[Wednesday, 23 June 1993.]

MR BROWN (Morley) [4.57 pm]: I thank the people of the Morley electorate, for supporting the Australian Labor Party and my candidature in the 6 February State election. I will do my best to live up to the trust that has been placed in me. I use the word trust deliberately. Trust, as the Royal Commission into Commercial Activities of Government and Other Matters identified is one of the two fundamental principles which underpin our form of representative democracy and responsible Government. Trust, like loyalty, must be earned. It is earned by commitments being honoured. It is destroyed by promises being conveniently forgotten or selectively interpreted at a later time. Institutions and individuals which are true to their word enjoy high levels of confidence and integrity. The reverse is also true. Commitments dishonoured bring those responsible and the institutions they represent into disrepute. Those who parade themselves as the virtuous and who criticise others for lapses in honesty and integrity have a responsibility to ensure their conduct is beyond reproach if they are not to be seen as hypocrites and opportunists.

As I believe there is an onus on individuals to carry out the commitments they make, I will outline some of the matters I promised to pursue on behalf of the electorate. Obviously it will not be possible to outline them all. I will touch on some local issues as well as a broader one which impacts on the community at large. The Morley electorate covers a range of suburbs including Lockridge. The people of Lockridge have a great deal of pride in their area. It is a pride well founded. Over many years, the community has achieved many facilities which are the envy of others. They have an active and well patronised senior citizens' centre; a well equipped and functioning community health centre and a variety of other community facilities. It is unfortunate, but true that Lockridge suffers from an unfounded image problem. On repeated occasions residents have told me of how the suburb is maligned by those who have only an uninformed, superficial knowledge of it. Efforts are being made to improve the area. The Shire of Swan has recently carried out a range of improvements.

However, the main problem that remains is a State Government responsibility. That problem relates to the high incidence of Homeswest flats. Homeswest accommodation amounts to 47 per cent of all accommodation in the area. The optimum for other suburbs is around 10 per cent. However, it is not simply the high incidence of Homeswest accommodation that is the cause of the problem. Rather, it is the design and clustering of large blocks of flats that have led to the social problems that continue to be experienced. Last year, some progress was made on this front when the then Minister for Housing made the courageous decision to demolish what was known as Clare Court flats. That action was welcomed by the local community and came after years of lobbying by community groups and the former member for Morley. However, more needs to be done. The local community would like to see additional blocks demolished, particularly those that continue to attract antisocial behaviour and which pose security risks for tenants and the surrounding community. In the months to come, the local community and I will be pressing for this problem to be rectified.

In case my comments are interpreted as a criticism of Homeswest, I assure members they are not. Rather, the problem I have outlined is a legacy of the past. In recent years, Homeswest has been exceptionally responsive to community needs. This can be seen in a variety of initiatives introduced in the design of new accommodation as well as improvements to existing housing stock. One initiative particularly applauded by the community was the upgrading of security measures in designated seniors' accommodation. It is hoped that this program will be expanded to include all accommodation occupied by seniors.

Homeswest is not the only department worthy of mention. The Ministry of Education can be proud of strong community support found in the overwhelming majority of schools in the electorate. In most schools there is a high level of parent involvement and excellent relationships between parents and the paid professional and support staff. Great care needs to be taken to ensure that this relationship is fostered. Changes in the school decision making processes which pit teachers against parents or otherwise create unnecessary tension will destroy this cooperative spirit which is so important in the school environment. I do not assert that everything in our schools is so perfect that further improvement is impossible. Improvement is possible in schools as it is in all other walks of life. However, in the school environment it is vital that change is implemented carefully and introduced in an incremental way that does not place at risk the advances made so far.

Some in the community who have less than a complimentary view of our education system believe schools should play a greater role in instilling a sense of responsibility into our young people in order to combat juvenile crime. Juvenile crime, and crime generally, require a multifaceted response. Schools can attend to some aspects of behaviour if adequate resources are provided. For example, resources are required to deal with recalcitrant truants if we are to overcome the social problems created when the very young effectively drop out of school. Additional programs within schools are only part of the solution to reducing the incidence of crime. Alternative penalties such as those used in New Zealand may provide an effective deterrent as well as giving victims of crime the feeling of some sense of justice. I commend the Attorney General for pursuing this initiative. It

demonstrates that the good ideas of one Government - or, in this instance, the former Minister for Community Services - will not be discarded by an incoming Government for petty political reasons.

There are a number of other legislative, administrative and community initiatives that can all play an important part in making the community a safer place to live. Locally, the people and Town of Bassendean have been pressing for the reopening of the Bassendean Police Station. This is a matter my colleague, the member for Maylands, and I will be pursuing with the town council. Crime, particularly juvenile crime, is one of the issues that has caused the public to question the adequacy of our legal system. However, it is by no means the only one. Public confidence in the judiciary has also been undermined by politically motivated unjustified criticism. There is no better example of this behaviour than in some of the emotive comments made about the High Court decision in what is generally referred to as the Mabo case. Those ideologically opposed to any form of just treatment of Aboriginal people endeavour to portray the decision as being made by unelected judges remote from the exigencies of a modern society. The judiciary stands accused of committing the cardinal sin of entering into the legislative arena. Adding to the woes of the courts' public standing has been some less than sensitive comments made by members of the judiciary which reflect a gender bias.

The integrity of the legal system has also not been helped by the high cost of access to it. This is a matter I will return to later. But for now and in the context of these remarks, it is worthy of note because it adds to the feeling of unease about the system. Coupled together, these views generate an opinion in some sections of the community that the legal system is out of touch and beyond the reach of the ordinary person. Some would argue it has always been thus. I would argue, however, that if this assessment of public opinion is correct, it is a worrying trend which must be corrected if we are to have an orderly society. Public respect for the openness and integrity of the legal system is necessary if we are to have a generally law abiding community. No amount of control mechanisms will bring about social harmony if there is a lack of confidence in the law and the way it is enforced. That is why there is an onus on Parliament to ensure, as far as practicable, that our legal system serves all equally. Equality before the law is a fundamental plank of any democratic society. It has been recognised as a civil and human right of all citizens. International human rights instruments have stressed the importance of this right. Article 26 of the International Covenant on Civil and Political Rights provides that - All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

Similarly article 7 of the Universal Declaration on Human Rights states that -

> All are equal before the law and are entitled without any discrimination to equal protection of the law.

Human dignity and the right to be treated as an equal hinge on the individual having equal rights before the law. It is sometimes wrongly assumed this principle is implicit in a democratic society. Unfortunately it is not. This is why some democracies have a constitution or charter which prevents these rights being usurped by the Legislature. The absence of a bill of charter of rights which guarantees the fundamental rights of ordinary citizens places an onus on this Parliament to ensure such rights are not inadvertently or otherwise curtailed or abolished. This is particularly so with the right to equality before the law. Equality before the law has been held to have both procedural and substantive meaning. Procedurally, equality before the law envisages the concept of equality in the enforcement of legal rules - of equal rights of access and representation. This concept is markedly different from the substantive interpretation which envisages equality in the law; that is, equality in the content of legal rules.

The second more liberal interpretation is shared by those who believe that the law needs to recognise the differences within society and ensure equality of treatment for citizens similarly situated. Unfortunately, this interpretation is frequently misunderstood as requiring the law to apply without distinction. Universal application of law in this way would only tend to reinforce the disadvantage suffered by some sections of the community. As John Stuart Mill poignantly observed -

> The justice of giving equal protection to the rights of all, is maintained by those who support the most outrageous inequality in the rights themselves. Even in slave countries it is theoretically admitted that the rights of the slave, such as they are, ought to be as sacred as those the master; and that a tribunal which fails to enforce them with strictness is wanting in justice.

Equality before the law hinges on the individual's capacity to protect his or her rights. For many in the community this means having the capacity to acquire the services of a legal practitioner. A number of factors impact on the ordinary citizen's capacity to acquire legal representation. One is obviously cost, another is the type of Government or other assistance that might be available, yet another is the manner in which the rights themselves may be enforced. I will deal with the issue of costs first.

The cost of legal representation has been the subject of considerable debate. The most recent contributions come from the Salaries and Allowances Tribunal. In the most recent report on the remuneration of judges and

magistrates the tribunal dealt with the increasing earnings gap between judges and solicitors. The tribunal had this to say -

> There is a strong feeling in the community that the greatest damage to the proper administration of justice is the cost of justice. The view is held that the average citizen can no longer afford litigation and this is not without substance. Judges tell the tribunal that the income gap has widened considerably since they accepted appointment to the Bench. Yet, unlike most members of the community, the real value of their remuneration has been more than maintained throughout the years of wage restraints. It follows, therefore, the income of private practitioners has soared while the majority of the population has been subjected to restraint.

Some believe the exorbitant legal costs have had the effect of deterring ordinary citizens from seeking to enforce their rights. There are plenty of examples where the cost of legal representation has forced individuals to capitulate to the will of the financially strong. Examples of which I am aware include -

> a small business person forced to abandon a business legitimately acquired as a consequence of a larger company threatening to sue;
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> a young couple unable to bear the cost of defending an action in a custody case;
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> an employee and his family having to meekly accept threatening letters from a powerful former employer for months on end, fearing any action to stop the letters could result in the family losing its meagre resources.

These are but a few examples.

Legal costs were the subject of a 1987 amendment to the Legal Practitioners Act. That amendment established the legal costs committee. The establishment of that committee was recommended by the Clarkson committee inquiry into the future organisation of the legal profession in Western Australia. The Clarkson committee recommended the establishment of the legal costs committee after reviewing the ad hoc and administratively cumbersome way costs scales had been adjusted in the past. However, the 1987 amendments to that Act made no reference to the criteria the legal costs committee should use in its deliberations. The Clarkson committee was also silent on that point. However, a careful reading of the committee's reports suggests that the legal costs committee should take into account the public interest in the setting of legal charges. The absence of a mandatory public interest test in the Legal Practitioners Act has allowed costs scales to be determined on criteria which do not protect consumers of legal services. In its 1991 report the legal costs committee expressed the view that costs scales should reflect reasonable market rates, assuming the operation of a fair market. There are a number of inherent difficulties with this approach. What features constitute a fair market? Are those features present in the legal profession? Are market rates appropriate or should these be set by reference to what is paid in like professions?

I return to the first point: Does a fair market exist? The answer to this question depends on a range of factors, including the ease with which new players may enter the market. To gain admission to practice in Western Australia a person needs to obtain a law degree and undergo a 12 month period of articled clerkship, followed by a further 12 months of restricted practice. Other limited ways of gaining access also exist. Admittance depends on university graduates obtaining employment in the profession. Hence, the profession collectively controls the number of new entrants to the market. To overcome this barrier the Clarkson committee recommended a legal practice institute be established to provide practical training for graduates. It was envisaged the institute would provide the type of training ordinarily obtained through in-service training. The idea of establishing a legal practice institute has not been pursued with any vigour. Instead, legal practices have been encouraged to create additional positions to soak up surplus graduates. This arrangement has been less than satisfactory and is unlikely to be capable of providing places for all students who will graduate at the end of this year. The employment of graduates is likely to become more precarious at the end of next year when a significant number of students from Murdoch University, as well as those from the University of Western Australia, will also be looking for places. Twenty three law graduates could not find places in the early 1980s when the idea of establishing a legal practice institute was recommended. That number of unplaced students is likely to pale into insignificance when the 1993 and 1994 classes graduate. The impediments to entry suggest a fair market does not exist in the legal profession. It follows that rates set by an imperfect market must be suspect and warrant closer scrutiny. An objective assessment which is transparent and open to public scrutiny will go some way to alleviating public unease about the level of legal costs. Should that form of scrutiny result in a real reduction of costs - and there is no guarantee that it will - then such an effect would be desirable. If, on the other hand, such an objective assessment found costs scales justifiable, public concern about unwarranted high costs would be allayed. In advocating this approach I do not assert that costs should be set at an artificially low level. Rather, it is to ensure the public pay a reasonable level of fees and nothing more. After all, the more affordable legal

services become, the more ordinary citizens can acquire such services, and the more we move to securing the objective of equality before the law.

Given the closed nature of the legal profession, there are strong grounds for legislatively requiring that the legal costs committee take into account the public interest when considering cost scales. Obviously, proper consideration of the public interest will require resources being made available to the committee to carry out the level of research necessary to reach an informed decision. This fact was recognised by the Clarkson committee 10 years ago when it recommended the State meet the costs of expert advice required by the committee. Adequate funds need to be made available to the committee for this purpose.

In case it is thought the changes I advocate seek to control lawyers' incomes - let me make it clear, they do not. Lawyers, like others in the community, are entitled to fair remuneration according to the nature of the work undertaken. Those prepared to undertake complex legal tasks are entitled to be paid a rate commensurate with the skills required. The same applies to those who wish to undertake a larger volume of work. Income disparities within the profession will continue according to skill and workload. Hence, any argument that the introduction of a public interest test will restrict lawyers' income is fallacious. Some may argue the imposition of a public interest test is an unwarranted intrusion into the rights of practitioners to charge whatever they deem reasonable. Should this limitation be imposed when it does not apply to business generally? The distinction between the services provided by the legal profession as compared to other businesses is, in my view, obvious. The closed nature of the profession, coupled with the need to ensure as many citizens as possible have access to the law, make it imperative that costs are set at a level which balances the interests of the lawyer and the client. It cannot be rationally argued that the public interest should be excluded in the determination of costs scales. Setting of cost scales in this way is not tantamount to price control as such scales do not limit the amount that may be charged. Under the Legal Practitioners Act a practitioner and client may enter into a costs agreement which provides for a level of charges different from that specified in the scales. Costs agreements may well be suitable for the corporate cum well informed clients able to bargain with the practitioners in a real sense. For ordinary citizens, however, costs agreements are difficult, if not impossible, to comprehend. Costs agreements pose a particular dilemma for those responsible for setting costs scales.

The widespread use of costs agreements indicate that the legal profession prefers to set fees according to what it deems appropriate as opposed to the fees set by a regulatory body. It has been argued elsewhere that any attempt to set scales on other than market rates will result in a greater use of costs agreements. Put another way, it is argued that the profession will always reserve for itself the right to charge whatever it deems appropriate.

Some in the profession maintain that setting scales below market rates will place an unfair burden on successful litigants, as they will be forced to pay the difference between the scale and the cost-agreement charges. It is claimed that successful litigants should be able to claim most, if not all, of party-party costs. This argument has some weight. However, it conveniently overlooks the justice of requiring an unsuccessful litigant to pay costs which cannot be justified on public interest grounds. There is no reason why an unsuccessful litigant should be required to pay more than the fees allowed under objectively set costs scales.

Likewise, no complaint should come from successful clients about having to bear the cost of any difference between a market rate cost-agreement and the rates set by the scales, provided this information is made available to clients before they enter a costs agreement. Clients unwilling to bear this additional cost are free to search for a solicitor prepared to restrict charges to scale. The Law Society or the Attorney General's Office could assist clients by publishing a list of legal practices which have volunteered to charge according to scale. Clients could then choose whether to engage a solicitor who charges according to scale or to bear the costs of any difference contained in a costs agreement.

One way of ensuring greater access to the law is the provision of procedures which can be taken by persons other than those within the legal profession. Alternative dispute resolution processes open to paralegal or lay advocates can substantially reduce the cost of enforcement proceedings. A strong case for this type of arrangement exists in the entertainment industry in which musicians frequently find agents reneging on contractual obligations. As the cost of enforcing a contract through the local court is likely to exceed the amount due, many musicians have no alternative to bearing the loss. An alternative process which permitted paralegal or lay advocate representation would go a long way towards remedying this injustice. Other equally valid examples are available of where the existing processes effectively deny access to the less financially secure. The measures I have outlined today will bring greater access to the law and therefore move closer to the objective of equality before the law.

At the outset of my address I thanked the people of Morley for supporting my candidature at the last election. I also thank members of my campaign committee for the countless hours they spent organising the campaign. I will always remember with fond appreciation the unselfish dedication shown by committee members, Labor Party members and supporters. I also thank my friends and colleagues in the union movement and the prison

service. I particularly thank the officers and staff, past and present, of the Miscellaneous Workers Union, the Prison Officers Unions, and the Trades and Labor Council of WA.

Amendment to Motion

Mr BROWN: I move -

That the following words be added to the motion -

but we regret to advise Your Excellency that in direct contradiction to its promise, given to the people of Western Australia before the election, that it would create more jobs, the Government has -

1. Announced the closure of the Midland Railway Workshops with the loss of 750 jobs (1 050 throughout Westrail). This decision was made without any supporting evidence of likely benefit to the State or to the people of Midland. It was made in the knowledge that -

   (a) the people of Midland had believed the Liberal Party's promise not to close but to upgrade the workshops;

   (b) these jobs will be lost to Western Australia as interstate and overseas companies take over the work formerly done at the workshops; and

   (c) the valuable skills of the workers at the Midland Workshops will be lost to the community at a time when the State needs skilled workers.

2. Announced the closure of Robb Jetty abattoirs with the loss of 220 jobs -

   (a) this decision was in direct contradiction to a promise given to upgrade the abattoir eg, to provide a new high-tech facility;

   (b) it will disadvantage the abattoirs workers and primary producers alike; and

   (c) was made in order to provide more work to a selected group of private sector employers at the expense of the best interests of the State as a whole.

3. Abolished the Homeswest maintenance division with the loss of 100 jobs.

4. Announced the closure of the State Print Works with the potential loss of 200 jobs. This announcement was made without regard for -

   (a) the very substantial changes in work practices and improvements in productivity that have been made at State Print; and

   (b) the need for a totally confidential and reliable printing service for needs of Government and Parliament.

5. Announced the sale of the Hospital Laundry and Linen Service with projected loss of 330 jobs. This decision was announced with -

   (a) no supporting evidence that a private sector laundry service would provide a cheaper and more efficient service to hospitals; and

   (b) no regard for the future of the workers in this establishment and their families.

[Applause.]