RIEBELING: The Government has said that, although I cannot remember the Minister's saying it. Given that that region is 1 600 km from Perth, what effect will that have on the seven days that the Minister claims it will take to process the secret ballots? I understand that the time frame will be extended considerably because of the isolation and nature of the sites and the number of workers. Many of these sites are very isolated and it takes several days for mail to get to them. I imagine that it would also take several days to compile the lists that are required. There is almost no ability for those workers to attend the various conferences that are proposed. Has the Minister been advised or has he thought about the effect on remote areas? It is mainly country areas that produce the vast wealth of this State.

Mr KIERATH: The commission can move and sit in country areas. Most country areas - no matter how isolated - usually have access to a telephone system. That method was suggested previously. Obviously, the commission will need to develop methods for the particular circumstances.

Mr Riebeling: But that will take longer than the Minister has suggested.

Mr KIERATH: Yes, particularly if it is not done electronically. However, if it is done electronically, it could still be done within seven days. That period was only an average. Obviously, the complex ballots will take longer and some may be done more quickly. An electronic ballot will probably be rapid, but a postal ballot might take even longer.

Mr RIEBELING: Has the Minister received any advice from major industrial sites, such as BHP sites in the Pilbara, about whether they welcome these changes?

Mr Kierath: I have had no advice from BHP, but it did invite me up there, and, as I have told the member - he does not like my telling him this - many employees, many of whom are staunch Labor people, say they are looking forward to these provisions.

Mr RIEBELING: Did the Minister tell them about the regulations and the procedure?

Mr Kierath: They want a secret ballot before they take industrial action.

Mr RIEBELING: Most people outside this place think a secret ballot is going to a meeting, getting a ballot paper, recording a vote on it, folding it, putting it in the box, and someone counting it -

Mr Kierath: It could be that.

Mr RIEBELING: - not 17 pages of procedure that have to be gone through to get to that point.

Mr Kierath: They must make sure that everyone who is entitled to vote does vote.

Mr RIEBELING: The Minister has said proudly in the past two years that disputation in certain companies - he used the example of Hamersley Iron Ltd - had reduced dramatically. He forgets to mention that in BHP there had not been any disputation either. That is a fully unionised town, which operates very successfully under the award system. Have companies such as BHP demonstrated this burning desire to take on board a system by which it will take, in the Minister's words, at least seven days to resolve a dispute, when for the past several years it has been able to resolve disputes by the employees holding small stop work meetings? The Minister knows that is how the vast majority of industrial disputes are solved, yet he does not like that system, for some reason. I cannot work out why he does not like it, other than that he has this hatred of unions. I am amazed that companies that have enjoyed such good relationships with their workers would take on board this kind of legislation. The Minister said that many companies support him. Why would they want to take on a process which will leave them in a worse situation?

Mr BROWN: Proposed section 97I deals with injunctive relief. The Minister said that all of the things that are set out in this section are a matter of "where practicable"; they will not be enforced with great precision. Subsection (1) states that a person may seek injunctive relief with regard to any proposed breaches of section 97B(1) or (2). Paragraphs (a) to (f) of section 97B(1) set out a number of things, including the fact that a member was entitled to vote in the ballot. If we read those two sections together, if a person who should be on the list of persons who were entitled to receive a ballot was not on that list, injunctive relief could be sought from the Supreme Court, and that would hold up the process until such time as any dispute about whether that person was entitled to vote had been determined. If any of the matters listed in proposed section 97B (1) or (2) were not complied with, the Supreme Court could issue an injunction to stop the process until it was satisfied that those matters had been complied with. It is not a question of whether it is practicable. It is an absolute obligation.

Mr Kierath: Proposed sections 97F, 97G and 97H and 97I also cover who is entitled to vote.

Mr BROWN: They do, but proposed section 97I does not provide an opportunity for injunctive relief generally. It provides an opportunity for injunctive relief with regard to a particular section - section 97B(1) and (2) - which is very specific and does not provide for "where practicable", or whatever else. We cannot import by way of interpretation other sections not related to 97B and say these sections will now apply, because they do not apply. If they did apply, that would be specified in section 97I.

Mr Kierath: The Supreme Court Act is available only for section 97B (1) and (2) and it does not cover those things. Obviously if a person was entitled to vote and was not part of that ballot, that might be a ground. Ultimately, the Supreme Court has a discretion: It may issue an injunction; it may not. Those are the key elements, and the court must be satisfied that it was reasonable or that the parties had not been hard done by.

Mr BROWN: We have come to the end of the time line -

Mr Kierath: I said the time line was an average. A Supreme Court injunction would not be part of an average strike ballot.

Mr BROWN: I hope not. I have yet to see how this will work. We are talking about a potential dispute. This is not where people are working together well. There could be a potential dispute when we invoke these provisions.

Mr Kierath: Other dispute procedures go before the commission and they do not get to the Supreme Court or the Industrial Appeals Court. There are very few appeals.

Mr BROWN: That is right, because they are not related to disputes of a nature that involves a withdrawal of labour. Many so-called disputes are paper disputes.

Mr KOBELKE: Proposed section 97(1) deals with a related federal body and states that a branch that is declared to operate in conjunction with the organisation as if it were the same body -

Mr Kierath: We have already debated this.

Mr KOBELKE: I want to ask some questions about it.

Mr Kierath: We have had a lot of discussion on this. The members for South Perth, Bassendean and Ashburton were involved in it.

Mr KOBELKE: I agree it was touched on. I believe we have actually gone through this Bill at a fairly good rate, because I had prepared notes on many clauses that we skipped over, realising that the time was limited and we wanted to move on. The reason for the delay is that we believe that in certain areas the provisions will not work or will not work effectively. That is what the member for Bassendean has been saying for nearly two hours. We do not believe the Minister's estimates of time are accurate or reliable.

Mr Kierath: Just say it and get onto the rest of the Bill.

Mr KOBELKE: The Minister complains that we are wasting time, but we are seeking explicit answers to detailed questions. Given that the Minister is proposing something about which we have the gravest doubts, it is proper that we put the Minister to the test to get a full and proper explanation rather than the half explanations that he keeps repeating. If we seem to have gone over the same areas, it is because the Minister's answer are not adequate.

The Minister does not accept that we have a dual system of industrial relations. The Minister might have a philosophical view that we should not have a dual system. The Minister's counterpart in Victoria, who seems to have a lot in common with the Minister, has offered to pass industrial relations over to the Commonwealth. The Minister may wish to push the totally opposite system; that is, it should be a state system. The Minister's philosophical point of view is not practical. The Opposition is concerned about how this Bill will work in practice.

Why is the Minister unable to operate in the dual system? Unions on occasion will take advantage of that duality. For the life of me I cannot see why the Minister feels he should shut them out of that and place such huge constraints on the dual system.

Mr Kierath: I am not shutting them out.

Mr KOBELKE: The Minister is putting constraints on them.

Mr Kierath: I am preventing them from using their federal complexion to avoid state law.

Mr KOBELKE: I understand what the Minister is saying, but in fact the Minister does not want them to take advantage of moving between the two systems.

Mr Kierath: They can take advantage; they cannot hide and claim the federal body is responsible. That is different.

Mr KOBELKE: The Minister is agreeing with what I am saying, although he is putting it in a different way. The Minister wants to prevent unions from taking advantage of the dual system. He does not want them to swap between the systems, where there is an advantage to them, so he has come up with this provision that some claim is likely to be unconstitutional.

Mr McGINTY: Is the constitutionality of this clause one of the concerns that the Deputy Leader of the Liberal Party, the Minister for Resource Development, has raised with the Minister about the progress of this legislation; in particular, his concerns about passing unconstitutional laws? We heard this morning on ABC Radio, and repeated later tonight, his criticisms of the Minister in his failure to consult, his concern about the nature of this legislation and about the impact of this legislation. Although he spoke specifically about the impact of disputation in the key economic sectors, it seemed as though he was also implying very much a criticism of the Minister for going down paths that might give rise to concerns, particularly in relation to whether this provision is constitutional. Has the Minister for Resource Development raised his concerns about these elements with the Minister?

Mr KIERATH: He has raised no concerns about this clause. It is not possible for me to get these clauses through Cabinet without at least his tacit approval.

Mr KOBELKE: In his response to the member for Fremantle the Minister alluded to the fact that people are voicing concerns about the constitutionality of this deeming proposal. The Minister is trying to shut unions out, so they cannot escape the provisions within the state system. If the Minister is forcing a lower standard than that which would be available under commonwealth law, on that ground alone there may be basis for a constitutional challenge. The Minister has sought legal advice on whether a conflict exists between this and commonwealth legislation. What degree of concern has there been about the constitutionality of this provision, and what steps, if any, has the Minister taken in drafting this legislation to ensure that it will not run counter to commonwealth law? The real concern is not that there might be a clear conflict; if that were the case, one hopes that the Minister would take notice of that advice. We cannot be sure of that, because the Opposition pointed out that the Land (Titles and Traditional Usage) Act would be counter to commonwealth law. That was proved by the 7:0 result in the High Court. We were right and all the advice to the Government was worth nothing. This is not that clear cut; therefore, the legal advice may show the legislation can get through without running into the issue of constitutionality. The real concern is that this could tie up the State in a lengthy and wasteful series of litigation to fend off challenges on the ground that a constitutional problem exists between this and the commonwealth law.

Mr KIERATH: I do not think there will be legal challenges. First, this provision will only prevent the example that I gave of a union using its federal counterpart to avoid the state Act. If they cannot do that, there will not be litigation. To simplify what is a complex issue, when one receives extensive legal advice there are all sorts of precedents. The issue is clear-cut where a conflict exists between state law and commonwealth law. The objects of clauses and of the Act give what in legal terms is called a head of power. If there are no heads of power in the commonwealth Act -

in other words, in areas where the commonwealth Act is silent and there is no conflict - state law will still apply. State law will continue to apply until such time as federal law overrides it. The member for Nollamara might be aware of the Crown v Cain case which went to the Industrial Appeals Court. Cain claimed, because he was a federal union official, he was not subject to the state laws. Even without this provision the appeals court handed down a 3:0 decision against Cain. That is a general summation of the advice and the most recent case before the Industrial Appeals Court.

Mr McGINTY: We are aware that the Minister is a law student. Is he doing constitutional law this year -

Mr Kierath: What has that to do with this?

Mr McGINTY: - or does the Minister just hold himself out to be a constitutional lawyer?

Mr Kierath: I do not. During my four years as Minister, many constitutional issues have related to this issue.

Mr McGINTY: What is the Minister enrolled in this year?

Mr Kierath: We have seen many appeals against moves into the federal arena. Queen's Counsel have been involved, and we have received extensive legal opinion on the conflict between state and federal law.

Mr McGINTY: Is the Minister enrolled in constitutional law this year?

Mr Kierath: What has that to do with this?

Mr McGINTY: It is a simple question.

Mr Kierath: What I do in my private life has nothing to do with this Bill.

The DEPUTY CHAIRMAN (Mr Ainsworth): Order! I do not think this relates to the legislation. It is an interesting sideline, and we are fascinated to know what the Minister does in his spare time. However, I ask the member for Fremantle to address the clause.

Mr McGINTY: The Minister is a full time student. That is what he does. It is debateable whether it is his own time anyway.

Mr Kierath: The member knows what I am doing, because his campaign manager has been in some of my classes.

Mr McGINTY: In the same law lectures?

Mr Kierath: I was talking to her one day and she said she did not want to talk to me for too long because it might ruin her career in the Labor Party.

Mr McGINTY: There would be other reasons why she would not want to be seen talking to the Minister, and I think it has a lot to do with the Minister. During his studies has the Minister dealt with sections 106 and 109 of the Constitution?

Mr Kierath: I will not discuss what I do in my private time. I am happy to tell the member when we have finished our business here. It has nothing to do with the matter before the Chamber.

Several members interjected.

The DEPUTY CHAIRMAN: Order!

Mr McGINTY: The Minister is abusing his position as a Minister by being a full time student at the same time, and by not following through his duties.

Mr Kierath: I am not a full time student.

Mr McGINTY: In the light of the observations that have been made by the member for Nollamara and the legal advice the Minister has obtained relating to the constitutionality of the proposed section, and putting aside the recent Cain decision in the Supreme Court, does the Minister have any unequivocal advice that this provision is constitutional?

Mr Kierath: Our advice is that it is constitutional.

Mr McGINTY: Does the Minister have unequivocal advice regarding the constitutionality of this provision? During the term of the previous Government, we frequently put that question to the Premier, who assured us that the laws we were passing were constitutional, but he was proved to be wrong. I ask that question because ultimately -

Mr Kierath: If you were a law student, you would know that there is no such thing as unequivocal advice.

Mr McGINTY: Is the Minister saying that he has advice that this may not be constitutional?

Mr Kierath: My strong advice is that it is constitutional.

Mr McGINTY: Is it equivocal?

Mr Kierath: I cannot tell you whether it is unequivocal. I do not think I have ever seen a piece of legal advice which was unequivocal. Most lawyers say this on the one hand and that on the other hand.

Mr McGINTY: My question is simple: What is the nature of the Minister's legal advice? Is it equivocal? The Minister's answer suggests that it may not stand up to scrutiny.

Mr Kierath: I have strong advice that it is constitutional.

Mr McGINTY: This is a fair question because in the past these sorts of issues have been unconstitutional, offending the relevant provisions of the Constitution. It is fair to ask the extent of the legal advice on this occasion as to whether this provision would, on the best advice available, withstand constitutional challenge. The question has not been answered satisfactorily.

Mr KOBELKE: We have not been satisfied on the constitutionality of the deeming provisions. I will put that behind us and move to another area which relates to the possible contravention of International Labour Organisation conventions on the freedom of association. The freedom of association principle for organised labour is central to the nature and operation of the ILO. Conventions 87 and 98 embody that core of ILO standards relating to freedom of association. Not only are these pre-strike ballots cumbersome and in many ways unworkable, but also the process could allow contravention of the freedom of association principle of the ILO. If that is the case, although there may not be an immediate breach of the legislation it will bring the State into a form of confrontation with the Commonwealth Government because it has responsibilities to uphold the ILO conventions to which it is committed.

I will relate these proposed provisions in the Bill to the advice we have relating to the ILO conventions on freedom of association. The Minister would be well versed in this area because the earlier legislation went to the Legislation Committee in the other place in 1995 and in that arena advice was given regarding the ILO conventions. I will refer to those in a moment. To reach some understanding I need to outline the procedures which are required. Proposed section 97B provides that a member of an organisation of employees shall not participate in any form of strike unless a pre-strike ballot is ordered; a ballot is conducted; the member was entitled to vote in the ballot; participation in that form of strike is endorsed by the ballot; the participation takes place not later than 28 days after declaration of the result of the pre-strike ballot; and, finally, notice of intention to participate in that strike has been given in accordance with proposed section 97H. They are the titles of the various steps. Then we have the means by which the requirements are fulfilled. It is a complex matter. Ultimately, there is no protection or immunity because proposed section 97A states -

> Nothing in this Part takes away, restricts or otherwise affects any power, right or liability, civil or criminal, arising under any other Part of this Act, or any other enactment or at common law.

One could go through the required procedures; yet there is no protection. I turn now to what people with some authority on ILO matters have to say. Human Rights Commissioner, Chris Sidoti, in a letter dated 22 February 1996 submitted to the Legislation Committee, states -

> The strike ballot provisions in the Bill are quite complex and very substantial in the degree to which they prescribe processes for initiating industrial action. When compared with the corresponding legislative frameworks in other State and Territory jurisdictions they could be viewed as excessive.

Those comments were made by someone with an understanding of law and of the ILO. That statement reflects the comments I have already made. Commenting on protection against legal remedies, he states -

> Almost all forms of industrial action are technically unlawful under tort law, breach of contract principles and various enactments. The retention of these remedies seriously undermines the right to strike. This view has been endorsed in various other contexts by the ILO Committee of Experts on Freedom of Association. I would suggest that freedom of association warrants inclusion in a provision in the Bill, ensuring protection against common law and other forms of liability, rather than one which preserves such liability.

Ms McHALE: Once again the contents of the proposed legislation are completely at odds with any sense of freedom of association enshrined in an International Labour Organisation convention. I pose that point because as we debate this legislation problems are becoming more and more clear. We have highlighted a number of those already which reinforce the assertion that the legislation may be contrary to ILO conventions.

It is worth considering the fact that the Industrial Relations Commission will not approve a pre-strike ballot if the grievance procedure has not taken place. We must bear in mind again that strike action is usually taken at a time of utter frustration. For instance, negotiations on an enterprise agreement could take six to nine months. However, if negotiations break down; parties cannot take industrial action because this legislation requires they follow grievance procedures. Can members imagine workers and unions patiently following disputes procedure in a climate of frustration and anger when they are unable to exercise their fundamental right to take industrial action?

The legislation imposes a range of other interferences in the right to associate provisions. I urge Government members to refresh their memories because at some stage they will have to account for whether the legislation complies with ILO freedom of association conventions. We must be responsible for that.

Mr KOBELKE: I quoted to the Minister one authority. I now quote him the others from the same report the Minister has. As I have made clear, these comments related to the 1995 legislation, rather than this one. The respective parts on which these judgments are made are even more severe, in this new legislation.

The other person who presented a point of view was Professor Breen Creighton from the school of law studies from La Trobe University, who speaks with some authority in this area. The Digest of the General Survey, at paragraphs 170 and 498 reads -

> The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organisations.

Further on he says -

> The legal procedures for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike.

In summing it up he says

> There is, therefore, a distinct possibility that the balloting provisions set out in what was then part VIB would be found to offend the principles of freedom of association as described above.

Here are two people with some expertise in this area raising the clear possibility that, because of the complexity and lack of any protection from other action, if people fulfil these requirements, this could be judged counter to the freedom of association provisions of the ILO.

Mr KIERATH: I refer to page 26 of the Thirty-Eighth Report of the Legislation Committee concerning the Committee for Freedom of Association of the ILO. It states -

> The CFA has ruled that the following procedural requirements are acceptable;
>
> (1) the obligation to give notice;

We have that.

> (2) the obligation to resort to conciliation and (voluntarily) agreed arbitration procedures in collective disputes prior to calling a strike -

In other words dispute settling procedures about which we have been talking.

> - provided they are adequate, impartial and speedy, and involve the participation of the parties at every stage;
>
> (3) the obligation to observe a fixed quorum;
>
> (4) the use of secret ballots in strike votes;
>
> (5) the adoption of measures to ensure observance of safety regulations and to prevent accidents; and
>
> (6) the maintenance of a minimum service.

Further on I quote fairly extensively but the bottom line of the next paragraph is -

> *Such restrictions on the right to strike are acceptable as long as they do not place substantial limitations on the means of action open to trade union organisations.*

In other words, dispute settling procedures about which we have been talking.

That is what the CFA has ruled. I can give the member the assurance that after the submissions were received by the committee on this report I sought Crown Law advice on whether anything raised in that report would cause Crown Counsel to change its point of view. The answer was no. Clearly we have had the arguments of other people tested and Crown Counsel has the ability to reconsider its point of view, but it has not changed its view that it does not offend ILO conventions.

Mr KOBELKE: I understand the point made by the Minister. He has given one side of the legal argument. I have given part of the other side of the legal argument. That does not mean this legislation is not open to being judged in contravention of the ILO convention.

Mr Kierath: I did not say that; I said that I sought Crown Counsel's opinion to see whether it would change its mind.

Mr KOBELKE: It is also common knowledge that Crown Counsel's opinion is not available to us. We know that lawyers will present opinions that the client requires them to give. I do not mean that it would be untruthful; they look to the needs of the client and the body of law and after considering their instructions they present an opinion which reflects how their client's view can be upheld.

Without seeing the Minister's opinion we do not know whether it is an objective opinion or Crown Counsel's opinion on how the Minister can uphold his position. However, we know from two independent commentators that the total complexion of this legislation could be in contravention of the ILO requirement with respect to the freedom of association.

The Minister read from his submission a list of points which clearly would be important in any consideration of whether freedom of association is under threat from the provisions in this Bill. It is not simply a list of points on which freedom of association is judged to be denied in his legislation; it is the totality of the effect of the provisions in the Bill much more than the number of points he made in the initial part of his submission.

If the requirements under proposed section 97B, as I have outlined, are not fulfilled, a range of penalties apply because people will have taken strike action not in accordance with these requirements. As the definition of strike action is so broad it would need to be taken into account in considering whether one was precluding the possibility of strike action. As already mentioned, minor industrial events could take place in the workplace which will be caught as strikes and caught as being outside the requirements for a pre-strike ballot to be considered successfully completed. On that basis they will be outside the law and penalties will be applied of $1 000 for an individual and $5 000 for an organisation, in addition to a daily penalty. Those penalties have been increased since the 1995 Bill was introduced, when the maximum penalty for an individual was $500 and for an organisation $2 000. It is a substantial increase.

In the opinion of Professor Breen Creighton that could be a basis on which the International Labour Organisation convention is contravened. He stated -

> It is possible, therefore, that the imposition of fines of up to $500 upon individuals and of $2000 upon organisations under s 84A might be found to be "disproportionate" - especially if they were imposed in respect of technical breaches of the legislation.

It is another part of the wall being built, which indicates the potential for these provisions to be contrary to the ILO convention on freedom of association. So far I have mentioned the complexity of the procedures, the lack of protection and the heavy fines applied to people who are deemed to be outside the provisions of the Act on technicalities because of the complexity of the requirements they must fulfill.

Mr BROWN: I support the comments of the member for Nollamara. The question of whether the legislation is in breach of the ILO convention is not determined simply by the prospect of whether strike action can be taken following a long and convoluted procedure, but rather by whether it is a reality. This legislation sets up a system that is so complex and convoluted, that it is clearly not the intention of the legislators to provide for a secret ballot or ballot process for strike action. It is designed to set up a mass of complicated arrangements which prevent that from occurring, and provide an opportunity for the Supreme Court in this State to frustrate the process or issue an injunction to ensure the process cannot take place. This does not comply with the legislation. The Minister said he took advice on the matter, and I am keen for the Minister to indicate the nature of that advice more fully than he has done so that we can see how it complies with that convention.

Mr KOBELKE: I have two more brief examples which in the opinion of Professor Breen Creighton give further support for a case to be mounted that the provisions for pre-strike ballots do not meet the freedom of association requirements. Proposed new section 97B provides that participation takes place no later than 28 days after declaration of the result. It is a further constraint on the whole process. Professor Breen Creighton said -

> In light of the fact that there appears to be no room for extension of time, and that 28 days is a relatively short period, there must be room for considerable doubt as to whether it would be found to be acceptable in terms of ILO standards.

The last example relates to the pre-strike ballot provided for under proposed section 97B(3) which states that for the purposes of subsection (1)(d), participation in a particular form of strike is endorsed by a ballot if the majority of persons who were entitled to vote in the ballot voted yes to the question applicable to participation in that form of strike. It is not sufficient for people to come together and to obtain a majority vote, or to send out a postal voting paper with a majority voting in favour. It must be a majority of persons entitled to vote. That places a particularly onerous task on people who feel they have the right to take industrial action. Professor Breen Creighton further stated -

> . . . there can be little doubt that the requirement that a strike proposal be approved by a majority of those entitled to vote (s 97B(3)) would be found to be inconsistent with the principles of freedom of association.

He also quoted the following -

> "If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level."

A person of considerable international standing on ILO conventions, together with the Human Rights Commissioner, has made a clear and argued case that the Minister's proposals in the 1995 Bill may not meet the requirements of the ILO convention for freedom of association. The current Bill is even more extreme. It has additional provisions which complicate the proposal. The penalties are more than double, which could be an issue in contravening the ILO conventions.

There is good reason to be seriously concerned about whether Western Australia is making a spectacle of itself. That was done with the Land (Titles and Traditional Usage) Act, in which this Government tried to overrule the Commonwealth Government and the High Court decisions with respect to Mabo. The reputation of this State was dragged down by this Government's persistence with a biased and uninformed view which took no account of reason and international standards. This State was held up to ridicule with a 7:0 decision by the High Court which indicated that the Western Australian Parliament was racist. It cannot be interpreted any other way because it had clearly contravened the Racial Discrimination Act. Is a similar thing being done with this legislation? The Minister is not willing to take up the issues put to him and argue them fully, openly and honestly. How do we know his supposed advice which says this can be pushed aside is of substance? I do not think it is.

Mr KIERATH: If I can get a summary of that advice to the member for Nollamara, will it satisfy him?

Mr Kobelke: No, because unfortunately you are too practised and too consistent in giving half information. If you have legal advice which gives a clear position and you are willing to share it with us - it is not common practice but it has been done before - we will be able to see the strength of your arguments.

Mr KIERATH: Crown counsel will not agree with that. It is a longstanding practice that it is not released.

Mr Kobelke: That practice has been broken. There are examples of when it has been released.

Mr KIERATH: I am not aware of any examples when the practice has been broken. At times when I have asked them they have done a summary of their advice for public consumption. If I had them do that, would that satisfy the member? It would not be my summary of their advice, but their summary of their advice.

Mr Kobelke: If the Minister is willing to offer that to me, I would be most thankful.

Mr KIERATH: I undertake to try to get that advice to the member before next Tuesday.

Mr BROWN: New section 97B(3) requires a vote of more than 50 per cent of eligible persons as opposed to the normal circumstance which would require a simple majority of the number of persons who voted. Bearing in mind that strict requirements mean that every person who is eligible to vote must get a vote and that injunctive relief can be taken if a person does not get a vote, why will there be three types of people who will get a vote - those who vote yes, those who vote no, and those who do not wish to exercise a vote one way or the other or who simply abstain? Why does the Minister require in this legislation that those who choose to abstain are counted as voting no?

Mr Kierath: The argument could also be put: Why should we allow those who do not vote to be counted as a yes vote? They are being asked to take industrial action - a serious matter that many people will lose over.

Mr BROWN: We are dealing with adults; people generally over the age of 18, although there might be some juniors, who are given a vote of some description. They must exercise their mind in relation to that vote. They can do that by placing a tick against the yes or against the no, or they can abstain.

Mr Kierath: If you have 50 per cent of the vote, there must be a strong reason to take industrial action.

Mr BROWN: Yes, there is no question about that. Why is the test in this legislation much higher than the test to vote for people who control the $7b state Budget. This is not the type of test that has people elected to this place.

Mr Kierath: Yes, members must have an absolute majority.

Mr BROWN: No, the Minister did not receive an absolute majority of the vote. On the basis that people voted yes or no, the Minister received 46 per cent of direct votes. That is 46 per cent of the number of votes that were returned. He got 41 per cent of the vote if he says it was the direct vote of the people who were eligible. Why is the bar raised so high in these matters?

Mr Kierath: Why should a minority of people force others to take industrial action?

Mr BROWN: I agree. That is not the case in this provision. Those who exercise a vote one way will be compared with those who exercise a vote the other way. The third group will not have exercised a vote.

Mr Kierath: They have not felt strongly enough to vote yes to take industrial action.

Mr BROWN: If that rationale were applied, not one member of local government in this State would hold office, because people do not feel strongly enough to vote in local elections. There is a 15 per cent turnout for local government elections; 85 per cent of people do not feel strongly enough to cast a vote for someone who will be on their local authority. That authority can increase their rates and taxes and do those sorts of things. People vote for members in this State Parliament. The Parliament can impose on them state taxes and charges, as it did today in the Budget. It can deny them services and provide them with services. Members in this Parliament would probably universally agree that it is wise for people to exercise a vote.

Mr Kierath: We have compulsory attendance at voting.

Mr BROWN: Many do not fill out their ballot papers. That is their right in a democratic organisation; they do not have to vote. It is the same under this legislation.

Mr KOBELKE: The Opposition must record its objection to a range of new sections. I move -

Page 7, lines 14 to 22 - To delete the lines.

Page 7, lines 23 to 25 - To delete the lines.

Page 8, lines 1 to 4 - To delete the lines.

Amendments put and negatived.

Mr KOBELKE: New section 97A ensures there is no protection if people do go through strike action, and on that basis it should be removed. I therefore move -

Page 8, line 18 to page 9, line 3 - To delete the lines.

Amendment put and negatived.

Mr BROWN: I move -

Page 9, line 5 - To delete "A member of an organization of employees" and substitute "An employee".

This anti-union legislation seeks to penalise only members of unions. It does not seek to take action against employees who participate in a form of strike. I am not in favour of the clause. I moved this amendment to highlight the fact that this clause is designed to attack union members rather than employees. Workplaces comprise employees who are members of unions and some who are not. The Minister's adviser may be able to advise the Minister on this point. Last year there was a dispute involving a government employer and industrial action was taken. Some of the non-union employees of that agency felt so strongly about it that they joined with the union members in that industrial action. It is not unusual for people to have a reservation about joining a union because they think it is too far to the right, left or centre.

Mr Kierath: The individuals have the right to withdraw their labour at any time they like. This is relevant only because they are members of an organisation that is registered.

Mr BROWN: There are sanctions in relation to individuals.

Mr Kierath: If collectively they do something.

Mr BROWN: I am talking about a collection of individuals who are employees, but not union members, who withdraw their labour.

Mr Kierath: I acknowledge the member's point.

Mr BROWN: I moved this amendment to highlight the point that this legislation is targeted at union organisations and union members who take industrial action. It is silent on whether the industrial action is taken by employees who are not union members. It does not matter whether the union members are covered by workplace agreements or awards. The clear inference one draws is that this is a piece of legislation designed specifically to get at unions.

Mr Kierath: People on workplace agreements are prevented from taking industrial action except when they are renegotiating their agreements under that legislation. That is the reason it was excluded.

Mr BROWN: Whether non-union members are covered by the award or whether they are award free, if they elect to take industrial action, not as an individual but as a collective, and they take that action there is no sanction against those people. I am not advocating a sanction because it would not be appropriate. The fact that there is not a sanction indicates the clear target of this Bill.

The Minister often comes into this place and is extremely pleased when he talks about the decline in union membership in this State. The reason for that is that people set themselves up by being union members when this sort of legislation is introduced. The objective of the legislation is to drive people out of unions and collective decision-making.

Amendment put and negatived.

Mr BROWN: I move -

Page 9, lines 15 to 18 - To delete the lines and to substitute the following -

(e) the participation takes place not later than the date of the resolution of the dispute in relation to which the ballot was held; and

This clause provides that in the event of a secret ballot resulting in a decision to take strike action the action must be taken not later than 28 days after the declaration of the result of the ballot. The amendment requires the participation in the process to take place not later than the resolution of the dispute for which the ballot was held. Sometimes these matters are resolved quickly but sometimes they are not. The Bill provides that if a ballot is passed by a majority of members those people have 28 days to take that action. If they do not take that action within that time they know they will have to go through the whole process again. They may have voted to endorse the action but, as happens in many cases, they may withhold taking that action, particularly if negotiations have taken place between the date on which the application started and the date on which the 28 days expire. Why not allow the matter to run so that if the action can be resolved without the action being taken, so be it? Why impose a 28 day arbitrary period within which people are forced to take the action on which they have voted or simply start the whole process again? It is counterproductive and any ballots taken must be taken in relation to a particular dispute.

The amendment refers to a ballot on a particular matter. Once that matter is resolved the decision is finished and if another matter arises there must be another ballot. The clause is provocative rather than seeking to bring about a resolution.

Amendment put and negatived.

Mr BROWN: I move -

Page 10, line 10 - To delete the words "were entitled to".

The deletion of these words would mean that in any ballot the result of the ballot would be determined by looking at the number of people who have voted yes and the number who have voted no. It would be a simple majority based on those people who exercise their right to vote, not the majority of those eligible to vote.

The Minister has given no rationale why the amendment should not be accepted except that he wants to raise the bar above any provision in other legislation in terms of secret ballots in this State, whether for members of Parliament or local authority councillors. This provision is above any other legislative requirement relating to the election to office. It is clearly designed to frustrate the process. The process would be made more simple if these matters were determined by a simple majority.

Mr KOBELKE: The Opposition wants an answer from the Minister because it is a serious matter. It is a straightforward amendment and the Minister is aware of its intent. By deleting three words it means the clause will apply to the majority of those voting rather than the majority of those entitled to vote.

Mr Kierath: We debated this point earlier. We spoke about whether a majority or minority of people should be causing the action. It was not my intention to not reply to the amendment. I have already answered it.

Mr KOBELKE: I heard the previous debate which was part of a general debate which has been ongoing. I wanted to drive home to the Minister that it is an important point and one that is easily made.

If the Minister is not willing at this stage to compromise and allow the amendment, at least will he give an undertaking to consider it? When it goes to the other House, will he recommit his existing point of view or will he try to move a little on a compromise? Can I get an undertaking in that regard?

Mr KIERATH: I will look at it between now and the other place; I have made my views clear on that.

Amendment put and negatived.

Mr KOBELKE: I will not move the amendments to proposed section 97H. I ask the Minister to take on board these proposed amendments, and to give a detailed response when the Bill reaches the other House. A range of notifications from employees to employers is outlined in the provision. The provision could be changed to make a simpler process for those responsibilities by which the employee gives notice to the employer. It is simply not acceptable that each employee will have to give notice in the way it will be interpreted. A number of small amendments are required throughout the proposed section. I ask the Minister whether we can discuss later the type of amendments which can be made. I ask him to change the onus on the organisation and not leave it with the individual employer.

Mr KIERATH: I will have those matters examined. I gave an undertaking that in the light of these provisions I would examine the large new clause the member moved. Those matters would be involved in that process.

Clause put and a division taken with the following result -

Ayes (29)

Mr Ainsworth	Mrs Hodson-Thomas	Mrs Parker
Mr Baker	Mrs Holmes	Mr Shave
Mr Barnett	Mr House	Mr Sullivan
Mr Board	Mr Kierath	Mr Sweetman
Mr Bradshaw	Mr MacLean	Mr Trenorden
Mr Court	Mr Marshall	Dr Turnbull
Mr Cowan	Mr Masters	Mrs van de Klashorst
Mr Day	Mr McNee	Mr Wiese
Mrs Edwardes	Mr Minson	Mr Bloffwitch *(Teller)*
Dr Hames	Mr Nicholls	

Noes (18)

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

Pair

Mr Johnson	Ms MacTiernan

Clause thus passed.

Progress

Progress reported.

ADJOURNMENT OF THE HOUSE - SPECIAL

MR BARNETT (Cottesloe - Leader of the House) [10.25 pm]: I thank members for their indulgence. I move -

That the House at its rising adjourn until Tuesday, 15 April at 10.00 am.

Question put and passed.

House adjourned at 10.26 pm

QUESTIONS ON NOTICE

ABORIGINES - HOUSING

Construction and Maintenance

201. Mr MARLBOROUGH to the Minister for Housing:

(1) In relation to the Aboriginal Housing Authority, how many dwellings are Homeswest or the Authority responsible for in the communities of -

(a) Jigalong;
(b) Balgo;
(c) Gogo Station;
(d) Christmas Creek;
(e) Looma;
(f) Beagle Bay;
(g) One Arm Point;
(h) Oombulgurri; and
(i) Kalumburu?

(2) What funds are presently allocated to the construction and maintenance of housing in each of these communities?

(3) What was the funding for these communities for the financial years -

(a) 1991-92;
(b) 1992-93;
(c) 1993-94;
(d) 1994-95; and
(e) 1995-96?

(4) Can the Minister advise as to Homeswest's processes for determining housing need in these communities?

(5) Is there an existing Government body meeting on a regular basis to determine housing and health needs of these communities?

(6) Can the Minister give the meeting dates of such a body for the previous four years?

(7) Can the Minister advise as to the number of bedrooms and toilets in each residence in the above communities.

(8) Can the Minister advise in relation to -

(a) Jigalong;
(b) Balgo;
(c) Gogo Station;
(d) Christmas Creek;
(e) Looma;
(f) Beagle Bay;
(g) One Arm Point;
(h) Oombulgurri; and
(i) Kalumburu,

the number of family members living in each individual dwelling in each of the above communities?

(9) What percentage of toilets in each of the above communities are connected to sewerage?

(10) Can the Minister advise how much money has been spent at Kalumburu on housing in -
(a) 1991-92;
(b) 1992-93;
(c) 1993-94;
(d) 1994-95; and
(e) 1995-96?

(11) Can the Minister advise what percentage of money has been spent on new housing and what percentage has been spent on upkeep and maintenance at Kalumburu in each of the following years -

(a) 1991-92;
(b) 1992-93;
(c) 1993-94;
(d) 1994-95; and

(e) 1995-96?

(12) How many Homeswest officers are allocated to the specific needs of looking after the housing needs in the following communities -

(a) Jigalong;
(b) Balgo;
(c) Gogo Station;
(d) Christmas Creek;
(e) Looma;
(f) Beagle Bay;
(g) One Arm Point;
(h) Oombulgurri; and
(i) Kalumburu?

(13) Can the Minister advise where these officers are located?

(14) Are all the communities visited by housing officers on a regular basis?

(15) If yes, how often do these visits occur?

(16) Can the Minister advise the dates of such visits from January 1995 to date?

(17) Can the Minister advise whether any Government department and/or contractor has the maintenance and plumbing contract for the above communities?

(18) Can the Minister advise as to any delays that have occurred to maintenance of toilet and sewerage systems in the above communities?

Mr PRINCE replied:

(1) While Homeswest and other government departments have constructed accommodation in these communities, overall responsibility, particularly in respect of maintenance and management, resides with the communities themselves.

(2) (a) $100,000
(b) $10,000
(c) $265,000
(d) Nil.
(e) $1,085,000
(f) $10,000
(g) $10,000
(h) Nil.

(i) $210,000

(3)

Community	1991-92	1992-93	1993-94	1994-95	1995-96
Jigalong	400,000	1,160,000	248,000	190,000	-
Balgo	-	-	-	-	-
Gogo Station	-	125,000	133,000	325,000	325,000
Christmas Creek	-	-	-	100,000	100,000
Looma	100,000	180,000	311,000	804,000	340,000
Beagle Bay	-	216,000	103,000	50,000	158,000
One Arm Point	300,000	275,000	220,000	14,000	-
Oombulgurri	-	-	-	520,000	82,000
Kalumburu	-	-	380,000	2,250,000	70,000

(4) Formerly, Aboriginal communities submitted application forms for consideration by the Aboriginal Housing Board and were prioritised on the basis of the following selection criteria in conjunction with other relevant sources of information and after liaison with ATSIC Regional Councils:

secure land tenure;
formal town plan;
community incorporation;
demonstration of need (overcrowding);
availability of fully serviced blocks or evidence that the same will be forthcoming.

The Aboriginal Housing Board has contributed resources towards conducting an Environmental Health Needs Survey under the auspices of the Environmental Health Needs Co-ordinating Committee. Key agencies participating in the EHNCC include Aboriginal and Torres Strait Islander Commission, Homeswest, the Health Department of Western Australia, the Aboriginal Affairs Department, the Western

Australian Municipal Association and the Commonwealth Department of Health and Family Services. All discrete Aboriginal communities in Western Australia will be surveyed and a needs based analysis is being developed on which to make funding decisions on an equitable basis.

(5) Aboriginal Housing Board; Environmental Health Needs Co-ordinating Committee.

(6) The Aboriginal Housing Board met on the following occasions:

23-25 February 1993
31 March - 2 April 1993
26-29 July 1993
30 November - 2 December 1993
11-12 April 1994
15-16 June 1994
26-27 April 1995
12-14 June 1995
31 July -2 August 1995
13-15 November 1995
14-16 February 1996
1-3 April 1996
2-5 July 1996
12 -13 September 1996

The Environmental Health Needs Co-ordinating Committee has met on the following occasions:

17 February 1995
9 June 1995
7 August 1995
10 October 1995
6 February 1996
21 May 1996
13 August 1996
12 November 1996
19 February 1997

(7) No. However the Environmental Health Needs Co-ordinating Committee will be conducting the Environmental Health Needs Survey from April to October 1997 in all discrete Aboriginal communities in Western Australia after which this information will be available.

(8) No. However the Environmental Health Needs Co-ordinating Committee will be conducting the Environmental Health Needs Survey from April to October 1997 in all discrete Aboriginal communities in Western Australia after which this information will be available although it should be noted that population fluctuations occur regularly.

(9)
(a)*	90%
(b)	Not known
(c)*	100%
(d)*	100%
(e)*	77%
(f)*	91%
(g)*	100%
(h)*	100%
(i)*	100%

*Approximates based on the ATSIC National Aboriginal Health Strategy/Community Housing and Infrastructure Programme project evaluations.

(10)
(a)-(b)	Nil.
(c)	$380,000
(d)	$2,250,000
(e)	$70,000

(11)
(a)-(b)	Nil.
(c)	100% Construction.
(d)	68% Construction; 32% Maintenance.
(e)	74% Construction; 26% Maintenance.

(12) There are eight officers in the remote housing area of the Aboriginal Housing Directorate of Homeswest. The Aboriginal Housing Directorate would spend a percentage of its time on these and other discrete Aboriginal communities depending on the program for the current year.

(13) Perth.

(14) Yes, depending on the current program.

(15) As required.

(16) 19 June 1995 - Gogo Station
19-23 May 1995 - Gogo Station
21 February 1996 - Gogo Station
29 February - 1 March 1996 - Looma
11-12 March 1996 - Beagle Bay
18 April 1996 - Oombulgurri, Kalumburu
24 September 1996 - Gogo Station
23 September 1996 - Oombulgurri
14-16 August 1996 - Looma
5 July 1996 - Gogo Station
1-7 July 1996 - Beagle Bay, Gogo Station
20-22 November 1996 - Looma
2 December 1996 - Gogo Station
11 December 1996 - Oombulgurri
3-6 February 1997 - Jigalong
5-7 March 1997 - Jigalong

(17) No. The Aboriginal Affairs Department has an essential services repair and maintenance program for these communities, otherwise it is the communities' responsibility.

(18) No.

HOMESWEST - SOUTH PERTH

Statistics

300. Mr PENDAL to the Minister for Housing:

(1) What number of dwellings does Homeswest own in the electoral district of South Perth?

(2) What number did the agency own five years ago?

(3) Is ownership periodically assessed with the view to -

(a) offering such properties to occupiers for purchase at discounted values; or

(b) demolishing dwellings and redeveloping large sites?

(4) How many rental properties in the electoral district mentioned have been sold to tenants in each of the past five years?

Dr HAMES replied:

For the purpose of this question the areas of South Perth, Kensington, Como, Karawara, Waterford, Manning and Salter Point have been utilised to provide the answer.

(1) *1 402 as at 14 March 1997.

(2) *1 392 as at 1 July 1991.

(3) (a)-(b) Yes. The Karawara Estates Improvement Program will specifically address these issues.

(4) 18 over the past five years.

* These figures represent Homeswest Rental, Aboriginal Housing, Crisis Accommodation, Joint Venture and Community Disability Housing Programs.

HOUSING - WOODLAKE VILLAGE COMMUNITY CENTRE

Government Financial Assistance

332. Mr BROWN to the Minister for Housing:

(1) Has the State Government provided any funds towards the cost of the construction of the Woodlake Village Community Centre in Ellenbrook?

(2) If so, how much -

(a) has been;
(b) will be,

provided?

Dr HAMES replied:

(1) Yes.

(2) (a)-(b)

Department of Family and Children's Services	$450 000
Ellenbrook Joint Venture project	$175 000

Homeswest is a 47.13 per cent shareholder in the Ellenbrook Joint Venture project. Funding contributions have been paid progressively throughout the project's construction period.

LOCAL GOVERNMENT - HOUSING INDUSTRY INDEMNITY SCHEME

Administrative Difficulties

336. Mr BROWN to the Minister for Fair Trading:

(1) Have local government authorities reported administrative difficulties dealing with the relatively recently introduced Housing Industry Indemnity Scheme?

(2) What is the nature of the problem reported by local authorities?

(3) Is the Government giving consideration to ways of resolving that problem?

(4) Does the Government intend to introduce legislation to resolve the problem?

(5) If so, when?

Mr SHAVE replied:

(1) The Ministry of Fair Trading and the Builders Registration Board have handled a number of inquiries from Local Government Authorities but there are no reports of significant administrative difficulties.

(2) There have been no problems as such. Most of the inquiries from local authorities relate to whether or not home indemnity insurance is required in specific circumstances, or to the acceptability of various forms of insurance certificate. It would appear that the wide distribution of comprehensive educational brochures prepared by the Ministry of Fair Trading prior to the introduction of compulsory home indemnity insurance has resulted in any administrative difficulties for local authorities being kept to the minimum.

(3) The Ministry of Fair Trading is providing advice in response to all Local Government inquiries. These inquiries appear likely to decrease as local authorities become more familiar with the requirements of the legislation.

(4) No. There is no need for legislation.

(5) It is a requirement of the Home Building Contracts Amendment Act (1996) that the insurance scheme be reviewed in any event as soon as practicable after two years of operation.

HOUSING - LOCAL GOVERNMENT

Housing Industry Indemnity Scheme

337. Mr BROWN to the Minister for Fair Trading:

(1) Have local government authorities reported administrative difficulties dealing with the relatively recently introduced Housing Industry Indemnity Scheme?

(2) What is the nature of the problem reported by local authorities?

(3) Is the Government giving consideration to ways of resolving that problem?

(4) Does the Government intend to introduce legislation to resolve the problem?

(5) If so, when?

Mr SHAVE replied:

Refer to question 336.

HOSPITALS - KING EDWARD MEMORIAL HOSPITAL

Statistics

352. Dr CONSTABLE to the Minister for Health:

In each of the last five years with respect to King Edward Memorial Hospital what -

(a) was the total Federal, State and other funding for the hospital;

(b) were the minimum and maximum number of beds available in each department;

(c) was the total number of medical, administrative and other staff;

(d) was the average length of stay per patient; and

(e) was the average patient to nurse, and patient to doctor ratio?

Mr PRINCE replied:

(a) Government funding for King Edward Memorial Hospital (Federal and State Government).

1991/92	$45,280,200
1992/93	$46,570,000
1993/94	$46,676,600
1994/95	$48,489,000
1995/96	see note below

At the direction of the Minister for Health, King Edward Memorial Hospital commenced a rationalisation of corporate and support services with Princess Margaret Hospital with effect from 1 July 1993. This process culminated in the creation of a single legal entity called King Edward Memorial and Princess Margaret Hospitals on 1 July 1995 in place of the two separate hospitals. Government funding for 1995/96 followed this process and no separate funds were provided for King Edward Memorial Hospital. The combined total budget for the two hospitals was $124,553,900. A separate figure for King Edward Memorial Hospital has therefore been estimated at $52,230,200 based on the 1994/95 ratio of the two hospitals for 1994/95 plus adjustments for capital expenditure in 1995/96.

(b) The average bed occupancy at King Edward Memorial Hospital for the years in question was as follows -

	Obstetrics	Gynaecology	Neonatology	Total
1991/92	94.3	52.7	52.1	198.9
1992/93	92.9	49.0	53.5	195.4
1993/94	94.5	45.2	51.7	191.4
1994/95	91.6	47.0	48.9	187.5
1995/96	91.0	42.3	57.9	191.2

Details relating to the minimum and maximum number of beds available for each Department are not available.

(c) Staffing Numbers (Full-Time Equivalents)

	Medical	Administrative	Other	Total
1991/92	78.01	145.67	781.22	1 004.90
1992/93	75.94	146.55	768.60	991.09
1993/94	75.26	148.38	750.19	973.83
1994/95	80.99	160.81	753.12	994.92
1995/96	78.60	145.64	716.23	940.47

Owing to the rationalisation of corporate and support services between King Edward Memorial and Princess Margaret Hospitals outlined under question (a), a number of departments previously located on two separate sites are now situated at one site only. This is particularly true of several Pathology Departments and some Corporate Services Departments. The figures shown above for 1995/96 reflect staff actually located at King Edward Memorial Hospital rather than staff performing functions for King Edward Memorial Hospital patients. For this reason, they are not directly comparable with the previous years' figures.

It should also be noted that the 1995/96 figures excluded temporary staff appointed for special projects such as major computer system implementations. This was done to ensure better comparability with previous years' figures.

(d) Average length of stay per patient:

1991/92	5.03 days
1992/93	4.91 days
1993/94	4.66 days
1994/95	4.34 days
1995/96	4.75 days

(e) Staff Ratios

The average patient to nursing/medical staff rates is a questionable statistic. It can be calculated in a number of ways and will be impacted by a number of variables, including casemix, acuity variability and the rationalisation process between the two hospitals outlined above. The figures shown below must be viewed, therefore, with extreme caution. For the purposes of this exercise, patient has been deemed to mean "inpatient".

	Medical Ratio Per Patient	Nursing Ratio Per Inpatient
1991/92	148.4	22.8
1992/93	153.0	23.3
1993/94	159.1	25.3
1994/95	157.8	28.0
1995/96	150.4	27.8

The reservations outlined in question (c) above about the staffing numbers for 1995/96 will affect the data tabulated above. The ratios have been calculated on the basis of 80% of staffing numbers being involved in inpatient work. This is an estimate only.

STATE SETTLEMENT PLAN - STRATEGIES

Deputy Premier

374. Ms WARNOCK to the Deputy Premier; Minister for Commerce and Trade; Regional Development; Small Business:

(1) What are the objectives of the Deputy Premier's departments' state settlement plan?

(2) What -

(a) internal; and
(b) external,

access strategies have been developed and implemented?

(3) What -

(a) financial; and
(b) human,

resources have been allocated to implement the state settlement plan?

(4) What consultation process has been undertaken by the Deputy Premier's department?

(5) Who from the -

(a) community;
(b) business sector; and
(c) academic sector,

has been consulted?

Mr COWAN replied:

This question on notice is not relevant to the following agencies within the Deputy Premier's portfolio -

(a) Department of Commerce and Trade;

(b) Small Business Development Corporation;

(c) Centre for Application of Solar Energy;

(d) Technology Industry Advisory Council; and

(e) the nine Regional Development Commissions.

STATE SETTLEMENT PLAN - STRATEGIES

Minister for Family and Children's Services

378. Ms WARNOCK to the Minister for Family and Children's Services; Seniors; Women's Interests:

(1) What are the objectives of the Minister's departments' state settlement plan?

(2) What -

(a) internal; and
(b) external,

access strategies have been developed and implemented?

(3) What -

(a) financial; and
(b) human,

resources have been allocated to implement the state settlement plan?

(4) What consultation process has been undertaken by the Minister's department?

(5) Who from the -

(a) community;
(b) business sector; and
(c) academic sector,

has been consulted?

Mrs PARKER replied:

(1) No state settlement plans exist in the Department of Family and Children's Services, the Office of Seniors Interests, or the Women's Policy Development Office.

(2)-(5) Not applicable.

COMMITTEES AND BOARDS - MINISTER FOR LABOUR RELATIONS

Membership

449. Dr CONSTABLE to the Minister for Labour Relations:

(1) Who are the current chairmen and members of the following -

(a) Railway Classification Board;
(b) Construction Industry Long Service Leave Board;
(c) Western Australian Labour Relations Advisory Board;
(d) Western Australian Industrial Relations Commission;
(e) Public Service Arbitration and Appeal Board;
(f) WorkSafe Western Australia Commission;
(g) Workers' Compensation & Rehabilitation Commission;
(h) Insurers' Advisory Committee; and
(i) Research Grants Advisory Committee?

(2) When was each member appointed and for what period of time?

(3) How much remuneration is each member paid?

Mr KIERATH replied:

(a) Railway Classification Board:

Members	Appointed	Term	Remuneration
PE Scott (Chair)	09/02/96	1 year	Nil
SA Crawley	29/05/96	1 year	Nil
FD Munyard	13/08/96	2 years	Nil
D Kemp	13/08/96	2 years	Nil
P Bothwell	05/12/95	2 years	Nil
J Wake	05/12/95	2 years	Nil

(b) Construction Industry Long Service Leave Board:

Members	Appointed	Term	Remuneration
Tom Lang (Chair)	18/09/95	2 years	$7,000/annum plus $600 office allowance
Joe Gallagher	18/09/95	2 years	$3,700/annum
Lyn Girdlestone	18/09/95	2 years	$3,700/annum
Les McLaughlan	18/09/95	2 years	$3,700/annum
Michael McLean	18/09/95	2 years	$3,700/annum
Kevin Reynolds	18/09/95	2 years	$3,700/annum
Gordon Thomson	18/09/95	2 years	$3,700/annum

(c) Western Australian Labour Relations Advisory Council:
Members
Hon Graham Kierath (Chair)

4 representatives from Trades and Labor Council, currently being - Tony Cooke, Sharryn Jackson, John Sharp-Collett, Joe Bullock.
3 representatives from Chamber of Commerce and Industry, currently being - Geoff Bull, Bruce Williams, John Dastlik
1 representative from Australian Mines and Metals Association, currently being - Steve Knott

Appointed/Term: This Council is solely an advisory body which exists at the discretion of the Minister for Labour Relations. Representation is from the peak industry parties. Its members are not statutorily appointed and the persons and period of appointment are determined by the peak organisations.

Remuneration: There is no remuneration.

(d) Western Australian Industrial Relations Commission:

Members	Appointed	Term	Remuneration
PJ Sharkey (Hon President)	01/11/88	*	$175,480 + prestige vehicle + other arrangements as per Judges Act
WS Coleman (Chief Commissioner)	03/02/86	*	$157,930 + prestige vehicle + superannuation as per Sec 20(8)(a) of the IR Act
GL Fielding (Senior Commissioner)	18/03/81	*	$150,034 + prestige vehicle + superannuation as per Sec 20(8)(a) of the IR Act
JF Gregor (Commissioner)	14/03/85	*	$142,137 + superannuation as per Sec 20(8)(a) of IR Act
SA Cawley (Commissioner)	03/06/86	*	$142,137 + superannuation as per Sec 20(8)(a) of IR Act
RN George (Commissioner)	01/12/87	*	$142,137 + superannuation as per Sec 20(8)(a) of IR Act
AR Beech (Commissioner)	12/09/88	*	$142,137 + superannuation as per Sec 20(8)(a) of IR Act
CB Parks (Commissioner)	03/10/88	*	$142,137 + superannuation as per Sec 20(8)(a) of IR Act
P Scott (Commissioner)	14/12/94	*	$142,137 + superannuation as per Sec 20(8)(a) of IR Act

* Appointed to position until aged 65, in accordance with Section 10 of the IR Act

(e) Public Service Arbitration and Appeal Board*:

Members (Public Service Arbitrators)	Appointed	Term	Remuneration
Commissioner JF Gregor	13/01/97	2 years	Nil
Commissioner P Scott	31/01/97	1 year	Nil
Commissioner AR Beech	25/03/97	1 year	Nil
Commissioner CB Parks	25/03/97	1 year	Nil

* The Appeal Board is formed when required

(f) WorkSafe Western Australia Commission:

Members	Appointed	Term	Remuneration
David Palandri (Chair)	30/01/96	3 years	$7,000/annum
Neil Bartholomaeus	21/06/94	3 years	Nil
Peter Shaw	21/06/94	3 years	Nil
Simon Billing	21/06/94	3 years	Nil
Anne Bellamy	21/06/94	3 years	*
Geoffrey Bevan	21/06/94	3 years	*

Patrick Gilroy	21/06/94	3 years	*
Robert Bryant	21/06/94	3 years	*
Anthony Cooke	21/06/94	3 years	*
Barry Chesson	21/06/94	3 years	*
Brian Dare	21/06/94	3 years	*
David Watkins	21/06/94	3 years	*
Amada Wright	21/06/94	3 years	*

* Members are eligible for sitting fees as determined by the Salaries and Allowances Tribunal. No sitting fees have been claimed by or paid to current members.

(g) Workers' Compensation and Rehabilitation Commission:

Members	Appointed	Term	Remuneration
Neil Bartholomaeus (Chair)	May 1994	3 years	Nil
Harry Neesham	May 1994	3 years	Nil
Vic Evans	May 1994	3 years	Nil
Tom Matyear	May 1994	3 years	*
Daryl Cameron	May 1996	1 year	*
Rob Gillett	May 1994	3 years	*
Kathy Digwood	Aug 1996	9 months	**

Members of the Workers' Compensation and Rehabilitation Commission who are non-public servants are paid $73 per half day in accordance with section 99(2) of the Workers' Compensation and Rehabilitation Act 1981 as follows:

* Paid sitting fees
** The sitting fees are forwarded to the Miscellaneous Workers Union at the request of the member

(h) Insurers' Advisory Committee:

Members	Appointed	Term	Remuneration
Harry Neesham (Chair)	Oct 1996	7 months	Nil
Brendan McCarthy	Oct 1996	7 months	***
Vic Evans	Oct 1996	7 months	*
Daryl Cameron	Oct 1996	7 months	*
Kathy Digwood	Oct 1996	7 months	*
Kim Mettam	Oct 1996	7 months	*

(i) Research Grants Advisory Committee:

Members	Appointed	Term	Remuneration
Harry Neesham (Chair)	Aug 1996	9 months	Nil
Diane Munrowd	Aug 1996	9 months	Nil
Kathy Digwood	Aug 1996	9 months	**
Rob Gillett	Aug 1996	9 months	*
Richard Green	Aug 1996	9 months	***

The two advisory committees listed above, that is, the Insurers' Advisory Committee and the Research Grants Advisory Committee, are newly created committees and although members are entitled to be paid fees and allowances in accordance with section 100A(4) of the Workers' Compensation and Rehabilitation Act 1981, sitting fees have not yet been paid. The current fee is $73 per half day for non-public servants on these subcommittees and will be allocated as follows:

* Entitled to be paid sitting fees.
** Entitled to be paid sitting fees, however the fees would be forwarded to the Miscellaneous Workers Union at the request of the Member.
*** As these members are employees of the CCIWA, they have declined the receipt of sitting fees.

COMMITTEES AND BOARDS - MINISTER FOR PLANNING

Membership

450. Dr CONSTABLE to the Minister for Planning:

(1) Who are the current chairmen and members of the following -

(a) Board of the Subiaco Redevelopment Authority;
(b) Board of the East Perth Redevelopment Authority;

(c) Town Planning Appeal Committee;
(d) Town Planning Appeal Tribunal;
(e) Northbridge Urban Renewal Committee;
(f) Parliament House Precinct Committee;
(g) Whiteman Park Board of Management;
(h) Swan Valley Planning Committee;
(i) Port Kennedy Management Board; and
(j) Western Australian Planning Commission?

(2) When was each member appointed and for what period of time?

(3) How much remuneration is each member paid?

Mr KIERATH replied:

Subiaco Redevelopment Authority:

Members	Appointed	Term	Remuneration
Ron Doubikin (Chair)	01/07/96	2 years	$18,000/annum
Bill Griffiths	17/06/96	1 year	$ 4,800/annum
Chris Whitaker	01/07/96	1 year	Nil
Stephen Potter	01/07/96	1 year	Nil
Loren White	01/07/96	1 year	Nil

East Perth Redevelopment Authority:

Members	Appointed	Term	Remuneration
Hon Richard Lewis (Chair)	26/03/97	9 months	$24,000/annum
Ken Michael	01/01/96	2 years	Nil
Steven Yovich	01/01/96	2 years	$4,800/annum
Maureen McSweeney	01/07/95	1 year	$4,800/annum
Peter Nattrass	19/06/95	2 years	$4,800/annum
Harry Morgan	19/06/95	2 years	$4,800/annum
Allan Skinner	01/01/96	2 years	Nil

Town Planning Appeal Committee:

Members	Appointed	Term	Remuneration
Gordon G Smith (Chair)	10/10/95	5 years	Nil
Willam Bateman DFC	30/01/96	4 years	*
Anthony Brand AM	30/01/96	4 years	*
John (Hans) Bollig	30/01/96	4 years	*
Ashley Castledine	30/01/96	4 years	*
Douglas Collins	30/01/96	4 years	*
Ross Easton	30/01/96	4 years	*
Antony Ednie-Brown	05/11/96	4 years	*
Michael Grimshaw	30/01/96	4 years	Nil
Vernon Haley	30/01/96	2 years	*
Roger Hope-Johnstone	25/02/97	1 year	Nil
James Jordan	30/01/97	1 year	Nil
Richard Leggo OAM	25/02/97	1 year	*
Francis McGrath	25/02/97	1 year	*
Eric Sabin	30/01/96	2 years	*
John Treloar	30/01/96	2 years	*
Raymond Upston	30/01/96	2 years	*
Alan Wilson	30/01/96	2 years	*
Peter Woodward	30/01/96	2 years	*

* Members part-time remunerated at the rate of $280 per day or $140 each half day.

Town Planning Appeal Tribunal:

Members	Appointed	Term	Remuneration
J I Bishop (Chair)	11/02/97	4 months	$150/hour
L Stein	10/10/95	2 years	$150/hour
D Drake	10/10/95	2 years	$50/hour
C Porter	13/08/96	2 years	$50/hour
E A McKinnon	10/10/95	2 years	$50/hour
one vacant position			

Northbridge Urban Renewal Committee:

Members	Appointed	Term	Remuneration
S Holthouse (Chair)	23/01/96		Nil
P Frewer	23/01/96		Nil
K Michael	23/01/96		Nil
W Cox	23/01/96		Nil
P Nattrass	23/01/96		Nil
J Marks	23/01/96		Nil
S Rogers	23/01/96		Nil

The Committee is established by resolution of the Western Australian Planning Commission (23.1.1996), pursuant to section 19(1) of the Western Australian Planning Commission Act, where the Commission may create and set the constitution and membership of committees.

Parliament House Precinct Committee:

Members	Appointed	Term	Remuneration
S Holthouse (Chair)	25/07/95		Nil
P Nattrass	25/07/95		Nil
D Silver	25/07/95		$73/meeting
Hon C Griffiths	25/07/95		Nil

The Committee is established by resolution of the Western Australian Planning Commission, pursuant to section 19(1) of the Western Australian Planning Commission Act, where the Commission may create and set the constitution and membership of committees.

Whiteman Park Board of Management:

Members	Appointed	Term	Remuneration
A O'Brien (Chair)	28/04/95	3 years	$97/meeting
S Davies	28/04/95	2 years	$73/meeting
L Richardson	28/04/95	2 years	$73/meeting
C Gregorini	28/04/95	2 years	$73/meeting
M Brockwell	28/04/95	2 years	$73/meeting
E Brice	28/04/95	2 years	$73/meeting
K Taylor	28/04/95	2 years	Nil
P Melbin	28/04/95	3 years	Nil

Swan Valley Planning Committee:

Members	Appointed	Term	Remuneration
K Lamont (Chair)	19/11/95	3 years	$97/meeting
P Cook	10/03/97	1.9 years	$73/meeting
S Metcalf	17/07/96	2.4 years	$73/meeting
R Henderson	02/11/95	3 years	$73/meeting
B Hunt	19/11/95	3 years	$73/meeting
J Rakich	19/11/95	3 years	$73/meeting
R Page	19/11/95	3 years	$73/meeting
C Zannino	19/11/95	3 years	$73/meeting
J Rex	19/11/95	3 years	$73/meeting
K Colbung	19/11/95	3 years	$73/meeting

Port Kennedy Management Board:

Members	Appointed	Term	Remuneration
R Fardon (Chair)	08/07/96	2 years	$7,000/annum
F Gairdner	08/07/96	1 year	$73/meeting
H Farrar	07/07/96	3 years	Nil
L Caport	07/07/96	2 years	Nil
A Briggs	07/07/96	2 years	Nil
R Palmer	04/08/96	1 year	$73/meeting
P Jennings	07/07/96	1 year	$73/meeting
R Lukin	08/07/96	3 years	$73/meeting
G Sheehan	08/07/96	3 years	$73/meeting

Western Australian Planning Commission:

Members	Appointed	Term	Remuneration
S Holthouse (Chair)	01/03/95	2 years	$78,000/annum
T Tyzack	18/06/96	1 year	$3,750/annum
S Metcalf	18/06/96	1 year	$3,750/annum
P Nattrass	07/06/95	1 year	$3,750/annum
A O'Brien	01/03/95	2 years	$3,750/annum
A Arnold	01/03/95	2 years	$3,750/annum
P Frewer	01/01/97	ongoing	Nil
R Payne	01/01/96	ongoing	Nil
K Michael	01/03/95	ongoing	Nil
C Whitaker	01/07/96	ongoing	Nil
B Jenkins	01/03/95	ongoing	Nil
one vacant position			

COMMITTEES AND BOARDS - HERITAGE COUNCIL OF WA

Membership

451. Dr CONSTABLE to the Minister for Heritage:

(1) Who are the current members of the Heritage Council of Western Australia?

(2) When was each member appointed and for what period of time?

(3) How much remuneration is each member paid?

Mr KIERATH replied:

(1)-(2)

Member	Appointed	Term
Maurice Owen (Chair)	27/02/96	2 years
Ainslie Evans	18/06/96	2 years
Michal Lewi	04/03/97	2 years
Bruce James	18/06/96	2 years
Philip Griffiths	18/06/96	2 years
Gerald Gauntlett	18/06/96	2 years
Janine Marsh	04/07/95	2 years
Antony Ednie-Brown	04/07/96	2 years
Michal Bosworth	18/06/96	18 months

plus one co-opted member

Professor David Dolan	01/07/96	2 years

(3) Each member receives $312.50 per month as a sitting fee, apart from the Chairman who receives an annual stipend of $16 000. Each member receives an additional $73 per half day or $108 per full day for any committee meetings they attend additional to the monthly Heritage Council meetings. If a member is the chair of one of these committee meetings, he/she receives $97 per half day or $145 per full day for chairing the meeting. However, the Chairman of the Heritage Council does not receive any fees additional to his annual stipend of $16 000.

PAINTERS REGISTRATION ACT - REVIEW

475. Dr EDWARDS to the Minister for Fair Trading:

(1) Has the Minister initiated a review of the Painters Registration Act 1961?

(2) If not, does the Minister intend to and when?

(3) If yes -

(a) who will conduct the review;

(b) what are the terms of reference;

(c) when will it be completed; and

(d) will it take submissions from the public?

Mr SHAVE replied:

(1) Yes.

(2) Not applicable.

(3) (a) The Acting Director Legal and Competition Policy, Ministry of Fair Trading will be conducting the review. He has no involvement with operational matters relating to the Painters Registration Act.
(b) The terms of reference are currently being finalised and will be discussed with major stakeholders prior to being published in a call for public submissions.
(c) It is expected that the review will be completed prior to the end of this calendar year.
(d) Yes - see response to (b) above.

EAST PERTH REDEVELOPMENT AUTHORITY - CHAIRMAN

Appointment of Mr R. Lewis

523. Dr EDWARDS to the Minister for Planning:

(1) What process led to the Minister's recommendation that Richard Lewis be appointed Chairman of the East Perth Redevelopment Authority?

(2) Did the Board of the EPRA comment on -

(a) the timing of appointing a new Chairman;
(b) suitable persons?

(3) If so, what was the advice?

(4) Who nominated Mr Lewis?

(5) What remuneration will Mr Lewis receive?

(6) Will the position of Chairman of the EPRA (after 31 December 1997) be advertised?

Mr KIERATH replied:

(1) The previous Chairman of the East Perth Redevelopment Authority resigned his position last year, and the Deputy Chairman has acted in the capacity as Chairman since that time. The Deputy Chairman, Mr Alan Skinner, indicated to me, soon after my appointment as Minister for Planning, that due to his own heavy workload he would prefer that a new Chairman be appointed as soon as possible. After considering a number of suggestions I considered the qualifications of Mr Lewis to be ideally suited to the position and hence my recommendation.

(2) (a) See (1) above.

(b) No.

(3) See (1) above.

(4) I did.

(5) $24 000 per annum consisting of $12 000 per annum standard rate plus $12 000 per annum based on an expectation that the position will require an average of two days per week of his time over the term of his appointment.

(6) There is no need to advertise this position. If, however, I am unable to identify a suitably qualified person I may advertise or seek expressions of interest at the time.

HEALTH - MENTAL

Ethnic Patients - Specialist Staff

530. Ms WARNOCK to the Minister for Health:

Which hospitals or centres of service, within the mental health services, provide specialised staff with appropriate cross-cultural training and skills for mental health patients of culturally and linguistically diverse backgrounds?

Mr PRINCE replied:

(1) Mirrabooka Mental Health Service

(2) Royal Perth Hospital
Inner City Mental Health Service

(3) Alma Street Centre, Fremantle Hospital

(4) AVRO Clinic

(5) Graylands Hospital
Selby/Lemnos Hospital

(6) Alma Street Clinic, Fremantle Hospital

(7) Royal Perth Hospital
Inner City Mental Health Service
Transcultural Psychiatry Unit

HERITAGE - REGISTER

Recommendations

537. Ms McHALE to the Minister for Heritage:

Can the Minister advise for the years 1993, 1994, 1995 and 1996 -

(a) how many properties have been recommended by the Heritage Council for listing on the heritage register during each of the above years; and

(b) how many -

(i) were accepted by the Minister for Heritage;
(ii) were rejected by the Minister for Heritage; and
(iii) are still pending?

Mr KIERATH replied:

(a) In the period to which the member refers, the Heritage Council recommended the registration of 223 places, spread across each year as follows -

1993 - 28
1994 - 62
1995 - 41
1996 - 92

(b) In that period, 212 of the recommendations were accepted, leading to subsequent registration. This leaves only 11 places recommended by the Council which have yet to be registered, over half of which date from late 1996 and are still under active consideration. Specifically, recommendations still pending as at 1 April 1997 are as follows -

1993 - 1
1994 - 3
1995 - Nil
1996 - 7

FAMILY AND CHILDREN'S SERVICES - DEPARTMENT

Employees - Child Abuse

548. Dr CONSTABLE to the Minister for Family and Children's Services:

(1) Have any employees of the Department of Family and Children's Services been -

(a) charged; and
(b) convicted,

of crimes of child abuse in the past 10 years?

(2) If yes, how many?

(3) Have any employees of the Department of Family and Children's Services been -

(a) charged; and
(b) convicted,

of crimes of child abuse committed in the workplace in the past 10 years?

(4) If yes to (3) above, how many?

Mrs PARKER replied:

(1) (a)-(b) Yes.

(2) Six charged.
Four convicted.

(3) (a)-(b) Yes.

(4) Two charged.
One convicted.

HOSPITALS - KALGOORLIE REGIONAL

Laundry, Catering and Cleaning Sections

572. Ms ANWYL to the Minister for Health:

(1) When will a decision be made about contracting out at Kalgoorlie Regional Hospital?

(2) Are bench marking data now available for the laundry, catering and cleaning sections of the Kalgoorlie Regional Hospital?

(3) If yes to (2) above, when were they made available to the Kalgoorlie Regional Hospital Board?

(4) If no to (2) above, why not?

(5) Is the Minister aware of whether the federal Minister for Health has a policy with respect to contracting out in hospitals and, if so, what is it?

Mr PRINCE replied:

(1) Requests for Tenders are currently being prepared for the Laundry and Catering Services. The preparation of these tenders is being delayed due to some outstanding legal issues that are yet to be resolved.

(2) The bench marking report is now being finalised.

(3) When the report is completed it will be provided to the board.

(4) Not applicable.

(5) I am not aware of any federal policy on contracting out in hospitals.

HEALTH - COLUMBIA HCA

Representations

577. Mr McGINTY to the Minister for Health:

(1) Has the Minister or the Health Department had representations from the United States based health care corporation, Columbia HCA?

(2) If yes, did those approaches involve the issue of Columbia HCA being involved in providing or managing any health services in Western Australia?

(3) If yes, what were the nature of the discussions?

Mr PRINCE replied:

(1) No.

(2)-(3) Not applicable.

EAST PERTH DEVELOPMENT AUTHORITY - CHAIRMAN

Hon Richard Lewis - Selection Criteria

582. Mr CARPENTER to the Minister for Planning:

(1) What criteria were used in the selection of Hon Richard Lewis as the Chair of the East Perth Redevelopment Authority?

(2) What was the selection process used in the appointment?

(3) Who else was considered for the position?

(4) Why were other candidates considered inferior to Hon Richard Lewis?

(5) What is the duration of the appointment of Hon Richard Lewis?

(6) What are the total and complete benefits and entitlements that append to the position that Hon Richard Lewis has been given?

Mr KIERATH replied:

(1) As per clause 7(2) of the East Perth Redevelopment Act.

(2)-(4) Hon Richard Lewis has extensive planning experience through involvement in Local Government, the Metropolitan Region Planning Authority, and as Minister for Planning for four years, and as such was the most appropriate candidate.

(5) Up to 31 December 1997.

(6) Remuneration is $24 000 per annum.

EMPLOYMENT - PRODUCTIVITY INCREASES

Data

607. Mr BROWN to the Minister for Labour Relations:

(1) Further to question on notice 247 of 1997, does the Minister know what data will be used to measure increases in productivity?

(2) If so, what data will be used?

Mr KIERATH replied:

(1) Yes.

(2) Data relating to -

(a) Gross State Product;
(b) Total hours worked by employees; and
(c) The labour force.

Government will also be keeping abreast of any new or additional methods and/or data from reputable sources to assist in future productivity calculations.

FAMILY AND CHILDREN'S SERVICES - CENTRES

Family, Community or Neighbourhood

608. Mr BROWN to the Minister for Family and Children's Services:

(1) How much did the State Government allocate in the -

(a) 1995-96 budget;
(b) 1996-97 budget,

for the construction of family, community or neighbourhood centres?

(2) How much has been spent on the construction of such centres in the last two financial years?

(3) Since 1 July 1995, what new government funded or part funded family, community or neighbourhood centres have been opened?

(4) In what suburbs have such centres been constructed?

(5) What amount of state government funds were allocated to the construction of each centre?

(6) When was each centre opened?

(7) In which financial year was the allocation made to each centre?

(8) What Government funded or part funded family, community or neighbourhood centres -

(a) are under construction;
(b) have funds been allocated to, but construction has yet to commence?

(9) How much has been allocated to each centre?

(10) In what suburbs are or will each centre be located?

Mrs PARKER replied:

(1) (a) $4,805,000
(b) $916,000.

(2)

1995/96	$212,823
1996/97	$1,391,000 (to March 97).

(3) Canning Vale Community Centre
Jenolan Way Community Centre.

(4) Canning Vale
Merriwa.

(5)

Canning Vale Community Centre	$280,000
Jenolan Way Community Centre	$425,000.

(6)

Canning Vale Community Centre	July 1995
Jenolan Way Community Centre	July 1995.

(7)

Canning Vale Community Centre	1994/95
Jenolan Way Community Centre	1994/95.

(8) (a) Wungong Community Centre
Atwell Community Centre
Riverlinks Community Centre
Woodlake Village Community Centre
South Ballajura Community Centre
Secret Harbour Community Centre

(b) Manjimup Community Centre
Albany Community House
Geraldton Community House.

(9)

Wungong Community Centre	$420,000
Atwell Community Centre	$425,000
Riverlinks Community Centre	$425,000
Woodlake Village Community Centre	$400,000
South Ballajura Community Centre	$500,000
Secret Harbour Community Centre	$200,000
Manjimup Community Centre	$400,000
Albany Community House	$400,000
Geraldton Community House	$247,000.

(10)

Wungong Community Centre	Wungong
Atwell Community Centre	Atwell
Riverlinks Community Centre	Australind
Woodlake Village Community Centre	Ellenbrook
South Ballajura Community Centre	South Ballajura
Secret Harbour Community Centre	Secret Harbour
Manjimup Community Centre	Manjimup
Albany Community House	Centennial Park - Albany
Geraldton Community House	Rangeway - Geraldton.

QUESTIONS WITHOUT NOTICE

LABOUR RELATIONS LEGISLATION AMENDMENT BILL

Lack of Consultation with Unions

171. Dr GALLOP to the Minister for Resources Development:

Is the Minister the senior Liberal Party Minister referred to on ABC radio news this morning as expressing concern about the handling of the Labour Relations Legislation Amendment Bill, particularly about the lack of consultation with unions?

The SPEAKER: Order! I have a problem with the question as it is outside the Minster's responsibilities, but I will give the Minister an opportunity to respond.

Mr BARNETT replied:

I am not sure whether I am or not - I really do not know. I suggest that the Leader of the Opposition ask the reporter involved.

Several members interjected.

Mr BARNETT: I will say that I have a concern about the progress of this legislation. I have a concern and a responsibility as a Minister about the delivery of services to the community of Western Australia, particularly power supply and to keep our schools operational. I am concerned about a rising sentiment in the community which gives all indications that it will lead to severe industrial problems in this State. I would hate to see that happen, and I will do everything within my powers to make sure the lights stay on and the schools remain open. That is my concern and sworn responsibility as a Minister, and that is what I will continue to do.

HEALTH - ABORIGINES

Australian Bureau of Statistics Report

172. Mr MARSHALL to the Minister for Health:

Can the Minister make any comments about the Australian Bureau of Statistics report on Aboriginal health that was the subject of comment by the Governor General in recent days?

Mr PRINCE replied:

I thank the member for his question, and a little forewarning of it.

Mr Graham: You wrote it.

Mr PRINCE: I did not. The Governor General made a number of comments late last week in respect of a report released by the Australian Bureau of Statistics concerning various statistics relating to Aboriginal health. Unfortunately, the news in that report is not new.

In 1994, this State led the way in this regard by commissioning the ABS and other bodies to produce a document then released as the "WA Regional Planning Profiles" which contained a great deal of data in a more detailed sense by region than the latest ABS report. It dealt with Aboriginal people as a group, and also considered males and females and the degree of morbidity and mortality applying to Aboriginal people in different parts of the State. That planning document was extremely well received, and it has been used since then - as it should have been - by government and non-government organisations to assist in planning for the delivery of appropriate programs It has led in part to a group of Aboriginal men - I wanted to highlight this - taking some control of their own lives. There is no doubt that Aboriginal men, and particularly men of the Noongar group, have the lowest life expectancy of any people in this State and probably in Australia. Aboriginal Noongar men die approximately 20 years earlier than the average for the rest of the population; Aboriginal Noongar women live somewhat longer.

For the first time since 1942, the men met in Wandering in April last year. It was an incredibly important meeting. They followed that up with a subsequent meeting at Mogumber in October. Out of those two conferences came a series of recommendations that were presented to me on 14 March. I have a copy of them here if members are interested. More importantly, the men cooperated and got some sponsorship from Healthway and other parts of the health industry for the production of a manual called "Noongar Men's Health Manual". As far as I am aware, it is the first of its kind ever produced in Australia. It details the resources available to men, particularly to Noongar men, to try to take control of their own health. It is the first time that a group of men has recognised that the answer lies with them with assistance available to them. It is an extremely interesting manual. I urge members to read it. With

the Speaker's permission I will place it on the table. It includes a number of photographs of prominent Aboriginal footballers including Nicky Winmar and Chris Lewis. It is written in a question and answer format. It is a very well resourced book and is something that will assist to make the statistics for Aboriginal health a much better read at some time in the future, because the men are taking control of their own lives.

The SPEAKER: Order! I will consider the manual to be laid on the Table for the balance of today's sitting.

STATE FINANCE - FORWARD ESTIMATES

Increased Taxes and Charges

173. Dr GALLOP to the Premier:

I remind the Premier of his claim when releasing the revised forward estimates last November - namely, that a 1 per cent saving on administration costs across government would pay for his election promises. In that context, I refer him to the daily newspaper at that time which carried the headline "Public Service pays for pledges". I also remind the Premier of his continuing claims this year that revenue forecasts have not been substantially altered. When will the Premier stop blaming the Federal Government for his budget turnaround and admit that he did not tell the truth during the election campaign about his real intentions to increase taxes and charges?

Mr COURT replied:

The Leader of the Opposition will find this afternoon that election promises will be implemented and funded with those productivity improvements. Additional moneys will be used for additional programs. He will support the initiatives we will introduce.

POLICE

Wearing of Firearms

174. Mrs van de KLASHORST to the Minister for Police:

A Bullsbrook constituent is concerned that he saw on television Bunbury police wearing their pistols when they attended a peaceful demonstration staged mainly by women and children at the site of the proposed Vodafone tower. Why were police wearing pistols?

Mr DAY replied:

I thank the member for some notice of this question. The Commissioner of Police has advised me that two operational tasking patrol officers visited a public meeting at the Vodafone tower site on the day in question and that that meeting was attended by predominantly male and female adults. No other officers were available at the time due to District Court commitments. Operational tasking patrol officers are specifically assigned for operational responses including to major or serious crimes and as such are required to wear firearms. There was no particular expectation that they would be needed at this incident.

INDUSTRIAL RELATIONS - UNFAIR DISMISSAL LAW CHANGES

Effect on Young People

175. Ms ANWYL to the Minister for Youth:

I refer to comments made by the Minister about the concerns young people have about employment security and ask -

(1) Is the Minister aware of the negative way young people will be affected by the proposed changes to the unfair dismissal laws and annual leave provisions in the Labour Relations Legislation Amendment Bill now before the House?

(2) Is it true that young people, already one of the most vulnerable groups in the work force, will be particularly disadvantaged by these changes?

Mr BOARD replied:

I thank the member for some notice of this question.

(1)-(2) This very day, senior officers from around Australia are meeting in the Office of Youth to discuss issues relating to young people and, in particular, the image of youth and employment. I addressed that meeting this morning and challenged those present to look at the rate of youth unemployment, not only in Western Australia but also in Australia. While we enjoy a much lower rate of youth unemployment in Western Australia, the level is nonetheless unacceptable. I have attended a number of forums over the past couple

of weeks where young people have indicated that, other than the image of youth, employment is the most important issue facing them.

As a result of submissions I have made to the Cabinet and through the budget process, we are constructing a number of programs that I believe will address employment related issues. Over the next 12 months, this Government will tackle the problem of job creation. There is nothing in the labour relations Bill that will adversely affect youth employment. In fact, I believe that workplace agreements will create more opportunities for young people.

YOUTH - FORUM

Effectiveness

176. Mr SULLIVAN to the Minister for Youth:

Some notice of this question has been given. The Minister participated in a youth forum in Bunbury last week - the first of its kind to be held in the south west.

(1) Has the Minister assessed the effectiveness of this forum as a means of involving and communicating with young people?

(2) If so, does he propose to participate in similar initiatives in the future?

Mr BOARD replied:

I thank the member for some notice of this question. I also thank the members for Vasse and Bunbury, who played a great part in that forum.

(1)-(2) We have some exceptionally good news, not only in relation to the forum at Bunbury but also at Point Walter, where 170 young Aboriginal people attended a forum yesterday. Throughout Western Australia young people are starting to get together. They now have direct access to the Minister for Youth and Cabinet to discuss what is happening in relation to youth - where they want policies and programs to go and so on. Hopefully, if this area attracts more resources from the budget, they will participate in discussions about where those resources will be spent.

I particularly thank the member for Mitchell for his contribution to this forum; it was exceptionally good. Young people came from not only the Bunbury region but also the surrounding areas. They addressed a number of significant issues that they relayed to me, and they challenged me to come back to them with some resolution. The forum held in Bunbury and the Aboriginal forum both singled out the image of youth as the greatest concern. They asked me to come to this Parliament and tell members that they are sick and tired of the negative images of young people that are projected. They want me to spread the good news about what young people are doing. They also asked the media to get behind the programs and what young people are doing and talk about the good news.

GLOBAL DANCE FOUNDATION - FUNDING

Cabinet Decision

177. Mr BROWN to the Premier:

I refer to the Premier's answer yesterday in relation to the Global Dance fiasco, in which he informed the House that the decision to fund Mr Reynolds' proposal to the tune of $430 000 was not a cabinet decision.

(1) Why was the Tourism Commission contacted on the Premier's instructions and asked to prepare two cabinet minutes?

(2) Does the Treasurer always approve supplementary funding without its going to Cabinet?

(3) If no, what made these circumstances special?

(4) Did the entire $430 000 for Global Dance come from supplementary funding?

(5) Did the Premier and the Premier alone make the decision to fund Global Dance?

(6) Separately, did the decision to fund Elle Racing go to Cabinet for a Cabinet decision?

The SPEAKER: Before I give the call to the Premier, that question has a large number of parts. The member might consider in future putting separate questions.

Mr COURT replied:

(1)-(6) As regards Elle Racing, I cannot tell the member whether that happened but I am quite willing to find out.

Mr Kobelke: You don't know whether it went to Cabinet, and you are the Treasurer!

Mr COURT: I was asked six questions. I will find out the answer for the member. As to whether I made the decision, the member has all the information which I gave in an answer yesterday, when I explained that none of those decisions was made or approved until we had Crown Solicitor's and Treasury advice on the matters.

Mr Brown: Did you get them in your -

Mr COURT: Does the member want me to answer the question? I am answering the questions in reverse. I have said to the member that none of the decisions was made without getting the proper advice. The member knows that they recommended that it be approved. As I said yesterday, those parties were involved. As I have said on many occasions, at the end of the day, regardless of the advice coming through, the Minister accepts responsibility for the decisions.

Mr Brown: Will you answer the question?

Mr COURT: Let me keep going. Very little supplementary funding goes to Cabinet. A lot of supplementary funding takes place on almost a daily basis, which is normal in the running of a $7b Budget. As to the two Cabinet minutes, did the member ask whether I asked to have them prepared? I will have to seek advice on that.

Mr Brown: That is what it says in the memorandum because it refers to Mr Doug - whatever his name is - from your office.

Mr COURT: If the member wants that detail, I will find it for him.

DRINK DRIVING

Increased Penalties

178. Mr BAKER to the Minister representing the Minister for Transport

(1) Does the State Government propose to increase the fines and periods of disqualification in respect of first, second and subsequent drink driving or dangerous driving offences so as to enhance the deterrent effect when sentencing drivers convicted of those offences?

(2) If so, what are the new proposed fines and periods of disqualification that will apply and from when?

Mr OMODEI replied:

I thank the member for some notice of this question.

(1) Yes, there will be an increase in the fines and periods of disqualification. All aspects of road safety are currently under review in Western Australia. The review will specifically consider penalties in relation to crash risk, penalties in other jurisdictions and the national push for standardisation of penalties.

(2) This will be effected from 1 July 1997.

ALINTAGAS - KINGSTREAM PROJECT

Epic Energy - Preferred Status Bidder

179. Mr THOMAS to the Minister for Energy:

Under clause 20 of the Iron and Steel (Mid West) Agreement, AlintaGas is given a preferred status in negotiating gas delivery and every endeavour is to be made to enable AlintaGas to do so.

(1) In view of the relationship of AlintaGas and Epic Energy, is AlintaGas still a bidder for gas transmission to Mid West Iron and Steel?

(2) Is the benefit of preferred status extended to Epic because of its relationship with AlintaGas?

(3) If yes, does Epic have access to the information. including details of bids by other parties, provided to AlintaGas under the preferred status provision?

Mr BARNETT replied:

(1)-(3) The arrangements and the bidding process are extremely complex. I will explain how clause 20 works under the Kingstream Resources NL iron and steel project. Anyone wanting gas, particularly large quantities, is obliged to go to the existing gas transporter, that is AlintaGas, as owner and operator of the Dampier-Bunbury natural gas pipeline. Clause 20 requires Kingstream Resources NL, like other companies, to do the same thing.

AlintaGas, as the utility, has a preferred bidder status. In other words, it puts in a bid. Kingstream must negotiate with Alinta. It may reach an agreement, and off it goes. If it does not reach agreement, Kingstream has the right to come back to the Government and say, "We have not reached agreement with the existing gas utility and pipeline operator; therefore, we will seek a licence for an independent pipeline."

That is the process. Under that process, Alinta has made a bid - there are all sorts of different bids in different degrees of sophistication; some are letters, others are very detailed - to provide gas at a certain price. That is the preferred bidder status. Epic, formerly Tenneco Energy Ltd, has made a bid to provide gas. That is a separate bid at a different price. The Epic bid is backed up by the fact that if Epic succeeds, it will deliver gas by funding an enhancement of the Alinta pipeline. There is no preferred bidder status on the Epic bid. Indeed, the relationship is between Epic and Kingstream. There is no involvement with Alinta in that bid, other than the fact that Alinta stands behind it in the sense that it agrees to an enhancement of the pipeline.

The preferred bidder status is held exclusively by Alinta. It does not apply in any way to the Epic-Alinta bid, or to Epic. Epic has no privileges or rights above any other bidder in the bidding process. For that reason, Epic does not have access to any information or details, and neither will it.

ALINTAGAS - KINGSTREAM PROJECT

Involvement in other Bids

180. Mr THOMAS to the Minister for Resources Development:

I ask the Minister a supplementary question, and I would like the Minister to be careful with his answer.

Mr Barnett: I always am.

The SPEAKER: Order! Just ask the question.

Mr THOMAS: I ask -

(1) Is AlintaGas a party to any other bids for the Kingstream contract, either as a direct supplier of gas or as the provider of transmission capacity to a third party; if so, how many bids?

(2) Has AlintaGas passed on information that it has received from the proponents that might not be generally available to Epic or any other contender for the Kingstream project?

Mr BARNETT replied:

(1)-(2) I am not aware of AlintaGas' involvement in any other bid for the project. I will inquire from Alinta as to whether there is any involvement. There has been an issue about information. In the sense that Epic did do some technical analysis on the expansion of the pipeline, I guess one could argue that might have given it some information and perhaps was part of the way in which it developed its proposal, which I think is quite unique. Other people put in proposals for stand-alone pipelines. Epic put in a proposal based on its funding an expansion of the existing pipeline, the ownership of which would remain with Alinta. I am not aware of Alinta being party to any other bid; I believe it is not.

Some strange viewpoints are being put out about this pipeline issue. One viewpoint, which is promoted by *The West Australian* in its business pages, is that I am doing all sorts of Machiavellian things to try to ensure that Alinta, or Epic-Alinta, gets the Kingstream business. I do not care whether it does or does not. All I have done is insist that it have the right to compete. I do have a very real concern on behalf of taxpayers and energy consumers that we maximise and get a high price for the sale of the existing pipeline. Whether Epic's securing of the Kingstream business will enhance or lower that value is a moot point. I really do not care. I have a preference, but it is probably not the preference that members opposite think I have. This theory that *The West Australian* runs around with that I am protectionist and am doing all these dastardly things to make sure that Epic-Alinta gets the business is untrue.

INDUSTRIAL RELATIONS - UNION MEMBERSHIP

Coercion to Join

181. Mr OSBORNE to the Minister for Labour Relations:

A union official has claimed that it is illegal to invite workers to join a union. Is the Minister aware of this claim, and what legislative provisions cover this issue?

Mr KIERATH replied:

In the past few days, a union official, Jim McGiveron from the Transport Workers Union, has claimed that prosecutions against union officials have been unfair. He has said that union officials are only going about their normal employment and that unions are perfectly within their rights to invite workers to join. Of course they are within their rights to invite workers to join, but they are not within their rights to bash people who try to go about their lawful business.

In this case Ron Crowe said that his truck was rammed and he was pelted with bricks when he crossed a Transport Workers Union of Australia picket line. He said he was punched in the face several times and his car door was kicked in. They are the actions to which this official was referring. Those sorts of actions are a contravention of freedom of association provisions, and, of course, they will result in prosecution.

Mr McGinty interjected.

The SPEAKER: Order! The member for Fremantle.

Mr KIERATH: I can understand the sensitivity of the ALP. When members opposite were in government they protected their union mates. They should have prosecuted their mates, and they did not do that. If union officials breach those provisions, they will be prosecuted.

Several members interjected.

The SPEAKER: Order! There are too many interjections. I know that on many occasions we allow them because it enhances the debate, but we need to hear the Minister.

Mr KIERATH: If one breaks the law, it does not matter whether one is an employer, employee, a union or anyone else, the law applies to everyone. On a lighthearted note, Mr McGiveron claimed that he was terrorised by a three man squad; a former policeman, an ex-union official and an ex-communist. Why would the TWU official be frightened of one of his former comrades?

FUEL AND ENERGY - GAS

Pipeline - Cabinet Consideration

182. Mr THOMAS to the Minister for Energy:

Has consideration of a proposal to develop a second gas pipeline gone to Cabinet? If yes, what was the decision; and, if not, why not?

Mr BARNETT replied:

Considerations for a second pipeline have not gone to Cabinet. I presume the member for Cockburn is referring to PGT Australia Pty Ltd, the fully Australian owned subsidiary of an American utility which has made many public announcements on its desire to build a pipeline. AGL Pipelines (WA) Pty Ltd, a 100 per cent Australian owned company, would also like to build a pipeline, and a Western Australian syndicate is also interested. I am determined that anyone who builds a new pipeline will do so in line with the deregulation timetable of this State and, equally, will do so in an open and competitive process. I am not about to allow any company, Australian or overseas, to have a preemptive right and gain a monopoly position.

Dr Gallop: The member for Cockburn asked why you have not taken your views on that subject to the Cabinet.

Mr BARNETT: Because there is the pipeline sale steering committee and the Office of Energy. I have had meetings with the Chamber of Minerals and Energy of Western Australia (Inc) and the Chamber of Commerce and Industry in the past couple of weeks and there is a clear way forward. However, there are many complicated issues about the pipeline including the easement and the proportion of the pipe that may be sold.

Dr Gallop: Don't you trust your Cabinet colleagues?

Mr BARNETT: I have absolute trust in them; however, I will take further proposals on energy policy to Cabinet when I have firmly decided on the direction we should take. I am about 99 per cent sure of the way to go, and when I am 100 per cent sure I will take that proposal to Cabinet.

WASTE DISPOSAL

Levy on Local Government

183. Mr BLOFFWITCH to the Minister for Local Government:

Will the Minister advise the House about his knowledge of discussions on a waste management levy and will any decision on a levy impact on the operations of the Keep Australia Beautiful Council (W.A.) or the Tidy Towns Committee?

Mr OMODEI replied:

As members will be aware, on Tuesday of this week the member for Midland asked a question in this House about a waste management levy. There have been discussions about a waste management levy as a result of the ministerial advisory committee on recycling and waste management looking at the select committee report on the same thing. That is under the responsibility of the Minister for the Environment. The advisory committee has three representatives from the Western Australian Municipal Association. I understand that the Minister has met the association and that consultation will continue. The Keep Australia Beautiful Council is funded partly by the State Government; however, the majority of funding comes from what was known as the litter and recycling research association.

The Keep Australia Beautiful Council runs education programs across Western Australia in relation to litter. The Litter Act is under my control, as Minister for Local Government. The Keep Australia Beautiful Council runs the Tidy Towns competition, and this year Denmark was the winner. We hope that Denmark will stand a good chance of winning the national award this year.

Although the Ministerial Advisory Committee continues to discuss the select committee report, the impact of the discussions will have no effect on the Keep Australia Beautiful Council. That report falls within the bailiwick of local government and the Litter Act. Local governments have ongoing control of the Tidy Towns competition. I am pleased to advise the member for Geraldton that although important discussions are taking place about recycling and waste management, the Keep Australia Beautiful Council and the Tidy Towns competition will not be affected.

LISTENING DEVICES - LEGISLATION

Urgency

184. Mrs ROBERTS to the Minister for Police:

I refer to a report published in the media last weekend claiming that the Minister would not be introducing four law and order Bills in Parliament this year, including legislation on the use of listening devices.

(1) Have any representations been made to the Minister regarding the urgency of listening devices legislation? If so, when and by whom?

(2) Is the Minister concerned that the lack of listening devices legislation is a serious impediment to the investigation of organised crime and the apprehension of offenders?

Mr DAY replied:

(1) I have had frequent discussions with the Commissioner of Police since my appointment as Minister. Over the past three months those discussions have been very satisfactory.

Mrs Roberts: Is he the only individual who has made representations about that urgency?

Mr DAY: The Commissioner of Police is the chief executive officer of the Police Service -

Mrs Roberts: Has anyone or any group outside the Police Service made representations?

Mr DAY: I have had discussions with a number of people about our legislative program, both inside and outside my office. The principal person with whom I have had discussions is the Commissioner of Police.

Mrs Roberts: Have you had representations from any other government agency?

Mr DAY: Not to my recollection.

(2) I do not have any concern about the impact of the Government's legislative program in relation to our fight against organised crime. This Government has a very proud record, both legislatively and through the Police Service taking action against organised and other forms of crime in Western Australia. This Government has put through Parliament a great deal of legislation relating to law and order, in our fight against crime in the community generally. That record will continue in 1997 and through the remainder of this four year term.
