



WESTERN AUSTRALIA

# **Parliamentary Debates**

**(HANSARD)**

THIRTY-FIFTH PARLIAMENT  
SECOND SESSION  
1998

LEGISLATIVE COUNCIL

Wednesday, 16 September 1998

# Legislative Council

Wednesday, 16 September 1998

---

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

## **SKILLSHARE COOLBELLUP, CLOSURE**

### *Petition*

Hon Simon O'Brien presented a petition, by delivery to the Clerk, from one person opposing the projected closure of SkillShare, Coolbellup.

[See paper No 168.]

## **POLICE HIGH SPEED CHASES**

### *Petition*

Hon Jim Scott presented a petition, by delivery to the Clerk, from one person opposing the continued use of high speed police car chases.

[See paper No 169.]

## **COOLBELLUP REMNANT BUSHLAND**

### *Petition*

Hon Jim Scott presented a petition, by delivery to the Clerk, from one person opposing the use of remnant bushland on the corner of Stock and Sudlow Roads, near Coolbellup, for urban development.

[See paper No 170.]

## **DEMOLITION WASTE LANDFILL**

### *Petition*

Hon Jim Scott presented the following petition bearing the signatures of 195 persons -

To the Honourable the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.

We the undersigned object to the practice of landfilling with Demolition Waste in the area of Bird and Jackson Rds Mundijong. We the residents of The Shire of Serpentine & Jarrahdale Beg The Government to stop this practice forthwith.

We object to the tipping of Demolition waste for landfill or the Crushing and Screening of such waste in this unsuitable area due to the likelihood of Contaminating the Local Wetlands, Environment and Drinking Water. And have grave concerns regarding Health, The Potential to endanger our local lifestyle, property values and local Businesses.

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

[See paper No 171.]

## **WORKSAFE WA**

### *Standing Committee on Public Administration - Motion*

Resumed from 15 September on the following motion -

That the House direct the Standing Committee on Public Administration to inquire into and report upon -

- (1) The degree to which and the methods by which WorkSafe WA applies and seeks to ensure compliance with the Occupational Safety and Health Act 1984.
- (2) The extent to which compliance with the Occupational Safety and Health Act 1984 has been impacted upon by privatisation and contracting out.
- (3) The degree to which legislative changes since 1993 have impacted on the safety of Western Australian

workers, with particular reference to the Industrial Relations Legislation Amendment and Repeal Act 1995 and the Labour Relations Legislation Amendment Act 1997.

- (4) The extent to which WorkSafe WA complies with safety standards enforcement in demolition and other high-risk industries.
- (5) The extent to which a declaration by the WorkSafe WA Commissioner not to respond to safety complaints by unions had an effect on the administration of the Occupational Safety and Health Act 1984.
- (6) The extent to which the construction branch of WorkSafe WA meets compliance with the Occupational Safety and Health Act 1984.
- (7) The extent to which reporting of occupational injuries and diseases as per the requirements of the Occupational Safety and Health Act 1984 truly reflects the extent and rate of occupational injuries and diseases in Western Australian workplaces.
- (8) The extent to which existing penalties for breaches of occupational health and safety standards adequately reflect the pain and suffering of victims.
- (9) Any other matters relating to WorkSafe WA and its operations that the committee deems necessary in conducting its inquiry.

**HON LJILJANNA RAVLICH** (East Metropolitan) [4.05 pm]: I welcome the opportunity to continue my remarks and to touch on the other terms of reference before us which I hope the Standing Committee on Public Administration will be able to consider. Fundamental to the issues surrounding WorkSafe is that it needs to be established whether WorkSafe is doing all that it could for workers' safety in Western Australia, particularly in the allocation of resources, and whether those resources are being used in an efficient and proper manner.

I was recently advised that at least 22 inspectors have left WorkSafe in the past two years. I am keen for the committee to find out how many of those inspectors have been replaced and how the commission can operate as efficiently as it might have once upon a time given that 22 key people are no longer in the organisation. The last time I spoke on this issue I expressed concern that WorkSafe may be breaching the Occupational Health and Safety Act. However, more work needs to be done in that area. It is apparent that the commissioner is breaching WorkSafe's own code of conduct, and that issue needs more analysis.

The second term of reference on which I want this inquiry to focus is the extent to which privatisation and contracting out has impacted on the Occupational Health and Safety Act. Members would be aware from comments I have made in this place that I have concerns about the whole area of privatisation and contracting out and the impact that has on the safety of workers. Underlying my concern are the economic pressures to undercut contract price and as a result cost savings occur in the area of safety. To achieve low costs, contractors often have to work excessive hours, which, combined with cutbacks in safety as a means of cutting cost, leads to potentially explosive situations in the lack of protection for Western Australian workers. However, apart from the economic issue of underbidding on contracts, there are issues also relating to work organisation. When contractors are brought in the work sequence which may have existed prior to contracting out no longer exists, so that when one group starts to do something, they may interfere with the work being done by other groups. That lack of organisation potentially has grave consequences for workers' safety.

Another issue I want the committee to look at is regulation. The laws were designed to deal with employees in large enterprises. They were not designed to deal with large groups of small contractors. Therefore, the laws and the compliance strategies have not been adapted to meet this new work mode. When people enter into self-employment or a subcontracting relationship often they have no collective representation and cannot organise themselves to deal with the problems that arise. Enormous implications result in terms of potential accidents. The implications cut across into other areas such as self-employed contractors not reporting accidents. It has an impact across a wide range of areas, including the statistics which WorkSafe collects. I have raised my concern about those statistics from time to time in this place.

What happens under contract arrangements is that the responsibility for safety shifts as people who were formerly employees are required to become incorporated and form companies in order to undertake specific tasks. This is an enormous issue which may have grave consequences unless it is addressed. If the rate of contracting out continues, my concern is that Western Australian workers will be worse off unless provisions are implemented to ensure that their safety is protected. I have no comfort currently that that is the case.

The third term of reference which I would like the committee to look at is the degree to which the legislative changes since 1993 have impacted on the safety of Western Australian workers, particularly the Industrial Relations Legislation Amendment and Repeal Act 1995 and the Labour Relations Legislation Amendment Act 1997. This really strikes at the heart of a wide range of safety issues. Quite clearly, major changes have taken place to undermine the effectiveness of the Western Australian union movement, as well as the Industrial Relations Commission. We most recently saw the Government

further undermine the democratic rights of workers with its Industrial Relations Legislation Amendment Act which was passed in 1997.

Nevertheless, historically as a part of the award provisions, unions have had a right to go on sites and check the working conditions, wages and records of their members. As they are now no longer able to do that, the potential exists for employers not to maintain the proper records and to reduce the working conditions, wages and occupational health and safety standards on site. Unfortunately, as a result of the Government's legislation, many of these breaches are now going unchecked, and workers' lives are being traded off for profits. That is a totally unacceptable position, and yet the Government continues to accept this. The Government does not pay any attention to, or show any concern for, the fact that this is occurring in Western Australian workplaces. Employers' rights and profits, unfortunately, are now driving the State's industrial agenda rather than there being any consideration whatsoever for the rights of Western Australian workers. Quite clearly, work must be undertaken by the committee to make an accurate assessment of just how disadvantaged Western Australian workers have become as a result of legislation passed in this place.

The fourth term of reference that the committee should consider is the extent to which WorkSafe WA complies with safety standards enforcement in demolition and high-risk industries. I have spoken on this matter on a number of occasions. When one refers to the schedule, some industries stand out as places where accidents are more likely to occur in Western Australian workplaces or on work sites. Those industries include forestry, mining - although I know mining is covered by a separate Act - demolition and some sectors of the manufacturing industry. Therefore, it is very important for the committee to make some assessment as to the special provisions needed in these high-risk industries to ensure a reduction in both the death rates and the occupational injuries and diseases area caused by mismanagement and lack of inspections by WorkSafe WA. The committee must investigate these areas.

Under current arrangements, very few field inspectors are pursuing compliance laws, with very few or no random inspections of Western Australian workplaces. Unfortunately for the Western Australian work force, employers know that they are unlikely to be randomly inspected, and as a consequence they continue to breach occupational health and safety standards. WorkSafe inspectors are not doing the job adequately if they overlook major breaches of occupational health and safety in Western Australia, as was clearly the case on the East Perth demolition site where Mark Allen, a Builders' Labourers, Painters and Plasterers Union organiser, died in an accident on a very unsafe work site. It was a tragic death and one that could have been avoided. The potential for such deaths and accidents to occur is far too high. As a community, we have a real problem, and we should consider this issue very seriously.

Much more work needs to be done by the WorkSafe inspectorate by making precautionary checks to ensure that Western Australian workers are working in a safe environment. There is no doubt that the inspectorates are becoming weaker nationally. That is a function of conservative Governments in most States. They are becoming weaker not only numerically, but also resource-wise.

I draw the attention of the House to one statistic. Apparently in New South Wales, between 200 and 300 prosecutions each year are initiated by the New South Wales inspectorate against firms which have broken the regulations. Some of these prosecutions resulted in fines of more than \$100 000. In comparison, the performance of WorkSafe in this particular area is incredibly lacking. In fact, the WorkSafe Western Australia Commissioner has a target of 130 prosecutions this financial year as part of his performance agreement with the Government. If a target is put on something, people will not aim for the best figure. Once the target of 130 prosecutions is reached, they will think they have done enough and will see no point in doing more. In any event, the target was 130 prosecutions last year. Setting a benchmark on the number of prosecutions is an indication of a Government and a department which are not prepared to do the job properly. WorkSafe has not done the job properly. This is an area which needs to be investigated. How can these targets be set when, at the same time, WorkSafe claims that it is doing everything possible? Under the present arrangement, no further prosecutions will be made after the target of 130 is reached. The committee should consider that very closely.

I give an example which shows how weak the inspectorate of WorkSafe is. On the East Perth metropolitan bus site where the late Mark Allen lost his life, apparently that demolition company had operated for six weeks under the nose of WorkSafe without so much as an inspector visiting the site during that period. It was not until Mark Allen fell to his death that WorkSafe started to take some action. As soon as that accident occurred, WorkSafe closed down the job and issued 14 improvement notices. What a price to pay for those 14 improvement notices. It is an absolute disgrace that a man in his prime had to lose his life and that WorkSafe WA, which has a particular function under an Act of Parliament to inspect workplaces, did not carry out those inspections until after that tragic event. Fourteen improvement notices were issued on the spot, and the people of Western Australia - I include myself - should ask why those improvement notices were not issued at the commencement of that demolition job. Why was that workplace allowed to operate with substandard occupational health and safety procedures in place for six weeks?

That is another issue that I hope the committee will spend some time looking into. I am sure that it will find some interesting information in high risk industries. I am not sure whether the committee will focus on that particular case, but I hope that it will give some attention to what happened at the East Perth bus port, because that is an example of a clear breach of duty.

It is not an isolated example, because I hear of these things time and again. When one hears the same thing time and again - not from the same source but from a variety of sources - one can bet one's bottom dollar that something is drastically wrong.

Paragraph (5) of the terms of reference is the extent to which a declaration by the WorkSafe Commissioner not to respond to safety complaints had an effect on the administration of the Occupational Safety and Health Act. I have spoken about this on previous occasions, and I make the point that the commissioner did not act in a way which brought credit to the commission or its 12 members, who should have been advised in this matter. The commissioner made a decision, then made it public through a press release, and thought he would get away with it. At the end of the day it backfired and pressure grew about whether he was breaching not only his own Act but other Acts governing the behaviour of senior officials in this State. Many issues must be resolved in relation to that. Yesterday I gave an example which demonstrated the requirement of section 14(1)(d) of the Occupational Safety and Health Act for the commission to act in consultation with various stakeholders. The trade union movement is one of those stakeholders and in this case that consultation has not occurred. The most important aspect of the committee's work will be to gather evidence. It is one thing for pieces of paper to go between opposition members, the Opposition and the Government, the Government and lawyers, and lawyers and QCs and whoever else is involved in these matters, but one of the critical issues for this committee is to hear from people who have been affected by the lack of administration of the Occupational Safety and Health Act in this matter and a range of other matters. It is critical that some of these cases are brought to light. From the extent of the complaints about WorkSafe WA and its operations it is my bet that we have real cause for concern, and an inquiry will get to the bottom of these issues.

The sixth point of reference is the extent to which the construction branch of WorkSafe WA complies with the Occupational Safety and Health Act. Allegations have surfaced over a number of years of corruption in the construction branch of WorkSafe WA, and usually where there is smoke there is fire. I wrote to the Commissioner for Public Sector Standards and asked him to investigate this issue. I suspect that the commissioner might have considered that it fell outside his jurisdiction, because of the fairly narrow framework within which he operates under the Public Sector Management Act. Consequently, his inquiry did not include any information in relation to that part of the complaint that I lodged. However, in correspondence the commissioner made the point that the Anti-Corruption Commission had received complaints and done some preliminary investigation of allegations. Only a few days ago I heard more information which would indicate that a level of corruption exists in the construction branch of WorkSafe WA. If at the end of the day the committee finds there has been no corruption, let us put that to bed. However, corruption does exist in the construction branch of WorkSafe WA, proper action must be taken. As members of Parliament we must ensure that the agencies that operate within this State are not corrupt. That is a key part of the inquiry for the Standing Committee on Public Administration.

Allegations have been made for a number of years that WorkSafe inspectors had received money, for example, in exchange for preferential treatment of demolition contractors, and allegations of corruption, bribery and collusion have been made. I am sure that members of Parliament and the Western Australian public want to know whether that is widespread and why it has emerged, and would want to take some remedial action to ensure that it is stopped. I have heard of incidents of collusion in the timber industry between inspectors and employers. This is not necessarily confined to one industry. The rumours are rife about collusion, corruption and bribery. In September 1994 there was a case of a demolition contractor who allegedly paid a WorkSafe inspector \$250 for preferential treatment on a site. I do not think that matter was ever investigated. I am keen for the committee to inquire into that issue. These allegations are rife. In the main they are restricted to the construction branch of WorkSafe WA. However, as far as I am aware and have been told, many people with the knowledge will not speak out because they are frightened of retribution. The issue must be properly assessed and I am sure if the inquiry were called the people with the relevant knowledge would not have second thoughts about presenting their information to such a committee. For that reason it is important that we get to the bottom of the fact that at least one inspector was caught corruptly charging a fee for the preparation of a demolition survey which had to be submitted to WorkSafe and then as a consequence the contractor received preferential treatment. Those issues have not been dealt with properly, and I am advised that in the past Commissioner Bartholomaeus has sanctioned that behaviour. A thorough investigation into the extent of this behaviour is long overdue.

The seventh term of reference is the extent to which reporting of occupational injuries and diseases as per the requirements of the Occupational Safety and Health Act truly reflects the extent and rate of occupational injuries and diseases in Western Australian workplaces. A number of things do not add up. The number of inspectors is down by 22 per cent. WorkSafe claims that its recent action in not dealing with unions resulted in productivity improvements. Clearly the Commissioner for Public Sector Standards found that this was no way in which to achieve productivity improvements. WorkSafe cannot say that the rate of occupational injuries and diseases has decreased if at the same time it is not responding to calls about WorkSafe breaches. Something just does not add up.

Hon N.D. Griffiths: The records do not portray the true picture.

Hon LJILJANNA RAVLICH: The records definitely do not portray the true picture, as I have said time and time again in this place. It also appears to me, and I am sure to other people, that something does not stack up when the data about WorkSafe's claimed improvement in the rate of injuries and diseases is compared with the number of workers' compensation claims. It is inconsistent that the department is saying that the rate of occupational injuries and diseases is declining, when

at the same time the Government is screaming that too many workers' compensation claims are being made. A fundamental problem exists with regard to that matter. I am interested to know how the department can claim to have reduced the rate of occupational injuries and diseases on the one hand, when on the other hand the number of workers' compensation claims is escalating and the Government is moving to change the workers' compensation legislation to make it harder for workers to claim workers' compensation. The committee needs to undertake a thorough investigation of that matter.

The eighth term of reference is the extent to which existing penalties for breaches of occupational safety and health standards adequately reflect the pain and suffering of victims. Many of the occupational safety and health prosecution cases show that the fines to companies for breaches of occupational safety and health standards are very low indeed. That signals to companies that they can pretty much get away with whatever they are doing, because the amount that they will save on reducing safety standards will be considerably higher than any fine that they will have to pay for being in breach of the Occupational Safety and Health Act. It is like waving a red flag to a bull when a company knows that by cutting back on the occupational safety and health requirements on a big construction or demolition job, it will be able to save \$150 000 or \$200 000 on that job, and that if it is prosecuted, it will be charged only \$20 000 or \$30 000. The simple economics of that situation are such that there is no incentive for employers to do the right thing; and as a result, many employers do not do the right thing and, in fact, do the wrong thing.

Hon N.D. Griffiths: It would be interesting for the committee to see what data was available and to determine what effect those measures would have.

Hon LJILJANNA RAVLICH: Absolutely, and I hope the committee will undertake a thorough analysis of that matter. To demonstrate that point, Keyport, which was trading as Statewide Demolition and Salvage, was fined only \$35 000 for being found guilty of causing its second fatality because of breaches of occupational safety and health. Where are the incentives for employers to do the right thing, when the incentives to do the wrong thing are so much greater? We really need to have a serious look at that matter. I have a number of examples that I have picked up from prosecution summaries, which describe the breaches and the fines that companies have been awarded. It is good to put those things on the record because it highlights the point that I am making.

The PRESIDENT: Order! Have these cases been disposed of by a court?

Hon LJILJANNA RAVLICH: Yes, Mr President, and I am happy to table that information.

The PRESIDENT: Hon Ljiljanna Ravlich can raise the matter of the penalty, if that is what was imposed, but she will need to be careful about the words that she uses in describing her view.

Hon LJILJANNA RAVLICH: Mr President, may I give a description of the breaches?

The PRESIDENT: Yes.

Hon LJILJANNA RAVLICH: The first breach that I will mention regards an employer which failed, so far as was practicable, to provide and maintain a working environment in which one of its employees was not exposed to hazards, and by that failure caused the death of that employee. The fine in that case was \$50 000. A fine of \$50 000 for the loss of a life is totally inadequate and inappropriate when one considers the pain and suffering caused to the individual concerned and also to the family members who have been left behind. The second breach concerns an employer which failed, so far as was practicable, to provide and maintain a working environment in which one of its employees was not exposed to hazards, and by that failure caused that employee serious harm. The injuries in that case were very serious, and included laceration of the lower leg and crushing of the heel and the ankle, and subsequent amputation of the foot. The fine in that case was \$40 000. When the fines are so paltry, there is no incentive for employers to do the right thing.

Hon Simon O'Brien: What sort of fine do you suggest would be appropriate?

Hon LJILJANNA RAVLICH: Certainly not a fine of \$40 000 or \$50 000. The committee will be in a position to hear from people who have had similar experiences and have suffered damage as a result of poor occupational safety and health provisions. I am sure that the committee will gather some very good evidence about the suitability of the existing fines for breaches of WorkSafe regulations and the like. From my reading of it, they are not just inadequate but are absolutely appalling, and are a reflection of a Government which has its priorities wrong.

The last issue that I hope the committee will examine is any other matters that the committee deems necessary in conducting its inquiry. The reason this has been added to the terms of reference is that often while an inquiry is being conducted, the committee feels that an issue is developing in a certain way and that it would like to spend some additional time on pursuing that issue. However, because the terms of reference are so restrictive, it cannot give that issue the time that it warrants. That is why term of reference (9) remains in the motion.

I now refer to a fax I received from a gentleman by the name of John Margio, who was an employee of MetroBus in the Department of Transport. This case pretty much typifies the lack of response, action, care and interest - in fact, total apathy -

which some people meet when injured at work and they seek justice through the appropriate channels. I am happy to table this document, which reads -

In February 1995, I collapsed from carbon monoxide poisoning while working as a MetroBus driver.

One must ask why that occurred.

Hon M.J. Criddle: Was it with MetroBus in 1995?

Hon LJILJANNA RAVLICH: Yes. It continues -

I was taken by ambulance to Fremantle Hospital where I was treated in the decompression chamber. The poisoning caused permanent neurological injury which resulted in Parkinsonism, and consequently I was rendered unfit to drive in public transport. My employment was terminated, and I have not worked since.

Despite numerous medical reports confirming my injuries, RiskCover denied liability for workers' compensation for almost 3 years. I lived off my savings until they were exhausted, and then I claimed social security benefits until March this year, when wages were backpaid.

MetroBus failed to report my accident to WorkSafe -

Hon M.J. Criddle: You must realise that it is the previous MetroBus arrangement.

Hon LJILJANNA RAVLICH: I do not care who it is. MetroBus is typical of many employers. I have other files. People say that they report an accident to their employer, and they report it to WorkSafe nine months later.

Hon M.J. Criddle: All I am saying is that it is not the private sector, but government.

Hon LJILJANNA RAVLICH: This should not occur.

Hon M.J. Criddle: I agree.

Hon LJILJANNA RAVLICH: The fax continues -

MetroBus failed to report my accident to WorkSafe, as required under the Occupational Health and Safety Act, so I myself requested WorkSafe to investigate my accident and the possible health risk to other bus drivers.

WorkSafe conducted a limited investigation, and produced a report which was vague and self-contradictory. The WorkSafe report concluded that I "might" have been poisoned by the exhaust-fumes of bumper-to-bumper traffic in Perth City. However, traffic was relatively light, and I collapsed in Fremantle, not in Perth. Evidence that the exhaust was leaking due to poor maintenance, and that it was replaced soon after the accident, was ignored.

WorkSafe denied my request to discuss the report -

How cooperative is that? Continuing -

- and suggested that I consult a professional to help interpret it. I submitted the report to Dr Peter Dingle, Lecturer in Pollutants and Toxicology, at Murdoch University. Dr Dingle found that WorkSafe testing was unscientific, and that it precluded any clear conclusions. Furthermore, he formed the opinion that I was poisoned by carbon monoxide originating from the bus I was driving, and not from the surrounding traffic or the atmosphere.

I advised WorkSafe of Dr Dingle's opinion and submitted a 30-page paper analysis of the WorkSafe report together with Dr Dingle's letter of endorsement. The paper was returned without comment, although it was indexed with the hand-written annotations of a WorkSafe officer. For more than 18 months, WorkSafe denied my request to discuss the report, and even took legal advice in relation to my case from the Crown Solicitor who is also defending MetroBus against my personal injury claim.

There must be a conflict of interest there, surely. Continuing -

In May 1997, I sought the assistance of Mr John Kobelke MLA, Member for Nollamara. Mr Kobelke wrote to WorkSafe requesting a meeting, however, his letter was answered by Mr Kierath, who wrote that he saw no need for further investigation of my accident. When Mr Kobelke raised questions about my case in State Parliament, Mr Kierath's answers gave the misleading impression that WorkSafe officers already discussed the report with me, when in fact there had been no discussion whatsoever.

Following further approaches to WorkSafe by Mr Kobelke and the office of the Ombudsman, WorkSafe has now agreed to a meeting on 09 September under the conditions proposed by the Ombudsman.

Virtually two years elapsed before reaching this stage. This guy suffered carbon monoxide poisoning at his workplace, yet he has experienced a huge run-around, which is typical of such cases - ask any victim of a workplace accident. It was not

until the Ombudsman became involved and Mr Margio had just about exhausted all avenues that WorkSafe agreed to the meeting on 9 September. It is bad enough that workers are injured at work, without their being given the runaround by the bureaucrats and the departments which are supposed to assist them.

I am sure that people will be pushing at the front door wanting to appear before these proposed committee hearings to ensure that stories like John Margio's will be told repeatedly. The report of this episode continues -

Four senior WorkSafe officers will listen to my concerns, but will not enter into discussion or answer any questions.

Imagine how much joy that will bring! Further -

The WorkSafe report is an official government document which effectively states that the air in Perth is so polluted that a motorist can sustain carbon monoxide poisoning and neurological injury, merely by driving directly through the city.

If that is the case, that is a story in itself: Maybe I should take this fax to *The West Australian*. It continues -

However, it offers no explanation as to why no other drivers or pedestrians in Perth have ever been so severely affected.

Contrary to Mr Kierath's claims in Parliament, I do not believe WorkSafe has fulfilled its obligation under the OS&H Act. Further several breaches of the OS&H Act by MetroBus and the Department of Transport, which I brought to the attention of WorkSafe, have not been prosecuted. I maintain that the validity of the WorkSafe report is open to question and that WorkSafe is unjustified in refusing to openly discuss it.

John Margio is not alone. I am sure thousands of workers have had the same experience. I received a fax the other day from a lady who is an employee of an organisation at the heart of accident prevention. She was knocked on the back of the head. I will not outline too many details. However, in front of witnesses, a fellow came up and thumped her in the back of the head, and she sustained some considerable injuries as a result. Nevertheless, this organisation did not report the accident for five months. WorkSafe says that everything is hunky dory and Western Australian workplaces are operating well, and that the statistics on accidents and injuries are a true reflection of what is happening.

I hear repeatedly that accidents are not reported or responded to, and that inspectors do not check sites. The public administration committee has much work before it.

The events of recent days will provide the committee with even more work. Clearly we have a WorkSafe Commissioner who is out of control, who continues to say that he has not breached the Occupational Safety and Health Act when the simple fact is that he has breached the code of conduct, the code of ethics and the Public Sector Management Act. I expect that will be picked up under the last term of reference.

I will not just bed this thing down and stop what I am doing in pursuit of a better deal for Western Australian workers. I will not rest until such time as justice is done for Western Australian workers. Members opposite might think this will not impact on them, that they can be smug and say that this will affect only the blue collar people, but it is just as likely to affect a member of their families as it is a member of my family. I will not sit by and allow that to happen.

**HON KEN TRAVERS** (North Metropolitan) [4.53 pm]: I support the motion moved by Hon Ljiljanna Ravlich. I congratulate her for bringing this matter before the House. There is no more important workers' rights issue than safety. It is incumbent upon all members of Parliament to constantly monitor the legislation which deals with these matters to ensure that it is sufficient to achieve the desired outcomes.

I have attended functions with people from the mining industry. They often talk about the reduction they have seen in the number of serious accidents and that they are working to reduce the number of fatalities. These people say that one fatality is one too many. That is an approach we should always take in dealing with occupational health and safety.

The matter goes further. In the time I have been a member of Parliament, I have met people whose lives have been shattered by workplace accidents which affect them for the rest of their lives. Despite monetary compensation, a person whose back is bad or who has repetitive strain injury can be affected for the rest of his life. I maintain a friendship with someone I worked with who has RSI. One only needs to see the effect that condition has on that person's day-to-day living and ability to do simple things like turn taps on and off to understand how difficult life can be with such injuries. We need to ensure that our legislation adequately protects people in the workplace. Members will remember the debate we had in this House earlier in the year about the farm industry. It was a constructive debate about the direction we should take in ensuring that we minimise the number of accidents in that industry.

The terms of reference outlined by Hon Ljiljanna Ravlich are good and cover the full range of concerns. I had hoped that paragraph (5) of the motion would be unnecessary at this stage; that this matter would have been fully accounted for by the Government. It reads -

The extent to which a declaration by the WorkSafe commissioner not to respond to safety complaints had an effect on the administration of the Occupational Safety and Health Act 1994.

We are all aware of the background to this matter. It is disappointing that this issue has not been addressed already. The Commissioner for Public Sector Standards has presented his report, stating that there was a problem. The report highlights his concerns about the WorkSafe Commissioner's declaration putting people at risk and the extension of some liability to the Government should that declaration remain in place. In dealing with this matter members opposite who spent such a long time on the benches on this side of the Chamber in the 1980s trying to get into government and attacking the Labor Party about the proper processes and procedures of government seem to have forgotten those experiences and are now trying to run and hide. This issue will continue to follow them. We on this side of the House will pursue the matter until it is adequately dealt with. If that means paragraph (5) must be left in the terms of reference and the committee must carry out an investigation of the matter, so be it. Members opposite have not learnt from past experience and do not seem to be practising what they have previously preached in this place.

Hon Ljiljanna Ravlich mentioned the circumstances of an industrial accident which touched me. That was the unfortunate and untimely death of an organiser of the Builders Labourers, Painters and Plasterers Union, Mark Allen. Mark was not just a comrade but also a friend of mine. I had known him since he was first involved in the Australian Labor Party at university. Many people remember what they were doing when when Elvis Presley died. I certainly remember the afternoon when I was told that Mark Allen had died in a tragic accident on a demolition industry worksite. It is with that in mind that I consider occupational health and safety issues, and the sad loss of Mark Allen always comes back to haunt me. That was the first major industrial accident that has ever touched my life and I sincerely hope it will be the last. I hope that if we are successful in having the inquiry established it will help to ensure that few other people are touched in the same way as Hon Ljiljanna Ravlich, other members and I were touched. I formally pay my condolences to the Allen family because they are good friends of mine.

Debate adjourned, pursuant to standing orders.

**[Questions without notice taken.]**

**ACTS AMENDMENT (VIDEO AND AUDIO LINKS) BILL**

*Introduction and First Reading*

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

*Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [5.34 pm]: I move -

That the Bill be now read a second time.

The Government recognises that efficiencies within the court system must be fostered if it is to satisfy the community's reasonable expectations of it. One means of fostering efficiency improvements is through the utilisation of new technologies, including innovative approaches to the use of video technology.

The Bill now before the House is concerned with enhancing the application of such technology in the Western Australian court system. To date, Western Australian courts have demonstrated a commitment to this technology and a capacity to employ it in practical and innovative ways.

In March 1996 video systems with the capacity to conference intrastate, interstate and overseas were installed in the Supreme Court, Central Law Courts and the C.W. Campbell Remand Centre.

These systems were principally established to enable people on remand and in custody to appear before the court by video. This was permitted under sections 12 and 86A of the Justices Act which enabled judges and magistrates to adjourn and remand matters by video link. Additionally, the Supreme Court rules enabled judges to deal with applications by telephone or video link for civil matters in the superior courts.

The application of video by the courts produced immediate benefits to the justice system. These benefits include the facts that -

firstly, security associated with prisoner transport has improved as many court appearances such as bail applications and remands are now dealt with by video. Now, alleged offenders considered inappropriate to release on bail can remain in the prison environment, which minimises the risk of escapes and subsequent threat to the community;

secondly, the number of prisoners processed by the Police Detention Centre at Central Law Courts has reduced by about 10 per cent. Over 1 000 prisoners are appearing before the courts by video each year, which alleviates pressure on police and prison officers in the transportation and handling of prisoners; and

thirdly, witnesses from outside the Perth metropolitan area, and from outside the State and the country, have been able to give their evidence by video in civil matters. This has reduced the cost of justice in that litigants do not have to pay travel and accommodation expenses for remote witnesses.

With the advent of the use of video in Western Australian courts of law, it became evident that a number of legislative amendments were required to maximise the use of video. Presently, there are no legislative provisions that enable evidence to be heard in criminal matters or for people to be sentenced by video link. Also, current legislation permitting the use of video applies only to certain courts. Therefore, legislation is required to empower any court or tribunal in Western Australia to hear virtually any matter by video link. The Bill before the House will, in essence, provide these powers.

**Legislative Reforms:** The original of the current Bill is sourced to a model Bill which was developed and tabled before the Standing Committee of Attorneys General. The model Bill established necessary powers and safeguards when evidence is given, via video or audio links, to other courts in Australia or received from witnesses interstate. It was also designed to progress the enactment of similar legislation in all States of Australia.

The Western Australian Video Technology in Courts Steering Committee, with representation from the judiciary, the legal profession, the Police Service of Western Australia and the Ministry of Justice provided input into the model Bill before it was endorsed by the Standing Committee of Attorneys General. The committee also sought to broaden the scope of the model Bill through recommending that in Western Australia powers be enacted to enable courts and tribunals to use video and audio links both intrastate and overseas.

The committee also endorsed the use of audio links to enable courts to use telephones for the taking of evidence or submissions. Although telephones have not been widely used in the court system in this State, the Bill provides the flexibility to do so. This will be of greater importance for courts that do not presently have video systems in place. The Bill also incorporates the reciprocal provisions required when courts in the eastern States use telephones to receive evidence from witnesses in this State. I now turn to address the key components of the Bill in a summary form.

**Amendments to the Criminal Code and the Sentencing Act:** Currently, in broad terms, the Criminal Code provides that the defendants must be present during their trial unless they act inappropriately within the courtroom. The Bill therefore amends the Criminal Code to enable the court, at its own discretion or upon application by a party to the proceedings, to use video and audio links for indictable matters before the superior courts. Under the Sentencing Act there are similar provisions to those now contained in the Criminal Code, referred to previously, relating to the offender's attendance in court.

The Bill provides for the Sentencing Act to be amended to enable courts to sentence offenders by video link. Importantly, the discretion to sentence an offender by video link rests with the court, taking into account the interests of justice, and both parties can make submissions on this issue. It was decided that audio links were inappropriate for sentencing and this is not provided for in the Bill. Taken together, the proposed amendments to the Criminal Code and the Sentencing Act will improve court security and the operation of courts by enabling potentially dangerous offenders to remain in prison during the hearing of trials and sentencing.

**Amendments to the Evidence Act:** The Bill also provides for a series of amendments to the Evidence Act which will enable Western Australian courts and tribunals to receive submissions and evidence by video or audio link from witnesses intrastate, interstate or overseas. The provisions of the Bill are intended to apply to all judicial proceedings in this State so that consistent practices are adopted across the board. The Bill in this regard makes provision for -

firstly, prescribing States and countries - or even specific courts or tribunals within those States and countries - to which this legislation is to apply;

secondly, empowering judicial officers in the various courts and tribunals to make orders, where the interests of justice are preserved, that evidence or submissions be taken by audio or video link;

thirdly, prescribing the place to which the court is connected by video or audio link as being part of the court so that powers can be exercised at the remote location; and

fourthly, authorising lawyers in other States of Australia to practise in a legal capacity when evidence is being given by video or audio link before a Western Australian court.

A further group of amendments to the Evidence Act prescribes powers and safeguards effectively to administer the giving of evidence by people in Western Australia to participating jurisdictions and recognised courts interstate or overseas.

The Bill in this regard makes provision for -

firstly, empowering participating jurisdictions and recognised courts to exercise all their powers except for punishing by contempt or enforcing or executing its orders or process which will, by the force of this legislation, be enforced by the Western Australia Supreme Court as if it were its own orders;

secondly, enabling proceedings to be heard in camera, requiring persons to leave the place where evidence is being given in this State, and to restrict publication of names or parts of the evidence;

thirdly, assigning judicial officers, legal practitioners and witnesses the same privileges as if they were participating in a Western Australia Supreme Court proceeding;

fourthly, administering oaths in accordance with the practice of the recognised court and providing for testimony to be recognised as being testimony in a judicial proceeding under the Western Australia Criminal Code so that perjury charges can be laid; and

fifthly, according recognised courts the capacity to request assistance from Western Australian courts when persons are giving evidence.

**Amendments to the Justices Act:** The Bill also provides for amendments to the Justices Act to make it automatic for prisoners on remand to appear before the court by video. Experience has demonstrated that prisoners on remand actually prefer to use the video system. However, due to a number of operational and technical issues, their legal representatives are still requesting personal appearances for some remands. While there were a number of teething problems, the Ministry of Justice has now corrected the technical issues and is currently working with the Legal Aid Commission and the Criminal Lawyers Association to resolve the operational issues with the aim of also making the video option the preferred choice by the legal profession. The new changes will significantly increase the number of video appearances. As a result, the consumption of police and prison resources in the transportation and handling of prisoners will be further reduced, as will the risk of escapes from custody. As a safeguard measure to protect the rights of prisoners, judicial officers, on their own initiative or upon application by any party, will still be able to order personal appearances if they consider that it is in the interests of justice.

**Conclusion:** The Bill recognises that court efficiency demands the adoption of appropriate technology. In Western Australia the court system continues to foster innovative applications of technology. Members may be aware that on 9 September 1998 the first video system in a country court became operational at Kalgoorlie, and the Ministry of Justice will be expanding the video technology to the Bunbury and South Hedland courthouses early next financial year.

Additionally four new District Court courtrooms presently being constructed in the May Holman building will be equipped with video capabilities. The benefits of this technology, given the size of Western Australia, are significant. The Bill aims to reduce the cost and resources consumed in transporting prisoners statewide, both adult and juveniles. Additionally, the Bill has the capacity to reduce expenses to the Crown and other parties to court proceedings, by minimising the requirement to travel to and from remote locations. At the same time inconvenience and disruption to witnesses living in remote locations will decrease significantly through not having to travel long distances to participate in the court process. The Bill will facilitate maximum use of video in our courts of law, with resultant benefits to participants in the court process and the community generally.

I commend the Bill to the House.

Debate adjourned, on motion by Hon E.R.J. Dermer.

## ADDRESS-IN-REPLY

### *Amendment to Motion*

Resumed from 15 September, after the following amendment had been moved -

To add after the word "Parliament" at the end of the motion the following words -

That the Legislative Council regrets to inform His Excellency that the Court-Cowan Government continues to fail to properly support the administration of justice, and in particular notes -

- (1) the crisis in legal aid;
- (2) the treatment of justices of the peace;
- (3) difficulties in the prison system including prison planning and deaths in custody; and
- (4) issues of public safety generally.

**HON PETER FOSS** (East Metropolitan - Attorney General) [5.45 pm]: I disagree with the amendment moved by Hon Nick Griffiths. I will go through the reasons for that. He put together somewhat of a ragbag of matters.

Hon N.D. Griffiths: I have put forward a number of matters of grave concern to responsible members of the community.

Hon PETER FOSS: Excellent. I still say that it is a ragbag of matters.

Hon N.D. Griffiths: You would.

The PRESIDENT: Order!

Hon PETER FOSS: He sought to bring them together under the words "support the administration of justice". The first is that he wishes to say to His Excellency that the Court-Cowan Government continues to fail to properly support the administration of justice with regard to the crisis in legal aid. First of all, I do not believe there is a crisis in legal aid. Even if there were a crisis in legal aid, it is certainly not due to the Court-Cowan Government. One of the things that this Government has done is to make up the shortfall that has arisen out of the loss of certain commonwealth moneys.

Hon N.D. Griffiths interjected.

The PRESIDENT: Order! I do not need a running commentary by any members. The Attorney General has the floor.

Hon PETER FOSS: Thank you, Mr President. One of the things we did was to say to the Legal Aid Commission that we would make up the shortfall to the extent that it was necessary. One of the most important things is that the Legal Aid Commission has increased its efficiency, so the amount necessary is considerably less than the amount it was originally getting. What is more, I hope that with continuing improvements in efficiency that exist at the Legal Aid Commission even more money will be available for what it should be available for; that is, providing legal aid. I am sure Hon Nick Griffiths, like me, has had complaints about some of the ways in which the Legal Aid Commission has in the past ordered its business. To give some idea of the problems that can arise, one problem is the way in which it was decided to deal with certain matters. One complaint I received, for example, was that at a petty sessional hearing in a rather remote part of Western Australia where a number of simple pleas were to be taken, three people were engaged to provide that service. Two people were sent from Perth, one a legal aid lawyer and the other a legal aid counsel, and the third person was a local practitioner. The problem was that it was an extraordinary expense for providing the service. All of that service could have been provided by a local practitioner. The way in which the assignment of legal aid was handled at that time - I hasten to say it is no longer the way in which it is dealt with by the Legal Aid Commission - resulted in three people being instructed, all of whom had to receive a significant fee and two of whom had to include in their fee the cost of their time and the physical cost of transport. It does not take an awful lot of imagination to recognise that if the Legal Aid Commission were to look at what it had on in a particular court on a particular day, it would be able to arrange for very adequate legal representation on simple pleas in that Court of Petty Sessions without sending two lawyers from Perth. I am sure the local practitioners in that remote part of Western Australia would be very pleased to have two extra jobs instead of only one.

Hon N.D. Griffiths: When did this incident occur?

Hon PETER FOSS: It was under the member's Government.

Hon N.D. Griffiths: In what year?

Hon PETER FOSS: It was certainly historical at the time I became Attorney General.

Hon N.D. Griffiths: We were in power for 10 years and you were in power for nine years before that so do not rest your case on something that occurred a long time ago.

Hon PETER FOSS: The point I am making is not by way of criticism of the Opposition but by way of saying that the processes of the Legal Aid Commission can be improved. The point I have made is that it was not until we recently appointed a manager that those process changes have occurred. The reason that it was dealt with on that basis was because each file was handled individually on the basis that the person who was dealing with it dealt with it individually. I do not believe that is efficient. It is certainly not believed now by the commission to be efficient and it is certainly not the way such matters are handled since these changes have occurred. The fact is, and I suppose it is not surprising, that in the way the Legal Aid Commission historically operated, that happened. I am not saying that it was the member's Government's idea or our Government's idea. The point is that the Legal Aid Commission has appointed a manager whose job it is to look at the processes by which it operates to ensure the legal aid dollar goes as far as it possibly can. I think we all hope that the legal aid dollar was spent on legal aid and not spent on inefficiency.

With those efficiencies not only have we been able to provide the same service that was provided before the shortfall that came as a result of the discontinuance of the federal moneys, but also we hope that with continuing improvements in efficiency we will be able to provide a better service. There is now a division between what is federal and what is state. I have previously expressed the view that I would prefer that division not to exist, but it does exist; it is something that has been required by the Commonwealth, and it has had its benefits. It has led to a consciousness of the outcomes that are required. In far too many aspects of government people get the money and there is no measure of what the money is spent on. The Legal Aid Commission itself, as a result of this process, believes that it has effected considerable improvements. It considers itself to be far more outcome oriented; that is, its principal role and real intent is to see that it can provide legal aid to people, and as much as possible. Any organisation can get into a position where the money comes in and it spends it without querying whether it is being spent in the most efficient and effective way. Although originally the loss of federal

funds was unwelcome, in the end the benefit that will flow from that loss is a better service for the people of Western Australia.

I disagree that a crisis exists in legal aid. I certainly disagree with any criticism of the Western Australian Government, which has found a considerable amount of extra money to put into the Legal Aid Commission and has responded in a positive and supportive way. In his speech, the principal criticism by Hon Nick Griffiths was of the Federal Government.

The second point refers to the treatment of the justices of the peace. It is interesting that various pressures are being put on me from another place. The office of justice of the peace is a very ancient, honourable and privileged one. As indicated by questions in another place I am being continually pressured to appoint more people as justices of the peace. The candidates coming forward are of an extremely high standard. Under the previous Government a proper policy was instituted by Hon Joe Berinson not to appoint justices of the peace willy-nilly, but according to need. The suggestion was endorsed by the Western Australian Law Reform Commission. In deciding whether to appoint JPs, we must first decide whether there is a need for them. I have made a small variation to that regarding ethnic justices of the peace. In appointing a JP we assess whether the person is fit and proper and has all the appropriate characteristics. After the final test a person might be considered to be an excellent potential justice of the peace, but his district may be oversupplied with JPs. The change I have made to that is to specify that in judging need, the community should be examined from two aspects; that is, how he can benefit the broader community and the ethnic community. When examining this I saw clearly that most ethnic communities were considerably under-represented. The ratio of justices of the peace to the total members of the ethnic community were well under the ratio of justices of the peace to the English-speaking community.

One of the most important things in justice is accessibility, which is dependent on not only language but also culture and the need to understand. Justices of the peace are not restricted to signing documents but become involved in explaining to people the process they are going through, particularly if it is a judicial process. I have informed everybody that in relation to ethnic communities we consider not only the immediate ethnic community but the ethnic community as a whole to ensure there is accessibility to people of a similar ethnic and cultural background. It is not just a matter of language, but also culture. Some of the worst misunderstandings occur when people speak the same language perfectly, but have a different cultural background. It is very important to understand the background meanings. I have also indicated that I will act on the suggestion that we assess need when examining the active justices of the peace so that we do not leave an area without them merely because there is a lot of dead wood there.

Hon Cheryl Davenport: Heaps of it.

Hon N.D. Griffiths: That will be very welcome.

Hon PETER FOSS: It will be done. The only limitation is that it is becoming more expensive to appoint JPs because we now require them to undergo certain training. However, that should not stand in the way of doing that.

Hon N.D. Griffiths: They save the system money.

Hon PETER FOSS: Undoubtedly, and the more useful JPs there are, the better. The first point is to ascertain whether people are willing to be justices of the peace and to carry out all their duties. I will accept anyone over the age of 70 not being active who indicates he does not wish to be an active justice of the peace. He will remain a justice of the peace, but in assessing needs we will disregard him. I will ignore any person in the needs analysis who has given more than 15 years of service and does not wish to remain active, but he will remain a justice of the peace. When persons under the age of 70, who have not given 15 years of service, do not wish to be active I will record the fact they are not prepared to give full service and will consider - I will not necessarily do it - publishing a general Commission of the Peace which omits their names. I will proceed to appoint more justices of the peace on a needs basis ignoring those who are not contributing.

We had some discussion about an amendment to the Justices Act to allow special categories of "JP retired", "JP inactive" and "JP". That is unnecessary. I am happy that JPs should retain their powers. However, once they are over 70 they will be on neither court rosters nor the police roster. They will cease to take judicial roles but will continue to have non-judicial roles. It is appropriate that, like judges of the Supreme and District Courts, JPs should retire at 70. That will enable us to appoint more JPs who will be active members of the community. It is also important to have a wide range of ages. It is important to have not just elderly justices, but people of all ages consistent with a degree of maturity. There should also be gender range because women justices are significantly under-represented in the community. However, that is changing. At present 17 per cent of justices of the peace are women. Interestingly enough, among the Aboriginal community 34 per cent of the justices are women. Although I do not have a quota system I would like to see a much greater emergence of women seeking to become justices of the peace. I am pleased to say that is occurring.

Hon Ken Travers: Is the prohibition of former police officers a life-long prohibition?

Hon PETER FOSS: I am sorry, I should have referred to that earlier. I recently announced a review of that policy. It was an absolute prohibition on all police officers no matter where they had served as a police officer. I made the prohibition five years so that for five years after they cease to be a police officer it is an absolute prohibition. Between five and 10 years

it is a matter of taking into account all other matters, but it is not an absolute prohibition and I have directed that after 10 years it be disregarded.

Hon Ken Travers: Is that a public announcement?

Hon PETER FOSS: I have announced it to all police officers. I have had a number of requests recently and I have written to them.

Hon N.D. Griffiths: Are they recent requests?

Hon PETER FOSS: Yes. It seemed to be extraordinary; to be prohibited from becoming a justice of the peace if one had been a police officer was almost like having a conviction. That was going far too far. I can see the logic in prohibiting a police officer for up to five years after he has left the service. After a person has been away from his position for five years I cannot see that bias or an alliance will play any part. That role can be taken into account between five and 10 years, but after 10 years it is to be totally irrelevant.

Hon N.D. Griffiths: A number of applications have been made by former police officers who have been refused consideration. Will you cause your office to write to those people and inform them of the policy?

Hon PETER FOSS: I would be quite happy to make an announcement here. Often, once people have been rejected it is difficult for them to reapply and I would be happy to receive any application from a police officer who falls within the criteria. I made the change a month or two ago. These things come through in enormous quantities and we eventually ask why something is being done. I came to the conclusion it was neither fair nor logical.

Hon N.D. Griffiths: The people concerned are genuinely aggrieved.

Hon PETER FOSS: I can understand that; that is why I changed the policy. Often it is a matter of asking why something is happening. One of the most common things in the community is the inertia that enables things to continue. I have changed the policy and it does not exist any more. I have given directions on that and I hope that will be regarded as a fair and proper way to deal with it. There is a considerable demand for the position of justice of the peace. It is an ancient, honourable and very important role in our society. I do not see the role of JPs being minimised. They have a great role in many areas. I would like to see them involved in matters of civil law.

*Sitting suspended from 6.00 to 7.30 pm*

Hon PETER FOSS: I will reiterate the point I was making before the dinner suspension so that members understand the current situation. I will be taking measures to determine need among justices of the peace. I will immediately allow members who are over the age of 70 to be disregarded in the counting of need; and any JP who indicates after 15 years of service that he no longer wishes to be an active JP, I will also allow to be disregarded on the question of need. Those who indicate that they do not wish to undertake the full range of duties of a JP, who are not 70 years of age and who have not completed 15 years of service, will be notified that, if it is necessary to appoint other people because they are willing candidates and it is clear from the courts or the police that they need JPs and cannot get sufficient, I may call upon them to resign their commission so that I can appoint other JPs. I will also call for the resignation of JPs who are required to carry out the course but do not do so in the appropriate time. I reserve the right to issue a general commission of the peace which would omit their names should that be the case. I believe we have a significant number of people who are willing to carry out that work.

The question raised by Hon Nick Griffiths relates to the JPs on roster at the Central Law Courts. Over a period of time the reimbursement to JPs of some mileage and other disbursements has been raised with me, which I have resisted. I am not the first Attorney General to resist it and it has always been resisted for a very good reason. First, the office of JP is an ancient and honourable one and has always been considered to be a public service. It is voluntarily undertaken together with the costs of undertaking it.

From time to time I have been asked to approve some sort of mileage allowance, and I have indicated that I am not prepared to do that, nor to reimburse petrol money or other out-of-pocket expenses. The reason is that the principle of being a JP is that one undertakes it as part of a public duty. It is not unreasonable to say to people that if that includes a cost, they should bear that cost. They have a choice whether or not to carry out that public duty. However, looking at the practical aspects, particularly in country areas, if we started paying mileage, I am sure there are many people who would treat it appropriately. I am also absolutely certain there would be one or two people who would never make a journey unless they were heading to do some JP work in town; not many, but enough.

Hon Kim Chance: You are not a generous man, Attorney General!

Hon PETER FOSS: I am not a generous man but I am sure Hon Kim Chance will accept that the biggest problem in the patient assisted travel scheme is not with the people who genuinely use the scheme but with those who rort it.

Hon Kim Chance: I have never seen any evidence of it.

Hon PETER FOSS: I did and most of the complaints came from local people.

Hon Kim Chance: I saw purported evidence but not evidence.

Hon PETER FOSS: I saw evidence. However, if we start to pay mileage, we will need to implement a checking mechanism. First, I do not believe in principle that it is acceptable. Secondly, we would have to check the mileage and make certain the calculations were done appropriately and the system was not being rorted. The costs of administering that would be significant. I am not prepared to do that because, firstly, it is wrong in principle and, secondly, a large number of people are still happy to take on the job on the basis on which it has been available for 900 years: They bear the cost of being a JP. I suppose it is a tax on those who are willing to do the work and bear that cost as part of the community. There are many times when I think we should query the concern for the Government to pay for things when all we will do really is circulate that money through government and pay it back to the very people who are paying their taxes. It may be said that it is fairer to pay it to the people who are doing this service. I believe that the better principle is that, as part of carrying on that duty, people bear that cost with it.

Unbeknown to me, the Central Law Courts had taken on the habit of paying bus fares and reimbursing parking costs to some of the JPs; and - apparently something of even longer standing - paying lunch money. I know these are all small amounts of money; however, I first learnt about them when I received complaints from country JPs saying, "Hang on, you are not prepared to pay for us. You told us we cannot be paid but you are paying bus fares in the city." I said that I did not know that bus fares were being paid in the city and that, if it were true, I would certainly agree with them that it was not fair to reject claims for the considerable mileage that country JPs incur, and pay bus fares for city JPs. It is contrary to the basic proposition that people should pay to get there themselves.

One thing I agreed to was to provide parking spaces for JPs attending the Central Law Courts, because throughout the State we usually provide access to parking. I said that I did not like the ministry reimbursing parking fees but I did not object to parking spaces being made available. The majority of the work of JPs is probably carried out at the Central Law Courts. I did say that I did not approve of the practice of reimbursing parking fees, and at that stage it was discontinued.

A matter of principle is involved. Once we open the door we have to look at the whole question: Do we pay for anybody's travel? I do not think the city JP should have his travel paid for, but a country JP should not have his travel paid for either. We either pay for both or we pay for neither. Therefore, my ruling was to restore the status quo; that is, not to pay for the travel of JPs. There is a small exception to that on occasions where JPs are specifically called upon to travel more than 100 kilometres; on those occasions some reimbursement has been made. However, that is certainly in exceptional cases and not the general rule.

The contribution of JPs' time is enormous and extremely valuable. If we start valuing their petrol at more than their time and reimbursing their petrol rather than their time, we start to lose the concept of what it is to be a JP. We will lose the concept that it is an important public service. It is not just because they save our justice system a considerable amount of money - and I can tell members they do; of far more value is the fact that they inject into the justice system the values that I believe our society holds. It is appropriate that in the battles that JPs deal with, members of the community make the decisions. There are problems. JPs are not as familiar with the law as are lawyers. Sometimes that is not a bad thing. In many areas the commonsense contact with the community and the participation by the community in those decisions is vital. It is the people themselves making decisions about what happens in their society according to law. It is valuable as a measure. To give an example, it is like being in a radioactive power station. In between the power rods, there is some sort of dampener which keeps the radioactivity going through a major chain reaction. Justices of the peace keep justice according to the mores of the community; they are the ones who inject that local feeling. More importantly, having made a decision, they are then responsible to the community. Justices of the peace have a very important role to play in a community taking responsibility for justice, particularly in country areas. Even if the Government had money to burn and the capacity to pay for a magistrate in every single part of Western Australia, I would still prefer to have this important leaven of the JPs in our justice system.

JPs are also used in the city areas where there are magistrates. Again, they have a vital role to play in our system that I would not like to end. I will be bringing before the Parliament a Magistrate's Court Bill to establish the Magistrate's Court. Members may not understand that WA has many little courts. The Court of Petty Sessions at Perth is a different court from the Court of Petty Sessions at Fremantle. The same magistrates and JPs may be seen at both courts, but in law they are separate courts. Each court is separately established. The Local Courts are also separate courts, and they are separate from the Courts of Petty Sessions. Therefore, the Local Court at Midland is separate from the Court of Petty Sessions at Midland. There are obviously logical difficulties in that, and there are also difficulties in trying to bring it all into some sort of order. The Chief Stipendiary Magistrate can tell a magistrate that he will be the magistrate at Midland, but once the magistrate gets there, the Chief Stipendiary Magistrate cannot tell him what to do. He is king in his own patch. It is rather like the Anglican Church. Once a person is appointed rector of a particular parish, he cannot be given a lot of riding instructions by the bishop. The bishop may have something to say about whether he goes there in the first place, but once he is there, he has an independence of action. Of course, the CSM has some powers to send people to other parts of the State, which might

have some effect, but essentially the courts become independent. Sometimes when the Government wants certain things adopted, it is very difficult to achieve that, because it does not have the capacity of the court to set standards and rules about how things should happen.

Hon Cheryl Davenport might be interested in my next point, because the Government is very keen to ensure a uniform approach in the area of domestic violence. Often, the law varies according to the area and who is sitting on the bench. The idea of the Magistrate's Court is to allow that single court, with its civil, criminal, administrative and family areas, to set general rules and to allow some sort of uniformity to take place, and to vest them with various jurisdictions.

One of the possibilities is to use JPs in the civil jurisdiction of small claims, because often in that area a commonsense solution is required. At the moment this is just an idea, but I would like to explore with particular country areas whether they would like some of their smaller litigation to be dealt with in the Magistrate's Court by two JPs rather than by a magistrate. Would the people in the country areas see that as a more satisfactory resolution of their problems? The Government should present that as an opportunity or alternative for country people, because it will give people greater control over what happens in their community.

In the city it is more difficult to achieve that, because the JPs tend to be as anonymous as magistrates to most people. However, in country areas the JPs would be well-known members of society and, if the JPs were involved in that area, it could be a gathering together of society and an ownership by that society. I raise that as a possibility. I do not see JPs as a cheap substitute for magistrates. I see JPs as a very important part of our justice system.

Hon Kim Chance: Before that was done, there would have to be a reform of the current list of justices of the peace, because while you ascribe a particular quality to them in general, far too many justices of the peace, particularly in the country, are not in touch with the community. They range from being too old to do their job - but nobody else will do it for them - to being goody-two-shoes types who do not have community support.

Hon PETER FOSS: The member is absolutely right. I intend to appoint a lot more justices of the peace of the type who I believe will be able to undertake this task. The question is what to do with the ones who are already in place. Generally speaking, if they are too old and not prepared to do the work, I intend to leave them off the court roster. I have the capacity to say they are not to be called upon for court work. That is how I will deal with that. They will remain JPs, and they can keep the honorific and the position, but I will have the capacity to say, "No, you will not be called upon for court work. You will not be assigned that particular duty." That will overcome the problems. I do not want a wholesale slaughter of the numbers. That would be quite unfair and unreasonable. However, I think we can handle that without changing anybody's status and without changing any of the rules or the law. I will appoint sufficient JPs with the qualifications to do the work, and those without the capacity to do that work will not be called upon. They can continue to sign documents and have the status of being a JP, but they will not be called upon in that particular role.

The other point is that the members of the local community should have some opportunity to say whether they want that. It is up to them. I would not want to foist it on people if they did not want it. However, if they did want it, I would like to have the capacity to bring it into effect. Similarly, when I offered hospital boards to all country hospitals, I did not say they must have one. I gave them the option. I said it would not necessarily be easy but at least the board would make the decisions. The decisions might be inevitable decisions, but at least the hospital boards would go through the exercise and make the decisions. We should do that in our society wherever we can. We should give people the option to take control of their lives and to make decisions.

Hon Kim Chance: People are given access to the information. That is the important thing.

Hon PETER FOSS: Exactly.

Hon Kim Chance: Therefore they know why a decision has to be made.

Hon PETER FOSS: Yes. If justice is local and they know how it was arrived at, they can be part of it. If someone comes from Perth, makes his decision and goes off again, local people may not know why a decision has been made and, as far as they are concerned, the bloke from Perth does not know what he is talking about. If there are two JPs from the local community, there is a lot more accountability by way of explanation and making sure decisions are understood.

Hon Kim Chance: I think country communities would generally welcome that, but it would have to be preceded by a reform in the JP structure. The Government would be looking at an increased number of JPs, of the order of about 30 per cent, and that has frightened off Attorneys General in the past.

Hon PETER FOSS: I know. I am considering it, mainly because I am also considering relegating a number of people. The biggest concern is appointing a large number of JPs of a particular age. The tendency is to appoint JPs between the ages of 40 and 50 years. If I appointed a huge number of JPs between the ages of 40 and 50 years, it would not be my problem, but in 20 years' time some Attorney General would have this unbelievably large number of JPs who he thinks are a little beyond it.

Hon Kim Chance: Give them tenure.

Hon PETER FOSS: I have examined it, and it is easily fixed. One simply does not call them. They are left off the court roster and the police roster. If necessary, if they have not been active in the meantime, they are left off the general commission. That is the most usual way. The Government has not been giving general commissions to justices of the peace for quite some time. That is a good way of going through the list and deciding to take them off if they are not contributing. However, if a JP has done his job, I do not see why I should take him off simply because he is not prepared to do it any more.

On the other hand, if they have never done their job or been prepared to put the work in, I do not see why they should keep their positions. However, I have no problem with someone over 70 years of age keeping his full commission; we just would not call on him to do certain things. I expect to hear from members when that Bill is debated in this House, and we can discuss those issues. I have had fairly reasonable feedback from members on the changes that I have made in relation to justices of the peace. I hope that, generally speaking, what I have done has been supported.

Hon Kim Chance: The Western Australian Municipal Association would like to talk to the minister as well.

Hon PETER FOSS: I would be pleased to talk to that association. I raise this issue because I do not think that I have been unfair on JPs. This motion suggests that we have treated justices of the peace badly. I have been the person who has given due consideration to the role of JPs. I have tried where possible to elevate that role, and I have taken into account their concerns. I have shown a proper respect for JPs. I have tried to place them appropriately in the justice system and to give them the respect and role to which they are entitled. I take some pride in what I have done with regard to JPs. I have mitigated some of the rules that were a little unreasonable, including the rule relating to police, and I have tried to encourage ethnic representation. I think that has worked well.

The next point that has been raised is the difficulties in the prison system, including prison planning and deaths in custody. I am not suggesting that there are no problems in prison planning or with deaths in custody. I hope, touch wood, that we are addressing the issues of deaths in custody. I will be frank with members; it is perplexing. It has not been through any lack of attempts to address the issue of deaths in custody that we have had these problems. We seem to have made some significant changes and more changes are coming. It is a difficult problem.

Let us consider lockups. It has not been possible to assess whether a person is likely to commit suicide when that person is put into a lockup, and so we are generally trying to upgrade the cells. Their appearance is ghastly but, hopefully, they will have no hanging point in them. When everything that can be used by a person to hang himself is removed, the cells are pretty bleak, bland and stark places. People do not have to hang themselves from the ceiling; they can hang themselves while lying on the floor. A person who can get his neck into a V-protrusion while lying on the floor can hang himself. There have been examples of people going to the most extraordinary lengths to kill themselves. We will have to do some pretty radical things to a cell to make it hang-proof. Of course, if people are really desperate, they can tear their clothes into strips and hang themselves. I will not go into the other ways people can hang themselves, because I do not want to provide descriptions of how they can do it. It is a problem.

Prison accommodation is also a problem, although we have that under control now and we are moving rapidly to address it further. There have been significant increases in prison populations of late - more than we predicted even a year ago. There are reasons for that, some of which are inexplicable because there appears to be no pattern. The Bail Amendment Bill that is before the Parliament could lead to a further increase in the prison population. However, I believe the matter is under some control.

The last point which I wish to raise is public safety generally. It is unfortunate that it has been added to the point on the administration of the justice. Frankly, one of the problems is the belief that the administration of justice can deal with the issue of public safety. Hon Kim Chance gave a good speech on the purpose of gaol. Frankly, I do not believe that we can improve public safety in gaols. Other members in this place have expressed exactly the same view. It is unfortunate that the amendment links the administration of justice and public safety issues generally.

Hon Muriel Patterson gave us an example of the circumstances under which the justice system can do something about reoffending. She described the Walpole camp, which has been remarkable in its effect on prisoners. However, we can give those people some self-esteem and skills and get them to resolve not to reoffend, but why were they there in the first place? What if they return to the same conditions that they came from? What if they go back to an abusive family, to no job, and to being surrounded by people who abuse drugs? Unless we address those social matters, the chances of recidivism will always be high.

I am not suggesting that it is not our fault or it is somebody else's fault. Today's problems are the result of the whirlwind of changes not just in Western Australia or Australia, but around the world. The world has undergone a major social change and that has manifested itself in many ways, including a breakdown in the family and in respect for authority. It is difficult to say what percentage of problems has been caused by these social changes. However, people say that in their day, children did as they were told by their parents, they were not allowed out at night, and they got the cane in school. I am not sure all

of those things were remedies for bad behaviour, but were indications of a different society that had more jobs, more optimism and probably more respect for authority.

Hon Kim Chance: And had an extended family rather than nuclear family.

Hon PETER FOSS: Exactly. I do not know which of those factors have caused today's problems or whether they have been caused by a mixture of all the changes in our society. It will get better or worse depending on how much we address those issues. To a large extent people must address them. Governments can help people address them; however, in the end people must address their own problems.

Hon Kim Chance: That is the neighbour issue that I have talked about.

Hon PETER FOSS: The speeches in this Parliament have shown a remarkable appreciation for the underlying difficulty. We must address our own lives and communities. The solution lies in what we do in our communities. The Geraldton program offers some hope because it is trying to provide a long-term solution. The short-term results in Geraldton have been totally unexpected. A graph of crime in Geraldton was showing a steadily rising rate of crime, and then there was a significant drop off. I think that the rate will rise again, but it will always be that much less than it would have been had we not made the change. In other words, it will always be a better situation than if we had not done it, but that initial impact will work only so far; it will not turn and head in the opposite direction.

Hon Kim Chance: It might plateau where it is.

Hon PETER FOSS: It might; it is indicating that. There tends to be link between the rate of crime and the size of a city. A smaller place will normally have a smaller rate, not just fewer crimes. Obviously there will be less crime because there will be fewer people, but the rate will normally be less.

Hon Kim Chance: That is because more people feel anonymous.

Hon PETER FOSS: More people feel alienated. There is no lonelier city than New York. What occurred in Geraldton was an unintended result. Because we indicated we were prepared to tackle the long-term problems, people were prepared to participate in the short-term measures.

A lot of people who are suffering from the long-term problems are fed up with bandaid solutions. They do not want to know about it; they do not want another do-gooder coming along and solving their problems for them. They know they will go away tomorrow and the basic problem will not be touched. We went in and said, "We are not here to apply bandaids. We are here to solve the long-term problem. Do not expect anything to happen tomorrow because we are not aiming at tomorrow but at 10 or 15 years from now." Suddenly everyone seemed prepared to do things for today. We must go to these people with that approach and say, "We will tackle the long-term problems with you. We are not expecting anything to happen in the short-term, but we hope your children will grow up with a better life than you have." We must give realistic aims and promises. If we promise the world and deliver nothing, we aggravate the situation.

These people have been disappointed time and time again. It is no excuse for what they do. I am not offering excuses for young criminals; not at all. I understand that social problems must be addressed and I expect the people who suffer those social problems to take the proffered hand and to work and do their part. We must coordinate our efforts and work with them. Hon Tom Stephens laughed about cooperation between government departments. He may well laugh, but it is one of the hardest things to achieve. He said "under this Government", but under any Government, cooperation between departments is hard to achieve. There is a natural desire to preserve the patch. There is an old-established civil servant method of communicating between departments which involves a communication going to the minister, across and back down again. It is not conducive to quick action on the spot. The process we developed in Geraldton allows that action on the spot; in fact, it compels the local departments to cooperate and to do the work.

Which ones are the primary agencies which will do something about law and order? Education, Health, Training, Employment and Housing will really tackle the problem of crime in our community.

Hon Kim Chance: By the time it reaches Police and Justice, it is too late.

Hon PETER FOSS: Far too late. All we can do is belt them on the head. There is a secondary role for police. It is important to have a good Police Force, one which will follow up, because there will always be aberrations. Not everyone is a criminal because he or she never had a choice; that is far too simplistic. However, far too many people are criminals because they never started life with any real opportunity. Unfortunately, far too many Aboriginal people have been put in that position. It is not because they have greater criminal tendencies, but because they are more disadvantaged and are more frequently put in that position. The real catch-22, the real difficulty, is that they also must help themselves. It is what Aboriginal people can do for themselves which will count the most. We must make certain that they are primarily involved in the solution; in devising and implementing it. That is the hard part because, almost by definition, because of their disadvantaged position they are not in a position to do that. It does not mean that we do not start and do not keep going, because the results will be seen 20 years down the track, and that is all the more reason to start now.

Hon Kim Chance: When we speak about this, it seems to work its way from Kununurra to Bremer Bay. In my experience, small country communities have asked us whether they will ever see the reintroduction of the homemaker program. That was a very popular program. People remember it even though it shut down 15 or 20 years ago.

Hon PETER FOSS: My mother was a homemaker.

Hon Kim Chance: So was my sister.

Hon Cheryl Davenport: Our Government cancelled it.

Hon PETER FOSS: That program started with non-Aboriginal people as homemakers. Then it was considered to be patronising to have non-Aboriginal people as homemakers so Aboriginal people were brought in.

Hon Kim Chance: None of the clients ever said that.

Hon PETER FOSS: No, but it was considered by non-Aboriginal people that it was. Non-Aboriginal people were then brought in as homemakers and that caused considerable resentment.

Hon Kim Chance: Of course it did.

Hon PETER FOSS: The first reaction was: I am not having that woman coming into my house and telling me what to do. They saw it as being quite wrong. I have spoken to someone who has been trying to establish a homemaker program in Derby, hopefully overcoming that problem of "I am not having her coming into my house". I agree with Hon Kim Chance entirely. However, it must be initiated by Aboriginal people. I have not received a demand from Aboriginal people for the homemaker program. Was that request from Aboriginal or non-Aboriginal people?

Hon Kim Chance: Mostly from non-Aboriginal and mostly at the level of local government.

Hon PETER FOSS: I am sure all members think it was a good idea. My mother was involved in it and had a considerable degree of success with it. I have not heard enormous demand for it from Aboriginal people. Hon Kim Chance said that the clients have never said it. We do not expect Aboriginal people to say things. One of the difficulties was that the view that it was patronising had been communicated, but not directly to the homemakers, simply because it was not the Aboriginal way to come out and directly confront people.

Hon Simon O'Brien: In view of the last interjection, which has generated a lot of interest, I remind you of a program which is running in Kwinana which draws on the principles which you have mentioned and about which I knew nothing. It is an early intervention program called Kidlink, of which you may be aware.

Hon PETER FOSS: The solution is lots of small ideas, instituted locally and persisted with. It is the individuals who count, not just the programs. The right people must be prepared to put in the time. The community must be largely engaged in it. There are many good ideas which will work if they are tried out in a particular area and people think they will work. What really makes it work is the belief by a number of people in the community that it will work and their willingness to act on that belief. What might work in one place cannot necessarily be transferred to another place. It must be derived by that community and must involve everyone in that community. It must involve the chamber of commerce, local council, government departments, Aboriginal people and other people in the community. There is no one idea; there is no one concept; there is no one person. It requires tackling the problems which are not justice problems.

I went from being Minister for Health to Minister for Justice and when I walked into the Ministry of Justice I saw that I had exactly the same problems. It was the same clientele with the same problems and the same solutions. I should have known it, but it was uncanny to walk through and think, "I have not left. I am right back where I was." It was then that I resolved that the only solution was to get cooperation between government departments and get us working in a concerted manner. I have worked on that ever since. It will take time, and eventually when we receive messages from people saying that is what we have to do, we will know we have it, and then we must adopt it on a national basis. I attended the national summit on Aboriginal deaths in custody and I persuaded everyone who attended that this cooperative agreement approach with outcomes that we would achieve together was the way to go. All the Aboriginal leaders and ministers present signed a memorandum whereby we committed ourselves to that method - the method that we devised for Geraldton. Everyone was persuaded that that was the way to go; both Aboriginal and non-Aboriginal people.

In terms of justice and public safety generally, there is a misconnection. I am not saying that justice and police do not have a role; of course they do. The real role is for us, as a community. The major problems of today started, in many cases, 100 or 150 years ago; some started 15 years ago, some 10 years ago and some five years ago. We must all take responsibility for the society that we have. It certainly is not fair and has not been very good at tackling some of that unfairness. The Opposition holds it out as what it represents, but has it been successful? It is all very well to have the idea, but what has it done? Has what members opposite have done been any more successful than what we have done? Have members opposite achieved any more than we have achieved? We can probably all say that we have been pretty useless at it. Not many people recognise it, but our party says much the same thing as members opposite about the right of an individual to achieve.

However, what have we done? In some areas we have been very successful. I am sure that if we asked many Aboriginal people, they would say that the best federal Aboriginal Affairs Minister was Fred Chaney.

Hon Kim Chance: The majority of us would agree with that.

Hon PETER FOSS: We can take some credit in the area of Aboriginal health for delivering Aboriginal health to Aboriginal controlled people. I take some pride in that, because on a statistical basis the health problems of Aboriginal people will get worse during the next 20 years. I can guarantee that, and I know why. However, I believe that at least Aboriginal people feel they have some control over and some contribution to make to that issue.

I do not like seeing in the same motion justice issues, and law and order and public safety issues, because that sends the wrong message. I do not think I have heard that message from anyone in this Chamber; and certainly in this debate I have not heard anyone say that we can solve the problem by doubling the length of sentences, or by locking up all offenders. That is not the solution. That part of the motion is quite contrary to every view that I have heard expressed in this Chamber, and is quite contrary to what I believe is the appropriate answer, and it should not be in the motion.

I have dealt appropriately with each of the matters raised in the motion. The motion is inappropriate. The Government can take considerable credit for the items that are mentioned in paragraphs (1), (2) and (4), and it may take some criticism for the items that are mentioned in paragraph (3). However, it is not appropriate to amend the Address-in-Reply in this way, because although we may not have got it completely right yet, we are on the right track, and many of the problems that we have inherited are old ones. I do not think anyone would suggest that the problems in the prison system started the other day. This amendment is quite unfair, and I urge the House to reject it.

Amendment put and negatived.

*Debate (on motion) Resumed*

Debate adjourned, on motion by Hon Cheryl Davenport.

**COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL**

*Committee*

Resumed from 15 September. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

**Clause 1: Short title -**

Progress was reported after the clause had been partly considered.

**Clause put and passed.**

**Clause 2: Commencement -**

Hon NORM KELLY: I move -

Page 2, after line 3 - To insert the following new subsection -

“ (2) Any provision of this Act that does not commence under subsection (1) within the period of 90 days beginning on the day on which the Act receives the Royal Assent, is deemed to commence on the first day after the end of that period. ”.

The commencement clause of the Bill states that -

This Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

The reason for this clause is to enable the department to draft regulations pursuant to the Bill, and also because the Bill provides for new auditing procedures. The retail community is concerned that after it has waited seven or eight years for this legislation to go through the Parliament, there may be a lengthy delay once the Bill has been passed before it comes into operation. The majority of the provisions in this Bill will not apply to existing leases. Therefore, leases that are signed between the time this Bill is given the royal assent and when it is proclaimed will not be covered by this Bill. It is important that the Bill be proclaimed as quickly as possible. Unfortunately, the history of the speed with which legislation is proclaimed is not good. Both the coalition Government and the previous Labor Government have been very slow in having legislation proclaimed. This Government not only is slow in having legislation proclaimed, but also it is extremely slow in answering questions about when legislation is proclaimed. On 20 May this year, I asked a question on notice of the Premier, which I then had to re-ask in August following the prorogation of the Parliament. I asked how many pieces of legislation had been passed by Parliament and were still waiting to be proclaimed; and for how long had those pieces of legislation been given the royal assent but had not been proclaimed.

Hon Max Evans: What was the answer?

Hon NORM KELLY: I am still waiting. I have been waiting for only four months so far, and hopefully the answer will be forthcoming sooner rather than later. The list may be so lengthy that the Premier is still counting up the number of Bills. This has been a long-term problem not only in this Parliament but in other Parliaments. The Senate *Hansard* of 12 April 1989 refers to drafting instruction No 2 of 1989 from the Office of Parliamentary Counsel, which states, under the heading "Commencement of Legislation by Proclamation", that -

Last year, Senators expressed strong disapproval of the fact that many pieces of legislation had been unproclaimed, in some cases for many years . . .

It states also -

As a general rule, a restriction should be placed on the time within which an Act should be proclaimed . . . The commencement clause should fix either a period, or a date, after Royal Assent . . . This is to be accompanied by either:

- (a) a provision that the Act commences at the fixed time if it has not already commenced by Proclamation; or
- (b) a provision that the Act shall be taken to be repealed at the fixed time if the Proclamation has not been made by that time.

It states also that -

Preferably, if a period after Royal Assent is chosen, it should not be longer than 6 months. If it is longer, Departments should explain the reason for this in the Explanatory Memorandum.

It states also that -

Clauses providing for commencement by Proclamation, but without the restrictions mentioned above, should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation).

Clearly, it is necessary to tidy up this part of parliamentary procedure. We pass Bills all the time. It is important to know when they will become law.

I am told that my amendment may pose some problems in its current form. I have allowed 90 days for the measure to be proclaimed, and I am advised that it may take longer than that to draft the tenant guide. Also, the department would prefer some provisions relating to auditing procedures to commence on 1 July next year. My favoured position on such provisions is to delete clause 2, thereby relying on the Interpretation Act for automatic proclamation after 28 days. Nevertheless, that is unsuitable in this case. At the same time, the retail sector is concerned about the lengthy delays in the Bill's passage to this stage. I am sure that sector would be very concerned if proclamation took any longer than necessary. Connected to this concern are other amendments on the Supplementary Notice Paper regarding the transaction provision and whether measures will apply to existing or new leases. Of course, if the provision were to apply to existing leases, this amendment would not create such concern. That argument will ensue shortly. I realise that the Government may want to propose an amendment to my amendment to better reflect its preference on proclamation. The Government must state categorically when this Bill will be proclaimed.

Hon PETER FOSS: I take up a remark made by Hon Norm Kelly about a question he asked. I happen to know something about this matter. I suggest in future that he not ask questions of the Premier, but the respective minister. When questions are addressed to the Premier, they go through a massive circulation process. They are circulated to every minister, and each department gives an answer. These are collated and circulated again. Usually by the time they are circulated again, something has changed. Therefore, the question is sent back for that alteration. It depends on the way the question is asked. The question must be circulated again once it is updated. If members want to know such information, they should ask questions of individual ministers. We must undertake that drawn out process because of the requirement not to mislead Parliament; therefore, an answer must be correct at the time it is given.

Hon Norm Kelly: I have gone to do that on some other occasions and I was told not to ask a question of every minister. I was told to direct the question to the Premier.

Hon PETER FOSS: That is true. Some things end up as nuisance question; that is, the same question multiplied. Some ministers object to such questions. The member's question is probably fair. It may be sensible to ask the Premier a question when the information sought is not likely to continually require updating. If the question is how many Bills are unproclaimed at a particular date, it is not a problem. If a member asks how many Bills are unproclaimed, it causes problems. I saw the question again today for the umpteenth time. I sent it back because I knew an alteration was required to my answer since I last saw it. We have tried to provide the answer. However, my office sent it back. It could go on interminably. The

member could assist by asking how many Bills were unproclaimed at a certain date. We could give that answer as it would be correct at that date. It would not require recirculation.

Proclamation is a problem. I was keen to make sure that legislation is proclaimed. I have noticed in reading through the interesting answer to the member's question -

Hon Norm Kelly: I am glad somebody is reading them - I'm certainly not!

Hon PETER FOSS: It is an interesting answer. It indicated clearly that a number of Acts will never be proclaimed. Perhaps the easiest way to deal with such legislation is to put them through Parliament in an omnibus Bill. Usually, matters are not proclaimed for good reason. One example in my area of responsibility was an amendment to the Act regarding Camp Kurli Murri. As the camp was closed, there was no point in proclaiming that measure. It would not seem to be contrary to the spirit of omnibus legislation for legislation which will never be proclaimed to be dealt with by omnibus legislation. It can always be deleted if people have a problem with that mechanism. At least it would tidy up the statute book.

I agree with the member's sentiment that putting a date on this legislation's proclamation has been a problem. It has taken some years for the Bill to reach Parliament. Whenever it reached a certain agreement to enable its presentation, another round of lobbying would begin and the deal fell apart. This Bill represents the latest deal. As soon as it reaches Parliament, someone tries to re-do the deal. I am sure the member's amendments are an attempt to re-do the deal. People who asked for that change will be pleased with such change, but those who negotiated to reach this stage of progress would be upset by the adoption of the change. It throws everything back into the melting pot and the negotiations would begin again.

Hon Norm Kelly: If there are flaws in the consultative process, our role is to argue that case.

Hon PETER FOSS: I am one of the ministers who has tried to have this Bill dealt with.

Hon Norm Kelly: It is flawed to start with if we must go through the same process.

Hon PETER FOSS: Does Hon Norm Kelly know why? It is like the Mental Health Act, which was passed in the knowledge that many changes to it were necessary. If an Act had not been passed, we would never have had a Mental Health Act. It went from the 1962 Act, and another Mental Health Act was never proclaimed, and 13 years later Hon Graham Kierath said, "Let's pass this one. It is better than what we have. If you want to do more about it, argue it later." I urge members to recognise that a deal has been done on this Bill.

Hon Norm Kelly: That is an interesting term. It is totally devoid of Parliament.

Hon PETER FOSS: Arbitration has taken place. People have been consulted to death. Views are irreconcilable. Occasionally one must say, "Enough is enough. It must go." Otherwise, members will precipitate exactly the same process as many people have experienced before. The issues are thrown back into the boiling pot and we end up with no legislation.

Hon Norm Kelly: It sounds like the threats we heard last night.

Hon PETER FOSS: It is not a threat; it is the unfortunate reality of this legislation. It has taken a long time to get this legislation to Parliament because every time it appears to be nailed down, someone tries to re-do it. The two points of view will never be reconciled, so Hon Norm Kelly should never expect everyone to agree. Once it is reconciled, someone tries to re-do it. The matters are returned for discussion, and everything goes out the window. Along the line, someone - normally the minister - must say, "Enough! I have listened to everybody; I will try to accommodate as many people as possible, but this is the deal." It might be a different deal from the deal that we had when I was the responsible Minister or when Hon Cheryl Edwardes was the minister, but in the end Parliament is not too good at nailing down that matter. It is worse than those toys that one must put together. One pulls them apart and then slides them back together again. It would be like a committee doing that. Somebody goes and pushes some point and, bing, it all breaks up again. I urge members please to let this legislation go through without mucking it up too much. I know what will happen.

Hon Ljiljanna Ravlich: Get a life.

Hon PETER FOSS: Truly. Having been through it myself, trying to nail this thing down and knowing how difficult it is, I urge members not to try to redo the situation.

Hon Ljiljanna Ravlich: What about trust?

Hon PETER FOSS: It is nothing to do with trust. It is a matter of saying who will finally nail it down, unless we think that the minister has been incredibly partisan, and I do not think that one could say that. The minister has tried to do what he thinks is fair between the parties. One cannot take over that role. If one tries to take over that role, it will fall apart and somebody will start to build it all over again, and that might take another seven years. I do not really have an interest in this legislation. As Minister for Fair Trading, for two or three years I tried to put the thing together. I handed over what I thought was ready to go. Of course, it has all gone again. I am sure that people have tried to achieve that many times and many times it has fallen apart again. I ask members not to upset it too much.

Hon BOB THOMAS: I recall sitting here in government when Hon Peter Foss continually tried to insert such clauses, and now he seems to have changed his tune. I wonder what brought that about. Labor members would like to support the clause, but we would like it to be amended before we do so. We would like the proclamation date to be set in such a way that it takes into account the need for the legislation to comply with the audit requirements and the financial year cycle. I would like an agreement that the Government will consider coming back with a drafted amendment which accommodates the audit requirements and the statements of the variable outgoing costs and ties it into the financial year cycle, and then we will be prepared to support that amendment. If the Government is not prepared to do that, we will accept Hon Norm Kelly's amendment. The ball is in the minister's court and I am interested to hear what he says.

Hon MAX EVANS: I thank the former minister for this unique legislation. As Hon Bob Thomas said, it is probably the most important legislation that we will pass. It has been drafted in a simple form to allow all the flexibility that may or may not be required. Like Hon Norm Kelly, with one or two exceptions, I will not bring Bills into the House until the regulations have been done, because I do not like to delay it. In fact, I will not let that happen with my legislation. The story has often been that the legislation has not been passed. This legislation is slightly different because we must go back to the interested parties more than we do with other legislation. It is probably just a drafting matter for parliamentary counsel. I understand that the tenant guide has been drafted but still needs to be discussed. If amendments are passed, there must be even more discussions. As I said last night, the tenant guide is long overdue, and I will be most interested to see it. I hope that various bodies can make a contribution, particularly the Small Business Development Corporation, which has much to do with businesses that get into trouble. It wants it to be a beginner's guide. Most people who go into business only once in a lifetime go into a retail shop and are either very successful or very unsuccessful and do not try it again - they learn by their mistakes.

The point has been made that with the 90 days we will get into the Christmas season. As we know, most retailers do more trade in the last three months of the year than they do in the other nine months. As a chartered accountant, I know that much of my legislation goes out to chartered accountants and to the Law Society of Western Australia and the Taxpayers Association of Western Australia. We write to the body, the body gets its members together to discuss the legislation, because it is usually not for a professional officer to make the decision, it is for the hands-on members. That takes a helluva long time. The Law Society is probably the worst to come back in reasonable time. It sends out the legislation to the members of its committee, it comes back and then it must be approved by the Law Society Board. The retail trade is probably much quicker, but how much will be done in 90 days?

Parliamentary counsel has drafted the Bill to provide for flexibility in proclamation to allow for the development of the new tenant guide and changes to regulations. Both those matters will require further consultation with industry stakeholders. Those tasks cannot be undertaken until the final form of the amendment Bill is known. In addition, the commencement of the new audit requirements will apply from the next applicable accounting year. That will also involve agreements for other than July-June financial years. It goes back to the lease that has been taken on. There are many different reasons such as where the holding companies are located. English and American companies have a 31 December year end and for Japanese companies it is either March or September.

The Government has undertaken to deliver the benefits of the Bill to the retail sector as soon as possible. That is obvious. We have wanted to get the legislation though. I hope that the many stakeholders will move quickly to come to an agreement on the tenant guide and the regulations. For that reason we request that the House not pass the amendment and leave the clause as it is.

Hon J.A. SCOTT: I have a couple of queries. Parts of other legislation that have been passed by both Houses have been proclaimed and other parts have not. It is a messy process and it is a shame that things are not able to be done much more cleanly. I agree that there is a lack of certainty about the proclamation date. At the end of the day the will of the Parliament does not really matter - if the Executive so decides, the legislation may never be proclaimed. That is outrageous. There must be a final point at which the legislation is proclaimed, otherwise the Executive will override Parliament. I would like to hear why Hon Norm Kelly specified 90 days, depending on the day on which the legislation receives royal assent. It is deemed to commence on the first day after that period. I agree that there should be a final time. Will the Minister say which parts of the Bill can be proclaimed quickly, even though that is messy process? I want to know why Hon Norm Kelly has chosen that period.

Hon NORM KELLY: The minister raised the issue of regulations being proposed and having them ready when the Bill is debated. It is a common problem, usually with the minister's Bills. If we get the regulations with the Bill, we can determine our position after having also considered them. That would be preferable to having the standard clause providing that the regulations will be prescribed, having to wait to see their final form and then deciding whether to move a disallowance motion or amendments. It can get very messy. It is easier to make a decision about the Bill if we are given the regulations at the same time.

I accept that this is a special case; it is very complex and requires consultation with the various bodies to come up with something that will be acceptable to everyone. Because it is based on the legislation, the tenants' guide is a lot easier to deal

with. I accept that time is required for the regulations and the tenants' guide to be formulated. As I said, an ideal solution would be to delete this clause and thus have automatic proclamation in 28 days.

In response to Hon Jim Scott, that is why I have moved to insert 90 days. That would allow sufficient time to draft the regulations and the tenants' guide. As I said in my reference to the Senate *Hansard*, this clause should be extended over six months to allow for proclamation during that period. I am flexible about the date, but there must be a guarantee in the legislation that the Bill will be proclaimed.

After the Bill is passed by Parliament, a group such as the Property Council of Australia could come to the Government and say that it has picked up a problem with the provision relating to management fees and that it needs time to sort it out with its lawyers. It might ask that the proclamation be delayed to allow the problem to be resolved. While that is going on, all the new leases being signed could be liable for management fees, and that could go on for months. Because of the way the Bill is structured, those leases, and therefore the fees, could be in place for 15 years.

This also relates to the transitional clauses. We need some assurance about what leases these provisions will affect. I have discussed this issue with departmental officers in my various briefings in the past few days. If we can get an assurance that leases from a certain date are covered by the new provisions, there would be some certainty for landlords and tenants.

While we have a Bill which has been passed by Parliament and given assent, and which is awaiting proclamation, everyone is in never-never land, not sure when it will be proclaimed. People will be negotiating leases with no certainty. My experience is that that is a very drawn out process. First, one looks at shops at a few different sites. Then one gets to the nitty gritty of arguing the details of the lease agreement. If the department were still working out whether to proclaim provisions, there would be no certainty.

Because landlords are more organised, they tend to have a better idea of when provisions are proclaimed, unlike an individual tenant who must deal one-on-one with a landlord. There are serious concerns about possible non-proclamation of, if not the entire legislation, at least certain provisions of it. That is why we need that guarantee, either at the beginning or the end of the Bill. If we could amend clause 14, which relates to certain provisions applying to new and existing leases - others apply only to new leases - that might be the better way to go.

The Australian Democrats would like to see all the provisions applied to all leases - new and existing. I know there will be opposition to that proposition. Either way, we need certainty about when these provisions will come into force. If we state that all the provisions will apply to leases signed after 1 January 1999, at least that will give tenants and landlords something to go by. We might have a period during which people are reluctant to sign because they want their lease to be subject to the provisions of the fairer Bill - so be it. This uncertainty ensures that the centralised landlords retain the power to negotiate new leases on their own terms.

Hon BOB THOMAS: I had determined to offer the minister an opportunity to reconsider the Government's position. However, I note from his comments that he is intractable and does not want to reconsider. I suggest that we defer this clause and deal with it at the conclusion of the committee stage. The Government should reconsider this clause and come back with an amendment to accommodate the wishes of the Australian Democrats, the Labor Party and the Greens (WA).

We do not want this legislation to sit on the shelf unproclaimed. We want a guarantee that it will be proclaimed, and we want it in the legislation. I said either in the second reading debate or in the debate on the short title that this Government always does the bidding of the Property Council. A number of clauses in this Bill will remove some of the property owners' negotiating powers. The Opposition does not want very influential property owners lobbying the Government after this Bill has been passed and the Government's finding reasons for some sections not being proclaimed.

Clause 2 provides that parts of this Bill can be proclaimed at different times. This Bill contains some very important reforms for small business. The ratcheting mechanism will be removed. The Opposition does not want property owners coming to the Government saying they have found a legal technicality and they do not want a particular section proclaimed. The tenants' guide is a very important change and it is especially important that the management fees issue be dealt with. Many small businesses are being ripped off as a result of management fees being included in the variable outgoings of their businesses. We do not want a very powerful lobby group persuading the Government that a section should not be proclaimed.

If the Government is not prepared to defer this clause and come back with a form of words that accommodates our requirements, the Opposition will support this amendment in its current form. We understand that the Government has a number of issues that it needs to take into account after this Bill is passed. We know that the tenant guide will involve considerable consultation with the various players in the industry; we understand that will be a lengthy process. We understand that there are various complications associated with the financial year cycle, so we will not hamstring the Government so that this Act is proclaimed and makes it impossible for business to comply with those requirements. If the minister is not prepared to accept our offer to redraft this clause, we will support Hon Norm Kelly's amendment. I know the minister does not want that, so we are giving the minister an opportunity to reconsider this.

Hon J.A. SCOTT: As a member of a committee that is looking at the workers compensation legislation it has occurred to me that one of the things that people will all be aware of is that when that last piece of legislation was mooted, there was a flurry of action from people trying to get claims in before the second gateway was closed off. I am concerned that the minister does not have some precise time at which this must be proclaimed. I am not sure what that time is, but I am quite happy to accommodate whatever time the minister has in mind. If the minister does not give a precise time, he will get a whole lot of people who might be about to take up a lease who will say, "I will not do it yet until I know that these conditions are in place." That will be bad for both sides of this debate. Why can the minister not tell us a time? There must be an outside time the minister can put on it and say, "We can proclaim it by then." It does not have to be the time laid down by Hon Norm Kelly. I think he is prepared to be reasonably flexible on that, and it appears the Labor Party is also. I think the minister will affect the normal flow of business unless he has a date in place.

Hon NORM KELLY: In addition to what Hon Jim Scott said, we need to think about what would happen in the real world if this were to go through in its current form. The result would be that the landlords would be enticing tenants to sign up, and in a sense they would be giving them an additional security of tenure by saying, "We will give you a five-year lease and give you three five-year options on that" because they would see that if they could lock someone into a lease with repeated options they would lock those people in for 20 years or so under the old provisions of the Act. I am glad to see that the Government has agreed that the current provisions of the Act are outdated and unfair and it would be wrong to allow those old provisions to prevail for too long. That is what would occur if we have a period of uncertainty about the proclamation of the legislation.

Hon MAX EVANS: I have listened to all members very closely. Some very good points were made by each individual member, particularly Hon Norm Kelly and Hon Jim Scott, about what would happen in the real world - will it delay or accelerate matters? I discussed this with my adviser 10 minutes ago. Who knows what will happen? Hon Jim Scott knows about the workers compensation legislation. The applications have all come forward because the lawyers think if they do not get them in before the changes, they might be sued for being negligent. The same thing could happen with the leases. It is the Government's aim to get this Bill through as quickly as possible.

**Further consideration of the clause postponed until after consideration of clause 14, on motion by Hon Max Evans (Minister for Finance).**

**Clause 3 put and passed.**

**Clause 4: Section 3 amended -**

Hon BOB THOMAS: I move -

Page 3, line 20 - To delete the figure "1 000" and substitute the figure "2 000".

We are trying to make a very minor amendment to this clause so that we can bring in a number of other retailers under the ambit of this legislation. It is a small number of retailers; around 20 or so independent grocers who have premises larger than the 1 000 square metres which is included in the principal Act, but less than 2 000 sq m. We would like to amend the Bill so that we can change the definition of a retail shop please from 1 000 sq m to 2 000 sq m total retail floor area. The 1 000 sq m equates to a quarter acre block. We are saying that another 20 or so small grocery retailers have retail areas of up to twice the quarter acre block. Most members would know them as the Supa Valu supermarkets and those sorts of shops. We believe that people in those circumstances are really small business people even though they might employ a few more people than most small businesses. They really are family-owned and run businesses; their area of specialisation is in retailing and all of their employees' skills are aimed at providing a retail service. They tend not to have within their organisations any specialisation in property management. Their staff do not have the expertise to negotiate with large property owners. They do not have legal expertise, nor the sorts of skills necessary to be able to understand the legal ramifications of leases.

They need some protection and that is best provided within this legislation. I refer the Chamber to a letter which was sent from Mr Gregory King, the executive director of the Western Australian Independent Grocers' Association, to my colleague in the other place, the member for Bassendean who had carriage of this Bill there. As members will know, the member for Bassendean consulted widely with all stakeholders in this industry when this Bill was dealt with in the other place. One response he received was from Mr Gregory King. This letter states -

The Association is concerned that the interests of its members are not being addressed in the proposed amendments to the Commercial Tenancy (Retail Shops) Agreements Amendment Bill. At the present time, it is proposed to retain a maximum floor area of 1,000m<sup>2</sup> to qualify for protection under the Act.

A significant number of independent supermarkets unfortunately will fail to meet this qualifying criterion as they operate stores in the vicinity of 1,000m<sup>2</sup> to 2,000m<sup>2</sup>.

As we understand it, the intention of the Act is to provide protection to small business operators in their lease negotiations with property owners, which are often held to be a somewhat one sided affair.

We maintain that the vast majority of independent supermarket operations can be best described as family based, owner operated, like the chemists, newsagents and other specialty shops that will be afforded the protection of the Act. Like the specialty retailers, our members do not necessarily have the skills, resources or capacity to negotiate on a level playing field with their landlord to ensure a fair and equitable lease is agreed between the parties.

In summary, we are not necessarily seeking major revisions to the intent of the Act, but rather a broadening of its application to include independent supermarkets.

The member for Bassendean also received a letter from a Mr Halvorsen concerning a number of changes he wanted in the legislation. One related to this amendment; that the definition of "retail" be increased to 2 000 sq m. I will summarise the contents of his comments. He said -

The reason for this request is that there are 22 independent supermarkets which are within the 1000 to 2000 square metre range out of a total of 82 Dewsons, Rules and Supa Valu franchise supermarkets of Foodland Associated Limited.

That shows members how often I do the shopping because I could not remember the names of all of those supermarkets.

Hon Max Evans: They have all changed their names within the past 12 to 18 months.

Hon BOB THOMAS: That is a good point, too. Mr Halvorsen went on to say -

These 22 supermarkets enjoy no greater negotiating power with landlords than do those with less than 1000 square metres and even if the legislation encompassed some stores owned by larger corporations this would not matter regarding the purpose of the legislation.

I assume Mr Halvorsen is one of the franchisees.

Hon Max Evans: He has three stores.

Hon BOB THOMAS: He sounds like he knows what he is talking about.

Hon Max Evans: There is a self-interest.

Hon BOB THOMAS: If one of those stores is situated in Leederville, I have spoken to this chap. I agree with the sentiments being put forward by those operators. They are not skilled or versed in property negotiations. Nothing is lost if we incorporate them within this legislation. As the letter to the member for Bassendean states, there are only 22 retailers caught in this amendment. I am keen to hear the response of the Government on this matter.

Hon RAY HALLIGAN: I am not necessarily concerned, but a little perplexed as to why this amendment has been put forward. I might add that there are two amendments under the proposed heading of "retail shop lease" within paragraphs (a) and (b). We must look at both to get a clearer picture of what might be intended. One will know from reading the second reading speech that this Bill seeks to regulate lease agreements for certain small businesses. By definition, a small business - certainly according to the Small Business Development Corporation - is a non-manufacturing concern employing no more than 20 people. That invariably means that those types of businesses, if they are incorporated, are usually private companies. There is no purpose in being otherwise. They are small, with up to 20 employees, and it is not necessary to require internal capital that the owners cannot provide.

When we look at this paragraph and seek to double the area to what is a considerable size, we must take into consideration paragraph (b) that we will be asked to delete. That paragraph, excludes from the legislation corporations which are not eligible to be incorporated in Western Australia as proprietary companies. That immediately means they must be public companies or subsidiaries of such corporations. Hon Norm Kelly has already gone down the path of Liquorland as a subsidiary of Coles-Myer. By excluding that paragraph we are allowing subsidiaries such as that to be protected by the legislation. The member not only wants to increase the size of the area for the small businesses, but also to allow public companies to be provided with the protection of this legislation. To my mind, they are no longer small.

The member spoke about the 22 supermarkets that have between 1 000 and 2 000 sq m. I understand that many of those supermarkets are major players within some of the smaller shopping centres. I wonder what their difficulties are or are likely to be with their landlords because they virtually have a monopoly in those areas. I hear also that they have no expertise, and that makes me wonder why they have gone into businesses of that size. The current legislation also states that there will be a disclosure statement. It is given for the purpose or shall be prescribed on behalf of the landlord and the tenant, and shall contain a statement notifying the tenant that he should seek independent legal advice. I am hearing these words, "I am sorry, these people do not understand." It is there in black and white that they should go out and seek advice.

One hopes that any normal prudent business person, particularly one about to sign a lease of an area up to 2 000 sq m, or half an acre, would seek independent legal advice. It is prudent and reasonable for a person to do that. I have heard nothing that convinces me that people in that situation should be protected by this Bill.

Hon J.A. SCOTT: Hon Ray Halligan has a point. One would think that people operating larger shops, such as mini supermarkets, would have a certain amount of understanding of what was going on. Let us examine the concept of the Bill. It is about putting in place fair terms of agreement to protect, principally, the smaller retailer or commercial tenant. Why do we need to exclude agreements between bigger businesses merely because they are big and able to get legal advice?

Hon Ray Halligan: The second reading speech refers to small business and not every business.

Hon J.A. SCOTT: The concept of the Bill applying to a larger business does not bother me. One should seek fairness for everybody. I had a letter referring to a country service station which had an area of tarmac less than 1 000 sq m. In order to escape the relevant clause, the landlord bitumenised another strip, which made the area over 1 000 sq m. Would that put the tenant outside the agreement? He is a small business person but because of the nature of the business he would run into a problem because of the square metres involved in his operation. I wonder whether there should not be some other way in which people like that could escape the effects of that sort of clause. Quite clearly those people are not involved in big business. I have known people who have started off in service stations. They were definitely small business people who did not have a lot of expertise when they started out. They would certainly need some sort of protection, particularly if they were leasing off a large fuel company, which are not the most magnanimous of landlords in the country.

Hon NORM KELLY: There is some validity in what Hon Bob Thomas is proposing. When we talk about small business, let us be sure that we do not confuse a business being physically small in area with what small business is all about. There is a general Australian definition of non-manufacturing small business. I cannot remember exactly the definition but it relates to the amount of turnover, such as \$1m, and a certain number of employees. Grocery concerns which fit into the 1 000 to 2 000 sq m category can legitimately be regarded as small businesses. However, my concern is that with Hon Bob Thomas' amendment to cover small businesses we may also find ourselves covering more than is intended by the member. I recognise the issue in the second amendment regarding corporations and realise the connection, but that should be regarded separately.

Hon Jim Scott mentioned a service station. I understand that other legislation can cover that type of circumstance. The example Hon Jim Scott gave was of unconscionable conduct. We must ensure that we stop unconscionable conduct when it comes to retail premises. We will probably be arguing this a little later, but a really good solid unconscionable conduct clause in this Bill would resolve a lot of the problems that keep arising with tenant and landlord negotiations. The whole issue involves a big melting pot and is about achieving a balance. We cannot look at one aspect of the Bill without looking at other aspects of legislation.

I feel for those grocers who are left out of the current legislation purely because of the size limitation, but there needs to be a cut-off point. I feel that 1 000 sq m is quite a standard size and is referred to in other legislation. For that reason I will not be supporting the amendment.

Hon RAY HALLIGAN: The member will note that the Bill refers to retail floor area and not parking area. I understand what Hon Jim Scott said about adding to the area of tarmac, but that is not part of the retail floor area. That is what the amendment refers to. A landlord can put in as much bitumen and roadway as he likes, but the measure is where a tenant is operating and the floor area of the retail shop, which must be over 1 000 sq m.

Hon KEN TRAVERS: I do not have a legal mind and I will be intrigued to hear the minister's response. Hon Kim Chance provided the minister with a copy of a letter from a Mr Spooner, who I suspect wrote to all members on this side of the Chamber. He used the example of a petrol station and referred to some case history which said that the tarmac area was considered by a judicial body to be part of the floor space because it was where someone was selling petrol. I understand that the minister was given a copy of the letter. I want to hear the minister refute the arguments in that letter and to refer us to some other case history which might counter that put forward by the gentleman who wrote to us. We need to expand the floor area provision. I take the point that a Coles-Myer supermarket probably does not need to be protected, and it is not the intention of this Bill to do so, but many other small businesses need protecting.

Hon J.A. Scott interjected.

Hon KEN TRAVERS: I am referring to the 1 000 sq m versus the 2 000 sq m. Many small, family-owned and family-operated businesses will be at the mercy of unconscionable conduct by landlords if the figure is not increased to 2 000 sq m.

I think Hon Ray Halligan brought the next amendment into the debate. He should support the first amendment and oppose the second, although I prefer him to support both. If he has a different view that is his prerogative. There are two separate items to be dealt with. I do not think he should necessarily knock off the first amendment moved by Hon Bob Thomas to increase the area to 2 000 square metres. That will give coverage to a number of small businesses which it is intended this Act should cover.

Hon BOB THOMAS: I understand Hon Norman Kelly will not support this amendment; therefore I do not see any point in labouring my view. I respect his views on this. I was especially heartened to hear him refer to the unconscionable provisions. Hon Ray Halligan referred to small business and to the Small Business Development Corporation's definition

of a small business as having no more than 20 employees. That is one definition but there are many other definitions. When I was a student at university in the 1970s, the Australian Bureau of Statistics definition of small business was a business with no more than 100 employees.

Hon Ray Halligan: You are correct; for a manufacturing business it is no more than 100. For non-manufacturing it is no more than 20.

Hon Norm Kelly: \$1m turnover.

Hon Ray Halligan: There has been an addition of a monetary value as well.

Hon BOB THOMAS: The point I am making is that the Small Business Development Corporation's definition of exclusively no more than 20 employees is not necessarily the yardstick we should use.

I refer to Hon Ray Halligan's comments that a prudent business person would not sign a lease if a lease were to his detriment. In an ideal world that would be true. However, we are not dealing with an ideal world.

Hon Ray Halligan: There is a clause in the Bill about disclosure. They are advised that they must obtain independent legal advice.

Hon BOB THOMAS: We are not dealing with an ideal world.

Hon Ray Halligan: That is entirely up to them.

Hon BOB THOMAS: There is huge disparity of bargaining power between two sectors - the lessee and the lessor. We need only examine the thousands of case studies in which the property owners have used their power capriciously and unconscionably to maximise their benefit, to the detriment of small lessees. We are not talking about an ideal world; we are talking about the real world. The Opposition knows that the size of the bargaining power counts. The small grocer and the others about whom I have spoken, and who may have a lettable area of up to 2 000 sq m have no more bargaining power than the pharmacy or news agency in the shopping centre. They are not large Australian companies that deal on a day-to-day basis with property owners such as the Lend Lease Group, Westfield, AMP and the like. They do not have the financial grunt that will enable them to get a fair deal.

I have read a couple of letters from small grocers who are saying what I am saying.

Hon Ray Halligan: Do you have their financial figures? You say they do not have the grunt. Do they not even have the money to take on a lawyer?

Hon Norman Kelly said that part of the definition of a small business is one with a turnover of up to \$1m. What percentage of net profit before tax do you believe one of those businesses may make?

Hon BOB THOMAS: That is not the point. We are talking about a large property owner being able to say, "Take it or leave it." These people are in a position of having to take it or leave it.

Hon Ray Halligan: You are not pitting a large property owner against small business people; you are pitting two lawyers against each other. That is what should happen.

Hon BOB THOMAS: I disagree with Hon Ray Halligan.

Hon Ray Halligan: Prevention is better than cure. You are waiting until after the event when the lawyer must refer back to legislation to take the large property owner to court.

Hon BOB THOMAS: I am sure the independent grocers will form their own view on Hon Ray Halligan's interjection.

Hon Derrick Tomlinson: They already have; it is very wise.

Hon BOB THOMAS: From the evidence I have provided to this House, I suspect their views will be diametrically opposed to those of Hon Ray Halligan. I understand the numbers of this House and I do not propose to offer any more comments on this clause. I would like to see us test the will of the House.

Hon MAX EVANS: This proposition was considered during consultation on the Green Bill. It was raised by only the Independent Greengrocers Association about the cost of fitting out, stocking, staffing and managing a supermarket on a quarter acre and if it was substantial bringing it up to half an acre. I thought the term green grocers was no longer in our vocabulary. Even though Mr Halvorsen has three stores all larger than 3 000 square metres, he is still a green grocer, although he is not very green!

Industry peak groups were further surveyed at the request of Minister Shave in May 1998. The proposal did not gain unanimous support from the retail side. The Western Australian Council of Retail Traders, via Mr Nick Catania, opposed

the extension of coverage of the Act. The issue was debated in the Assembly and rejected. All States adopting an area forming tenancy law have chosen 1 000 sq m and indicated at the time that business needed legislation protection.

In New South Wales, this Act does not apply to shops that have a lettable area of 1 000 sq m or more. In Victoria it applies to shops with a floor area of up to 1 000 sq m. Tenancies held by public companies and businesses run on behalf of landlords are excluded. In Queensland, premises subject to the Act must not have floor space exceeding 1 000 sq m and will be a tenancy held by a public company or public company subsidiary.

In Western Australia retail shop premises that have a floor area that exceeds 1 000 sq m are excluded and a tenancy held by a public company or a public company subsidiary is excluded. In South Australia the Act does not apply where rent exceeds \$250 000 a year where occupational rights arise under sale and mortgage, etc. Public companies, banks, insurance companies, local councils and the Crown are excluded. In Tasmania the code applies to all businesses occupying tenants' retail premises of less than 1 000 sq m. The Australian Capital Territory is slightly different. It does not apply to premises of more than 1 000 sq m which are let to a corporation that is not eligible to be incorporated as a proprietary limited company under Corporations Law and a small commercial premises not located in a shopping centre of not more than 300 sq m.

The other States are fixed on a pattern of one group. I gather the Independent Green Grocer's Association is the strong voice which Hon Bob Thomas is quoting, and rightly so.

It was suggested that we are dealing with a very professional enterprise that will obtain expert advice which will strongly represent its interests. The Opposition proposal is out of step with the intention of the Act and its amendments. It also carries no weight as no industry-wide consultation or consultation request was made in this regard. It is not intended to extend the coverage of the Act in this way to accommodate particular groups and larger businesses.

If the lessor is a petrol company, he is excluded from the Act.

In the case referred to, the writer of the letter is in dispute with his landlord. He discussed hypothetical situations of the landlord doing this, this and this which might bring him into a larger area and he might not be able to go ahead. It depends on what is in his lease. As Hon Ray Halligan said, the legislation deals with retail space. We are trying to protect people in that regard. The Government does not support the amendment.

Hon J.A. SCOTT: In considering the amendment moved by Hon Bob Thomas, I raced down to get a copy of the documents from the Western Australian Independent Grocers Association and the National Association of Retail Grocers. It is interesting that these documents contain a graph of Australia's retail grocery sales showing that in 1975 the small independent grocers held 60 per cent of the market. By 1985 this had fallen to 40 per cent and by 1998, to 20 per cent. The document shows that the estimate for 2000 drops to 15 per cent. I wonder if each time we make these decisions we should consider levelling the playing field for these people. I was thinking along the other line, but when I looked at this data it sparked the thought in my mind that these are exactly the people who need to be protected. The endangered species is the middle-sized retail grocer. If this Bill affects people with over 1 000 sq m of retail space, it will not have a detrimental effect on anybody and I cannot see the problem. What detrimental effect would there be if those people were incidentally caught up in this? I do not believe this will change anything; it will ensure that this is fair on everybody.

Hon Ray Halligan: What will it ensure?

Hon J.A. SCOTT: I am saying that we are bringing this in to protect the rights of the small person without much bargaining power.

Hon Ray Halligan: That is a fallacious argument. You have mentioned some percentages and you are talking as though you believe this Bill will protect or increase that percentage. That is not the case.

Hon J.A. SCOTT: I am not saying that. A large chain like Woolworths or Coles has many ways of getting an advantage over smaller retailers. It buys its goods at a lower price because of its bulk buying power. It has an unfair advantage if we are talking about competition policy. Competition policy does not work in all directions; the big players always have an advantage because of their buying power.

Hon Ray Halligan: That has nothing to do with this Bill.

Hon J.A. SCOTT: There are lots of ways that these big players have an advantage over the smaller people, including the ability to get cheaper rental space owing to the huge areas they rent. In the same way that they buy cheaper goods, they get a better deal on floor space.

Hon Derrick Tomlinson: How do you know?

Hon J.A. SCOTT: Most of them are doing better because they get better deals all the way through.

Hon Derrick Tomlinson: How do you know?

Hon J.A. SCOTT: They are taking over the world of retail groceries.

Hon Derrick Tomlinson: It is a great big conspiracy.

Hon J.A. SCOTT: No, it is not a great big conspiracy. Some people are using their advantages to increase their market share. At the same time, the people we represent in the wider community will not be advantaged if we have one retail grocer in Australia, because its prices will not be low.

Hon Derrick Tomlinson: Have you had a look at the relative prices of groceries since we have had that sort of marketing in the last 20 years?

Hon J.A. SCOTT: I have shopped.

Hon Derrick Tomlinson: Have you shopped for 20 years?

Hon J.A. SCOTT: Yes, I have.

Hon Derrick Tomlinson: Can you tell us about the value and cost of your groceries in those 20 years?

Hon Norm Kelly: They have gone up.

Hon J.A. SCOTT: They have gone up considerably. I could shop cheaper -

Hon Derrick Tomlinson: Go away and do an exercise on the change in values and see what happens.

The DEPUTY PRESIDENT: Order!

Hon J.A. SCOTT: It is difficult to calculate mentally every shopping trip. It can only be compared with wages and so on.

Hon Derrick Tomlinson: Do something simple; measure it as a proportion of your total income.

The DEPUTY PRESIDENT: Order! One interjection at a time.

Hon Derrick Tomlinson: What you will discover is that your myth will be blown out of the water.

Hon J.A. SCOTT: Hon Derrick Tomlinson is suggesting something that is impossible to gauge.

Hon Derrick Tomlinson: You are making the impossible statement.

Hon J.A. SCOTT: While there has been a change in practically every item and a change in the value of money, there has also been a change in wage levels and other things. One can compare it only with one's own wage.

Hon Derrick Tomlinson: Of course you can; it is a very simple exercise.

Hon J.A. SCOTT: It is impossible. It is obvious to most people that a large chain has many advantages with its buying power, which it uses to get a better deal than the smaller retailers. The people affected by this amendment are those people who fall between the small business - as Hon Ray Halligan would see them - and the small to medium-sized business. This amendment will not cause anyone any grief whatsoever. I want someone to explain how this amendment would hurt anybody.

Hon RAY HALLIGAN: I do not want anybody to get me wrong; I believe there is need to protect certain people. That is the purpose of the Act; it is there to protect the small business person. Exactly when do members opposite believe that the owner of a business believes he has the capacity to understand and then act in a manner that one would expect a prudent business person to act. I am talking about the size of the business - the turnover and the number of employees. How big does a business have to be before that person says he is big enough to go to a lawyer? Any answers?

Hon Ken Travers: No specific answer. I would advise a business owner of less than 1 000 sq m to go to a lawyer.

Hon RAY HALLIGAN: Exactly. However, the argument being put forward to us is that he is unskilled and does not know. He needs the protection of the Act.

Hon Ken Travers: Only his bargaining position.

Hon RAY HALLIGAN: The lawyer protects him. Even if he came under the Act and believed he was hard done by, if he believed his landlord had acted outside the legislation, what does he do? Wave it under his nose?

He goes to a lawyer and the lawyer will probably take the landlord to court. As I said previously, and I am sure some members will agree, prevention is better than cure.

Hon Ken Travers: If there is no protection in the Act, the lawyer cannot get a decent lease either.

Hon RAY HALLIGAN: Okay, let us go down that path.

Hon Tom Stephens: Let us not! You are only stonewalling the Government's legislation.

Hon RAY HALLIGAN: What members opposite are trying to do is level the playing field. It does not exist. The way people are protected is via the law. Is that not correct, Hon Nick Griffiths? Lawyers are the salt of the earth. They know everything and they are prepared to help anyone who is prepared to pay.

Hon N.D. Griffiths: You have been listening to Hon Peter Foss.

Hon RAY HALLIGAN: I cannot agree with the arguments being put forward.

Hon Bob Thomas: Okay, we will agree to disagree with your points.

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

Ayes (11)

Hon Kim Chance  
Hon J.A. Cowdell  
Hon Cheryl Davenport

Hon N.D. Griffiths  
Hon Mark Nevill  
Hon Ljiljanna Ravlich

Hon J.A. Scott  
Hon Christine Sharp  
Hon Tom Stephens

Hon Giz Watson  
Hon Bob Thomas (*Teller*)

Noes (14)

Hon M.J. Criddle  
Hon Dexter Davies  
Hon B.K. Donaldson  
Hon Max Evans

Hon Peter Foss  
Hon Ray Halligan  
Hon Helen Hodgson  
Hon Norm Kelly

Hon Murray Montgomery  
Hon Simon O'Brien  
Hon B.M. Scott

Hon W.N. Stretch  
Hon Derrick Tomlinson  
Hon Muriel Patterson (*Teller*)

Pairs

Hon John Halden  
Hon Tom Helm  
Hon Ken Travers  
Hon E.R.J. Dermer

Hon Barry House  
Hon M.D. Nixon  
Hon Greg Smith  
Hon N.F. Moore

**Amendment thus negatived.**

Hon BOB THOMAS: I move -

Page 3, after line 21 - To insert the following paragraph -

“ (d) in the definition of “**retail shop lease**” by deleting paragraph (b) of that definition. ”.

The reason I so move is that we believe there are some smaller public companies which are no more than small retailers and we think they deserve the protection that this amendment would give them.

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

Ayes (8)

Hon Kim Chance  
Hon J.A. Cowdell  
Hon Cheryl Davenport

Hon N.D. Griffiths  
Hon Mark Nevill

Hon Ljiljanna Ravlich  
Hon Tom Stephens

Hon Bob Thomas (*Teller*)

Noes (17)

Hon M.J. Criddle  
Hon Dexter Davies  
Hon B.K. Donaldson  
Hon Max Evans  
Hon Peter Foss

Hon Ray Halligan  
Hon Helen Hodgson  
Hon Norm Kelly  
Hon Murray Montgomery

Hon Simon O'Brien  
Hon B.M. Scott  
Hon J.A. Scott  
Hon C. Sharp

Hon W.N. Stretch  
Hon Derrick Tomlinson  
Hon Giz Watson  
Hon Muriel Patterson (*Teller*)

Pairs

Hon John Halden  
Hon Tom Helm  
Hon Ken Travers  
Hon E.R.J. Dermer

Hon Barry House  
Hon M.D. Nixon  
Hon Greg Smith  
Hon N.F. Moore

**Amendment thus negatived.**

**Clause put and passed.**

**Clauses 5 and 6 put and passed.****Clause 7: Section 11 amended -**

Hon NORM KELLY: I move -

Page 10, after line 7 - To insert the following -

" (3) Section 11 (3) of the principal Act is amended -

- (a) by deleting "either - "; and
- (b) by deleting paragraphs (a) and (b) and substituting the following -

2 persons licensed under the *Land Valuers Licensing Act 1978*, one of whom is appointed by the landlord and one of whom is appointed by the tenant. "

This first amendment relates to the appointment of valuers for a determination in a rental review. Section 11(3) of the Act states -

A retail shop lease that provides for review of the amount of rent payable during the currency of the lease shall be taken to provide that where the parties do not agree on the rent payable as a result of the review, the question shall be resolved, subject to subsection (5), by either -

- (a) a person licensed under the Land Valuers Licensing Act 1978 agreed to by each of the parties; or
- (b) 2 persons licensed under that Act, one of whom is appointed by the landlord and one of whom is appointed by the tenant.

The effect of my proposed amendment is to ensure that on all occasions two valuers are appointed to make that rental determination. Although in the current Act a single valuer could be appointed by agreement of the two parties, in this situation the tenant and the landlord are already in dispute, and that is a crucial part of the legislation. When a tenant and landlord in dispute agree on a single valuer, that is how it will proceed.

In an ideal world, there would be truly impartial valuers, but in the real world there are valuers who tend to favour landlords and valuers who tend to favour tenants. Landlords are normally dealing with these matters much more frequently than tenants. The tenant is usually involved in only one store, and sometimes more. The landlord is usually a professional who deals with these matters all the time and knows which valuers favour the landlord's point of view. It would be common for the landlord to give the tenant the names of two or three valuers, and invite him to select one. Those two or three valuers may be those who would typically favour the landlord.

This amendment would ensure that two valuers were used. It is a fairer way of gaining a true reflection of market value. Although the cost will increase slightly because both the tenant and landlord will have to pay for their respective valuers - it would provide more work for valuers, I suppose - it will result in better rental determinations. I stress again that this is a situation in which the tenant and landlord are already in dispute. Therefore, it is critical that there be a fair determination.

Hon MAX EVANS: The proposal to make it mandatory to engage two valuers worries me. I can think of many occasions in my experience when it could have been done in that way to save costs and so on. This issue was not raised in the Green Bill process, and no-one else identified any stakeholder support for it. Obviously, the member has some support for it, perhaps it is the Institute of Valuers and Land Economists.

Hon Norm Kelly: The tenants association has passed a lot of individual tenants to it.

Hon MAX EVANS: This proposal would prevent two parties from agreeing to appoint only one valuer in order to save costs. I am not sure whether the proposal would be an advantage or a disadvantage. The Government does not support the amendment, but I understand where the member is coming from.

**Progress reported, pursuant to standing orders.****FIRE AND EMERGENCY SERVICES AUTHORITY OF WESTERN AUSTRALIA BILL***Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon Peter Foss (Attorney General), read a first time.

*Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [9.57 pm]: I move -

That the Bill be now read a second time.

This Bill seeks to improve the coordination and planning of our State's emergency services through the establishment of the Fire and Emergency Services Authority of Western Australia. This initiative is designed to achieve an improvement in the delivery of services to the community and to more than 20 000 emergency services volunteers and over 1 000 frontline staff throughout Western Australia; a more effective and coherent framework for policy development and implementation; and a coordinated approach to planning and management matters across emergency services agencies.

The establishment of the authority will consolidate under one board and chief executive officer the following entities -

- the Bush Fires Board - a statutory authority established under the Bush Fires Act;
- the Western Australian Fire Brigades Board - a statutory authority established under the Fire Brigades Act;
- the Department of Fire and Emergency Services - a department originally established under the name of the Western Australian State Emergency Service.

The Bill will establish the authority, and provide it with functions and powers relating to the provision and management of emergency services. The provisions of the Bill include the following matters -

- establishment of the authority as a body corporate, which may sue or be sued, and as an agent of the Crown;
- establishment of a board of management with a maximum of 10 board members. This will include three members representing emergency services volunteers, and one member representing local government authorities. Although these four members of the board will have a representative basis to their appointment, it is essential, in order to ensure the success of the new structure, that all members consider the needs of the organisation as a whole in their deliberations. The FESA Board will replace the Bush Fires Board and the Western Australian Fire Brigades Board.

Functions and Powers of the Authority: These relate to the provision and management of emergency services vested in the authority under the "umbrella" of emergency services Acts. This includes the Fire and Emergency Services Authority of Western Australia Bill 1998, the Bush Fires Act and the Fire Brigades Act.

Administrative matters, including constitution and proceedings of the board; appointment of chief executive officer and staff; financial provisions, including establishment of accounts, sources of funds, expenditure, investments, borrowings, and the application of the Financial Administration and Audit Act; establishment of consultative committees to provide advice to the board and chief executive officer; and savings and transitional matters.

Protection from liability for acts done in good faith in performing functions under the emergency services Acts.

It is important to note that no jobs will be lost as a result of the consolidation of emergency services agencies. Any savings achieved through the establishment and utilisation of common resources will be used to increase service provision by the new authority.

This Bill has been drafted following a great deal of consideration and consultation regarding an appropriate framework for the management and coordination of emergency services in this State.

The Bill represents the first stage in a process that will see Western Australia provided with comprehensive emergency services legislation to underpin the work undertaken by emergency services staff and volunteers in assisting the community in times of crisis. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

## **FIRE AND EMERGENCY SERVICES AUTHORITY OF WESTERN AUSTRALIA (CONSEQUENTIAL PROVISIONS) BILL**

### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon Peter Foss (Attorney General), read a first time.

### *Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [9.59 pm]: I move -

That the Bill be now read a second time.

This Bill is necessary as a result of the introduction of the Fire and Emergency Services Authority of Western Australia Bill. This Bill seeks to effect changes to a number of other Acts of Parliament which include references to the Bush Fires Board or the Fire Brigades Board. Such references will be substituted by references to the Fire and Emergency Services Authority of Western Australia. Amendments to the Bush Fires Act and the Fire Brigades Act will provide for the abolition of the Bush Fires Board and the Western Australian Fire Brigades Board; and the transfer of their powers and functions to the Fire

and Emergency Services Authority of Western Australia. I will be seeking the leave of the House for the two Bills to be dealt with cognately. I commend this Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

*House adjourned at 10.01 pm*

---

# QUESTIONS ON NOTICE

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

## GOVERNMENT DEPARTMENTS AND AGENCIES

### *Expenditure Estimates*

37. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for Police:

Will the Minister for Police provide for each agency and department, within the Minister's portfolio responsibilities, the estimated current expenditure levels to date, and over the forward estimate period of the current budget statements for -

- (a) testing both equipment and procedures for Millennium Bug policy compliance;
- (b) replacing or purchasing equipment as part of agency strategies to avoid or control the Millennium Bug issue; and
- (c) adjusting or developing new procedures for the delivery of existing services?

Hon PETER FOSS replied:

### WA POLICE SERVICE

- (a) The Police Service commenced the remediation of critical core business services and systems in July 1997. The Project Plan calls for critical business processes to be tested and certified by December 31 1998. Non-critical systems and technologies are planned to be Year 2000 compliant by the end of March 1999.

The cost for testing both equipment and procedures for Millennium compliance to date including consultancy fees and salaries directed specifically to the Year 2000 project is \$392,000.

Forward estimated costs for testing equipment and procedures for the 1998/99 year are \$5.68 million.

- (b) Equipment replacement including a compliant mainframe processor and operating system upgrades has commenced. The cost to date for this upgrade is \$930,000.

Forward estimated costs for replacing or purchasing equipment are \$1.85 million for the Year 2000 Project. In addition replacement of the desktop computer environment and associated network infrastructure is provided for in the Delta Communication and Technology (D.C.A.T.) Project.

- (c) Forward estimated costs for adjusting or developing new procedures as this is recognised as an ongoing responsibility of management to deliver services efficiently and effectively.

It is estimated that the Police Service will expend between \$7 and \$8 million to achieve Year 2000 compliance in 1998/99 as part of the D.C.A.T. Project which has total projected costs of \$124 million over five years.

### FIRE & EMERGENCY SERVICES

- (a) \$30,000 planning costs.
- (b) It is anticipated the cost of corrective measures to Fire & Emergency Services' Human Resources, Finance, Records and Operations Centre systems will be in the vicinity of \$1.1m-1.4m.
- (c) Delivery of existing services should not change.

### FIREARMS

#### *Number Handed In*

71. Hon MARK NEVILL to the Attorney General representing the Minister for Police:

- (1) What was the number of firearms handed in to the Western Australian Police Service in the financial years ending -

- (a) June 30, 1996;
- (b) June 30, 1997; and
- (c) June 30, 1998?

- (2) When during these periods in (1) above did amnesties for handing in on unlicensed firearms begin and cease?

Hon PETER FOSS replied:

- (1) (a) 4215.  
(b) 33363.  
(c) 35016.
- (2) There has been an ongoing amnesty throughout the above periods and the amnesty continues to date.

## JUSTICES OF THE PEACE

### *Travelling Expenses*

114. Hon BOB THOMAS to the Attorney General:

Further to the Attorney General's letter to the Royal Association of Justices of WA of May 28, 1998 in which you state "As you are aware Managing Registrars and Clerks of Petty Sessions pay travel expenses to Justices of the Peace in specific and select circumstances for example if travelling in excess of 100 kilometres" -

- (1) Apart from the Annual Conference at a branch, when did you direct Managing Registrars and Clerks of Petty Sessions to pay travel expenses if travelling in excess of 100 kilometres?
- (2) How many times has it been paid and under what circumstances?
- (3) Are you aware that Justices are travelling 100 kilometres and more in a week but are not eligible because it is not all in one trip?
- (4) Will you reconsider your refusal to meet reasonable out of pocket expenses for JP's?

Hon PETER FOSS replied:

- (1) I have not directed them to do so. I first wrote to the Royal Association of Justices in May 1996 on this matter. I am advised that the practice existed as a Ministry of Justice/Crown Law Department policy prior to my letter and in fact dates back to the 1980s.
- (2) The local Managing Registrar, within the guidelines specified, handles authorisation and payment. No central record is maintained.
- (3) It is not the intention of the policy to remunerate justices of the peace who aggregate in excess of 100 kilometres in a given period. The policy provides for payment in exceptional circumstances only. It was adopted particularly for remote country areas where justices of the peace are requested to travel long distances to preside and due to the remoteness of the location, no alternative Justices of the Peace are available.
- (4) Justices of the Peace are aware prior to their appointment that the position is on a voluntary basis as a community service. Payment, other than in exceptional circumstances, has never been contemplated.

## HERITAGE

### *Restoration of Old Treasury Buildings*

138. Hon NORM KELLY to the Leader of the House representing the Premier:

- (1) Does the Premier accept that the Coalition's Heritage policy in 1993 included the restoration and refurbishment of the Old Treasury buildings, for use as a home for Government?
- (2) Does this remain the Coalition's policy?
- (3) If not, when did the change of policy occur?
- (4) Who was involved, and agreed to the change in policy?
- (5) What is the Coalition's current policy on this matter?

Hon N.F. MOORE replied:

- (1) Yes.
- (2) No.
- (3) 20 April 1998.
- (4) Cabinet.

- (5) The current policy is to conserve the buildings' significant heritage values and the visual ambience of the heritage precinct. This will be achieved by pursuing private sector redevelopment for a functional use which achieves a positive financial outcome for the State.

Options for adaptive re-use within government have been considered but, given the high cost of refurbishment (approximately \$35 million), economical uses cannot be justified.

# JUSTICES ACT

## *Amendments to Section 148*

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

- (1) Is consideration being given to amending section 148 of the *Justices Act*?  
 (2) If so, what is being considered and has any decision been made?  
 (3) If so, what?

Hon PETER FOSS replied:

- (1) Yes.  
 (2)-(3) The Government is currently giving consideration to amending the section to enable the media and other interested parties to gain access to the transcript and audio tapes of court proceedings.

# JUSTICES ACT

## *Terms of Reference of Committee*

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

- (1) Has a committee been set up, presided over by Justice White or of which Justice White is a member, to deal with changes to the *Justices Act*?  
 (2) What are the terms of reference of that committee?  
 (3) When was it set up?  
 (4) Has it completed its work?  
 (5) Has a report been provided to you?  
 (6) If so, when was the report provided to you?  
 (7) What are the recommendations of the report?  
 (8) What action has been taken or is contemplated as a result of the recommendations of the report and what is the proposed timetable?  
 (9) Will the report be tabled?  
 (10) If so, when?  
 (11) If not, why not?  
 (12) What is the title of the report?

Hon PETER FOSS replied:

- (1) Yes.  
 (2) The Court Recording Working Party was established to examine and make recommendations on current legislation, court rules, policy and procedures associated with the recording and transcription of court proceedings.  
 (3) It was established by the Court Services Division of the Ministry of Justice in March 1995.  
 (4)-(5) No.  
 (6)-(8) Not applicable.  
 (9) This will be determined when it is completed.

(10)-(12)  
Not applicable.

# PERTH THEATRE TRUST

## *Service Provision Contract*

223. Hon LJILJANNA RAVLICH to the Minister for the Arts:

With regards to Contract and Management Services tender number EOI83397 calling for Expressions of Interest for service provision for the Perth Theatre Trust -

(1) Can the Minister name the companies which will tender for service provision of -

- (a) venue management;
- (b) food and beverage services; and
- (c) BOCS ticketing services?

(2) If not, why not?

Hon PETER FOSS replied:

The Contract and Management Services tender EOI 833/97, calling for Expression of Interest for the service provisions for the Perth Theatre Trust was advertised both locally in "The West Australian" and nationally in "The Australian". The closing date for submissions was 16 October 1997. This resulted in 15 submissions being received.

The companies that submitted an expression of interest for service provision(s) are listed below.

- |     |                             |              |
|-----|-----------------------------|--------------|
| (a) | Venue Management            |              |
|     | Val McKelvey                | Spices       |
|     | Gary Snowdon                | NewCo        |
|     | Perth Theatre Company       | Pegasus      |
|     | WASO                        | Ogden IFC    |
|     | Black Swan/Barking Gecko    |              |
| (b) | Food and Beverage           |              |
|     | NewCo                       | Gary Snowdon |
|     | Drake Overload              | Mustard      |
|     | Pegasus                     | Ogden IFC    |
|     | Greenwich (HMT Tavern only) | Spices       |
| (c) | Ticketing                   |              |
|     | Drake Overload              | Ticketmaster |
|     | Zed Holdings                | Spices       |
|     | Pegasus                     | Ticketek     |

As a result of the EOI, four companies were short listed and invited to respond to a Request for Proposal for Venue Management (including food and beverage services). No companies were invited to be short listed for ticketing services. These companies were:

- The Spices Group, trading as Gallery Management Services
- Facilities Arts and Recreation Management Pty Ltd
- Ogden International Facilities Corporation (Ogden IFC)
- Stage Right (principal Valentine McKelvey).

The Request for Proposal (RFP 333/98) submissions are currently being evaluated. The Perth Theatre Trust's Competitive Tendering and Contracting Steering Committee has recommended that Ogden IFC be nominated preferred proposer for Venue Management and that the Ministry for Culture & the Arts now advance the process by exploring in detail in Ogden IFC proposal.

# ALBANY REGIONAL PRISON

225. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) Has the sewerage problems at Albany Regional Prison been addressed?
- (2) If yes, how have they been addressed and at what cost?

- (3) If not, why not?
- (4) Has the asbestos roof in Unit 1 of the Albany Regional Prison been replaced?
- (5) If yes, when was it replaced and at what cost?
- (6) If not, why not?

Hon PETER FOSS replied:

- (1) Yes.
- (2) Modifications to the existing plant have been undertaken. Regular routine and cyclic maintenance is also undertaken. Cost of plant modifications was \$31,000.
- (2) Not applicable.
- (3) No.
- (4) Not applicable.
- (5) Replacement is scheduled for the 2000/2001 financial year.

#### BROOME REGIONAL PRISON

226. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What improvements have been made to Broome Regional Prison to address the issue of overcrowding and cramped conditions?
- (2) What recreational facilities are available for prisoners at Broome Regional Prison, apart from one basketball court?

Hon PETER FOSS replied:

- (1) Further extensions are not possible due to site considerations.
- (2) Minimum security prisoners have access to external recreational activities such as football and swimming.

#### BROOME REGIONAL PRISON

228. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask what emergency generator facilities have been provided to Broome Regional Prison, given that the report stated that the generator available in 1996 was unable to supply power to the new safe cells as it was already at the limit of its capacity?

Hon PETER FOSS replied:

In the 1997/98 financial year the existing 30kVA generator set at Broome Regional Prison was replaced with an 80kVA generator set.

#### BUNBURY REGIONAL PRISON

230. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What has your department done about improving the main kitchen facilities at Bunbury Regional Prison to ensure they meet current regulations and conventions since receiving this report?
- (2) What funding has been provided since 1996 for the upgrading of the main kitchen facilities at Bunbury Regional Prison?
- (3) What funding has been provided since 1996 to improve the security system at Bunbury Regional Prison?
- (4) Has any major maintenance work been carried out on the emergency fire water service since November 1996?

Hon PETER FOSS replied:

- (1) The kitchen facilities at Bunbury Regional Prison meet regulations and are subject to regular and ongoing maintenance and minor works to comply with recommendations from frequent inspections by Health Department officers.
- (2) Not applicable.
- (3) Regular maintenance and minor works funding including a replacement computerised defence management system.
- (4) Yes.

#### BUNBURY REGIONAL PRISON

231. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funding has been provided since November 1996 to redevelop the medical centre at Bunbury Regional Prison?
- (2) How many medical escorts from Bunbury Regional Prison into Bunbury were required in the years -
  - (a) 1996;
  - (b) 1997; and
  - (c) to date for 1998?
- (3) What is the cost to escort prisoners from Bunbury Regional Prison into Bunbury?

Hon PETER FOSS replied:

- (1) None. However, the facility is subject to ongoing maintenance and minor works.
- (2) 1996 - 240  
1997 - 211  
1998 to date - 155
- (3) The cost of transporting prisoners by road forms part of the Service Cost analysis undertaken as part of the Police Justice Core Functions Project. The information sought is commercially sensitive and its release at this time contravenes the Probity Safeguards applicable to the evaluation and subsequent negotiation phases of this undertaking.

#### BUNBURY REGIONAL PRISON

232. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funding has been provided to replace Cell Block "C" at Bunbury Regional Prison, given that at the time of this report they failed to meet BCA or other prison recommendations?
- (2) How many prisoners are currently being held in Block "C"?
- (3) What funding has been provided to replace or redevelop the detention cells I- Cell Block "F" at Bunbury Regional Prison, given that it does not meet with the intent of the Royal Commission into Deaths in Custody?
- (4) What funding has been provided to redevelop the minimum security block?

Hon PETER FOSS replied:

- (1) There is no requirement under the Building Code of Australia (BCA) to retrospectively upgrade facilities that complied at the time of construction in order to meet new requirements.
- (2) 79.
- (3) Capital works funding - Two cells have recently been upgraded to comply with Police Safe Cell Guidelines which in turn comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- (4) Capital works funding - The minimum security block at Bunbury Regional Prison was extended in 1997.

## KARNET PRISON FARM

238. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) Has funding been provided since November 1996 to improve the medical facilities at Karnet Prison Farm?
- (2) If yes, when and how much?
- (3) Will the Minister give details of what improvements have been carried out?
- (4) If no improvements have been carried out, why not?

Hon PETER FOSS replied:

- (1) The facility is subject to regular routine maintenance and approximately \$300,000 has been allocated to upgrade the health facility at Karnet Prison Farm in 1999/2000 financial year.
- (2)-(4) See answer to (1).

## KARNET PRISON FARM

239. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funding has been provided to upgrade Block B at Karnet Prison Farm, given that it failed to meet the current building regulations at the time the report was presented?
- (2) What funding has been provided to upgrade the kitchen facilities in Block A at Karnet Prison Farm given that the facility fails to meet current health standards?
- (3) What funding has been provided to improve the huts at Karnet Prison Farm, in view of the report's finding that they pose a potential fire trap?
- (4) What funding has been provided to upgrade all ablutions at Karnet Prison Farm, that failed to comply with current regulations and requirements?

Hon PETER FOSS replied:

- (1) There is no requirement under the Building Code of Australia (BCA) to retrospectively upgrade facilities that complied at the time of construction to meet new requirements.
- (2) The facilities have ongoing maintenance and minor works carried out to comply with the requirements of periodic inspections and reports issued by the Health Department.
- (3) There is no requirement under the Building Code of Australia (BCA) to retrospectively upgrade facilities that complied at the time of construction to meet new requirements; further, prisoners are not locked in at night.
- (4) Upgrade of ablutions at Karnet Prison Farm was completed in 1997.

## PARDELUP PRISON FARM

242. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funding has been provided since November 1996 to replace asbestos roof to the kitchen and administration buildings at Pardelup Prison Farm?
- (2) If none, when will this funding be provided?
- (3) What funding has been provided to upgrade the recreation facilities and gymnasium at Pardelup Prison Farm?
- (4) What funding has been provided to build a second ablution block at Pardelup Prison?

Hon PETER FOSS replied:

- (1) None.

- (2) In the 2000/2001 financial year.
- (3) None, but regular maintenance has been undertaken.
- (4) None.

PARDELUP PRISON FARM

243. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) Has funding been provided to purchase asthma equipment including nebulisers and oxygen equipment for Pardelup Prison Farm?
- (2) If not, why not?

Hon PETER FOSS replied:

- (1) Pardelup Prison is equipped with adequate asthma equipment including two nebulisers, one oxy viva and four air vivas. This equipment has been in place for approximately four years.
- (2) Not applicable.

ROEBOURNE REGIONAL PRISON

245. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funds have been provided for works carried out on Roebourne Regional Prison to ensure the prison complies with all the requirements of the Royal Commission Into Deaths in Custody?
- (2) If none, why not?
- (3) If yes, please provide details of improvements carried out?

Hon PETER FOSS replied:

- (1) Capital Works funding.
- (2) Not applicable.
- (3) In 1996 a new cell intercom system throughout the entire prison was installed and two observation cells were upgraded to comply with Police Safe Cell Guidelines which in turn comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

ROEBOURNE REGIONAL PRISON

246. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funds have been provided to upgrade or replace the medical centre at Roebourne Regional Prison, given that it probably would not meet current health standards?
- (2) If none, why not?
- (3) If yes, what improvements have been carried out?

Hon PETER FOSS replied:

- (1) An amount of \$2,000 was provided for minor improvement to the Roebourne Prison Health Centre as a temporary expedient.
- (2) Not applicable.
- (3) A small office adjacent to the health centre was made available for the storage of medical supplies. A sluice was installed in close proximity to the Health Centre to allow disposal of specimens and other "dirty" waste. This work was completed in October 1997.

## ROEBOURNE REGIONAL PRISON

248. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funding has been provided since November 1996 to upgrade the kitchen facilities at Roebourne Regional Prison, that would not pass a Public Health inspection at the time of this report?
- (2) If none, why not?
- (3) If yes, what improvements have been made to the kitchen facilities?

Hon PETER FOSS replied:

- (1) Capital Works funding.
- (2) Not applicable.
- (3) General maintenance and replacement of some equipment.

## ROEBOURNE REGIONAL PRISON

249. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) Has a new separate female section been developed at Roebourne Regional Prison, as recommended in the report?
- (2) If not, why not?

Hon PETER FOSS replied:

- (1) No.
- (2) The Ministry of Justice is currently reviewing state wide facilities for female prisoners. Any required changes at Roebourne Regional Prison will be incorporated in this review.

## WOOROLOO PRISON FARM

250. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What funding has been provided to improve the kitchen facilities at Wooroloo Prison Farm, given that it did not meet the current health regulations in November 1996?
- (2) If none, why not?
- (3) If yes, what improvements have been undertaken?

Hon PETER FOSS replied:

- (1) Capital Works funding.
- (2) Not applicable.
- (3) Replacement of equipment and facility upgrading.

## WOOROLOO PRISON FARM

252. Hon LJILJANNA RAVLICH to the Minister for Justice:

I refer to the report "Assessment of Existing Prison Infrastructure and the Project of Future Needs" provided to your department in November 1996 and ask -

- (1) What improvements have been made to the detention security unit at Wooroloo Prison Farm, given that it did not comply with the Royal Commission recommendations, current building requirements, conventions and regulations in 1996?

- (2) If none, why not?

Hon PETER FOSS replied:

- (1) Minor works and maintenance have been carried out on the detention centre at Wooroloo Prison.
- (2) The holding area is only for short-term use and does not contain observation cells. Prisoners to be considered 'at risk' are transferred to a metropolitan closed facility.

### QUESTIONS WITHOUT NOTICE

#### NORTHBRIDGE TUNNEL VARIATION CLAIM

**204. Hon TOM STEPHENS to the Minister for Transport:**

- (1) How much of the Boulderstone Clough \$25m variation claim has been included in the 1998-99 budget estimates for the Northbridge Tunnel project?
- (2) How much of the claim has been approved for payment?
- (3) How much is still in dispute?
- (4) Will the minister specify what are the \$5m worth of associated projects which are over and above the 1998-99 budget estimates?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question.

- (1) The Boulderstone Clough joint venture has given notice of approximately 220 claims to date totalling in value approximately \$25m. Those claims are for contract variations, new works associated with the Graham Farmer Freeway and work being undertaken within the project on behalf of other agencies. Main Roads has not separately identified the amount included in the budget papers because the information is commercially sensitive and would jeopardise Main Roads' negotiating position.
- (2)-(3) Main Roads has approved variations to the stage 1 contract of approximately \$7.5m. The remainder of BCJV claims are subject to negotiation and resolution in accordance with normal contract administration procedures and acceptance by Main Roads.
- (4) Approximately \$5m of associated works for other agencies has been identified since the preparation of the 1998-99 budget estimates. Final amounts are subject to negotiation. New works funded by others include constructing a new dual use path bridge at the Claisebrook railway station and extensions across the Westrail yards for the Department of Transport and construction of a new sewerage line for the Water Corporation that is located within the contractor's worksite.

#### BUS COMPANIES, FINES

**205. Hon TOM STEPHENS to the Minister for Transport:**

Yesterday the minister said \$15 000 in fines had been levied against four private bus companies for 80 missed, late or early services and I ask -

Why was only \$15 000 worth of fines levied when the rate of fine is supposed to be \$300 per breach?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question. The value of fines paid with regard to July services was \$15 000. The value of fines levied in relation to August is \$9 000, which is to be paid in the month of September. The total value of July and August fines was \$24 000. In summary, total fines numbered 80, and the value of the fines was \$24 000, of which \$15 000 has been settled in relation to the month of July.

#### ATTORNEY GENERAL, DEFAMATION ACTION

**206. Hon N.D. GRIFFITHS to the Attorney General:**

With respect to the action of former Law Reform Commissioner Moira Rayner brought against the Attorney General for his defamation of her -

- (1) What has it cost the taxpayers of Western Australia and in particular -
  - (a) What is the liability of the State with respect to the payment of private lawyers engaged to act for him?
  - (b) What is the cost of litigation services provided by public sector lawyers?
  - (c) What sum, if any, was or is to be paid to Ms Rayner by way of -
    - (i) damages; and
    - (ii) costs?
- (2) Why was the case settled so close to trial?
- (3) Why did he take so long to apologise, why did he not do so earlier to save taxpayers' money, and why did he not just apologise to prevent any litigation at all?

Hon Ljiljanna Ravlich: He is a liability, that is why.

The PRESIDENT: Order! The question is to the Attorney General and I am interested in the answer, even if Hon Ljiljanna Ravlich is not.

**Hon PETER FOSS replied:**

- (1)-(3) As usual, Hon Nick Griffiths has the problem of assuming that everything that he reads in *The West Australian* is correct. That is a fault of which he is often guilty. I shall give members a few points. Hon Nick Griffiths made some unjustified assumptions. First, I am still waiting to hear the final details to determine whether the matter has been fully settled. I understand that it has been, but until such time as I receive that advice from my lawyers, as opposed to hearing it from reporters for *The West Australian*, I will refrain from commenting. Secondly, I did not offer an apology. If Hon Nick Griffiths had bothered to read, perhaps, the late edition of *The West Australian* he would have picked up that point, because it was a little more accurate. I stated in writing that my criticism was of Hon Nick Griffiths' former Government, not of her. I have always had high regard for Ms Moira Rayner and a personal friendship with her. My criticism was of the dreadful way in which the Labor Government abused the processes of the Law Reform Commission, and I made that clear at the time. The fact that Hon Nick Griffiths' Government did not know how to treat the Law Reform Commission is its problem, not hers.

The letter that was actually given to Ms Rayner was offered to her at the very beginning - right from day one that same letter was offered. I, of course, have no capacity to determine whether or not people proceed with their cases, but I can tell Hon Nick Griffiths that the letter that I wrote, which is the letter which makes it clear that any reflection was on his Government and not on her, was offered from day one, and I understand that letter was accepted by Ms Rayner.

Hon Tom Stephens: At whose expense was all that?

Hon PETER FOSS: I will give members all that information. Let me tell members something about this: If, as a member of government, I do my duty, I am entitled to that indemnity. Every day people outside the House, whether they are policemen, public servants or prison officers, expect the Government to back them if they do their duty. I have done my duty and I will continue to do my duty, and I will continue to expect that I will have the support that I hope every civil servant believes that he or she has from the Government, under the terms and conditions of policies that were laid down in this Parliament by Hon Nick Griffiths' own Attorney General, Hon Joe Berinson.

If Hon Nick Griffiths believes that, he has a double standard; he should go and tell the police what his views are. He should tell them what he thinks should happen to them if they do their duty: Do they believe that they should have an indemnity from the Government? He should tell the police and the prison officers. During an adjournment debate, Hon Nick Griffiths can tell Parliament and his supporters in the Prison Officers Union and in the Police Union what he thinks should happen to people who do their duty. If he does not think that people who do their duty are entitled to support from the Government, he should say so, but if he is to make a distinction between me and anybody else he must justify it. Opposition members are a sniping, snivelling group.

The PRESIDENT: Order! I ask the Attorney General to draw his answer to a close.

Hon PETER FOSS: Thank you, Mr President. When I get confirmation, I will definitely let people know what the situation is, but I made it clear from the beginning that I would wait until that time.

Hon N.D. Griffiths: He is always sniping and snivelling.

Hon PETER FOSS: The member is using double standards in the way that he always does.

Hon N.D. Griffiths: You have no standards at all.

Hon PETER FOSS: The member's Government set the rules, and we abide by them for everybody. He has double standards, and that is his problem.

Hon N.D. GRIFFITHS: You are pathetic.

The PRESIDENT: Order!

## GOVERNMENT DEPARTMENTS AND AGENCIES

### *Instruction on Financial Management*

#### **207. Hon HELEN HODGSON to the Minister for Finance:**

- (1) Is the minister aware of an article appearing in *Australian CPA* dated June 1998, entitled "Scope for Improvement - Financial Management in the WA Public Sector"?
- (2) Has the Treasury issued any instruction to Western Australian public sector agencies specifying how to calculate the cost of goods and services; and, if so, will the minister table this instruction?
- (3) In particular, has the Treasury issued any instruction to WA public sector agencies specifying how to calculate and include the cost of -
  - a) labour on-costs, including superannuation;
  - b) cost of capital;
  - c) resources received from other government departments;
  - d) notional taxes from which the agency may be exempt?
- (4) If so, will the minister table this instruction?

#### **Hon MAX EVANS replied:**

I thank the member for some notice of this question.

- (1) Yes.
- (2) No formal Treasurer's Instruction has been issued. However, Treasury issued guidelines to agencies in April 1994 titled "Costing Government Activities - Guidelines for use by Agencies" and an updated version in July 1995. A further updated edition is expected to be released shortly.
- (3)
  - (a) The guidelines provide information on the inclusion of labour on-costs, including superannuation, and provide an illustrative example to assist agencies in determining their labour on-costs.
  - (b) Chapter 2 provides specific information to assist agencies in calculating and including the cost of capital.
  - (c) The guidelines recommend the inclusion of services received free of charge from other government departments in the cost of goods and services.
  - (d) The guidelines recommend the inclusion of notional taxes from which agencies may be exempt in the cost of goods and services.
- (4) The publication "Costing Government Activities - Guidelines for use by Agencies" is a publicly available document circulated to all government agencies. I am happy to provide the member with a copy.

## OMEX SITE - REDEVELOPMENT

#### **208. Hon GIZ WATSON to the minister representing the Minister for the Environment:**

Some notice of this question has been given. With regard to the rehabilitation of the Omex site -

- (1) Have contamination investigations been carried out on lots 55 and 56?
  - (a) If not, why not?
  - (b) If yes, please detail.
- (2) Is it the case the 700m<sup>2</sup> of land that is part of the land described for redevelopment under the improvement plan by the Ministry for Planning, is to be leased to the Peak Petrol Station, an agent of the Omex-related companies?

- (3) If yes, under whose authority was this decision made?
- (4) What effect will this decision have on the options for redevelopment of the site?
- (5) With regard to the level of assessment set for the containment wall project - that being an informal review with public advice - what public advice has been received to date?
- (6) Does the occupational health and safety plan for the containment wall project encompass the immediate community surrounding the site?
  - (a) If not, why not?
  - (b) If yes, please detail.

**Hon MAX EVANS replied:**

- (1)-(6) I thank the member for some notice of this question. It was not possible to provide the information in the time available. I request that the member place the question on notice.

**WA RACECOURSE DEVELOPMENT TRUST FUND - FUNDING**

**209. Hon MURRAY MONTGOMERY to the Minister for Racing and Gaming:**

- (1) How much money is allocated to the WA racecourse development trust fund and from where does it come?
- (2) How is it allocated to the various codes and in what proportions?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

- (1)-(2) The racecourse development trust fund gets the money from unclaimed dividends at the TAB. With the installation of the new computer terminals a couple of years ago it was anticipated that there would be a drop in unclaimed dividends because the tickets now have the name of the horse on the back. However, it is about the same at \$2m. That is split between the racing codes, 65 per cent for the turf clubs and 35 per cent for the trotting clubs. In 1997, Albany Race Club received \$31 000; Esperance Bay received \$22 000; and Mt Barker received \$3 000. In trotting, the Albany club received \$14 000; the Bridgetown club received \$17 000; the Bunbury club, \$45 000; the Collie club, \$4 000; and the Pinjarra club, \$16 000.

Turf clubs decide to which trotting clubs the money should go and the trotting clubs decide to which turf clubs it should go. The system has worked very well. The Turf Club used \$1.9m of its accumulated fund to finance the extensions built a couple of years ago. The Lotteries Commission has about \$3m in unclaimed winnings. Members should check their tickets - they might have won!

**TOURISM - ELLE MACPHERSON ADVERTISEMENTS**

**210. Hon KIM CHANCE to the Minister for Tourism:**

Some notice of the question has been given by Hon John Halden. In relation to the proposed new Elle Macpherson advertisements -

- (1) Was an amount allocated for the production and placement costs of the advertisement in the Western Australian Tourism Commission's budget for 1998-99?
- (2) If so, how much was included in the budget for these costs?
- (3) If not, will the minister explain where the money to meet these costs can be found?

**Hon N.F. MOORE replied:**

I thank Hon John Halden for some notice of this question.

- (1) Yes.
- (2) A total of \$2 012 574 has been allocated in the 1998-99 financial year for production and placement. This amount will be supplemented by industry contributions, which are yet to be finalised. It should be noted that funds have also been budgeted for in the 1999-2000 financial year for production and placement.
- (3) Not applicable.

KEMERTON AND OAKAJEE INDUSTRIAL BUFFER ZONES - REDEVELOPMENT

**211. Hon J.A. SCOTT to the Leader of the House representing the Minister for Resources Development:**

- (1) In the industrial buffer zone -
  - (a) around Kemerton, and
  - (b) around Oakajee
 will the landowners still be able to subdivide their property?
- (2) If not, will the landowners in each case be compensated and, if so, will it be based on the subdivided value or on current value?
- (3) Who will compensate them?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question.

- (1)(a)-(b) Landowners have a right to subdivide their properties only when the land is appropriately zoned. The effect of the buffer zoning, if implemented, will be that landowners in the buffer will not be permitted to build residences, irrespective of whether the land is subdivided.
- (2) Yes. It is the Government's intention to purchase the development rights within the buffer area around Kemerton and Oakajee. This may involve the purchase of the land and subsequent resale with development rights removed. The purchase of land would be on the basis of current market value, which will have regard to existing subdivision approvals.
- (3) The land and development rights will be purchased by LandCorp.

TOURISM - ELLE MACPHERSON ADVERTISEMENTS

**212. Hon BOB THOMAS to the Minister for Tourism:**

Some notice of this question has been given. In relation to the proposed new Elle advertisements -

- (1) What company will have responsibility for the production of the additional advertisements?
- (2) What is the estimated cost of producing these new advertisements?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question.

- (1) The Western Australian Tourism Commission's advertising agency Marketforce, a Western Australian-based company. It is anticipated that some of the work will be subcontracted out.
- (2) Estimated production - excluding Elle Macpherson's fee and associated expenses and media placement costs - is \$436 832.

STATE AGREEMENT ACTS

**213. Hon CHRISTINE SHARP to the Leader of the House representing the Minister for Resources Development:**

Some notice of this question has been given. Could the following be provided -

- (1) The number of current state agreement Acts in existence?
- (2) A list of the current state agreement Acts in existence?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question.

- (1) There are 64 agreement Acts under the portfolio of Resources Development.
- (2) Appended is the complete list of agreement Acts, under the portfolio of Resources Development, which includes all amendments.

I seek leave to table the list.

[See paper No. 172.]

#### CASUARINA PRISON - PRISONERS' MOBILE PHONES

**214. Hon LJILJANNA RAVLICH to the Attorney General:**

Some notice of this question has been given. With regard to mobile phones being found in the possession of prisoners at Casuarina Prison -

- (1) How many mobile phones were found in the prison?
- (2) How many prisoners were in possession of these phones?
- (3) For what offences had these prisoners been gaoled and what are the terms of imprisonment they are serving?
- (4) What stage has the investigation of this incident reached?
- (5) Have any charges been laid as a result of this incident?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) Three. One was operational and two were not.

Hon Ljiljanna Ravlich: Were they not turned on?

Hon PETER FOSS: I will check that. I believe that "operational" means that it can be used. I will clarify that point.

- (2) One.
- (3) Wilful murder - life sentence.
- (4) Internal charges have been laid under the Prisons Act, but the matter is still under investigation by the police. It would be inappropriate for me to make any further comment on police operational matters.

Hon Ljiljanna Ravlich: A murderer with a mobile phone in a prison does not bear thinking about. He was not ordering pizza.

Hon PETER FOSS: I would prefer a murderer to have a mobile phone to a drug dealer having one. It is possible for prisoners to make phone calls from the prison. Those calls are recorded and the prisoners have a list of numbers that they can call. The calls are supervised, but they can take place. It is not intended that there be no phone calls, but there are no unsupervised calls.

The people about whom we are most concerned are the drug offenders. I agree that we do not want any prisoner to have a mobile phone, but I do not believe a murderer would be the worst person to have a mobile phone. We would have greater concerns about other prisoners.

#### HEALTH DEPARTMENT, PURCHASE OF ORACLE FINANCIALS SYSTEM

**215. Hon E.R.J. DERMER to the minister representing the Minister for Health:**

- (1) Will the minister confirm that the Health Department has purchased the Oracle Financials 10.5 financials and supply system?
- (2) Does the system perform the financials and supply function for all metropolitan Health Department services?
- (3) What was the total cost of purchasing, customising and implementing this system?
- (4) When was this system commissioned?
- (5) What is the anticipated duration of this system's commission?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

- (1) The Oracle Financials system, version 10.5, is one of a number of systems implemented throughout the metropolitan hospitals by CSC Australia Pty Ltd as part of a six-year contract with the Health Department.

- (2),(4)-(5) The scope of the system encompasses financial and supply functions. Following implementation at the pilot site at Princess Margaret Hospital for Children and King Edward Memorial Hospital in March 1997, it was decided

to upgrade to the current version, 10.7, of the system. This is under way, as detailed in my answer to a previous question, No 150, from the member.

- (3) The costs associated with this system were included in the overall contract price agreed with CSC Australia and have not been separately identified.

#### MAIN ROADS LEAK INQUIRY - ELECTRONIC MAIL SEARCH

**216. Hon TOM STEPHENS to the Minister for Transport:**

I refer to the Main Roads inquiry into leaked documents and ask -

- (1) Was legal advice obtained by Main Roads on the propriety of searching the electronic mail of its staff?
- (2) If so, from whom was that obtained?
- (3) What was the substance of the advice?
- (4) Did Main Roads ever proceed with such a search in connection with the leaked documents investigation?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question.

- (1)-(4) As I have indicated on several occasions, I have asked the Premier to arrange for the Ministry of the Premier and Cabinet to review the processes which led to the decision within Main Roads to investigate the unauthorised release of an internal memorandum to parties who are external to Main Roads, and the process undertaken in all consequent actions.

#### MITCHELL FREEWAY EXTENSION NORTH

**217. Hon KEN TRAVERS to the Minister for Transport:**

I refer to the Transform WA road program for 1998-2008, which indicates that the State Government is spending \$21.6m on the extension of the Mitchell Freeway from Ocean Reef Road to Hodges Drive, and ask -

- (1) Is this in addition to the \$25m provided by the Federal Government for this project?
- (2) What is the total state government contribution to this project?
- (3) What is the current estimated cost of the proposed extension?
- (4) On what date and by whom was the decision made to exclude the Eddystone Avenue bridge as a part of the current proposed works?
- (5) Will the minister table a copy of the 10-year plan that shows when this bridge will eventually be built?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question.

- (1)-(3) The extension of the Mitchell Freeway from Ocean Reef Road to Hodges Drive is estimated to cost \$25m. The Federal Government is providing funding of up to \$25m for this project under the roads of national importance program.
- (4) A bridge over the freeway at Eddystone Avenue has never been part of the project to extend the freeway to Hodges Drive.
- (5) I will be happy to provide the member with a copy of the 10-year plan when it is finalised and printed. As I indicated in my response yesterday, it is intended that a bridge over the freeway at Eddystone Avenue will be constructed in conjunction with the extension of the freeway north of Hodges Drive scheduled for commencement in 2004. This corresponds with traffic studies indicating that a bridge at Eddystone Avenue may be required in five to eight years.

#### GOODS AND SERVICES TAX - TOTALISATOR AGENCY BOARD

**218. Hon CHERYL DAVENPORT to the Minister for Racing and Gaming:**

I refer to the minister's answer yesterday that it is the Government's intention to protect the Totalisator Agency Board from any future goods and services tax.

- (1) What will the Government do to protect oncourse betting, both tote and bookmakers, from the effects of the GST?
- (2) Is the Government intending to fully reimburse owners who are unable to register for GST purposes?

- (3) Can the minister confirm an estimate that upwards of 70 per cent of owners will be unable to register for GST purposes?

**Hon MAX EVANS replied:**

- (1)-(2) The bookmaking around Australia and the taxes are different. The 2 per cent tax that the Western Australian Government previously received now goes back to the codes. That is, \$2.3m from the bookmakers is distributed among the trots, the thoroughbreds and a little bit to the greyhounds, on a turnover of about \$141m. The GST will be paid at 10 per cent on the profit that the bookmakers make on gambling. That is about \$5m, 10 per cent of which is \$500 000. New South Wales has a tax of 2 per cent and it can offset one against the other. In Victoria, 1 per cent is taxed and 1 per cent goes to the codes. We still have to work this one out because if the bookmakers had to pay \$2.3m to the codes plus another \$500 000, they would be \$500 000 out of pocket, which could make a big difference to their operations. They will have to work that one out. As I said yesterday about the TAB, roughly \$41m goes to the codes and \$36m to the Government; that is \$77m, and one-eleventh is \$7m, which would be the GST. The TAB would have to pay that. It would not affect the punters. It would be the same with the bookmakers - it would not affect the punters. The problem is the uncertainty. As soon as the bookmakers know what the rules are, they will work their way around the problem. I would.
- (3) The unclear issue that is brought about is that the majority of owners are not registered as business operators for the Australian Tax Office. It has been said that these people can register for the GST. If they are not a registered business, it is not certain whether they will be allowed to register for the GST. That is unknown at present and we will have to take it up with them.

#### PRISONER PRE-RELEASE PROGRAMS

**219. Hon HELEN HODGSON to the Attorney General:**

I refer to question without notice 142 asked on 9 September 1998 and ask -

- (1) How much was paid to each of the following organisations for pre-release programs delivered in the year ended 30 June 1998 -
- (a) Centrelink;
  - (b) Homeswest;
  - (c) Prisoner Advisory Support Service;
  - (d) Kindred;
  - (e) Outcare;
  - (f) other government agencies; and
  - (g) other non-government agencies?
- (2) Has the Ministry of Justice called for tenders for delivery of pre-release programs for the current financial year?
- (3) Which organisations will be delivering pre-release programs in the current financial year, and what is the estimated cost in respect of each organisation?
- (4) Has the Ministry of Justice established a performance indicator for the percentage of prisoners accessing such a program prior to release?
- (5) If so -
- (a) What is the percentage in respect of prisoners imprisoned for more than 12 months and less than 12 months respectively?
  - (b) Was that percentage met in the year ended 30 June 1998?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) Metropolitan Prisons:
- Centrelink - \$50 - the majority of this service is free.
  - Homeswest - free service.
  - Prisoner Advisory Support Service - approximately \$10 300.
  - Kindred - approximately \$10 300.
  - Outcare - approximately \$7 200.
  - Other government agencies - approximately \$500.
  - Other non-government agencies - approximately \$15 000.
  - Coordinators and facilitators on contract - \$20 650.
- Regional Prisons:
- Non-government providers and coordination - \$66 000.

- (2) The Ministry of Justice is bound by the guidelines of the Financial Administration and Audit Act and the Treasurer's Instructions and so must abide by these rulings when appointing service providers. The whole program delivery for pre-release was not put out for full tender as each prison has been allocated funds to deliver its respective programs. Verbal quotations were sought from the major providers - Prisoner Advisory Support Services, Outcare and Kindred - as contracts at each prison will fall into the under-\$5 000 category. Each of these major providers has been heavily involved in the implementation stage of this financial year's delivery strategy. In this process the Ministry of Justice recognises the specific expertise of each provider.
- (3) At this stage only the major providers have been set - Prisoner Advisory Support Services, Outcare and Kindred. All small specialist providers will be contracted as the need so the offender groups at each prison site is established. The program runs in approximately eight to 10-week cycles, targeting offenders for delivery on a continuous basis and so the needs of the offenders recruited for the program may change. The metropolitan prisons have been allocated the following funds to contract-in services for this financial year -
- |              |         |
|--------------|---------|
| Casuarina    | \$8 000 |
| Canning Vale | \$8 000 |
| Bandyup      | \$8 000 |
| Wooroloo     | \$8 000 |
| Karnet       | \$8 000 |
- (4) The Ministry of Justice has not set a performance indicator in relation to the percentage of prisoners accessing the program prior to release. It is currently a voluntary program offered at each prison site.
- (5) Not applicable.

#### FISHERIES DEPARTMENT DISPUTE, RV *FLINDERS*

#### 220. Hon KIM CHANCE to the minister representing the Minister for Fisheries:

- (1) Was the Fisheries WA research vessel RV *Flinders* left stranded in Dampier as of Thursday, 10 September due to an industrial dispute?
- (2) Where was the crew of the RV *Flinders* on 10 September?
- (3) Have members of the crew returned to the vessel?
- (4) Do members of the crew have productive work to do while they are not on the vessel?
- (5) Are the issues that are central to the dispute such that the dispute may spread to other sections of Fisheries WA?
- (6) Were threats made to Fisheries officers by Dr Jim Penn and others, to the effect that officers faced dismissal if they refused to return to the vessel?
- (7) What action does the Minister propose to ensure Fisheries research is not unduly impacted by this dispute?
- (8) Is it correct that at a staff meeting held on 8 September, Dr Penn threatened employees that he would invoke the provisions of the third wave legislation?
- (9) Does the Minister support the use of the third wave legislation in this case?
- (10) Does the Minister intend to discipline Dr Penn for his handling of the dispute and, in particular, his threat to dismiss employees?

#### Hon M.J. CRIDDLE replied:

- (1)-(10) This matter is being managed by the Executive Director of Fisheries WA, as it should be. The dispute has been referred to the Industrial Relations Commission.

#### WORKSAFE WA INQUIRY

#### 221. Hon SIMON O'BRIEN to Hon Ljiljanna Ravlich:

This member has charge of Notice of Motion No 1 on today's Notice Paper; that is, the referral of aspects of the operations of WorkSafe Western Australia to the Standing Committee on Public Administration.

- (1) Has the member discussed with any union official or other person the use of this inquiry to attack the Commissioner of WorkSafe personally?
- (2) If so, with whom?

- (3) Has she discussed with any union official or other person, the use of this inquiry as a method of removing Mr Bartholomaeus from his position?
- (4) If so, with whom?

**Hon LJILJANNA RAVLICH replied:**

- (1)-(4) I ask the member to put the question on notice!

Several members interjected.

Hon Simon O'Brien: I have a supplementary question.

The PRESIDENT: Order! I do not understand some of the behaviour in this place sometimes. I guess in the end that is up to members.

SCANIA AUSTRALIA PTY LTD, BUS REPAIRS

222. **Hon TOM STEPHENS to the Minister for Transport:**

- (1) Has Scania Australia Pty Ltd agreed under warranty to pay the costs for the repair of the 12 central area transit buses currently out of action?
- (2) If not, who will be required to pay for these repairs?
- (3) What is the estimated cost of the repairs?

**Hon M.J. CRIDDLE replied:**

I thank the member for some notice of this question.

- (1)-(3) Transport is in discussion with Scania regarding the repair costs for the CAT buses. The Department of Transport is seeking advice as it is its view that the warranty would cover the repairs.
-