WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Wednesday, 14 October 1998

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 4.00 pm, and read prayers.

URANIUM MINING INDUSTRY

Petition

Hon Giz Watson presented a petition, by delivery to the Clerk, from 39 persons praying that the Legislative Council investigate and evaluate the acceptability of a uranium industry measured against the known health hazards.

[See paper No 261.]

CRIMINAL LAW AMENDMENT BILL (No 1)

Assent

Message from the Governor received and read notifying assent to the Bill.

WORKSAFE REPORT BY COMMISSIONER FOR PUBLIC SECTOR STANDARDS

Statement by President

THE PRESIDENT (Hon George Cash): I have received a letter from the Commissioner for Public Sector Standards. It is addressed to me but the commissioner asked that all members be advised of its content. I will read the letter so that it appears in *Hansard* but I will also table it for the information of members. It is dated 13 October 1998.

> Dear Mr Cash
>
> **WORKSAFE REPORT**
>
> I write to draw your attention to confusion which has arisen following my report to the House concerning WorkSafe Western Australia, dated 31st August 1998. It has been represented to me by the Hon Ljiljanna Ravlich MLC that some members of the WorkSafe Western Australia Commission feel aggrieved because they believe the term "WorkSafe" used in my report unfairly implicates them in the subject matter.
>
> I would be grateful if you would inform Members that this was certainly not my intention. Since submitting my report to Parliament, I have learned that under the Occupational Safety and Health Act, the Commission is entitled to use as its short form name, "WorkSafe WA" (s.6(5)).
>
> In using the term "WorkSafe WA" or "WorkSafe" in my report I intended to mean the Department for which Mr Neil Bartholomaeus was at the relevant time the Chief Executive Officer. I have no reason to suppose that any member of the WorkSafe Western Australia Commission, other than Mr Bartholomaeus, had any part in taking the decision which was the subject of my report.
>
> I have spoken to the Commission's chairperson, Mr David Palandri, by telephone to assure him of this and he agreed with my suggestion that I should write to you to clarify the matter.
>
> Yours sincerely
>
> Don Saunders
>
> COMMISSIONER FOR PUBLIC SECTOR STANDARDS

[See paper No 262.]

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Report in relation to Summons to Produce Documents Issued Pursuant to Section 5 of the Parliamentary Privileges Act

Hon Mark Nevill presented the twenty-fourth report of the Standing Committee on Estimates and Financial Operations in relation to the summons to produce documents issued pursuant to section 5 of the Parliamentary Privileges Act; and on his motion it was resolved -

> That the report do lie upon the Table and be printed.

[See paper No 263.]

SELECT COMMITTEE OF PRIVILEGE

Failure to Produce Documents under Summons - Motion

HON MARK NEVILL (Mining and Pastoral) [4.04 pm]: I move -

That -

(1) A Select Committee of Privilege consisting of five members, any three of whom constitute a quorum, be appointed to inquire into and report on -

(a) whether the failure to produce documents under summons in the circumstances set out in report No 24 of the Standing Committee on Estimates and Financial Operations constitutes a breach of the privileges, or is a contempt, of this House; and

(b) if the committee so finds, what penalty, if any, the House might impose for the breach or contempt.

(2) The committee have power to send for persons, papers and records, including those in the possession or under the control of the Standing Committee on Estimates and Financial Operations.

(3) The committee report not later than six sitting days of the day on which this order is made.

The twenty-fourth report of the Standing Committee on Estimates and Financial Operations discharges the committee's obligation to report an apparent breach of privilege to the House. On 12 November 1997, the committee resolved to commence an inquiry into whether the goldfields gas pipeline tariffs as required by the Goldfields Gas Pipeline Agreement Act are "fair and reasonable". On 4 March 1998, Dr Peter Murphy, Director North and Inland Division, Department of Resources Development, appeared before the committee to give evidence about the tariffs inquiry. He advised the committee that there had been no review up until then to determine whether the tariffs were fair and reasonable and whether they complied with the tariff-setting principles under the Act. He advised that the department "had initiated a review as of now". He advised the committee that consultants Bird Cameron had been engaged to verify and determine the capital costs of the pipeline and that consultants McLennan Magasanik were to advise on the tariff-setting principles and the fairness and reasonableness of the tariffs.

During that evidence, Dr Murphy was advised by the committee that if he did not comply with the requirements under the standing orders of the committee, he might be subject to legal penalties. A number of issues arose during the evidence in which he said he would seek legal advice on releasing the information. During that evidence, Dr Murphy was asked to provide other background documents. On 15 May 1998, Dr Murphy wrote to the committee providing some of the documents and advising that the Department of Resources Development was reviewing some of the documents with the Crown Solicitor's Office and the company before deciding a response. We have had no response to date.

Six months later, on 1 September 1998 the committee wrote to Dr Murphy at the Department of Resources Development requesting copies of the two reports and seeking a reply by 15 September 1998. Mr Peter Kioses from the Department of Resources Development responded to our letter of 1 September 1998 in which the committee requested copies of the Bird Cameron and McLennan Magasanik reports. On behalf of the Department of Resources Development he sought a 10-day extension of time until 25 September. That was granted verbally by me. In granting the extension I was aware that 25 September was the date of final bids for sale of part of the goldfields gas pipeline.

On 9 September 1998 the committee resolved to authorise the chairman to issue a summons to Dr Murphy to produce the Bird Cameron and McLennan Magasanik report should the Department of Resources Development decline to provide the reports by 25 September 1998. At 5.07 pm on 25 September the committee received a fax from Dr Peter Murphy of the Department of Resources Development declining to provide a copy of the Bird Cameron report and requesting that the committee not require production of the McLennan Magasanik report until after completion of the impending tariff negotiations with the joint venturers.

On 29 September 1998 and in accordance with the resolution of 9 September 1998 and through the chairman, I authorised the Clerk of the Legislative Council to issue the summons documents pursuant to section 5 of the Parliamentary Privileges Act 1891. A summons was issued to Dr Murphy on the morning of Tuesday 29 September 1998. The summons required Dr Murphy to produce the reports no later than 4.30 pm on 29 September 1998.

On Tuesday, 29 September 1998, at 5.39 pm, the Clerk of the Legislative Council received a fax from Mr Richard Ellis, principal policy adviser to the Minister for Resources Development, signed by the Minister for Energy, Hon Colin Barnett, directing Dr Murphy and all officers of the Department of Resources Development not to release the Bird Cameron and McLennan Magasanik report to the committee. The committee must now consider summonsing the authors of the reports before the committee and seeking production of the two reports.

Debate adjourned, on motion by Hon N.F. Moore (Leader of the House).

SPEED LIMIT TRIAL

Motion

Resumed from 13 October on the following motion -

That -

(1) This House supports a trial to increase the speed limit to a maximum of 130 kilometres per hour on specific roads in remote areas of the State of Western Australia.

(2) The trial should be conducted over a 12-month period, be fully monitored by the Road Safety Council of Western Australia, and appropriate data to be compiled both prior to and during the trial.

HON NORM KELLY (East Metropolitan) [4.14 pm]: Yesterday I dealt with the widespread opposition to the suggestion of a speed limit trial in the north west of the State by all those who are closely involved in road safety organisations in this State. It appears that support for the trial comes from a limited range of the community, even though that support is somewhat stronger in the north west. Today I will discuss some factors that we must consider when deciding how to vote on the motion. In particular, I refer to the critical safety factor of fatigue. I will quote two reports that members should read before they vote on the motion. One is a report which was commissioned by Main Roads Western Australia in 1996 and which was carried out by ARRB Transport Research. The other report was done by Main Roads itself and it is entitled "Risk assessment of a raised maximum speed limit trial in the remote area of Western Australia". That report was produced last month and it gives further detail of the practicalities of where such a speed limit trial would take place. Fatigue has been mentioned as a factor which would necessitate an increase in the speed limit. It is interesting to note that there is no evidence that the reduction of fatigue would be a sufficiently significant factor to support a speed increase. The Main Roads report states -

> Main Roads does not support the argument that the increase in speed limits will reduce the incidence of fatigue. The amount of time saved by raising the limit is too short to affect the level of fatigue. With respect to keeping a driver alert, a high speed may initially be challenging but after a period of time the higher speed will appear normal.

The idea of the arousal factor is the other part of the equation. The argument is that someone driving at a higher speed, because of the increased danger of driving at that speed, will be more alert to danger and as a result more ready to respond to dangers that present themselves. The idea of the arousal level being raised is also refuted in the reports. The ARRB Transport Research report states -

> Also, while it is true that driving at high speed may initially be challenging and generate a high arousal level, extrapolation from what is known about speed adaptation suggests that higher speeds are unlikely to result in consistently high levels of alertness over long distances in the long term.

Those two factors are put forward as arguments for a trial, but in fact according to scientific research there is no benefit at all. The amount of time that would be saved by driving at higher speed would be minimal overall and it would not equate to an increased arousal level. Another safety factor is the level of traffic on the proposed trial roads. When ARRB was asked to conduct the research it was asked also to consider options for the 130 kmh limit on roads with traffic of fewer than 300 vehicles a day, yet the Fitzroy Crossing to Halls Creek section of the North West Highway does not comply with that factor; it is about 20 per cent above that traffic level. For a start, if the trial went ahead, we should at least consider excluding that section of road.

Another factor is speed differential - that is, vehicles travelling at more widely disparate speeds on the same road. It is questionable whether that is an argument for or against a trial, because it can be argued that a higher speed differential between light vehicles and trucks, caravans and buses makes it far easier to overtake and to resume on the correct side of the road. However, it can also make it more dangerous, because drivers will need to slow down suddenly from a very much higher speed when they come up behind a car that is travelling more slowly, and they must also be able to gauge the speed of oncoming traffic when they are deciding whether to overtake. The research on this matter is inconclusive, and arguments can be put either way.

One of the most important factors that we need to address is the effect of increased speed on the impact of road crashes. The Main Roads WA report states that -

> Small increases in speed can result in a great increase in the forces applied to vehicle occupants in a collision and consequently raising the speed limits will increase the severity of any crashes. Raising the limit to 120 km/hr will not have a great impact on crash severity as only a small rise in operating speeds is expected. However, raising the speed limit to 130 km/h will result in a significant increase in crash severity both in terms of likelihood and consequences.

This is what members need to weigh up. It may be on the heads of those members who support such a trial if there is an increase in the number and severity of crashes. The 1997 report of the federal Office of Road Safety, entitled "Travelling Speed and the Risk of Crash Involvement", states that speed limit research has shown surprisingly large increases in fatality rates for apparently small changes in average travel speeds, and that the "fourth power rule" derived from such data indicates that a 5 per cent increase in average travel speed typically increases fatality risks by about 20 per cent. Those matters must be considered when deciding whether to have such a trial. All members should have no doubt that an increase in the speed limit will increase the number and severity of the crashes that occur on the roads.

Hon Kim Chance: Why did the death rate increase when we abolished the open speed limit in Western Australia?

Hon NORM KELLY: I do not know the data on the actual speeds that were travelled. We need to look not only at the speed limits but also at the actual speeds at which people travelled, and because I do not have those figures, I cannot comment on that matter.

Hon Kim Chance: So the argument should be that if we dispensed with speed limits altogether, the average speed would fall.

Hon NORM KELLY: That is not the argument at all.

A major cause of the crashes on these roads is crashes with animals. The Main Roads WA report suggests that to increase speed limits will increase stopping distances and will, therefore, increase the likelihood of crashes with animals. Stopping distances are even more important when a person is driving at night. That is a strong argument for maintaining a speed limit of 110 km an hour, because at that speed the stopping sight distance is already beyond headlight distance; and at higher speeds, the distance that is illuminated by standard high beam headlights is even less than the minimum stopping distance. Therefore, a person who was travelling at 110 km an hour and saw an animal in his headlights would not have enough distance to stop before he hit that animal. The situation would be even more dangerous if the speed limit were increased to 130 km an hour.

The roads that we are considering for this trial carry low volumes of traffic. However, the engineering standards of these roads do not allow for a uniform speed limit of 130 km an hour and it would be necessary to have variable speeds along the total length of these roads. All of the 37 bridges in the proposed trial sections fail to meet the 9 metre width requirement for road train routes, and seven of the 32 cattle grids in the proposed trial sections fail to meet that 9 metre width requirement. Therefore, it will be necessary to vary the speeds on those sections of road.

It has been argued that an increase in the speed limit will facilitate overtaking. However, it will also increase the sight distances that are required. A speed limit of 110 km an hour requires a sight distance of 1 100 metres, or 1.1 km, before it is safe to overtake. A speed limit of 130 km an hour requires a sight distance of 1 500 m, or 1.5 km. That may not be a huge issue, because these roads carry low volumes of traffic. However, it will require a lot of remarking and repainting of road signs. Stopping sight distances also increase significantly when speeds are increased. The stopping sight distance increases by almost 50 per cent if the speed is increased from 110 km an hour to 130 km an hour. The reality is that if the speed limit were increased to 130 km an hour, an increasing number of drivers would drive at 140 km an hour in the knowledge that they would not be caught, and would thereby exceed the design speed of the road.

Another important factor is the cost of the onsite inspections that would need to be conducted before any trial was implemented. It would be good if the mover of the motion or the Minister for Transport could tell us the anticipated cost of implementing a trial, because we need to consider whether this money would be well spent or whether there would be better uses for this money. The onsite inspections would determine where it was necessary to install new warning signs and where to relocate the existing warning signs to allow for the changed response distances, where it was necessary to change the overtaking white line barriers, and where it was necessary to increase the lettering size of the existing signs, because the size of the lettering is determined by the speed at which people travel past the sign.

Hon Tom Helm: The lettering size is not increased in the Northern Territory.

Hon NORM KELLY: It has different speed limits.

Hon Tom Helm: It does indeed.

Hon NORM KELLY: It would be necessary to install new signs to inform drivers of the new speed limits on different stretches of road. It would also be necessary to set up stations to monitor the volume and speed of road traffic, not only before the trial but also during the trial.

Hon Simon O'Brien: Put all of the Multanovas up there!

Hon NORM KELLY: That is probably a good idea! Some cost will be involved in evaluating the trial during its operation and at the end. As I said previously, an extensive amount of road marking will be necessary, and some cost will be involved in amending legislation.

Hon Greg Smith: Since when has the expenditure of public money been a factor?

Hon NORM KELLY: People are more than happy to spend money on worthy causes, and I am sure there will be some arguments about what is a worthy cause. Consideration must be given to the anticipated cost, and I would appreciate some feedback from the minister as to the anticipated cost of establishing and running this trial. Other proposals have been made. Members of the Australian Labor Party spoke about a trial speed limit of 120 kmh. That would be far better than a speed limit of 130 kmh but, as the mean speed travelled is currently around 120 kmh, we must consider whether such a small change would be worth the cost of implementation. The reports to which I have referred state that it is difficult to gauge the effect on driver behaviour if a trial takes place. It is agreed that average speed limits would increase but the extent of that increase is hard to gauge.

Hon Greg Smith: Are you saying the average speed limit would increase or the average speed travelled would increase?

Hon NORM KELLY: I refer to the average speed travelled.

Hon Greg Smith: I do not believe it would. I think people travel at that speed now.

Hon NORM KELLY: The data shows that under the existing speed limits the average speed travelled on these stretches of road is between 121 kmh and 125 kmh, to the eighty-fifth percentile, which is a standard gauge for travel on these roads. One of the arguments is that people drive at that speed in accordance with the prevailing conditions, whether they feel safe, the quality of the road and so on. Of course, one of the prevailing conditions is the speed limit applying on the road, and that factor must be taken into the equation. Some people will drive 10 kmh above the speed limit and feel that it is safe to do so. Similarly, some will drive above the advisory speed limits when taking bends in the road. Hon Greg Smith referred to the high quality of vehicles now in use. There may be an 80 kmh advisory speed limit on a bend in the road but some drivers may feel quite safe driving at 90 kmh or 100 kmh, and drivers will know the quality and limits of their vehicles. Drivers in other vehicles may know that it is not safe to exceed that advisory speed limit. Many drivers travel at 10 kmh above the speed limit, and it can be anticipated that if the speed limit increases to 130 kmh, their driving speed will increase to 140 kmh. If the drivers feel safe in their vehicles and the road quality is good, they will continue to drive 10 kmh above the speed limit. Drivers may travel within 10 kmh of the prevailing speed limit because they do not want to be caught by a police patrol. If the limit increases, that in itself will increase the average speed at which people travel on these roads.

The Road Safety Council has been vehemently opposed to such a trial. In the Main Roads report published last month reference is made to all the risks, pre-trial, during the trial and so on. Included in the pre-trial risks under the subheading "Road Safety Council" is the following -

> Road Safety Council have not endorsed previous proposals to raise speed limits on remote rural highways. Their lack of support is a threat to the trial taking place. To reduce the threat a further report could be presented to the Council.

I am concerned about whether it is considered that some data is lacking or could be altered to persuade the Road Safety Council to change its opinion on such a trial. If that new report is based on solid, scientific data and research, that is fine. However, I am concerned about the wording and whether a new report would be based on such solid data. Given the difficulty I had obtaining a copy of the report, I am a little suspicious of Main Roads' consideration of this trial.

One of the main problems in country and remote areas is non-compliance in the wearing of seat belts. The Road Safety Council feels that an increase in speed limits in trial form could negate its educative work in the north west. As limited money is available for these areas, there is good argument for the money to be directed towards better education and increased road safety compliance, rather than to facilitate the minimal benefit of being able to drive at increased speeds. The emphasis should be on education and adherence to the current laws rather than on a change to accommodate current non-compliance with speed limits. It seems we are trying to change the law to catch up with those people who currently break it.

Environmental issues are probably regarded as more minor in this matter but they should be considered. Increased speeds have a detrimental environmental effect, by increasing fuel consumption and vehicle emissions. Western Australia already has the highest regulated open road speed limit in the world, excluding those on the motorways in Europe where drivers do not have to contend with oncoming traffic. Passing a road train can leave very little room indeed.

I would also like the minister to indicate the control parameters for such a trial and how Main Roads will assess its success or otherwise. Will the minister be willing to call off the trial if the number of road accidents increases in the first few months of the trial, or will the trial proceed for a full year with a higher than average rate of road accidents? I know this can be difficult because the number of road accidents is fairly low overall but, before voting on this motion, it is important for members to have an idea of how the trial would be assessed during its operation and at the end.

Hon M.J. Criddle: Does the member want to cover speed, safety and accidents?

Hon NORM KELLY: Yes, so that before the House supports a trial or otherwise, it has more information.

Hon M.J. Criddle: Does the member want to know what guidelines will be in place?

Hon NORM KELLY: Yes, and what the minister anticipates would arise from such a trial. In a letter I received from Assistant Commissioner of Police, Mel Hay, he pointed out that with effect from 1 December next year it is anticipated that uniform Australian road rules will be introduced with a speed limit of 100 kmh, except in special circumstances. I do not believe we should support a decrease from 110 kmh to 100 kmh. Although it may solve some revenue problems for the Government, it will increase the noncompliance rate.

The national road rules stipulate 100 kmh, and Western Australia's increasing the limit to 130 kmh would run contrary to the national push to increase road safety. Western Australia would not be regarded well.

Hon Greg Smith: It is called practical.

Hon NORM KELLY: I do not think it is practical when one weighs up the benefits and implications of such a trial.

Several members interjected.

Hon NORM KELLY: Hon Greg Smith is showing his intelligence. I am happy to see him come up with more ideas.

Hon Ken Travers interjected.

Hon NORM KELLY: It was his proposition that we should not worry about using the brakes in our cars; we should simply let the air slow down the vehicle. Why do we bother having brakes in cars?

Hon Ken Travers: The faster you go the quicker you slow down.

Hon NORM KELLY: I have outlined why the Democrats will not support this trial. We have not heard sufficient convincing arguments to support it, but we are interested and involved in this debate. I have put these questions to the minister because it is important that we look at these issues. We are aware that despite our opposition the trial might still go ahead. If it is to go ahead, it is important that it be undertaken in the most responsible and thoughtful manner. If the trial were conducted, and there was no increase in crashes or casualties, would the minister regard it as a success? It should not be, because the emphasis should be on reducing the number of casualties and crashes. It can be very difficult to set the parameters for such a trial. We have a good arrangement in Western Australia with the Road Safety Council's improving road safety and educating the public. I am concerned that this move will run counter to the council's activities. We should look at not maintaining current levels.

Hon M.J. Criddle: I hope we do not.

Hon NORM KELLY: That is correct. If we undertook a 12-month trial and there was a reduction in crashes and fatalities, the trial would appear to be a success. However, many other factors must be considered.

Hon Kim Chance: It could be a reason to continue the trial.

Hon NORM KELLY: That could be argued. Despite the Democrats' opposition to this trial, I hope to see a reduction in the casualties. I do not want to say later, "I told you so." However, I am fearful that that may be the result. As Hon Kim Chance said, if there were a reduction, that would be a good argument to continue the trial. Of course, pressure would be applied to include more roads. If that were done with the same scrutiny and decision-making processes as those applied to the initial trial, that would be fine.

The Democrats will oppose the motion, but I look forward to comments from other members, and particularly from the minister, as to how the trial would proceed.

HON M.D. NIXON (Agricultural) [4.46 pm]: I support the motion. As a member for the Mining and Pastoral Region, Hon Greg Smith is representing the views of his constituents. This is an area in which I have considerable experience. It is a pity that those who speak on this motion are not required to have driven at least two million kilometres in country areas. It is only with experience that one understands the risks and considerations involved in country driving.

Members will recall that I presented statistics indicating that before these limits were introduced we were killing approximately 250 people each year on the roads and when we introduced speed limits the number went to 310. I suggest to Hon Norm Kelly that if we increased the speed limit to 130 kmh and the death rate increased by that number, there would be a hue and cry to reverse the decision. The evidence indicates that the introduction of speed limits increases the accident rate, so it is fair to say that speed limits do not reduce the number of accidents. When the speed limits on the metropolitan freeways were increased from 80 kmh to 90 kmh to 100 kmh there was no statistically significant increase in accidents; that is, the statistical evidence is that an increase in speed limits does not increase the number of accidents.

Country driving is very complex. It was initially believed that speed and drink were the two major factors in accidents. At a road safety conference last year fatigue was mentioned as a major contributor to road accidents. Most of the research on fatigue presented at the conference related to the American trucking industry. Having driven trucks, I believe that the statistics presented were accurate; I was not surprised by them.

Professional truck drivers drive for long periods. Most people driving in the country do not drive for eight hours; they drive for two or three hours or perhaps a little longer on a long run. I regularly drive 500 km after dinner. If I work here all day and go to a meeting in the country in the evening, I can clock up about 500 km by midnight. I have driven about three million kilometres and I have had a couple of near misses. They have never been as a result of speeding but as a result of fatigue. Fatigue is not always caused by spending excessive hours behind the wheel, as it can be the result of boredom. Many motorists are bored to death.

The Premier was unable to attend the Ferrari concourse d'elegance on Sunday and requested that I attend on his behalf. I decided to swot up on my Ferrari history and discovered that one Italian driver decided to race at Indianapolis. He was one of the few people in the 1950s who was a member of the 100 miles per hour club - he had done 500 miles in less than five hours. Being an Italian, he was used to driving on winding roads. His biggest problem at Indianapolis was boredom. Lapping at 100 miles an hour on an oval track and never having to change gear caused a lack of concentration. That is relevant to this debate.

One of the worst problems with speed limits is that to avoid being booked most people use cruise control devices. If members want to do something about accidents, they should move to increase speed limits and outlaw cruise control devices. Nothing adds to boredom on a long trip more than setting the car on cruise control and letting it drive itself. There will not be a meaningful reduction in road accidents until people drive according to road conditions. In many ways a nanny state, in which people are told what they can and cannot do, removes self-reliance and responsibility from the driver. I am fortunate to be one of those people who drove in the days when we had an open road speed limit. I asked a question about that earlier because I already knew the answer. In those days motor cars were nowhere near as good as they are now. A truck was lucky if it could carry a load averaging 5 tonnes or even reach, let alone exceed, 30 miles an hour. Since then, in the 30-odd years since speed limits have been introduced the average truck has increased its load to 40 or 50 tonnes and its speed to approximately 100 kmh.

Hon Ken Travers: Kim Chance has already given this speech to our Caucus.

Hon M.D. NIXON: He is very wise. Over that time there has been a dramatic increase in the ability of trucks to shift goods, but the motor car has not kept up. When I travel around the agricultural region and the city I am battling to travel 60 kilometres over a set period. The computers do not take into account the time we stop at traffic lights, etc. Therefore, if I am to carry out my job in an agricultural region I must cover up to 1 000 hours a year sitting behind a steering wheel. That is expensive and although I do not know whether it is time well spent - as members of Parliament we must move around our electorates - it puts my life at risk because I am subject to the boredom factor which increases dramatically when driving on a good, safe road in a comfortable car on a warm afternoon, particularly after lunch. Probably the most dangerous time to travel is in the afternoon on a road such as the Brand Highway on a warm, sunny afternoon at a constant speed, particularly when the vehicle is in cruise control mode to avoid drifting a couple of kilometres over the speed limit, and be subject to the wrath of a patrol car.

Hon Tom Helm: Particularly with a six-pack lunch!

Hon Ken Travers interjected.

Hon M.D. NIXON: People can do many things to avoid boredom. However, the most important thing is to drive according to the conditions. Obviously the blanket speed limits that were introduced 35 years ago are not relevant now in the light of the dramatic improvement in the performance of motor cars and, at least a significant improvement in roads since then. Agriculture was the basis of civilisation. Until people could produce food in one spot they were unable to develop a permanent society. Perhaps the next thing that advanced civilisation was the invention of the wheel.

Hon Tom Stephens: I heard it was the boomerang.

Hon M.D. NIXON: That was pretty important.

Hon Tom Helm interjected.

Hon M.D. NIXON: That is also important. I am correct when I say that the wheel was probably the turning point in the advancement of civilisation. Transport is vital to any society, particularly a modern society. If transport is important to society it is vitally important to Western Australia because nowhere in the world are there such sparse populations and vast areas among which goods and people must be moved. If ever there was a place in which we should be considering improving the viability of transport it is Australia. I read recently about some of the work done in Britain in the early 1960s. The authorities realised that if they were to shift more people on a small island they must work on developing increases in speed. One of the interesting experiments involved a Citroen, which had full power steering, etc and which was set up with a wire under the road. As it was completely automatic the driver sat reading a book while the car drove at 100 miles an hour in close proximity to other cars, with automatic braking so that if anything went wrong the car would slow down automatically. That is 30 or 40-year-old technology. If we want to move more people we must move them faster. No doubt, in time, particularly in our cities, cars will have computer technology built into them so that they maintain constant distances between each other while travelling at greater speeds.

We have demonstrated on the city freeways that 100 kmh is certainly no more dangerous than travelling at 80 kmh. Although cars on a city freeway travel almost bumper to bumper at those speeds it would be stretching the imagination to suggest that it is equally dangerous to travel at 130 kmh in remote areas. On a freeway, if there is a disaster as a result of driver fatigue or mechanical failure, the opportunity for a massive pileup is far greater, even at 100 kmh, than on country roads. As I have said previously, some of the accidents, at least on country roads, are not accidents; they are probably deliberate. They are possibly a form of suicide, although that is very difficult to establish. When a single vehicle hits the only tree for miles around it is difficult to prove that excessive speed was the cause. The only place at which excessive speed can be blamed is on a corner when the vehicle skids and leaves no brake marks. Under those circumstances it could be assumed that the driver was driving too fast.

Whatever we do, it is important to return to the driver the responsibility of driving according to conditions. As has been previously stated, many drivers already exceed the limit of 110 kmh. As Hon Norm Kelly suggested they even exceed the speed of 120 kmh.

Hon Tom Helm interjected

Hon M.D. NIXON: Not many, but the occasional one might. In the light of that, it is vital we trial the speed limit of 130 kmh. Although the speed limit is 110 kmh people get away with driving quite a bit faster. If a trial at 120 kmh were introduced it could be that drivers would be driving slower than they are at present. It is important that people drive according to the conditions. I do not think many people drive dangerously. There are two punishments for driving a motor car, one of which is to be booked by the police. That is a good reason for driving according to the rules. However, the greatest penalty for dangerous driving is the death penalty. People who exceed the limit are threatened with the death penalty because that is the ultimate punishment for making mistakes on the road at high speed. We should never believe that if we take the police off the road there would be no speed limit because the ultimate penalty would be suffered in the end. That would ensure that most people would drive sensibly. Those who are not worried about the death penalty would not drive carefully no matter what we did. That is not a logical reason for preventing the trial.

The only way to determine whether 130 kmh is safe is to try it. My personal experience is that rather than increasing the number of deaths on roads, which is a legitimate fear of many members of this House, it could well decrease the death rate. If, as argued by Hon Norm Kelly and similar people, aeroplanes travelled at 50 feet above the ground at about 80 or 90 kmh nobody would move around the world and there would be many more accidents. What causes death in the first instance is an accident or a vehicle hitting another object. If we are to make a major impact on the number of fatalities we must first reduce accidents.

It cannot be doubted that seatbelts, crumple rates, and other secondary factors have a bearing on the severity of the injuries sustained by people in motor vehicle accidents.

I support some of the comments regarding trees on the south west roads. We should be reviewing some of the statistics such as the accident rate of, say, the Albany Highway compared with the Brand Highway. They are totally different highways; one has trees, one has not. We should be comparing the accident rate between the southbound and northbound traffic on the Albany Highway between, say, Kojonup and Albany. I am sure it would be found that the accident rate is greater for the southbound traffic in which drivers have already travelled 250 or so kilometres than those who are travelling north and are still fresh. That would demonstrate that fatigue, not speed, is the major cause of motor vehicle accidents.

Debate adjourned, pursuant to standing orders.

[Questions without notice taken.]

ADDRESS-IN-REPLY

Motion

Resumed from 17 September.

HON J.A. COWDELL (South West) [5.34 pm]: I refer to certain electoral matters and constitutional issues. The Opposition would welcome an Electoral Act amendment Bill and encourage bipartisan support for same. We see a need for an omnibus measure in the first instance to take up some of the proposals brought forward by the Western Australian Electoral Commissioner in his report on political finance. The Electoral Commissioner has proposed that there be a reasonable regime of registration of political parties. We do not have a systematic registration of political parties. We have some form of recognition under the Electoral Act, but no proper registration procedure. We do not object to the initiatives proposed by the Electoral Commissioner in this regard. The commissioner specifically proposes that a process for the registration of political parties by the Western Australian Electoral Commission be established and that political parties be required to lodge a disclosure return upon dissolution. At the moment, some fly-by-night organisations could fold up prior to the designated time of disclosure and therefore avoid the necessity of furnishing returns. The Electoral Commissioner has also proposed that political parties be required to identify and disclose details of associated entities, with appropriate penalties for non-disclosure. The Opposition supports these proposed initiatives.

The Electoral Commissioner also suggests an amendment to the appointment of agents to allow an extension of time for the appointment of agents up to 6.00 pm on the day before polling day. We have no objection to that, although I will not hold my breath in expectation of a great increase in the rate of appointment of agents. It appears to be a useful reform. The commissioner also addresses the disclosure of donations. His report states -

> That political parties be required to disclose all details of gifts and other income received, and electoral expenditure incurred, by candidates that it has endorsed. These candidates would then be required to lodge statements indicating they did not receive any donations or incur electoral expenditure personally.

With the spirit of the previous amendment introduced by Hon Norman Moore, we should parallel the Commonwealth as closely as possible on the disclosure regime. I am not entirely convinced by the proposal that political parties should assume total responsibility for everything their candidates do regarding donations or expended amounts. Western Australia has a regime whereby if candidates use their official party accounts, they are adequately disclosed, but there will always be instances where candidates pay amounts directly from their private cheque accounts. These are adequately disclosed in the Electoral Commissioner's reports, and it might be onerous to make political parties responsible for all these incidental amounts in their own returns. I would certainly like to see the experience of the Commonwealth in this regard.

The commissioner has proposed a separation of donations; that is, that section 175N(5)(a) of the Electoral Act 1907 be amended so that donations and income must be separated or identified and that amounts relating to state elections be identified, if not separated, under section 175N(5)(b). I certainly believe that is possible. Of course, under the old commonwealth regime, parties were initially required to have separate accounts whereby they could identify which items were electoral expenditure for commonwealth elections, which items were used for administration, and what expenditure was devoted to state electoral matters. It would be possible to make that division so I see no problem with that initiative. Nor is there a problem with proposal 7 that the legislation be amended to specifically require disclosure of fundraising activities. Presumably, that would be along the lines of the commonwealth legislation, under which parties account for particular functions, how much was raised and how many people attended, and that device is not used to avoid the disclosure provisions. That, more or less, concluded the commissioner's comments with respect to the disclosure regime.

I was surprised when looking at the individual returns, which were generally quite comprehensive, to find two amounts which were not adequately disclosed. One amount was $352 800.

Hon Derrick Tomlinson: It was not my campaign.

Hon J.A. COWDELL: No, it was not Hon Derrick Tomlinson's personal contribution to his campaign! The other amount was $88 200. Those two amounts should have been adequately disclosed. It seems a glaring omission in the report of the Electoral Commissioner to deal with minor discrepancies with respect to disclosure, while making no comment whatsoever on the operation of blind trusts and other shields which effectively abort the whole public disclosure intent of the legislation. In any amending legislation I would expect that problem to be adequately addressed. I express concern that the Electoral Commissioner has not seen fit in any way to address this obviously very substantial problem in terms of the disclosure regime of the state legislation.

I have no difficulty with the further proposals of the commissioner with respect to the definition of "electoral expenditure" dealt with in recommendations 8 and 9. He recommends that the definition of "electoral expenditure" be redefined to provide for all types of advertising and publicising expenditure, including mail-out costs and electronic advertising. Evidently, the listing at the moment is incomplete and does not give an adequate picture of expenditure, and there is also a call for an adequate definition of "authorised expenditure" from a political party.

The commissioner comments on external agency reporting. At the moment it is a requirement that electoral expenditure by public agencies be disclosed. The commissioner points out that this is too broad a requirement, and it is not adequately disclosed under the regime of the Electoral Commissioner. I would be sympathetic to some closer definition of agency reporting, but certainly there must be a requirement that within six months of an election, relevant agency expenditure be disclosed under the Electoral Act. Indeed, the Electoral Act requires appropriate authorisation and so on. Certainly, there was massive expenditure in the run-up to the federal election on selling the goods and services tax. It was originally supposed to be expenditure of $10m and it increased to $16m. At least the Commonwealth Government had to front up and properly authorise its advertising as the political propaganda that it was. Such requirements should stay in the state Electoral Act.

The commissioner suggests that a regime of charges be instituted for providing copies of returns. I am not convinced, given the relatively small amounts of expenditure, that it is necessary to introduce a financial barrier to accessing returns and public disclosure.

Obviously, the commissioner's "Political Finance Report 1997" is the basis for a range of amendments to the Electoral Act, and the Government should address this prior to the next state poll. Other matters should be addressed when amending the Electoral Act. During the recent federal election I came across some innovative interpretations of the powers of various local

authorities. A number of local authorities ban political advertising within their boundaries, and I have no objection to that. It saves a lot of time and money in not putting up a poster in every window or a hoarding in every front yard and so on. I can understand the arguments of visual pollution and the like, although in some areas it is a well-defended tradition which the local authority would not dare encroach upon. However, when the local authority decides that this extends to pulling down candidates' signs in front of the pre-poll - the logical extension of which is that it has the power to rip down all the candidates' signs outside polling booths on election day; I am referring to the City of Rockingham - it is appropriate to look at state legislation to make sure that overzealous local authorities, in curtailing political advertising, do not move to close down the provision of useful information to electors on polling day or at pre-polls.

Hon Simon O'Brien interjected.

Hon J.A. COWDELL: No, it happened at the pre-poll stage, but an argument was put very strongly to the City of Rockingham that that was unreasonable. It logically followed that, if it were ripping down candidates' signs at pre-polls where how-to-vote cards were being handed out, there was no difference between that and a similar exercise on polling day. I raise that in passing as a shot across the bow of overzealous local authorities. Those authorities should be aware that if they pursue that course, Parliament will have to take legislative action to indicate the public will in this regard.

I note the last amending Bill introduced by Hon Norman Moore. I know we followed the Commonwealth's lead, and I generally agree with that regime. However, we allowed "Langer" votes to be counted as valid; that is, an elector may put 1 then 2, 2, 2 and so on and still be deemed to have cast a valid vote. In its June amendments to the Electoral Act, the Commonwealth decided the easiest way to deal with the Langer heresy was to allow ballot papers to be marked in that way but to count the vote as informal. That was the most effective way of dealing with the problem, rather than putting Langer and his friends in gaol and making a cause celebre out of the situation. It can still be done, but it is far more effetive to write a pithy comment on the ballot paper and have the scrutineers pick it up. The State may need to follow the Commonwealth's lead in redefining "formal" and "informal" votes.

Any omnibus amendment should address the return of deposits to candidates. This State's particularly harsh regime has operated at one election, and there is no reason for us to maintain it. In Western Australian electoral contests if a candidate attracts less than 10 per cent of the votes in a Legislative Assembly contest or less than 5 per cent in a Legislative Council contest, his or her deposit is non-refundable. The commonwealth requirement to attract at least 4 per cent of the vote is more appropriate. A range of legitimate candidates -

Hon N.F. Moore: That's right. You tell us about bogus candidates.

Hon J.A. COWDELL: They are good if they manage to attract 4 per cent of the vote.

Hon Simon O'Brien: In 1993, the then Mr Jim Scott barely had his deposit refunded even though he was elected.

Hon J.A. COWDELL: If he were here, he would endorse my comments, but he is away on urgent parliamentary business. The range of opinion on this is wide and a 4 per cent hurdle is adequate. I am glad Hon Simon O'Brien wanted to highlight the worth of the argument I was putting in that regard, particularly in respect of Hon Jim Scott.

Hon N.F. Moore: Perhaps we should have a rule that candidates should attract 10 per cent of the vote to be elected.

Hon J.A. COWDELL: I would be happy to deal with other government ideas. Hon Norman Moore normally gets excited about the concept of by-elections, candidates retiring early, and the cost of same.

Hon N.F. Moore: I do not get excited. You were morally obliged to pay for the Kalgoorlie by-election, having taken that high moral ground.

Hon J.A. COWDELL: I say on this occasion, as I have said on previous occasions, that it is the Australian Labor Party's policy to support any legislation that imposes a financial penalty for causing a by-election for other than legitimate reasons, such as ill health.

Hon N.F. Moore: You supported the Commission on Government's recommendation without qualification.

Hon J.A. COWDELL: We would be happy to support it in that regard.

Several members interjected.

Hon J.A. COWDELL: With no exception for Gareth Evans.

Of course, any amendment to the Electoral Act should deal with certain provisions currently in the Constitution Act Amendment Act. Our current Act contains a section dealing with the qualifications of electors, as it should do. However, the qualifications to be a candidate are not contained in that Act; one must hunt down the Constitution to find them. One section deals with not only qualifications to stand as a candidate but also the requirements to be admitted to the House as a member. It is a double hurdle. I have always argued that it is appropriate that, like the commonwealth legislation, the state legislation should have one section detailing the qualifications to be an elector and one detailing the qualifications to be a candidate and to be admitted as a member. In that way, any candidate or member of the general public would be able to go

to the Electoral Act to establish the appropriate qualifications without having to hunt down the Constitution Act Amendment Act 1899.

Of course, I could not conclude my comments on the Electoral Act or worthy amendments thereto without reference to our new colleague Hon Dexter Davies' inaugural speech about one-vote-one-value. Perhaps it will suffice if I recite the Government's electoral platform in this regard. Just prior to the last state poll, the Government released its response to the Commission on Government's reports Nos 1 to 5. Of course, I cannot but agree with the Government manifesto, which states -

> The Legislative Assembly cannot continue with the current arbitrary boundary line between metropolitan and non-metropolitan seats, with the present fixed allocation of seats. The Government considers that the Legislative Assembly should move far closer to a basic equality of enrolments. At the same time, there should be sufficient flexibility so that areas remote from Perth, or with dispersed populations, retain adequate representation.

The Government stated that it would address electoral reform during the next Parliament. I cannot but agree with the Government's official statement in this regard and look forward to the foreshadowed electoral reform and the introduction of a single quota with 15 to 20 per cent variance for the Legislative Assembly.

Sitting suspended from 6.00 to 7.30 pm

Hon J.A. COWDELL: It is time to move on from -

> WHEREAS by the 32nd section of the Imperial Act passed in the session holden in the 13th and 14th years of the Reign of Her present Majesty, intituled "an Act for the better Government of Her Majesty's Australian Colonies," it was among other things enacted that, notwithstanding anything thereinbefore contained, it should be lawful for the Governor and the Legislative Council of Western Australia, from time to time, by any Act or Acts, to alter the provisions or laws for the time being, in force under the said Act or otherwise concerning the election of the elective members of such Legislative Council, and the qualification of electors and elective members, or to establish in the said Colony, instead of the Legislative Council, a Council and a House of Representatives, or other separate Legislative Houses, to consist of such members to be appointed or elected by such persons and in such manner as by such Act or Acts should be determined, and to vest in such Council and House of Representatives, or other separate Legislative Houses, the powers and functions of the Legislative Council for which the same might be substituted; and whereas -

It is indeed time to move on, that being only part of the preamble to our current Constitution.

Hon Derrick Tomlinson: You have missed the good bits.

Hon J.A. COWDELL: I will get to the good bits. The Government has the reports of the 1991 Select Committee into the Constitution, the Royal Commission into Commercial Activities of Government and Other Matters, the Commission on Government, the Parliamentary Joint Standing Committee on the Commission on Government, its own constitutional committee and feedback from half a dozen regional constitutional forums. It is time to get on with things. It is time for the Government to act on constitutional matters; there has been enough consultation. The Government has an opportunity in the 12 months of 1999 to make some immediate and worthwhile reforms to our Constitution prior to the centenary of federation. The reforms that suggest themselves, for most of which I am sure we will see multi-partisan support, are outlined in COG recommendations 253 to 262. They are relatively uncontentious matters dealing with the Constitution. The Commission on Government recommended that we hold a people's convention, but some immediate things can be done. They are in accord with the general consensus that has come through at the Government's own constitutional forums held around the State this year.

The recommendations to which I am referring pertain to the definition of the role of Governor and the function of the Office of Governor, spelling out in the Constitution the position and role of the Premier and introducing novel devices such as that the appointment of the office of Premier shall be made by the Governor on the condition that the Premier will lead a ministry that will secure the support of a majority of members of the Legislative Assembly present and voting on a motion of confidence, save when such a course is inconsistent with the Governor's duty to safeguard the Constitution. The concept of a Premier being sworn in on the basis of commanding a majority in the Legislative Assembly is novel! The other recommendations propose that the duties and powers of Cabinet and the duties and powers of ministers be defined, the consolidation of the Constitution Act 1899 and the Constitution Amendment Act 1898, and the definition of other fundamental features of our government system. As I say, it is time that the Government announced a legislative program to deal with these matters. It is not appropriate to refer these matters to a people's convention. That is not to discount the importance of a people's convention. One should be held and the majority of its members must be popularly elected.

Hon Derrick Tomlinson: A state convention.

Hon J.A. COWDELL: I am referring to a state people's convention. I recognise that it is not possible to summon two conventions and therefore it may be appropriate that this convention not be summoned until after the federal referendum

on the republican issue. Indeed, it is appropriate that this convention should consider any republican forms of government to be adopted in the Western Australian state context. Therefore it is probably appropriate that the convention meet after the federal referendum which will be held some time in 1999. People at such a convention will want to deal with the republican issue and a range of other issues as indicated at the regional constitutional forums. Those issues range from the preamble to whether we have a Bill of Rights, citizens' initiated referendums and issues suggested by the Commission on Government.

Although we do not discount a people's convention and accept that indeed a people's convention should advise the Parliament on the most important aspects of constitutional reform, there is a necessity not to tie up such a convention in the minutiae. The convention should deal with the big-picture items and it should not revisit items on which there is clear consensus in the community, and on which there was clear consensus at the constitutional forums that the Government held this year. The Government, given the advice that has been received over the past decade and particularly the the past 12 months, could quite rightly act on those matters within the next 12 months so that we do not go into the new century with the disgraceful situation of our current Constitution being spread over several Acts with many obsolete clauses, many embarrassing clauses and no basic definition of the institutions and offices of our Government and Parliament. Everyone agrees with that. The Government could quite easily announce in the Governor's speech a significant program to reform and update the Constitution by the turn of the century. In no way would that impinge on other matters that would require further consultation with the public in a people's convention.

I suggest that the first round of reforms would involve the repeal of the obsolete provisions of the Constitution Act 1889 and then the repeal of the Constitution Acts Amendment Act altogether, placing some clauses of continuing relevance from that Act into either the Electoral Act or the Constitution Act itself, and then amendments could be brought forward to fill out the structure of the Government, the Governor, the Cabinet and the Premier. As I have said, the convention could then be consulted on other matters. The Government could of course, if it wished, provide a lead now. We will need to choose a Governor, presumably in the new year. For example, if the Government believed in a process of parliamentary participation in the choice of a Governor under a republican form, it could institute such a procedure now and establish a workable model. However, as I have said, there are no initiatives on the horizon, so we go into the next century as we went into this century - that is, with the same outdated, obsolete Constitution.

I conclude on the necessity of constitutional change. If the Government opts for a constitutional convention and complete change, it will be another decade or so before we accomplish any change. The Government should advance and make those changes where there is clear consensus in the Parliament and the community, and we will at least have some reform of our Constitution by the change of the century. We can then resolve the other issues, taking into account the advice of the people's convention. At the moment there is no movement whatsoever at the front and there needs to be, particularly in respect of the Government's pledge in going to the people on the issue in December 1996. We need a program of legislative change of our constitutional Acts and amendment of our Electoral Act. I commend such initiatives to the Government and hope that we will see some action in the not-too-distant future.

Debate adjourned, on motion by Hon Ray Halligan.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL

Committee

Resumed from 17 September. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

Clause 8: Section 12 amended -

Progress was reported after the following amendment had been moved -

Page 15, line 16 - To delete the words "If there is".

Hon NORM KELLY: When we debated the amendment a few weeks ago there was a little confusion to which I probably added because I jumped ahead a little to the next amendment on the Supplementary Notice Paper. It is important that members read the amendments in conjunction to see the proposed new terminology.

Proposed subsection (1f) at page 15 of the Bill refers to the payment of management fees. This amendment seeks to put into plain English the words in the last two lines of that subsection, which state that "the landlord is not entitled to recover, and the tenant is not obliged to make, that payment". Those words are a bit confusing and not as strong as they could be. If my amendments Nos O8 and P8 on the Supplementary Notice Paper were successful, proposed subclause (1f) would then read -

A provision in a retail shop lease in respect of any premises which requires the tenant to -

(a) pay management fees; or
(b) reimburse the landlord for management fees,

is unenforceable.

That is a clearer and stronger way of stating the Government's intention in this Bill. When this Bill becomes an Act, it will be referred to frequently, and the clearer we can make it at this stage, the better it will be for all. I urge members to support the amendment.

Hon MAX EVANS: Has this amendment been checked with parliamentary counsel to see whether it is workable?

Hon Norm Kelly: Yes.

Hon MAX EVANS: This proposed subsection was drafted by parliamentary counsel to give effect to the Government's intention as outlined in the Green Paper. None of the parties has raised a concern. I can understand that Hon Norm Kelly is trying to make this subsection clearer, but I am not certain of what will be the impact of this amendment. As the minister representing the Minister for Fair Trading in the other place, I will stick with the Government's drafting of the Bill, because I believe that is the clearest way of dealing with this matter. I am always a bit worried when amendments like this are moved.

Hon NORM KELLY: Amendment No Q8 on the Supplementary Notice Paper refers to the non-payment of land tax. That amendment is in line with the amendment that I have proposed here. I believe that if all of my amendments are successful, the wording of the Bill will be consistent. I appreciate what the minister is saying, but I believe my amendment will make this proposed subsection clearer.

Hon MAX EVANS: This amendment is an attempt to clarify the wording of the Bill. Proposed amendment No Q8 will change the whole question of land tax.

Hon Norm Kelly: If both of my amendments are successful, the wording of the Bill will be consistent.

Hon MAX EVANS: What the member is proposing with regard to land tax is different from what he is proposing with regard to this subsection and would change the whole tone of the legislation.

Amendment put and a division held, with the Chairman casting his vote with the ayes -

Ayes (13)

Hon Kim Chance	Hon N.D. Griffiths	Hon Norm Kelly	Hon Christine Sharp
Hon J.A. Cowdell	Hon John Halden	Hon Mark Nevill	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer			

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Max Evans	Hon N.F. Moore	Hon B.M. Scott	Hon B.K. Donaldson *(Teller)*
Hon Peter Foss			

Amendment thus negatived.

Hon NORM KELLY: Mr Chairman, is it possible to recommit the amendment? I understand there is some agreement.

The CHAIRMAN: It is not possible to recommit at this stage. That can be done at a later stage.

Hon NORM KELLY: In that case, I will move amendment No P8 on the Supplementary Notice Paper.

The CHAIRMAN: It is appropriate that Hon Norm Kelly deal with that amendment at the recommittal stage and proceed to amendment No Q8 at this stage.

Hon NORM KELLY: I move -

Page 15, line 22 to page 16, line 5 - To delete the lines and substitute the following -

(1g) A landlord must not include in a retail shop lease a provision that requires a tenant to -

(a) pay land tax; or

(b) reimburse the landlord for land tax.

(1h) A provision in a retail shop lease requiring a tenant to -

(a) pay land tax; or

(b) reimburse the landlord for land tax,

is unenforceable.

This follows on from the previous proposed subsection regarding management fees. The Government proposes in this

legislation that land tax be paid at the notional rate and not at a higher rate. I propose to delete that part of the legislation and to move that the payment of land tax by a tenant is unenforceable. The argument in favour of that proposition is similar to that in relation to management fees in that these are costs which should be borne by the landlord or the property owner because they are costs which are directly related to the management or accruing value of the owner's property. The tenant receives no direct benefit from charges such as land tax or management fees, therefore, it is unfair that a tenant should pay these charges, which are a tax on the wealth of the owner. For that reason I urge members to support this amendment.

Hon RAY HALLIGAN: To put it simply, this amendment has me stumped and I do not understand its intent. It has been agreed that this is a cost to the landowner or landlord. I wonder if the mover of this amendment knows how the costs associated with the operation of a building such as a shopping centre will be recouped. I wonder whether the mover of the amendment understands how a rental amount is calculated and the determinants which are used to calculate that charge. The land tax that must be paid by a property owner is one of many costs associated with the construction, maintenance and operation of a building. Obviously people who invest in shopping centres want to recoup those costs. If they do not recoup the costs they operate at a loss, so why would they want to invest? They recoup these costs by charging rents. If a landlord specifies the land tax and the tenant receives his assessment, it is visible, everybody knows the amount of the land tax and it is to the benefit of the tenant if he is aware of the proportion of land tax he is paying. It is one of the landlord's costs and he will want to recoup it. If land tax is not visible, the landlord will need to add a figure - that is then not visible - to the total rent; but it will be charged anyway. Land tax will either be visible or it will be part of a total rental cost. I cannot support the amendment.

Hon MAX EVANS: After the debate which took place in this House many weeks ago I am most surprised that the member would proceed with this amendment. I believe this could be the last nail in the coffin of this legislation because it involves retrospectivity in the return to landlords. If someone entered into a lease three months ago and this amendment were passed, no land tax would be paid even if the rent were negotiated on the basis of the landlord's return including land tax. The return to property owners these days is not very big and it includes land tax. If a landlord has a number of shops, land tax comes back by way of rent. He has many borrowings and if he is selling up someone might be able to buy the property cheaply; that is up to them. I am concerned about the people who I have tried to look after in my land tax legislation and these are the self-funded retirees. They own one or two shops or offices in suburban areas, not in big shopping centres. Usually they are ethnic people who have bought them for their superannuation and so on. If they are involved in this, suddenly the whole of the lease is done retrospectively. The lease is set at a certain rate which includes land tax being passed on to the tenant at the base rate - not aggregated - and if that is reversed it is a major change and those self-funded retirees who own shops would have any profit they have made wiped out. When they negotiated with the tenants initially, they knew what they would be paying in land tax, council rates, water rates and the like. In most of those cases, no management fees are involved. It worries me what could happen to those people.

Land tax has been an interesting issue. Much fuss was made about the City Hotel when Judy McEvoy raised the matter. Her land tax reduced from $27 000 to $12 000 in three years, and then in the next two years it increased to $31 000 because the value of properties in King Street rose. She was better off that way than if the landlord had been paying all the land tax. He would have received the benefit of the lower land tax rate and not Mrs McEvoy at the City Hotel. She had the benefit of it reducing from $27 000 to $12 000 and going back up to $31 000, but over the five years she received a big benefit from that. People in Barrack Street between Murray Street and Wellington Street complained about land tax, particularly the owner of Sports Locker. Five years ago the value of the property was high, but it went right down; in year three it was even lower than the value of the City Hotel, and that is when he bought it. It went up for the next two years but it was still nowhere near what it had been five years ago. One of the other property owners in the area - I knew him quite well from local government - blasted me about the land tax factor. I took a bet with him - he did not pay - that his land tax was lower now than it was five years ago. He would not agree with me. We checked up for him and sent him a letter. There have been ups and downs on the lower value of properties; on the big commercial stuff, it is completely different. South Australia passed similar legislation, but I cannot be quoted. I think it was to take effect when the next lease was drawn up, but an amendment such as this will affect leases which are in place. It will have a very serious retrospective effect on property investment and this could be enough to cause us to reconsider the whole legislation because this issue has not been raised before. The Government does not support this amendment.

Hon BOB THOMAS: The Caucus has decided to support this amendment for a number of reasons. One of the most interesting things I have heard is that the minister would reconsider the entire Bill if this amendment were passed. We are talking about a cost which may be 1 or 2 per cent of the total turnover of a business.

Hon Max Evans: Turnover is nothing; gross profit is all you pay in rent.

Hon BOB THOMAS: We are talking about something that is possibly one quarter of the cost of management fees. The Government has been happy to write into the Bill provisions to exclude management fees from any of the variable outgoings tenants are required to pay. I did not hear the minister say that that action would precipitate this Bill being removed. However, he has said that an amendment moved by a member of one of the minor parties, which will have one-quarter of the effect of management fees, will precipitate this Bill falling over. I do not agree with his logic. I am surprised that the

Liberal Party, which is supposed to be the champion of free enterprise and to believe very much in allowing the market to determine outcomes, is opposed to this amendment. The Government wants landlords to be able to derive rent from some form of market-based calculation and then add on further costs. It is giving an advantage to one of the parties which is already advantaged by virtue of its power in the negotiations with smaller leaseholders. The Australian Labor Party does not agree with the minister's argument or the Government's position. It certainly does not accept that this amendment would be sufficient to knock over the Bill. I would like the minister to explain whether the Government or the minister in another place who has responsibility for this legislation has done a deal with the Property Council of Australia and has agreed to include management fees and exclude land tax, or am I mistaken?

Hon MAX EVANS: Hon Bob Thomas is completely mistaken. I will not respond to a statement such as that. Many properties do not have a management fee. The member is trying to equate land tax to a management fee. It would be a large part of the profit of self-funded retirees who have a small shop leased out. The amendment would be retrospective. In most cases land tax is much higher than management fees, although it may be different in large shopping centres with high cleaning costs and electricity charges. The member is suggesting that when this legislation is proclaimed the tenants should no longer be responsible for the land tax which was negotiated as part of the rental deal, and that the landlord should pay the land tax. If that happened, a number of landlords might go under, depending on how finely geared their finances were. I hope Hon Bob Thomas never accumulates enough assets to start renting properties, because he would probably go broke if he looked at matters in this way. This is a serious matter. It was clarified on the premise that rental property should be subject to land tax. There have been some doubts about the cost of land tax on one block of land, rather than on an aggregation of properties. Some tenants had problems with landlords because the land tax on the property they leased was increased by the number of other properties the landlord owned. Since the beginning of time there has been a basic land tax on premises, but the aggregated value of larger or additional properties increases the rate of tax. This has been done to clarify that situation. It is not a case of any deals being done. Management fees are a fact of life. This amendment completely reverses the whole matter and it would be sad to see this provision included. I do not know what the minister can do about it. I am worried about how it would affect many businesses. It would be necessary to carry out a survey. It is not my job, but surveys have been carried out and many small shop owners could be in a serious situation if this applied. Small investors with 10 to 12 shops might also have a lot of problems. The Government does not support the amendment.

Hon NORM KELLY: The minister is confusing a couple of issues. He spoke about the retrospective aspects of this clause, but has forgotten the transitional and saving clauses included in the Bill. They will be a matter for further debate when we can argue about whether making land tax payments void should apply to existing or new leases. That will be an argument involving many issues in this Bill, but it is totally irrelevant to the matter under discussion. It is a tradition for landlords to extract all their expenses from the tenants, whether or not the tenants are liable for that tax. In some cases landlords have charged tenants for expenses accrued on other properties. It is very easy for a landlord to be flamboyant in the way he manages a property and the costs which do not directly relate to the expenses of a shopping centre. That is why the exclusion of management fees is a good thing which should apply to all new and existing leases.

Some consideration should be given to the benefit tenants receive from the expenses of the landlord or owner which the tenants are forced to pay. It is wrong to compare the payment of land tax to the payment of council or water rates. Tenants paying a portion of the council and water rates of the landlord receive a direct benefit from council services and water supply, and there is a direct correlation between the tenants' payments and the services received. Land tax is totally irrelevant. It is a cost on the property, and in no way does the tenant receive a benefit from that payment. I refer to a booklet "Leases Landlords and Tenants" which sums up the argument quite well -

> The value of private land is enhanced by the infrastructural investment the general community put into it, through their taxes, in the form of communications, power, water and sewerage services, roads and public amenities, government and local government institutions and services. These are benefits which accrue to the landowner and raise the value of his or her land. The landlord benefits from that added value when the land is sold. Land Tax is a tax on the landowners asset, a charge for these benefits which are provided by the community at large. It is a charge on ownership of the land and not on its use. It is extraordinary therefore, that tenants are almost universally paying the landlords' land tax.
>
> The WA Land Tax Assessment Act 1976 specifically states that the owner of the land is liable for the payment of land tax.

That is where those costs should remain, and that is the entire reason for this amendment. Once again, I urge members to support it.

Hon BOB THOMAS: From the minister's response to my remarks, I am led to believe that the Government has done a trade-off with the property owners.

Point of Order

Hon MAX EVANS: I object to that being included in *Hansard*.

Hon Norm Kelly: It must have hit a nerve.

The CHAIRMAN: The minister has objected to the statement.

Committee Resumed

Hon BOB THOMAS: My remark was that the Government has done a trade-off with the property owners to exclude land tax -

Hon Max Evans: You said the way I answered led you to that view.

Hon BOB THOMAS: I formed the view from the minister's answer that the Government has done a trade-off with the property owners to exclude land tax but to allow for management fees to be void. The Australian Labor Party does not care what sort of deal the Government has done with property owners. It believes that land tax should be paid by the property owners and it will support this amendment.

Hon MAX EVANS: Hon Norm Kelly has a further amendment relating to existing leases after 12 months. If those involved have gone to a five-year lease, after 12 months the lease would be not voided but would simply change and the land tax would then be paid. I have jumped ahead to that because it is material to what I was saying about retrospectivity. It is not retrospective immediately but in 12 months. With these amendments to the legislation it would apply only to new leases. I ask him to clarify that. What does he expect after 12 months? Would the term of that lease change?

Hon NORM KELLY: I am happy to debate all the amendments at once if the minister wants to do that, because we must look at the balance between landlords and tenants. As I said in my second reading speech, this is about getting a balance and that is not achieved by this Bill. I am moving amendments to achieve what the Australian Democrats believe would be a fair balance. If the minister were to look at the amendments I have on the Notice Paper, he would see a couple that would not make sense if they were both passed - one is a fall-back position. If one were passed and the other rejected, it would not have any effect on what I am proposing. For the benefit of members, I am putting all my cards on the table so they can judge them. If the current amendment is passed, it will have some bearing on the debate we will have when we get to the transition and saving clauses. It is premature to decide whether to support this amendment based upon possible future amendments that we have yet to debate. I appreciate the minister's point in relation to all these amendments being passed - I would love his support for them - but it is wrong to address this amendment in terms of future amendments. It works both ways: Various aspects of what the Government has presented in future clauses are impacted upon by what is happening now. By the time the Bill leaves this place it could be very convoluted and messy.

Hon N.F. Moore: Or in the rubbish bin.

Hon NORM KELLY: The Leader of the House has summarised it: The Government has no intention of genuinely debating this Bill. We will probably need to adjourn the debate to assess how we have progressed and to ensure that we do not have undesired consequences. The minister has jumped the gun. Members should support the current amendment and worry about saving and transition clauses when we get to them.

Hon MAX EVANS: The word "unenforceable" is doubtful legal jargon. Perhaps it should be "void".

Hon Norm Kelly: I am happy to make that change.

Hon MAX EVANS: I am not trying to amend it on the run.

Hon N.F. Moore: You cannot legislate on the run like that.

Hon MAX EVANS: We are trying to get away from the word "unenforceable", which has definition problems. Does the member wish to change the word?

Hon Norm Kelly: That will throw you entirely.

Hon MAX EVANS: No; I am simply trying to improve the amendment.

Hon RAY HALLIGAN: I would like to clarify that members opposite understand a term that is often used in leases; that is, "variable outgoings". Is Hon Norm Kelly aware of that term? It is used in many leases. Lessees pay a fixed figure plus variable outgoings. Does the member understand that?

Hon Norm Kelly: Yes.

Hon RAY HALLIGAN: Obviously the member does not see land tax as one of those variable outgoings.

Hon Norm Kelly: It depends on how it is itemised. Often the variable outgoings are one lump sum covering all other costs such as rates, land taxes, management fees and so on.

Hon RAY HALLIGAN: That is not normally the case.

Hon Norm Kelly: In other leases they are itemised. A tenant then has an accurate idea of what is paid.

Hon RAY HALLIGAN: It usually relates to communal areas and other areas and the amount of floor space used. That is where council rates and the like come in. Does the member not see land tax as one of those costs that would normally be passed on to someone utilising that building?

Hon Norm Kelly: That has been my entire argument. It is a cost passed on but it should not be for the reasons I outlined.

Hon RAY HALLIGAN: However, this amendment suggests that it should not be passed on.

Hon Norm Kelly: That is right.

Hon RAY HALLIGAN: But the member has just said that he can see where it could be passed on.

Hon Norm Kelly: I said I know how it is passed on now, but I do not believe it should be.

Hon RAY HALLIGAN: If he does not believe that land tax should be passed on, I take it that he does not believe council rates should be passed on. The piece of land is owned by the owner of the building.

Hon Norm Kelly: I said that when the tenant is paying council rates or water rates, he or she is getting a direct benefit.

Hon RAY HALLIGAN: What benefit are they getting from council rates?

Hon Norm Kelly: They are getting rubbish collection, security patrols, good roads leading into the shopping centre and public and community amenities that make it a good area in which to shop. They are all benefits to the tenant. If the tenant has a good council that encourages shopping in the local area, he or she benefits. The situation is similar with water rates.

Hon RAY HALLIGAN: That is an assumption on the member's part. He should check whether the shopping centre owner or the council is providing the greater part of those benefits.

Hon Norm Kelly: If it were not for the local council, the shopping centre would not be there. The council allows the planning for it to be there in the fist place.

Hon RAY HALLIGAN: That is a funny attitude to take; it is very odd. That is the member's argument; it is not necessarily mine. The minister has already mentioned those possible retirees who have invested in a small shopping centre. They are a small business and Hon Bob Thomas has told us that we are the party that supposedly looks after small business. How are we to look after them? Are they entitled to make a profit? What sort of rentals should they charge? What matters should they concern themselves with in determining the rent they charge? Through you, Mr Chairman, I question the members opposite, particularly those who have suggested that this amendment should be supported. Can they give me some indication of how that rental should be charged to the tenant and what determinants should be used? Should they concern themselves with a percentage of the capital cost? Should they concern themselves with the maintenance of the shopping centre, the communal areas, the council rates, the electricity for the communal areas and the land tax they have to pay? I am not receiving any support, Mr Chairman. I am also receiving no argument.

The CHAIRMAN: Perhaps the member should not ask the question, given the standing orders.

Hon RAY HALLIGAN: That small business operator - the owner of the shopping centre, the possible self-funded retiree - is also entitled to make a profit. The only way he will make a profit is by passing on all of the costs associated with the operation of that investment.

Hon Norm Kelly: Are you aware that under the Western Australian Residential Tenancies Act, landlords are prohibited from passing on land tax costs to the tenants? Why should it be any different for commercial tenancies?

Hon RAY HALLIGAN: I must admit, I was not aware of that. I will repeat what the minister said: If they are working on a very fine margin and some of these costs cannot be passed on, they will go broke because they will be making a loss. Therefore, there will be no investments in these types of structures. The small business tenant will have nowhere from which to operate. I have difficulty in understanding the member's argument. I firmly believe that for the shopping centre owner to operate as a business - and to operate, a business must make a profit - he will have to pass on those costs in a visible manner. The member has alluded to that and I agree with him. I too would like to see all the costs itemised. Then they could be verified. There will be a land tax notice and a council rate notice. It is all verifiable. That is the better way to go. How can we justify causing the owner of the shopping centre to absorb such a cost, when doing so is possibly to that person's detriment?

Hon NORM KELLY: If landlords have to pay their own land tax, the whole retail small business sector will not collapse in a heap. We are trying to work towards an accurate reflection, as Hon Ray Halligan said, of what a tenant should be paying for what he is receiving. The tenant is not receiving any benefit from the landlord's ownership of the property. He is receiving a benefit from the use of that property and that is paid for in the rent. When a fair rent is calculated, a property owner will calculate return on investment and all the rest. That calculation should be done on the basis that the landlord is

paying the land tax. That will alter the return received, and the rent that is paid will be adjusted. However, the rent accurately reflects what the tenant is receiving and that is what we are working towards.

Hon J.A. SCOTT: The land tax is different from other overheads. Many tenants are receiving an advantage from a building and so is the person who has invested in the property. He is receiving a benefit by renting the property to the tenants. How is the percentage of benefit that the property owner is receiving from that investment apportioned? As Hon Norm Kelly said, land tax should be part of the calculation which the property owner makes when he looks at his overheads and works out the rent. He is also receiving an advantage out of that land and it becomes very difficult to work out his percentage in that equation.

Hon Derrick Tomlinson: You either subsume it in the rent or put it as an up-front physical cost. You want to conceal it in the rent. You are in favour of wholesale tax.

Hon J.A. SCOTT: The problem with doing it the way Hon Derrick Tomlinson has suggested is that the property owner will make the person renting the property pay a greater share of the land tax.

Hon MAX EVANS: If we make this change, and do not do clause 14, there is a transitional effect on the leases. A new lease will be negotiated which will be grossed up to include all the things the owners want to do or they will have to find a new tenant. It is very important, because after 12 months the landlord cannot charge land tax when it has already been part of a lease that has been pre-signed; it becomes retrospective. We will take that up at some later date.

Hon NORM KELLY: I can understand the minister's impatience to move to other clauses.

Hon Max Evans: No, I am not. Let us put this one.

Hon NORM KELLY: What members have said about the land tax being subsumed into the overall rent is something that landlords are expert at - hiding costs and inflating the costs that tenants must pay. Whether this land tax is payable or not, the landlords have the ability to manipulate and adjust their rents. This is just removing one factor in the calculation of the rent. If a tenant pays $1 000 in rent and $100 of that goes to land tax, and we change the Act, the landlord pays $100 and the tenant pays $900. In reality that will not happen. We must make a point of what is genuinely the owner's cost against what is genuinely the tenant's cost. If the Government wants to support tenant's paying this wealth tax of the owners, so be it. The Democrats believe that land tax is a genuine cost of the owner and tenants should pay the genuine costs of the benefits they gain from their use of that property. That is what they are doing. They are paying for the use of the property, not for the ownership.

Hon RAY HALLIGAN: I am hearing a lot of things this evening that I have not heard before.

Hon Norm Kelly: You are not the only one.

Hon RAY HALLIGAN: I suggest my experience may be a little different and a little better than the member's. The member says that the land tax belongs to the owner of the property, but so does the building.

Hon Norm Kelly: Exactly.

Hon RAY HALLIGAN: Does the member want the owner to absorb all of those costs as well?

Hon Norm Kelly: Which costs?

Hon RAY HALLIGAN: The cost of maintenance and construction. An owner either has the money or has to borrow money to build. What happens to all of that? Does the member want that cost to be absorbed by the owner? Does the member want the Parliament to fix the rental that the tenant pays?

Hon Bob Thomas: None of us has said that.

Hon RAY HALLIGAN: I am asking the question, not telling the member. If the member listened he might learn something.

Several members interjected.

The CHAIRMAN: Order!

Hon Norm Kelly: The owner should pay for capital improvements to the property; the tenant is paying -

Hon RAY HALLIGAN: Paying what?

Hon Norm Kelly: He is paying for the maintenance and upkeep.

Hon RAY HALLIGAN: Is that all?

Hon Norm Kelly: The owner should be paying for any capital improvements that are not directly related to the existing property.

The CHAIRMAN: Order! Hon Ray Halligan should address his comments to the Chair.

Hon RAY HALLIGAN: Thank you, Mr Chairman. I will address my remarks through you. However, that is a particularly pertinent point. It is important that it be recorded in *Hansard* so that small business people who read *Hansard* at some later date understand where Hon Norm Kelly is coming from; that is, if I spend $1m on building a shopping centre, I cannot pass that cost on. I may rent out the property but I cannot pass the cost on. Hon Norm Kelly said - it is recorded in *Hansard* so he will be able to read it later - that I can pass on the maintenance and the improvements costs. What improvements would there be if I had already built?

Hon Norm Kelly: I did not say that with regard to improvements at all.

Hon RAY HALLIGAN: The member can read it tomorrow.

Withdrawal of Remark

Hon NORM KELLY: I want the member to withdraw the remark that I said that those costs are passed on to the tenant. I did not say that.

The CHAIRMAN: There is no point of order. That can be refuted at the appropriate time.

Committee Resumed

Hon RAY HALLIGAN: My concern is that there does not appear to be that understanding and realisation of the commercial world. The Government is trying to ensure that the charges that are passed on in a legitimate manner, such as variable outgoings and land tax, can be - I will admit not always are - one of the variable outgoings. One of the reasons that there are variable outgoings is to make them visible. Because they are visible one is able to find an audit trail and go back to a document. The charges passed on to the tenants can be calculated from that. I will not go into the fact that quite often there are associations of tenants who talk to one another and compare their charges. Invariably they are able to come up very quickly with information that will show whether the landlord is overcharging.

Hon Derrick Tomlinson has already mentioned this fact: My concern with this amendment is that if the amendment is passed a hidden tax will be created, another wholesale sales tax-type tax. The owner of the premises would have no option but to pass on those costs. I believe that it is in the tenant's interest to be able to see exactly what the cost is. The more figures shown to the tenant that make up the total rent the better position the tenant will be in to make a comparison with other tenants either in that building or in other shopping centres. However, if they are being charged one fee without knowing how that figure is made up, they will definitely not be in that position.

Hon J.A. SCOTT: It is interesting that Hon Ray Halligan raised this question. I have had deputations from tenants who are concerned about the way in which the Bill is framed because of exactly the propositions that the member put forward. What is happening is that tenants can get an account which expresses overheads and which shows the cost of maintenance and all of the ongoing costs. However, there is no differentiation made in those accounts between the costs which should rightly be the tenant's and those which should rightly be the land owner's. Hon Ray Halligan may shake his head, but according to the tenants who spoke to me, that is quite a normal practice. The ongoing maintenance is normally theirs and costs for any improvements or major changes to the shopping centre which are not part of their wear and tear belong to the landlord. Those costs are presented all on one account, so one cannot tell in many cases which are the landlord's costs and which are the tenant's costs. Land tax should be applied to the owners of property and not to the lessees of property. The tax is imposed on the owners according to my understanding. If I were to rent out a housing property, the tenant would not pay the land tax. When calculating the rent I would take into account a certain amount of that cost. At the end of the day that person would be paying more because of that tax, I agree. However, like costs involved in any changes to the shopping centre, such as the addition of more shops, the cost of land tax should not be imposed on the tenant.

Hon Ray Halligan: You have just defeated your own argument. A little while ago you said that you did not mind them paying council rates on the whole property because they derived some benefit from it.

Hon J.A. SCOTT: I did not mention council rates at all.

Hon Ray Halligan interjected.

The CHAIRMAN: Order! The interjection is a bit lengthy.

Hon J.A. SCOTT: The reality is that many improvements are not designed always to help the tenant. Sometimes they will result in exactly the same sort of shop as the tenant's and take away some of his trade, so quite the reverse can happen. However, he can still be lumbered with the cost. It is therefore perfectly right to separate ongoing maintenance costs resulting from the wear and tear and upkeep of the property from costs for major structural change. Unless it is agreed to by the tenant, those costs are normally the costs of the landowner. The tenants who came to see me said that is how it is supposed to operate but they could never tell when they received an account of the expenditure which were their costs and which were legitimately the costs of the owner of the property.

In the minds of these people - they say that they have typical leases; they have had a number of shops and in more than one shopping centre - and in the agreements they have, that is quite a normal practice. If the people to whom Hon Ray Halligan speak are subject to different practices, obviously he has formed a different impression. My argument is that there should be a separation: The ongoing maintenance of painting the shopping centre in the same colour it was before it became a bit dirty or repairs to the carpets and all those sorts of things are the responsibility of the tenant; whereas the landowner should pay the costs of major changes to the shopping centre or things that will not necessarily benefit the tenant, but will bring the landowner money. Let us take the case of a person who is running a butcher shop in a shopping centre. If the landlord wants to put another butcher shop at the other end of the complex, should the tenant pay for that as well? That should not occur.

Hon Derrick Tomlinson: What has that to do with land tax?

Hon J.A. SCOTT: Land tax is similar to -

Hon Derrick Tomlinson: A butcher shop.

Hon J.A. SCOTT: It is not like a butcher shop. It is a cost that properly belongs to the owner of the shopping centre, not the tenant. Who pays the land tax on Hon Derrick Tomlinson's land?

Hon Derrick Tomlinson: I do not have enough land to pay land tax.

Hon J.A. SCOTT: If people own property, they are responsible for paying land tax. The same applies when a tenant is leasing a property. The land owner should pay the land tax. It does not get paid by the tenant.

Hon NORM KELLY: I mentioned before that under the Residential Tenancies Act the landlord is not to pass on land tax charges to the tenant. We are trying to achieve some consistency in this legislation about where land tax rightly resides. Hon Ray Halligan hit on a very important point about the capital costs of a centre. He said that the tenant should pay for the capital costs of the construction of the centre. However, the tenant does not own the building at the end of the construction. The landowner does and so he should pay those capital costs.

That is why the Australian Democrats will fully support the Government in a future clause in the Bill relating to sinking funds. The Government has identified how important this issue is. We fully support the Government in trying to delineate the capital costs involved in a shopping centre, as against the ongoing maintenance and repair costs. If a tenant goes into a lease and contributes to a sinking fund, which is committed to improvements to that centre to attract more customers, that is fine. At least the tenant knows what he is paying for and what he will get in return. The landlord is bound to use those funds for that express purpose. If the tenant does not enter into such an agreement where the landlord may put in a capital injection to improve the centre, maybe with the existing number of stores, or maybe expanding the centre, that is the choice of the landlord and he should not pass on those costs to the tenant. The landlord will benefit.

If a landlord is charging his tenants a rent based on turnover, although those benefits will go to the tenant, they will largely flow back to the landlord. The tenant has no control over how that money is spent unless he has agreed to those funds being expended in a certain way by the use of a sinking fund. That is quite a legitimate, common cost for a tenant to incur when going into a run-down centre. A sizeable amount of money may have to be put into the sinking fund with the expectation that there is a plan for an upgrade or extension of the centre. The tenant must decide whether he will get the benefit when those improvements are done. The tenant can justify that expense. At least that is all above board. Although they are different issues, as the Government has realised, we delineate the capital costs from ongoing general maintenance and repair costs.

Hon BOB THOMAS: Hon Ray Halligan must have been reading Adam Smith recently because his explanation of the way rents are set is very unrealistic. He was trying to say that the landlords are a benevolent society that calculates how much it costs to build and maintain a property, how much must be set aside each week to amortise the costs of the property as well as the cost of interest; it then calculates a reasonable margin and that is the rent that is set. He tried to give the impression that the landlords will act in a fair and reasonable manner when setting rents. That does not happen. Landlords have a voracious appetite. They tip small businessmen upside down and shake every last penny out of them that they can. They will take as much as they think they can get out of tenants. Land tax is just added on top of everything else. They do not add it to their calculations of what is a fair and reasonable rent. They just add it on to the top because they want to get as much as they can. We do not think that should happen.

Hon Norm Kelly: They get cream and more cream on top of that.

Hon BOB THOMAS: That is right. The fanciful world in which Hon Ray Halligan has been living is not realistic. I do not think he has added anything to the debate on this clause. If anything, he has firmed up our resolve to support this amendment.

Hon RAY HALLIGAN: I am sorry if Hon Bob Thomas has not learnt from this debate. It is unfortunate. I was asking what determinants were used in calculating the figure. I did not suggest for one moment the bottom figure calculated was the one charged. Again, I suggest there is something to be learnt.

The arguments being put forward this evening are, unfortunately for me, very difficult to fathom. I hear that the owner of the property is just that - the owner. All the costs associated with the building of the property are not necessarily something that should be passed on. Only the maintenance and council rates and any improvements, if any, may be passed on. Because the owner has to sit with that cost for I do not know how long, it should not be passed on to the tenant. I have heard that owners will benefit from the expenditure of that money. I would dearly love to know when they will benefit and I would like someone to explain that to me.

Hon Norm Kelly: You missed the point that the owners are benefiting by owning the properties.

Hon RAY HALLIGAN: If they have paid out a lot of money or have borrowed money and are paying interest and principal repayments as well, and they are finding that the rental income creates a shortfall on their outgoings, how are they benefiting? Are they benefiting because they have an asset? They have no cash flow.

Hon Norm Kelly: Is that called a capital risk? What happens if they lose a few tenants? They are investing in the properties. The smart ones invest in good properties, but some do not.

Hon RAY HALLIGAN: The member just alluded to another point to which I must respond. Hon Bob Thomas said that shopping centre owners are intent on wringing tenants dry of their money, and that they are unscrupulous. I gain the impression that the member believes owners do not deserve to be in that position of ownership and should have a liability, not an asset. Tens of thousands of small businesses operate out of shopping centres. If owners are so bad, how are those shopping centre retailers able to operate? I suggest that someone is doing something reasonably right with those businesses. Members opposite are trying to tar all people with one brush. Hon Ken Travers said on 15 September, as reported in the uncorrected *Hansard* proof -

> I accept the minister's comments that the vast majority of tenancies work well and there is a good relationship between the parties.

It might be a good idea for Hon Ken Travers to talk to Hon Bob Thomas because their thoughts appear to be in conflict.

Hon Bob Thomas: A mind reader are you?

Hon RAY HALLIGAN: Land tax is a legitimate outgoing for owners of shopping centres. It would be to the benefit of tenants for the tax to be visible so it could be calculated. An audit trail enables people to compare their situation with tenants in the same shopping centre or elsewhere. I cannot support the amendment.

Hon BOB THOMAS: Hon Ray Halligan asked about the benefits the property owners receive from paying land tax. The State provides all sorts of infrastructure which benefits property owners. It provides railway lines, roads and all the power and gas infrastructure to ensure that customers can access the shopping centres concerned. Therefore, the property owner is levied land tax to contribute to the cost of the infrastructure on which he depends. The Opposition believes that it is only fair that property owners pay land tax, and not automatically pass the tax on to their tenants. If Hon Ray Halligan thinks that large shopping centres operate in isolation from infrastructure provided by government, I will be interested to hear his explanation.

Amendment put and a division held, with the Chairman casting his vote with the ayes -

Ayes (13)

Hon Kim Chance	Hon N.D. Griffiths	Hon Norm Kelly	Hon Christine Sharp
Hon J.A. Cowdell	Hon John Halden	Hon Mark Nevill	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer			

Noes (12)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon B.K. Donaldson
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*
Hon Peter Foss			

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 9 to 12 put and passed.

Clause 13: Section 31 amended -

Hon NORM KELLY: I move -

> Page 26, lines 6 to 10 - To delete the lines and substitute the following -

13. Section 31 of the principal Act is repealed and the following section substituted -

" **Review of Act**

31. (1) The Minister administering this Act is to carry out a review of the operation and effectiveness of this Act within 6 months after the expiration of every 5 years from the commencement of the *Commercial Tenancy (Retail Shops) Agreements Amendment Act 1998.*

(2) The Minister is to prepare a report based on each review made under subsection (1) and cause the report to be laid before each House of Parliament within 1 year after the commencement of each review. ".

This amendment will ensure that a review of the Act will occur five years after the commencement of the Act, and every five years thereafter, and that the report of the review be laid before Parliament one year after the commencement of each review. As a result of the possibility that not all clauses will apply to all leases, it is important that the rolling five yearly review be held. In a few years, different tenants will work under varying stages of the commercial tenancy legislation.

A shopping centre could have one-third of its tenants operating on leases based on the provisions of this Bill, another third operating under the provisions of the 1990 version of the Act, and the final third operating under the 1985 provisions of the commercial tenancies legislation. It is important for the Government to keep its finger on the pulse to know what is occurring in commercial tenancies. It could be a very confusing situation unless the commercial tenancies legislation is amended so that all existing leases operate under the same provisions. In such confusion it would be possible for landlords to manipulate leases to their benefit by applying the wrong rules to various leases. It is important to carry out this review. Given that it is a standard type of review, I would be very surprised if the Government did not support the amendment.

Hon MAX EVANS: I understand exactly where Hon Norm Kelly is coming from. I understand that parliamentary counsel is automatically rolling over a review every five years. That aside, the minister may prepare a report within six months of the expiration of every five years of the operation of this legislation. That can be done, but it is not always practical. The member's proposed subclause (2) provides that the minister is to prepare a report based on each review and cause the report to be laid before each House of Parliament within one year after the commencement of each review. Many problems have arisen with this legislation. The last review was held in 1995, and one was held before that. The most important aspect is the terms of the review and how comprehensive it is. The review can be either a Clayton's review or a real review. The member wants to clarify that a review will be held every five years, within six months of the expiration of every five years, and a report will be made to the Parliament within one year. I am advised that the current legislation already provides for that.

Hon NORM KELLY: My amendment is a tighter version of the provision. It sets out when a report on the review is to be tabled in the Parliament. It has been suggested to me that five years is too long, and that reviews should be held every two to three years. However, given the complexities of the legislation and how it will take effect, I consider five years is an appropriate period during which enough new leases will be signed to gauge the effectiveness of the legislation. The main difference is that my amendment specifies when the report is to be tabled. The minister made a point about whether the review is a Clayton's review or something more substantial. That applies across the board to other legislation. The minister must direct how the review is conducted and must report on that review. When I have studied reports on various reviews of legislation, it is clear that there is wide variance between them. I would be surprised if a minister were negligent and did not ensure that a full and proper review took place. My amendment strengthens the review provisions of the legislation by specifying a tighter time frame.

Hon MAX EVANS: Because of certain factors in the Bill, certain things may commence at different times. If this amendment is agreed to, some clarification will be needed in the other place.

Hon Norm Kelly: As to the commencement date?

Hon MAX EVANS: Yes. Apparently it is a contentious point. Parliamentary counsel advises that it was satisfactory but if the amendment is passed in this place, it may need to be tidied up when the Bill goes to the other place.

Hon NORM KELLY: I appreciate the minister's comments. If the Government accepts the tighter time frame in proposed subclause (2), I will be more than happy to negotiate the best wording to calculate the starting date for this clause.

Amendment put and a division held, with the Chairman casting his vote with the ayes -

Ayes (13)

Hon Kim Chance	Hon John Halden	Hon Mark Nevill	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths			

Noes (12)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon B.K. Donaldson
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*
Hon Peter Foss			

Amendment thus passed.

Clause, as amended, put and passed.

Clause 14: Saving and transitional -

Hon NORM KELLY: I move -

Page 27, lines 7 to 23 - To delete the lines and substitute the following -

(2) The principal Act as amended by a provision of this Act applies -

(a) in relation to a new lease, after that provision has commenced; and

(b) in relation to an existing lease, on the first day after 12 months from the day that provision commenced.

(3) Subject to subsection (2) a provision of the principal Act amended by this Act applies to and in relation to an existing lease as if it had not been so amended.

I believe this will be the contentious amendment in this Bill, but it is very important. I will be guided by the Government's true intent. Unfortunately it is difficult to consider the following amendment at this stage. A number of tenant organisations and individual tenants have told me that if this legislation does not apply to existing leases, we should toss it out. The minister has threatened to kill the Bill in respect of a far more minor amendment.

Hon Max Evans: Because of the effect of this retrospectivity. It is not my Bill. If you make the removal of land tax retrospective, so be it.

Hon NORM KELLY: That is true and it is sometimes difficult to debate individual amendments - we are looking at the overall Bill. As I said, the Democrats believe that the passage of this amendment is important for a true balance to be achieved. It is not retrospective and businesses constantly face changing commercial conditions. I pointed out in my second reading speech that we are faced with a massive change in the tax structure of this country that will increase the burden on small businesses as they become tax collectors. At this stage it is highly unlikely that those small businesses will be sufficiently recompensed for the extra time, effort and cost involved in collecting that tax.

Several members interjected.

Hon NORM KELLY: We will probably end up with very similar interjections to those made during my second reading contribution. It would be crazy to apply a GST only to new businesses and maintain the wholesale sales tax on existing businesses.

Hon B.M. Scott interjected.

Hon NORM KELLY: We have a tax structure that has been in place for years and businesses have developed using that as their guide. We are now facing a new structure and those businesses are now being confronted with a new tax, which they will play a far more significant role in collecting. That will lead to a much greater burden. There is some talk about compensation and the coalition's stock line is that those businesses will benefit from increased income flow. That will not fix it.

Several members interjected.

Hon NORM KELLY: When members see the Democrats in action in the Senate they will note how effective we can be if the debate continues beyond July next year.

The CHAIRMAN: The member will address the relevant amendment.

Hon NORM KELLY: I forgot the election was over.

Hon Simon O'Brien: I thought you were going to tell us how the Senate will amend a money Bill.

Hon NORM KELLY: If the member researched the history of the Australian Democrats he would see how effective we can be.

As I said, this is a very important part of the legislation. To be fair, there should be a period of adjustment, and that is why I have included that it applies 12 months after the commencement of the provision. Because of the amendments that have been passed tonight, it will be far easier for a fairer rent to be paid. It will also be far more difficult for landlords to subsume that land tax component into an overall rental component because there will be a straight changeover of the removal of land tax from the payments. For those reasons, the committee should support the amendment.

Hon BOB THOMAS: The Labor Party has agreed to support this amendment.

Hon Max Evans: Are you supporting retrospective legislation?

Hon BOB THOMAS: As I said in my second reading speech, this Bill has some very good provisions and the Labor Party wants to see it implemented as soon as possible. However, it also supports the Democrats' amendment to ensure that those improvements apply to existing leases after 12 months. Some time should be provided for the various effects to be calculated and worked through the system - they cannot be implemented immediately. Therefore, the Labor Party supports the amendment.

Hon Max Evans: You are so kind.

Hon BOB THOMAS: We are very keen to see further debate on this issue in another place. Issues may be raised in that place that we are not aware of here.

I relate my comments to one aspect of the existing legislation, key money. A landlord is not able to charge key money under the existing legislation. The Act states that any such provision in a contract is void. I do not think it is retrospective by requiring that the new provisions that we have written into this new Bill be implemented after 12 months. Currently it is illegal for landlords to charge key money. We know that some very innovative landlords are able to manipulate the system so that they can charge what is in effect key money. We are strengthening those provisions in this new Bill so that those creative landlords are not able to circumvent the will of this legislation. I do not think it makes any difference whether we ensure that the new provisions apply after 12 months or when new leases are signed, because it is currently illegal to charge key money. We are simply improving the wording so that the spirit of the Act is adhered to. The Labor Caucus has agreed to support this amendment and it is keen to see further debate on this in another place.

Hon MAX EVANS: I am fascinated by the comment about the further debate in another place. The member's minder must have thought of many issues to raise when this Bill is returned to the other place.

The new provisions apply to all new leases immediately and all existing leases after 12 months. I am most surprised at this because the Labor Party has always been very strong on retrospective legislation. I will bring this up to haunt it for years to come, because it voted for retrospective legislation. If retrospectivity is applied within 12 months, the lease is already in existence. This cuts across the principle of not applying the legislation retrospectively. This principle has been consistently applied by Governments of both the major parties because it would be irresponsible to do otherwise. Independent legal opinion also supports this consistent stance. Leases are contracts under laws current at the time of negotiation and should not be interfered with by later legislation, which is what the Opposition is doing. Later legislation can override all those agreements, but we must realise the impact that it is having on businesses. This has the potential to impact on the viability of both the landlords and the tenants. The landlords could face large financial trouble and that could be a detriment to the shopping centre, even a small shopping centre. This is an interchange of the Government's proposal which was clearly identified in the Green Bill. At this stage the Opposition has not made any suggestion that there is a slight transition which could cause an adjustment in the rent. Any future increase or land tax to be absorbed by the landlord and not by the tenant would be ironed out. One could say the rent would be adjusted by the amount of the land tax. The City Hotel had a land tax of $31 000; there would have been no management fees that did not come into the place. That would have been $31 000-plus to the tenant - I do not know what her rent is - and a minus to the landlord. Many others will be in a similar situation. They simply must wear it. It is as simple as that. I am sorry to see this. I do not know what Hon Bob Thomas has in mind about the debate in another place on this subject or how it would have any influence on the decision to be made. Enough was said about this when we discussed the land tax factor.

Hon Ed Dermer interjected.

Hon MAX EVANS: Half the member's luck.

It is clear that this is what the member wants. The people he is talking to do not believe they should pay land tax. It is like the thousands who do not believe they should pay payroll tax, or no-one should pay any tax. It is silly. Why should anyone pay any tax? As long as we own free schools, free hospitals, free roads and so on, no-one should pay any taxes and everyone should live in a tent in the desert. However, we must keep the State going and land tax is charged. It has not risen very much in recent years; some people have been affected more than others because of the valuation of properties.

The Government is strongly against this amendment because it is retrospective. We believe it could do much harm to business and the future confidence of people who go into business. Landlords and property owners these days are not

rushing out to write retail leases. They are building plenty of high rise structures in the cities all around Australia and the world, but people are not rushing to buy new shopping centres. Booragoon and Karrinyup are being made larger to attract more people, but many of the other ones - GSB has one - are holding their own; it is not a very attractive investment. If these changes are brought in retrospectively, it will dampen the enthusiasm of people to go into these things.

Hon Norm Kelly talked about residential tenancies in which tenants do not pay land tax - I know my tenants do not - or water or council rates. The landlord can charge for excess water but not the others, and that is the way it has always been. Those three charges would be paid by the tenant if this amendment were to pass. In South Australia and one of the other States the landlord pays the land tax, but I understand there is a transitional period so that the rents can be adjusted accordingly. If the Opposition wants to makes this retrospective after 12 months, so be it.

Hon J.A. SCOTT: Even though I understand what Hon Norm Kelly is trying to achieve - I think it is a reasonable objective - I believe that this will be messy, particularly when someone is on a five and five year lease and he is three months into the renewal of the lease and suddenly a change is made. That would be happening at different stages for different people. Therefore, I will not be able to support this amendment. Some of the concerns can be covered in other ways.

Amendment put and negatived.

Hon NORM KELLY: I move -

Page 27, after line 16 - To insert the following -

(c) section 10(3), (4) and (5) of the principal Act as inserted by section 6 of this Act;

(d) section 11(2) and (2a) of the principal Act as inserted by section 7(2) of this Act;

I appreciate the concerns about my previous amendment as to how wide ranging that might have been, but there is definitely no reason that this amendment should not receive unanimous support. If members refer to clause 14(2), they will see a list of various parts of this Bill which will apply to both new leases and existing leases. These are largely accounting and mechanical changes to the legislation which have no commercial effect on the landlord-tenant relationship. I am proposing that in clause 6, which relates to the assignment of leases on page 8 of the Bill, that should also apply to new and existing leases. I remind members that clause 6 is what the Government has moved as a tidy up of 1990 legislation, the wording of which - I think it was either moved or promoted by the member for Avon in the other place - did not match the intent. The Government is here making that change so that it matches that original intent. I think the Government has unanimous support for this change. As such, I do not believe there is any reason why that clause should not also apply to existing leases. The second part of the amendment is to include it in existing leases under clause 7(2).

This amendment relates to rent reviews and what is known as ratchet clauses in tenancy leases, those which, irrespective of market rents, are continually cranked up. Once again the Government has identified that that is very much an unfair practice and that is why it is covered in this Bill. Although my amendment will affect existing leases, it will provide a greater fairness to the tenant which does not exist. I can understand members' reluctance to support my first amendment to this clause. However, there are strong reasons why we should support this second amendment. Although the first proposal may have been somewhat idealistic, this amendment is realistic. In introducing a greater degree of fairness to this legislation the Government should support extending that fairness in this case to existing leases.

Hon MAX EVANS: I take it the member's amendment provides that transitional provisions will apply to not only new leases but also assignments, subleasing provisions, market rent determinations, etc. They would be covered by the 12-month factor, and without the 12-month factor, they would apply immediately. I have not worked out the economics.

I remind members that a lease is a contract between two parties to arrange a deal for which all the facts are known. The new legislation provides for a registrar or other people to ensure tenants get the correct advice. Hon Norm Kelly is taking a serious position regarding a contract of lease between two parties which, as Hon Jim Scott said, may not be for only five years, but for five years with an option for another five years. The new terms and conditions would apply throughout that period. Hon Bob Thomas has another amendment on the Supplementary Notice Paper which seeks to determine how rent is fixed. Many people like to share risks with the landlord and the lessee based on turnover. That has been done since the beginning of time. Many fast food businesses have commenced their business on that basis. It is a very low base and eventually both parties benefit when turnover increases. If the site is unproductive, no-one benefits and the place is closed down. That is when a short lease suits both parties.

In the light of this being retrospective legislation, I have not worked out the full implications. Assignments and subleasing provisions can be beneficial. However, it could be dangerous to make this change off the cuff.

Hon BOB THOMAS: The Labor Party supports this amendment.

Hon J.A. SCOTT: The amendment is similar to measures proposed in the Bill. It dovetails into those which the Government has proposed. How are the Government's measures different from what Hon Norm Kelly has proposed? I do not see how his amendment, which applies to any existing or new lease, can be a problem.

Proposed new section 10(3) seeks to void a provision in a retail shop lease that the landlord may withhold consent to an assignment of the lease by a tenant unless the tenant or guarantor of the tenant agrees to pay any money payable under the lease by the person to whom it is proposed to assign the lease. It applies the same rationale as the minister has applied to his measures.

Hon NORM KELLY: Clause 7(3) inserts new subsection (3)(a) which will prevent a landlord from increasing the rent payable until the ongoing rent is determined. In the event of a rent review the landlord is unable to increase the rent until a determination is made. It could be argued that if that provision applies to existing leases, it will also be retrospective. I am highlighting the hypocrisy of the Government's argument. I agree with its aim because it establishes that element of fairness which does not exist. It is hypocritical of the Government to say it will interfere with what rent is to be paid in these rent review situations and that my amendment should not be allowed.

It will have an effect on the commercial dealing of the landlord-tennant relationship in that the landlord may choose to increase the rent at the rent review time perhaps even because he wants to force out the tenant. For whatever reason, the landlord is allowed to do that now. Under this Bill he will not be able to do that. For those reasons I support the Government's element of fairness.

What I propose also introduces that element of fairness into the commercial arrangements. It will have a detrimental effect on landlords who want to rip off tenants, but it will not interfere with the fair dealings between landlords and tenants. That is why I have narrowed the provisions which should apply to existing leases. I have put forward a reasonable measure and I would love to hear the minister's comments on what I have outlined.

Hon MAX EVANS: The full legal implications of what we are doing worry me. Some retrospectivity is involved. The measure affects new lease provisions, market rent determinations and so on.

Progress reported.

CARNARVON BANANA INDUSTRY (COMPENSATION TRUST FUND) REPEAL BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon M.J. Criddle (Minister for Transport), read a first time.

Second Reading

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [9.52 pm]: I move -

That the Bill be now read a second time.

This Bill is a simple piece of legislation to provide for the repeal of the Carnarvon Banana Industry (Compensation Trust Fund) Act.

The Act has operated as a compensation scheme for banana growers in the Carnarvon area. Premiums paid into the compensation trust fund come from levies on cartons of bananas produced. These grower payments are supplemented by a government contribution of $1 for every $2 contributed by growers. Payments to banana growers may be made to compensate them for losses suffered as a result of cyclones, storms, floods or any natural cause if, in the opinion of the minister, the event constitutes a serious threat to the existence of the Carnarvon banana growing-industry.

The scheme was introduced in 1961 when insurance premiums on such risks were unacceptably high. It was designed to bring confidence and stability to the developing banana-growing industry. A review of the Act in 1996 found that the trust fund had a sufficient balance to be self-funding; the entire balance of the trust fund belonged to the industry; the original objectives of the trust fund had been achieved; alternatives to the trust fund existed, as private insurance was now viable; and the Act did not comply with national competition policy.

The review recommended that the balance of the trust fund be transferred to a growers committee under the auspices of the Horticultural Produce Commission Act. This led the review group to conclude that the Act should be repealed. Subsequently the Act was reviewed in 1996-97 under national competition policy guidelines. The Cabinet Government Management Standing Committee has endorsed the national competition policy review report and the recommendation to repeal the Act.

In March 1997 the Carnarvon Horticultural Development Council conducted a ballot in which a majority of Carnarvon banana growers favoured the establishment of a self-funded compensation scheme. A business plan has been prepared by a subcommittee of the Carnarvon Horticultural Development Council on behalf of the Carnarvon banana growing industry. This recommends that Carnarvon banana growers establish a committee under the Horticultural Produce Commission Act to manage funds transferred from the Carnarvon Banana Industry Compensation Trust Fund.

At 30 June 1998, the Carnarvon banana industry compensation trust fund had reserves of $5.851m. This will provide the

basis for a long-term, industry-managed scheme. A self-funded compensation scheme would then commence, managed by the industry under the umbrella of the Horticultural Produce Commission. The plan recommends that initially compensation coverage be for cyclone and storm damage only.

Under the provisions of the Horticultural Produce Commission Act, growers may elect to form a growers committee for a specific sector of the horticultural industry. The growers committee can then arrange for the introduction of specific services which are funded on a fee-for-service basis. The Act has been a successful model for self-determined industry activities. Eight growers committees are currently operating under this Act.

In summary, this Bill provides the mechanism for the transfer of trust fund reserves to industry control and for repeal of the Carnarvon Banana Industry (Compensation Trust Fund) Act. The trust fund reserves will be transferred to a temporary account at Treasury.

A Carnarvon banana growers committee will be established under the Horticultural Produce Commission Act. When the minister is satisfied that all arrangements are in place, the funds will be transferred to the Horticultural Produce Commission for the benefit of Carnarvon banana growers opting to belong to the new scheme. The Carnarvon Banana Industry (Compensation Trust Fund) Act 1961 will then be repealed by proclamation of this Act.

The effect of the Bill is supported by the growers and is consistent with the Government's objective of encouraging industry self-reliance. Proclamation of this Act will terminate the activities of the Carnarvon Banana Industry (Compensation Trust Fund) Act. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon M.J. Criddle (Minister for Transport), read a first time.

Second Reading

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [9.58 pm]: I move -

That the Bill be now read a second time.

The Bill amends the Western Australian Meat Industry Authority Act to provide body corporate status for the authority and to provide the authority with the power to borrow funds. The Bill also proposes a consequential amendment to the Statutory Corporations (Liability of Directors) Act. The Western Australian Meat Industry Authority approves abattoirs and carries out associated activities concerning standards and operating conditions for abattoirs. Since July 1994, the authority has also had responsibility for managing the Midland saleyard, which was previously managed by the former Western Australian Meat Commission. That responsibility was transferred by way of the Meat Industry Legislation (Amendment and Repeal) Bill.

In the course of investigating borrowing powers for capital works required at Midland saleyard, the authority received advice from the Crown Solicitor that the authority has no body corporate status or the power to borrow money. It therefore is unable to carry out ongoing capital improvements required to maintain the Midland saleyard as a first-class selling complex. Prior to the transfer of responsibility for the management of the Midland saleyard, the authority was a small operation serviced by the then Department of Agriculture, and body corporate status was not appropriate.

This Bill, by establishing the authority as a body corporate, permits it to borrow from the Treasurer, or other sources with the Treasurer's approval. The Bill also provides the authority with powers to acquire and dispose of property and enter into contracts. With the minister's approval, it may enter into business arrangements where this is required for the performance of its functions. With respect to its business arrangements, its powers are limited to functions relating to the management of the Midland saleyard; other facilities in the meat industry as directed by the minister; and the encouragement and promotion of improved efficiency in the meat industry.

The Bill requires that the authority separately identify the financial management of its regulatory responsibilities and its business responsibilities. The authority is also required to apportion expenditures and incomes between the Midland saleyard, any future management responsibility and its other functions. This ensures consistency with national competition policy principles.

Further, the Bill provides that the authority may delegate its functions regarding management of the Midland saleyard. Delegation may be to authority members, officers or employees of the authority, or to persons approved by the minister. This will permit functions such as the day-to-day running of the saleyard to be carried out by the most appropriate persons.

Consequential amendment of the Statutory Corporations (Liability of Directors) Act 1996 provides for inclusion of members

of the authority on the list of persons who are directors under this Act. Thus, the duties and responsibilities of directors under this Act will apply to members of the authority.

Implementing the proposed amendments is unlikely to have any impact on the government budget. However, it will enable the Western Australian Meat Industry Authority to operate in the manner envisaged when the responsibility for management of the Midland saleyard was transferred to it in 1994. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

SOIL AND LAND CONSERVATION AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon M.J. Criddle (Minister for Transport), read a first time.

Second Reading

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [10.03 pm]: I move -

That the Bill be now read a second time.

The Soil and Land Conservation Amendment Bill now before the House is a relatively simple piece of legislation. It seeks to introduce into the principal Act - the Soil and Land Conservation Act 1945 - provisions that will enable the many land conservation district committees in Western Australia to seek approval to fund specific soil conservation services on the basis of a service charge, if they wish.

The service charge concept for land conservation in Western Australia has been developed directly as a result of a heightened awareness of the close relationship between the conservation of our natural land resources and the viability of local communities.

The population of most rural towns vitally depends upon the prosperity of the surrounding farms, which itself depends, and will in future depend even more, on the effective conservation of rural land and the contribution of the general population of a local community. Nowadays this is seen as more than just a "good thing to do". It is a responsibility that is taken seriously by farmers and by local governments on behalf of all landowners in a community.

Effective land conservation relies not only upon action taken on land that is most obviously in need of conservation. For example, the occupation of urban land can and often does contribute significantly to the degradation of rural land in a community. Furthermore, the management of widely separated pieces of land can have an effect on the outcome of conservation projects on only one of those pieces.

Recognising the need for funding of specific projects on a community-wide basis, a number of rural local governments have requested that the relevant state legislation be amended to enable a catchment community to contribute to land conservation on the basis of a property charge for specific services. This Bill answers that request. It addresses the fact that the Act at present does not permit the setting of a "rate" that is other than an amount in the dollar of property value. The Bill changes this position by adding a new opportunity in addition to the land-value-based option provided in the current legislation.

Examples of the type of project that might be funded as a service charge and be of benefit to both rural and urban property owners include -

the provision of soil conservation information within a catchment area;

support for and implementation of tree planting programs;

management of appropriate resource centres;

catchment planning projects; and

the implementation of catchment conservation strategies at land-holder level.

These services benefit both rural and urban property owners, even though the properties may have vastly different values. Under the current arrangements, soil conservation services that tend to have an equivalent effect on all properties may not be equitably funded. This runs contrary to the interests of community fairness.

Turning to procedural matters relevant to service charges, these parallel those currently required for a land-value-based soil conservation rate. From a statutory point of view, the Bill defines a service charge as one that is imposed by the minister. In this regard, the minister will seek the advice of the relevant land conservation district committee, which will be required by regulation to consult with affected local governments and communities. Additional safeguards to be prescribed with respect to these matters will be outlined later in this speech.

The Bill provides that service charges may be applied only to land that is rateable land for the purposes of the financial

management provisions of the Local Government Act 1995. In accordance with the current Act, the service must give effect to one or more of the statutory functions of district committees. Moneys raised will be administered as part of the land conservation districts fund held at Treasury, with accountability through the chief executive officer of Agriculture Western Australia. There will also be power for the minister to establish the classification or exemption of land for the purpose of setting a service charge, as in the present system.

The payment of service charges may not be deferred under the Pensioners (Rates Rebates and Deferments) Act 1966 in the same way that service charges are treated under the Local Government Act 1995.

Returning to the accountability provisions included in the Bill, it is intended that regulations will be gazetted in conjunction with the proclamation of this legislation. These will require a land conservation district committee to -

adequately plan and cost all projects to be funded by way of a service charge;

take reasonable steps to ensure that all potentially affected local governments and property owners are given adequate written details of a proposed project;

ensure that affected parties are consulted by way of a public meeting;

obtain the formal approval of the council of any local government within which a soil conservation fee-for-service proposal will have an effect; and

keep the minister fully informed, including the degree of support for a project before and during its life, in accordance with agreed time schedules.

Local governments may and are likely to be required to facilitate the collection and administration of the service charge through a specific account. Committees will have to use the money in the period allocated for the supply of the service.

To enable the thrust of the amendments included in this Bill to be available for the full 1998-99 financial year, the Minister for Local Government recently gazetted amendments to regulations made under the Local Government Act 1995. These now include the provision of soil conservation services under regulation 54 of the Local Government (Financial Management) Regulations 1996. It is intended to repeal this temporary action after the Act arising from this Bill is proclaimed to ensure that these matters are dealt with under the Soil and Land Conservation Act 1945, the most appropriate legislation. I commend the Soil and Land Conservation Amendment Bill 1998 to the House.

Debate adjourned, on motion by Hon Bob Thomas.

GOVERNMENT FINANCIAL RESPONSIBILITY BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Max Evans (Minister for Finance), read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [10.10 pm]: I move -

That the Bill be now read a second time.

The Government Financial Responsibility Bill provides a framework for government financial targeting, planning and reporting. The Bill sets out a number of requirements for the Government and Treasury, with the intent of strengthening the financial accountability and transparency of government and so enhancing the economic outcomes of the State.

The Bill requires three tiers of "financial indicators": Principles; key elements; and targets. Only the principles are specified in the Bill. The three financial principles are -

reliance on the current generation for funding current services;

stability and predictability in relation to spending and taxing policies; and

prudent management of financial risks.

These principles are of enduring relevance and importance: The Bill requires the Government of the day to choose a financial strategy which is to be based on and is consistent with these principles.

The Bill further requires the Government to establish a reporting framework to communicate its financial strategy, how the targets which comprise the strategy are expected to be achieved, and, unique to Western Australia's Bill, whether they have been achieved. The financial strategy of this Government is detailed in the 1998-99 budget papers.

The Treasurer is required under the Bill to publish, as part of the papers supporting the Budget, a "government financial projections statement" containing "whole of government" forward estimates for the budget year and three out years. The

timing for the release of this statement is to be linked to the introduction of the annual appropriation Bills in the Legislative Assembly.

The Bill requires the Government to table in Parliament and publicly release a "government mid-year financial projections statement" to be released no later than 15 February. This statement will provide an update of the forward estimates provided in the budget, taking into account actual performance.

To complete the circle of accountability, the Treasurer is required to publish a "government financial results report" within three months following the end of a financial year, in respect of that just completed financial year. The report is to provide an "after the event" comparison and evaluation of the actual result against the forward estimates and medium-term targets. This requirement is a first for this type of legislation in Australian jurisdictions.

In the interests of openness and transparency, upon the calling of an election the Under Treasurer is to publish updated financial forward estimates which take account of all government decisions up to the time of the dissolution of the Legislative Assembly. Further, the proposed legislation defines principles for costing, in certain circumstances, of publicly announced election commitments following the calling of an election.

To enhance comprehension of the proposed reporting by government, the measurement and reporting practices are to be based on accepted external standards; that is, Australian Accounting Standards and government finance statistics principles. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

PETROLEUM SAFETY BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon N.F. Moore (Leader of the House), read a first time.

Second Reading

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [10.14 pm]: I move -

That the Bill be now read a second time.

Part 1 - Preliminary: This Bill provides a new safety regime for the upstream petroleum industry for both onshore and offshore areas. It replaces and consolidates various regulations and standing directions of a safety nature made under the Petroleum Act, the Petroleum (Submerged Lands) Act and the Petroleum Pipelines Act. It will also apply its duty of care provisions to the commonwealth area adjacent to Western Australia - that is, beyond our coastal waters - by replacing schedule 7 of the commonwealth's Petroleum (Submerged Lands) Act.

The structure and intent of the Bill has been adapted from the State's Mines Safety and Inspection Act with the exception that it embraces a safety case regime. Under the safety case regime, titleholders are required to, in respect of their particular operations, identify the major hazards and develop management systems which reduce the risk of these hazards to as low as reasonably practicable.

Part 2 - General duties relating to safety and health: This part sets out the duties of titleholders, operators, contractors and employees, which are all encompassing and provides various levels of responsibility. It embodies the philosophy that safety is everyone's responsibility but primarily that it is up to the employer to ensure, as far as is practicable, that the workplace is safe for workers. It also imposes certain obligations on manufacturers and in this regard is similar to the Mines Safety and Inspection Act.

Part 3 - Administration of the Act: This provides for the appointment of inspectors and outlines their powers, which include the ability to direct that work cease until a hazard or likely hazard has been removed. It also provides for special inspectors to be appointed and these may be people who have expert skills in a particular area. In all, the powers of inspectors are similar to those contained in the Mines Safety and Inspection Act.

Part 4 - Safety case: Resulting from the *Piper Alpha* disaster in the United Kingdom sector of the North Sea, a nationwide tripartite working group - COSOP - was established to ascertain how such an incident could be avoided in Australia. The result of this study, and a similar one undertaken in the United Kingdom, was the introduction of the "safety case" regime. This approach is a departure from the prescriptive "regulation" style of safety management to an objective based regime. The objectives include identification of the major hazards which would confront a particular petroleum operation, and developing plans for managing these hazards. This is the approach adopted and used in commonwealth waters. Presently the "safety case" regime is imposed by way of direction in state waters. This Bill now seeks to incorporate these requirements directly into the legislation.

Part 5 - Safety and health representatives and committees: These provisions are essentially the same as those contained in

the Mines Safety and Inspection Act and the broader Occupational Safety and Health Act. They provide for safety and health representatives to be elected from the workplaces and for the establishment of safety and health committees. All decisions made in respect to these matters are capable of being reviewed by the safety and health magistrate and in that regard the provisions are consistent with the State's overall worker safety philosophy.

Part 6 - Dealing with safety and health: The Bill requires that a procedure be in place for resolving safety and health issues at a petroleum site. This approach leads to internal resolution of most safety and health issues, prior to any need for regulatory body intervention. Unresolved issues can be notified to an inspector. An employee can refuse to do any work that he feels will expose him or her to a risk of imminent and serious injury or harm. The Bill allows for the same provisions as the Mines Safety and Inspection Act and the Occupational Safety and Health Act for a "disentitled employee". A disentitled employee is one who refuses to work due to risk of injury or harm to health, but where such refusal is not reasonable.

Part 7 - Specific matters relating to safety and health:

Division 1 - Health surveillance: Provision is included for the establishment and maintenance of a health surveillance system for employees. The system will be a requirement imposed on the employer by way of a direction.

Division 2 - Reporting, records and accident sites: Provision is made in the Bill for reporting by operators of critical incidents where no injury or harm has occurred, but the potential for injury or harm to health is high. This requirement is additional to the present obligation to report certain defined events, from which injury or harm resulted. The purpose of this is to increase the awareness to hazards across the industry. The petroleum inspectorate will disseminate widely the information collected and collated by this means. This will be a valuable extension to existing programs. It will also ensure that incidents with a high potential to cause injury or harm are investigated, and the root causes addressed.

Part 8 - Ministerial, safety and health powers: The Bill provides for the establishment of a Petroleum Safety Advisory Board to provide advice to the Minister for Mines on safety and health in the petroleum industry in Western Australia. The board will comprise representatives from the Department of Minerals and Energy and other relevant government departments, together with persons representing employers and employees in the petroleum industry.

The functions of the board are listed in the Bill and generally parallel those of the Commission for Occupational Health, Safety and Welfare, which was established to advise the Minister for Labour Relations. One of the functions of the PSAB is to liaise with the WorkSafe Western Australia Commission, the Mines Occupational Safety and Health Advisory Board and the Office of Energy to coordinate activities on related functions and to maintain parallel standards. The PSAB will be structured to provide competent advice from a wide cross-section of expertise, drawn from the bodies and groups represented. Provision has been made for the formulation and recognition of guidelines and codes of practice, which are of direct relevance to this industry.

Part 9 - Legal Proceedings: An appropriately structured system of penalties for offences has been incorporated throughout this Bill. Major offences under the Bill - the duty of care provisions - will be subject to a penalty of up to $200 000 for an employer and up to $20 000 for an employee. Provision has been made for referral of certain matters and proceedings for an offence to be heard by a safety and health magistrate; that is, to be heard and determined as if it was a matter in which jurisdiction was conferred on the safety and health magistrate by the Occupational Safety and Health Act. Most proceedings for an offence under this Bill must be commenced within 12 months after the offence is committed.

The Bill allows for vicarious responsibility of operators and employees if they are proved to have knowingly permitted or employed a person to commit the offence or the offence was committed with their consent. Continuing offences can attract fines of up to $200 per day.

Part 10 - Miscellaneous: Provision is made in the Bill for exemption from personal liability for officers of the inspectorate, and members of statutory boards and committees. This parallels the provisions in the existing Occupational Safety and Health Act and the Mines Safety and Inspection Act.

The Bill allows for the making of regulations covering the matters set out in schedule 1. Regulations may provide for penalties of up to $5 000, and continuing offences can attract fines of up to $200 for each day the offence continues.

A review of the Bill is to be conducted by the Minister for Mines as soon as is practicable after five years from its commencement. A report based on this review will be laid before each House of Parliament.

Conclusion: Consultation on the development of this Bill has been widespread in its scope and depth. Intensive effort has been applied to canvass opinion on its content throughout the State. The process of refinement has seen the Bill finalised at the fifth draft and the final product is an excellent document. It is logically structured and has been drafted in plain English.

The Bill consolidates the safety legislation previously covered in a number of state petroleum Acts and will provide a consistent safety legislation across the various petroleum operations covered under these Acts.

This Bill provides the petroleum industry with a clear, logical, comprehensive, well structured and consistent framework of legislation for safety and health. This will enable it to build on the sustained improvement in safety performance which has been demonstrated to date. Improved standards in safety and health performance are fundamental to government policy. I commend this Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

House adjourned at 10.21 pm

QUESTIONS ON NOTICE

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

PERKINS BROS BUILDERS' CONTRACT

107. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Education:

In relation to the contract called for tender by the Department of Contract and Management Services, on behalf of the Education Department and the successful tenderer, Perkins Bros Builders for East Busselton Primary School construction to the value of $3 967 700 -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If not, why not?

(4) If yes, will the Minister for Education table details of the cost benefit analysis and information on any identified inherent risks to the Government?

Hon N.F. MOORE replied:

(1)-(4) When making decisions on replacement schools such as East Busselton Primary School, the Education Department takes into account educational facilities and demographic information.

In this instance the existing Busselton Primary School was located on a limited site near the commercial centre of the Town and comprised a number of inadequate facilities. Consequently, in November 1996, a decision was taken to construct a modern replacement school at East Busselton.

Funds for the project were appropriated in the 1997 State Budget. Part of the cost of providing the replacement school will be offset with funds realised from the sale of the Busselton Primary School site later this year.

HOMESTYLE PTY LTD'S CONTRACT

109. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Education:

In relation to the contract called for tender by the Department of Contract and Management Services, on behalf of the Education Department and the successful tenderer, Homestyle Pty Ltd for Ellenbrook Primary School Construction to the value of $2 798 120 -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If not, why not?

(4) If yes, will the Minister for Education table details of the cost benefit analysis and information on any identified inherent risks to the Government?

Hon N.F. MOORE replied:

(1)-(4) When making decisions on new schools such as Ellenbrook Primary School, the Education Department takes into account educational facilities and demographic information.

In this instance the enrolment at the interim "school in houses" at Ellenbrook had exceeded 150 students by the end of third term last year.

A planning report indicated that the long term enrolment projections were sufficient to justify establishment of permanent school facilities. On this basis, a decision was taken to construct a permanent primary school to open in mid-1998. The "school in houses" model remains a most cost-effective strategy in providing neighbourhood schooling to small communities well before a permanent school can be justified in terms of student enrolments.

QUESTIONS WITHOUT NOTICE

CHIEF EXECUTIVE WORKING PARTY ON ESSENTIAL SERVICES TO ABORIGINAL COMMUNITIES

267. Hon TOM STEPHENS to the minister representing the Minister for Aboriginal Affairs:

(1) Which of the 18 recommendations of the report of the chief executive working party on essential services to Aboriginal communities - the Hames report - have been implemented in full by the State Government?

(2) Which are still to be implemented and when will these be implemented?

(3) Which have been rejected?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Recommendations 5, 11, 12, 13 and 18 have been implemented in full.

(2) The implementation of recommendations 1, 2, 3, 4, 6, 7, 10, 14, 16 and 17 is ongoing. Recommendations 8 and 15 will be implemented in the current financial year. Recommendation 9 has not yet been implemented and is currently under consideration.

(3) None.

ABORIGINAL DEMONSTRATION PROJECTS

268. Hon TOM STEPHENS to the minister representing the Minister for Aboriginal Affairs:

(1) Which communities in addition to Jiggalong and Oombulgurri have been added to the demonstration projects?

(2) When were these communities added to this program?

(3) What additional funds have been allocated to this program's budget to provide for these additional communities?

(4) What is the scheduled duration of the demonstration project program?

(5) What target date has the State Government set for ensuring that all 48 major Aboriginal communities in Western Australia have adequate water, power, housing and maintenance programs?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) The Nambi Road (Leonora), Burringurrah (Upper Gascoyne) and Dampier Peninsula communities.

(2) 1998-99.

(3) The additional communities are being funded from the existing demonstration project budget.

(4) Funding is confirmed until the 2001-02 financial year.

(5) None.

ATTORNEY GENERAL, DEFAMATION ACTION

269. Hon N.D. GRIFFITHS to the Attorney General:

I refer to the Attorney General's answer provided on 16 September 1998 to question without notice 206 concerning the action of former Law Reform Commissioner Moira Rayner brought against the Attorney General for defamation of her. Is the Attorney General now able to advise -

(1) What is the liability of the State with respect to the payment of private lawyers engaged to act for him?

(2) What is the cost of litigation services provided by public sector lawyers?

(3) What sum, if any, was or is to be paid to Ms Rayner by way of damages and costs?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) I am not sure whether the member is asking this as a matter of law or fact. I have asked for a minute to Cabinet requesting indemnity in accordance with the guidelines tabled by Hon Joe Berinson.

(2)-(3) None.

MILK VENDORS, COMPENSATION

270. Hon HELEN HODGSON to the minister representing the Minister for Primary Industry:

(1) Does the minister intend to pay further assistance from the distribution adjustment assistance scheme to former milk vendors who suffered severe hardship after leaving the industry as a result of the deregulation of milk distribution?

(2) If not, why not?

(3) If so, on what basis will this further assistance be calculated?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Having considered report No 6 of the Standing Committee on Public Administration, chaired by Hon Kim Chance, member for the Agricultural Region, regarding the distribution adjustment assistance scheme guidelines, the Minister for Primary Industry has agreed to implement a further assistance payment to former milk distributor-vendors covered by schemes B and C of the DAAS.

(2) Not applicable.

(3) Those eligible for further assistance have been advised directly by the Dairy Industry Authority.

ROAD, KARRATHA-TOM PRICE

271. Hon GIZ WATSON to the Minister for Transport:

In respect of the construction of the new road from Karratha to Tom Price -

(1) Why has the alignment for this road been established within and adjacent to the Hamersley Iron's rail line?

(2) Will it replace Hamersley Iron's access road at any location?

(3) Will it be used by Hamersley Iron for access to its rail line for maintenance purposes?

(4) What is the projected cost for this road?

Given that the projected vehicular use for this road is estimated at 35 vehicles per day -

(5) Why is this road being built when a more scenic and tourist suitable road and alignment already exists?

(6) What explanation can the minister provide for this gross waste of public money?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) A general corridor has been identified as a result of a planning study involving extensive consultation with affected parties. The study concluded that a corridor which generally follows Hamersley's rail line for the greater part of the route is the preferred option.

(2)-(3) As more detailed planning progresses it is possible that at some locations, the alignment of the new road and the Hamersley rail access will coincide. However, given the nature of the terrain and other constraints along the preferred corridor, the two roads are likely to be separated for the major part of the route.

(4) The budgetary estimate for the project is $125m.

(5) The planning study referred to in (1) concluded that the existing alignment along the Roebourne-Wittenoom Road is not the most suitable. As the new alignment has not been finalised, its scenic qualities are not able to be fully assessed. However, the existing route along Hamersley's rail line is arguably more scenic than the Roebourne-Wittenoom Road.

(6) This is necessary road infrastructure for the long term benefit of the region, and there has been no waste of public funds on the project.

WA ACADEMY OF SPORT, SOUTH HEDLAND BRANCH

272. Hon GREG SMITH to the Minister for Sport and Recreation:

I understand that the WA Academy of Sport has recently established a branch in South Hedland.

(1) What sports will the institute cover?

(2) Who will be responsible for ongoing funding and coordination?

(3) What training and accommodation facilities will be in use?

Hon N.F. MOORE replied:

I know that members will be very pleased to hear about this program, particularly Hon Tom Helm, who has a great interest in Pundulmurra Aboriginal College.

(1) The Academy of Sport will provide assistance to a number of sports through its athlete development program. The focus of the ADP is the scholarship program which has two streams, the squad program and the individual scholarship program. The squad program will concentrate on touch football, netball and swimming in the first years, and the sports will be introduced in that order. The individual scholarship program focuses on talented athletes in all other sports not in the squad program.

(2) The State Government has committed $200 000 per annum to the end of the 1999-2000 financial year. The academy will be raising sponsorship (80 per cent of proposed operating budget) from the corporate sector to manage its programs.

(3) The facilities at Hedland College were originally identified as being the prime location for the academy and negotiations are in place for more definite ongoing arrangements. However, as the academy is developing, satellite programs are developing in other centres and facilities in other towns will also be used where appropriate.

FORESTS, LANE 1 EAST BLOCK

273. Hon NORM KELLY to the minister representing the Minister for the Environment:

I refer to the tree in lane 1 East Block containing a protest platform -

(1) On what date did the Department of Conservation and Land Management make a request to Dr Siemon to inspect and report on the condition of the tree?

(2) On what date did CALM adviser, Dr Siemon, inspect the tree?

(3) On what date did CALM receive Dr Siemon's report?

(4) On what date did CALM advise protesters of the findings of Dr Siemon's report?

(5) In what manner were protesters advised?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) 30 July 1998.

(2) 5 August 1998.

(3) 14 August 1998.

(4)-(5) On 5 August 1998, Dr Siemon verbally expressed his concerns about the condition of the tree and the associated safety hazards to the protesters present at the site. That has been followed up by the Department of Conservation and Land Management on several occasions by verbal warnings to protesters present at the site and by written warnings on 1 and 15 September 1998.

SMOKE ALARMS

274. Hon MURIEL PATTERSON to the minister representing the Minister for Seniors:

The Office of Seniors Interests recently contributed with other community groups to the funding of smoke alarms in houses occupied by seniors in Mandurah. Are there any plans to contribute to other similar community groups?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The Smoke Out Australia program has been offered to eligible Seniors Card holders in the following areas: Scarborough, Mandurah, Fremantle, Mt Hawthorn, Moora, Attadale and Rockingham districts. The program is available through participating Rotary Clubs in Western Australia, and, to be eligible, people must be current Seniors Card holders. It is a Rotary Australia initiative, backed by GIO Australia, Quell Alarms and the State Government through the Office of Seniors Interests. The program also has the endorsement of the Fire and Emergency Services Authority of Western Australia. The Office of Seniors Interests has supported this program by special mail-outs, with more than 8 000 letters of offer to Seniors Card holders who fall within the respective Rotary Clubs' jurisdiction. The mail-outs contain information regarding the program and the option for Seniors Card holders to participate.

ELLE MACPHERSON - PERSONAL FEE

275. Hon KEN TRAVERS to the Minister for Tourism:

(1) Will the minister confirm that on 16 September he told Parliament that $2 012 574 had been included in the 1998-99 Western Australian Tourism Commission budget for the production and placement of the new Elle advertisements?

(2) Will he confirm also that on the same day he said that the production costs of the new advertisements were $436 832?

(3) If so, is Elle's personal fee of $843 000 included in the placement component of the allocation or is it in a separate allocation?

Hon N.F. MOORE replied:

I do not seem to have a copy of an answer to that question, but I have about six other questions on the same subject.

Hon Ken Travers: Answer them all.

Hon N.F. MOORE: I should have thought that Hon Ken Travers would be embarrassed about asking questions on that matter, quite frankly. If the member wishes to place that question on notice, I will provide an answer, but I have several others that he might wish to ask some time today.

WESTRAIL - CUSTOMER SERVICE ATTENDANTS

276. Hon BOB THOMAS to the Minister for Transport:

(1) Will the minister confirm that Westrail is filling customer service attendant vacancies with Chubb security guards?

(2) If so, why were those positions not offered to the more than 400 redeployed MetroBus drivers?

Hon M.J. CRIDDLE replied:

I must ask the member to put that question on notice. Obviously, I would like to be sure of the answer.

SMALL BUSINESS DEVELOPMENT CORPORATION

277. Hon RAY HALLIGAN to the minister representing the Minister for Small Business:

With the rapid growth in the number of small businesses in the North Metropolitan Region, will the Government consider extending the full range of services offered by the Small Business Development Corporation, which is based in the city, to the outer metropolitan area?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. Although the Small Business Development Corporation is based in the city, it is closely linked for the delivery of many of its services to the network of 36 business enterprise centres throughout the State, 10 of which are in the metropolitan area. North metropolitan suburbs are serviced by BECs located in Stirling, Joondalup, Malaga and Belmont. Those centres are able to access, or arrange access, for clients to all the services provided by the SBDC, including business licence information; free business guidance; specialist advice on matters such as franchising, commercial tenancy and marketing; taxation information; business mentors; and services to women in export areas. Arrangements can also be made through a local BEC, or the SBDC direct, for field visits by SBDC staff to the metropolitan area as appropriate. Business enterprise centres also act as agents for the SBDC in the delivery of programs such as the small business improvement program to assist with business plans, marketing plans and quality assurance and the Aussiehost customer service program.

The recent development of the SBDC's Internet site at www.sbdc.com.au has meant that information services are also more readily accessible to clients in metropolitan and country regions. Licence information requests and purchases of publications are now able to be processed via the Internet.

INSURANCE FRAUD ADVERTISING CAMPAIGN

278. Hon LJILJANNA RAVLICH to the Minister for Finance:

In relation to the "Help get the bludgers off our backs" advertisements I ask -

(1) What is the anticipated cost of the insurance fraud advertising campaign being mounted by the Insurance Commission of Western Australia?

(2) What are the major cost components of the advertising campaign?

(3) Who is responsible for authorising and paying for the advertising campaign?

(4) What is the estimate of the total cost of insurance fraud to the Insurance Commission of WA?

(5) What is the basis for the estimate of insurance fraud for the Insurance Commission of WA?

(6) How is the amount of $160 extra insurance for each hard-working Australian, as stated in the advertisement, obtained?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The campaign launch from 4 October to 5 December 1998 is expected to cost $340 000.

(2) Media buying approximately $300 000; advertisement production approximately $35 000; Crime Stoppers $5 000, paid by the Insurance Commission of WA.

(3) The Insurance Commission of WA.

(4) $30m.

(5) According to the Insurance Council of Australia, insurance fraud costs Australians $1.5b a year. Additionally, between 10 and 15 per cent of insurance claims across all classes of insurance exhibit elements of fraud. The Insurance Commission of WA settled bodily injury claims to a total value of over $300m a year. Ten per cent of that amount equates to $30m.

(6) When the estimated cost of insurance fraud of $1.5b is divided by the number of people in the work force of 8.6 million in May 1998, the resulting cost per capita is about $175. That amount has been rounded down to $160 per capita to allow for some uncertainty in the fraud estimate.

I do not know why people make an issue of that. They should be pleased. Only a short while ago, a person was had up for burning his car and claiming the insurance on it. It was eventually found to be fraud so the company did not pay out. Every time an insurance company pays out $30 000 or $40 000, that cost must be recovered by other people's premiums.

Hon Tom Stephens: Don't ever burn your car; I will never be able to afford my premium.

The PRESIDENT: Order! There are several questions due to be asked.

Hon MAX EVANS: It is a bit like the road safety campaign, a large part of which is financed by the Insurance Commission of WA. Yes, it is all about self-interest on behalf of the taxpayers of Western Australia so that we can cut claims. Members should be grateful that there is the initiative to do that because it does not always happen.

PERTH AIRPORT TAXI LEVY

279. Hon TOM HELM to the Minister for Transport:

My question might come from Hon John Halden at some time, but I am asking it now. It relates to the minister's answer yesterday regarding the private operator at Perth Airport, who can apply a levy on taxi entry to the airport and buses serving the airport.

(1) Will the minister now confirm the levy of which the Department of Transport has been advised?

(2) Will he permit taxi drivers to pass on any such levy to consumers?

The PRESIDENT: I assume that the question is from Hon Tom Helm as Hon John Halden is not in the Chamber. If it is from any member who is not in the Chamber, it is out of order. Those are the rules.

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. It is in the name of Hon John Halden, with Hon Tom Helm's name on the top.

(1) Yes. Incidentally, that was confirmed last night. Commercial buses, $2; limousines, $2; and taxis, $1. Transperth buses are exempt from the levy.

(2) Taxi fares have been set by Transport. Taxi companies can apply to Transport for fare increases. There has been no formal approach by the taxi companies to Transport to have fares altered.

CLOVER MEATS ABATTOIR CLOSURE

280. Hon KIM CHANCE to the minister representing the Minister for Primary Industry:

With regard to the closure of the Clover Meats export abattoir at Waroona -

(1) Has the minister had any contact with the company during its period of difficulty?

(2) If so, did the company seek any assistance from the Government to help overcome its problems?

(3) What steps did the minister take to try to avert the closure of this export abattoir, with the loss of nearly 200 jobs?

(4) If the minister has not provided any assistance, why not, and when does he intend to do so?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The Minister for Primary Industry has provided the following reply -

(1)-(4) I have spoken with Mr Graham Laitt, Managing Director of the Peters and Brownes Group, who has advised me of possible difficulties with Clover Meats. These have now been widely reported by the company as resulting from matters such as South-East Asian market conditions. Mr Laitt has not requested government assistance from me.

LPG GAS PRICES

281. Hon J.A. SCOTT to the Leader of the House representing the Minister for Energy:

(1) Is the minister aware that Woodside is selling LPG gas to Japan for 9.6¢ a litre whereas Wesfarmers Ltd is charging Western Australian consumers 34¢ to 46¢ a litre?

(2) Is the minister further aware that bottles of LPG gas are being sold in Perth for 68¢ a litre whereas they are being sold in Victoria for 48¢ a litre?

(3) Can the minister explain why Western Australian consumers and industries are being forced to pay significantly higher prices than overseas and eastern states buyers?

(4) Is there a difference between the base price of natural gas in Western Australia and Victoria; and, if so, what is the difference, and what is the reason for it?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. I regret that I could not be provided with an answer in the time available and ask that the question be placed on notice.

ABORIGINAL LANDS TRUST REVIEW REPORT

282. Hon TOM STEPHENS to the minister representing the Minister for Aboriginal Affairs:

I ask this question on behalf of Hon Cheryl Davenport. Which of the recommendations of the Report of the Review of the Aboriginal Lands Trust - the Bonner report - has the State Government -

(a) accepted;
(b) implemented; and
(c) rejected?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(a) Recommendations one to eight.
(b) None.
(c) Recommendations nine and 10.

BATTYE LIBRARY ORAL HISTORY UNIT

283. Hon J.A. COWDELL to the Minister for the Arts:

Is the minister satisfied that he is not presiding over the effective dismantling of the State's oral history program? If so, how has he satisfied himself that the oral history unit at the Battye Library is adequately funded and staffed?

Hon PETER FOSS replied:

I am satisfied, because upon inquiry I have found that the supposed disasters that are taking place there have not taken place.

All that has happened is that the position of one person has been reviewed and not renewed. I do not think any person is entitled to assume that he or she has life tenure. It is a matter of allocating appropriately the resources for particular projects.

PINUS RADIATA PLANTINGS

284. Hon CHRISTINE SHARP to the minister representing the Minister for the Environment:

I refer to page 20 of the Department of Conservation and Land Management's annual report for 1997-98, which states that 1 238 hectares of *Pinus radiata* have been replanted in the reporting period. How many of these hectares were planted in the winter of 1997, and how many were planted in the winter of 1998?

Hon MAX EVANS replied:

I thank the member for some notice of this question. It has not been possible to provide the information in the time required, and I request that the member place the question on notice.

FAMILY AND CHILD COUNSELLORS

285. Hon HELEN HODGSON to the Attorney General:

I refer to the regulations for the Family Court Act 1998 tabled on 13 October 1998.

(1) When determining whether a person is suitable to be authorised as a family and child counsellor for the purposes of paragraph (c) of the definition of "family and child counsellor" in section 5 of the Family Court Act, what qualifications and other criteria will the Attorney General use to assess a person's training and experience?

(2) Has the Attorney General issued any authorisations under this regulation to date?

(3) If so, will the Attorney General table details of the persons authorised to date?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) I will consider any application under this regulation on its merits. No specified qualifications or criteria are prescribed.

(2) No.

(3) Not applicable.

WESTRAIL FREIGHT BUSINESS SALE - PROJECT DIRECTOR

286. Hon MARK NEVILL to the Minister for Transport:

I refer to the minister's answer yesterday with regard to the sale of Westrail's freight business, when he said that the project director started work this month.

(1) What is the value of the salary package of the project director?

(2) When will the budget against which expenditure will be controlled and monitored, which is being prepared for consideration by the rail freight sale task force, be finalised?

(3) Will the minister undertake to provide a copy of this budget once it has been finalised?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) The salary package is $235 000.

(2)-(3) As answered in yesterday's question, a full budget of expenditure is being prepared, and I will make it available at the appropriate time.

ELLE MACPHERSON ADVERTISEMENTS

287. Hon KEN TRAVERS to the Minister for Tourism:

With regard to the costs associated with the production of the Elle Macpherson advertisements -

(1) Are the costs of accommodation, meals, travel, etc, incurred by Ms Macpherson and her entourage during the shooting of the advertisements incorporated in either -

(a) Ms Macpherson's personal daily fee of $250 000; or

(b) the production costs of $416 832;

or are they a separate item?

(2) What is the estimate of these associated costs during the period of Ms Macpherson's visit to Western Australia?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The cost of accommodation, meals, airfares, personal security and ground transport incurred by Ms Macpherson and her entourage during the shooting of the advertisements are a separate budget item.

(2) $25 000.

ROE HIGHWAY EXTENSION

288. Hon NORM KELLY to the Minister for Transport:

(1) With regard to the planned extension of Roe Highway, when will the stages to the following be commenced and completed -

(a) Kwinana Freeway to Rupert Street; and

(b) Albany Highway to Welshpool Road?

(2) Is the minister aware that the uncertainty about when these stages will be completed is having a detrimental effect on local small businesses and residents?

(3) What action will the minister take to alleviate this uncertainty?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) (a) Construction of the Roe Highway from Rupert Street, now referred to as the Kenwick link, to Nicholson Road, will commence in 1998-99 and is scheduled to be completed by late 2003. The Nicholson Road to Kwinana Freeway section is programmed to commence in 1999-2000 and to be completed in 2006.

(b) Construction of the Albany Highway to Welshpool Road section is planned to commence in early 1998-99 and to be completed in 2001-02.

The completion of those projects is obviously subject to variation, as the member would understand.

(2)-(3) I am not aware of any detrimental effect. In order to assist the people concerned, local businesses and residents are given regular project newsletters to keep them informed of the project. The latest newsletter was distributed last month.

MID WEST REGIONAL MINERALS STUDY

289. Hon GIZ WATSON to the Leader of the House representing the Minister for Resources Development:

With respect to the proposed regional mid-west regional minerals study -

(1) Has the study been established?

(2) If no, when will it be established?

(3) What are the funding commitments for this study?

(4) Which mining companies are or will be part of the management committee?

(5) Will the regional communities have any representation on the principal or management committee?

(6) Will the Acclaim Uranium group of companies, with 53 mineral tenements in the mid-west regional minerals study zone, have representation on the management committee?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) The mid-west regional minerals study is in the process of being established.

(3) The Commonwealth and State Governments and industry have made in-principle monetary commitments to the study together totalling $240 000.

(4) The management committee is being established. The companies are yet to respond.

(5) The mid-west regional minerals study is a strategic infrastructure planning study focusing on the infrastructure requirements to support the resources industry. The study is not a statutory planning document. Regional communities will be represented in the study process

(6) Acclaim Uranium has not been approached to participate on the management committee.

MAIN ROADS INQUIRY - REVIEW FINDINGS

290. Hon TOM STEPHENS to the Minister for Transport:

I refer to the findings of the review of Main Roads "private eye" investigation carried out by the Ministry of Premier and Cabinet's public sector management division and tabled in another place yesterday. Specific findings indicated a failure to uphold principles and processes consistent with public sector requirements, significant management deficiencies within Main Roads, a failure to adhere to due process, and significant shortcomings associated with International Investigation Agency's investigation and the management of the IIA contract which give rise to some serious doubts about the reasonableness of any outcome associated with this matter.

(1) Does the minister accept the findings of that report?

(2) In light of the serious doubts of the review about the reasonableness of any outcome, does the minister accept that no useful purpose is served by the continuation of the investigation seeking out the whistleblower?

(3) Does the minister consider the expenditure of a further $8 000 on top of the more than $200 000 already spent justified?

(4) When will the minister call a halt to this wasteful and expensive political witch-hunt seeking out a community-minded whistleblower within the Main Roads Department?

The PRESIDENT: The last part of the question is out of order because it breaches Standing Order 140 - I will allow the Leader of the Opposition to work out which part of the standing order. The balance of the question can be answered.

Hon Tom Stephens: Just do the decent thing and call it off.

Hon M.J. CRIDDLE replied:

(1)-(4) The investigation has concluded and that has been made clear previously in this place. What comes from that investigation is up to the Commissioner of Main Roads as he is the responsible person for the people he employs. I wait with interest to see the outcome of his consideration.
