Legislative Council

Thursday, 17 October 1991

THE PRESIDENT (Hon Clive Griffiths) took the Chair at 2.30 pm, and read prayers.

PETITION - DUCK SHOOTING

Prohibition Legislation Support

Hon Reg Davies presented a petition bearing the signatures of 5 541 citizens of Western Australia urging Parliament not to declare duck shooting seasons and to legislate for the prohibition of any future duck shooting in this State.

[See petition No 737.]

PETITION - JUVENILE OFFENDERS

Cautioning Policy Review - Child Welfare Act Amendment

Hon Reg Davies presented a petition from 10 107 citizens of Western Australia requesting the Parliament of Western Australia, through the Minister for Police and the Minister for Community Services, urgently to review the policy of cautioning juvenile offenders and to amend the Child Welfare Act.

[See petition No 738.]

PERMANENT BUILDING SOCIETY

Report Tabling

HON J.M. BERINSON (North Metropolitan - Leader of the House) [2.35 pm]: I present the report on the Permanent Building Society and appendices. This report comes in two volumes, and contains a cover note to the main section of the report with this notation: "This report has sections removed which are considered legally and/commercially sensitive and if disclosed to the general public may prejudice the society." I take this opportunity to make it clear that that notation is by the administrator and is part of his report. I also take the opportunity, given the scarcity of copies of this voluminous report, to indicate that an additional copy is being lodged in the Parliamentary Library.

[See paper No 735.]

MOTION - FOREST AMENDMENT REGULATION

Disallowance

Debate resumed from 16 October.

HON TOM HELM (Mining and Pastoral) [2.40 pm]: Members will recall that on 15 October, because of the time factor, I was unable to complete my comments on this motion. I was making a point about the ability of the Department of Conservation and Land Management, in this instance, to set fees without any reference to this House, without debate and without anyone being warned what the new fees may be. I gave the example of a family going into one of our national parks or forests and being charged a fee of which they were unaware and perhaps being turned back because they had insufficient money to pay the fee. The House should disallow this regulation because it allows the Act to be overridden by ministerial decree or by somebody with delegated authority; that would be a dangerous step to take. I ask that the House support the motion.

Debate adjourned, on motion by Hon P.G. Pendal.

MOTION - MINES REGULATION AMENDMENT REGULATIONS (No 2)

Disallowance

HON TOM HELM (Mining and Pastoral) [2.43 pm]: I move -

> That the Mines Regulation Amendment Regulations (No 2) 1991 published in the *Government Gazette* on 28 June 1991 and tabled in the Legislative Council on 20 August 1991 under the Mines Regulation Act 1946 be, and are hereby, disallowed.

This regulation contains the same element as that of the Forest Amendment Regulations and the Department of Conservation and Land Management (Miscellaneous Fees) Regulations; that is, the department is asking for the right to increase fees by ministerial decree or on that authority delegated to somebody else. All of the dangers which I explained in the last two cases are inherent in this regulation. The Standing Committee on Delegated Legislation has charged me with the responsibility of asking this House to disallow the regulations. However, the committee's concern goes one step further because the committee is not sure that the department has the right to set regulations on fees in the first place. The Mines Regulation Act Regulations 1976 are very detailed and set out the intentions of the Minister when the Bill was put before the Parliament and passed. However, they do not make any comments on the Act's ability to set regulations about fees. The committee is concerned with the underlying issues involved and feels that the regulations are not in the best interests of parliamentary democracy. Even if Parliament chose to move the regulations in a way that was acceptable, the committee did not think the Act gave the power to the Minister to move regulations in that way. To assist members I will quote the legal advice the committee asked for and received. I will refer to the parts of the regulations which have been gazetted and which the committee feels should not have been. The regulations say -

> 1. These regulations may be cited as the *Mines Regulation Amendment Regulations (No 2) 1991*.
>
> Regulation 3.12 amended
>
> 2. Regulation 3.12 of the *Mines Regulation Act Regulations 1976** is amended by deleting "of $20.00" and substituting the following -
>
> "determined by the Minister".
>
> [**Reprinted in the Government Gazette of 14 September 1984 at pp.2945-3071. For amendments to 6 March 1991 see pp.304-05 of 1989 Index to the Legislation of Western Australia and the Gazettes of 3 August 1990 and 15 February 1991.*]

The enabling power is given by subsection (zb) of section 59 of the Mines Regulation which states -

> All other matters connected with the regulation of mines and the working thereof not expressly provided for by the provisions of this Act.

It was brought to the attention of the committee that the Act is quite specific in many things, down to the detail of describing the purposes, building and location of crib rooms down the mine. Our legal counsel tells us -

> The Mines Regulation Act Regulations 1976 required applications for certain certificates to be accompanied by a fee of $20 prescribed by that regulation. The amendment deletes reference to the amount and substitutes the phrase "determined by the Minister".
>
> The enabling provision is section 61(1) Mines Regulation Act 1946 ("the Mines Act"), which authorizes the Governor to make regulations for all or any of the purposes there set out. Those include:
>
> "(nb) Dealing with all matters connected with the issue . . . of certificates . . .".
>
> There is no express power to make regulations in relation to fees.
>
> The "catch-all" power in section 61(1)(2b) which authorizes the making of regulations in respect of
>
> > "all other matters connected with the regulation of mines and the working thereof not expressly provided for by the provisions of this Act"
>
> In my view and in the context of the long list of specifically detailed matters in section 61(1), probably does not authorize the imposition of fees.
>
> The point is far from clear, but section 61(1)(nb) arguably does permit the imposition of fees by regulation as "a matter connected with the issue of certificates".
>
> If this construction be correct, the power should probably be read as one to make regulations "dealing with fees connected with the issue of certificates". Thus, taking the approach described above, the power would likely authorize the making of a regulation allowing the Minister to fix fees by determination.

I reiterate, however, that this conclusion is by no means clear and the Committee might well take the view that disallowance should be recommended where (as here) -

(i) the power to impose and fix fees by regulation is not clearly granted; and especially where

(ii) the assumed power is sought to be used to enable fees to be set in a manner which is not subject to Parliamentary scrutiny.

Our legal counsel agreed with the view that the committee took in this case, which was that on the one hand we are not sure - it will be for the House to determine at the end of the day whether the Act specifically provides for the regulation connected with fees to be made -

Hon Mark Nevill: That is an academic argument, is it not?

Hon TOM HELM: It is an argument that leans the way the committee leans. It was very concerned that if the Act is clear about its intentions as it was in 1946 there might have been no intention for a fee to be imposed. None of us can second guess whether fees should be imposed. I am sure that if we had an amendment before us we would accept the amendment. There would not be too much of a problem in that going through the Parliament and I suspect, taking the committee's view, that there would not be too much of an argument to say, " If you are going to issue certificates, you need someone competent to issue them." They cost money and someone has to pay.

The request for the disallowance of this regulation follows the same line as the committee's request for the disallowance of the previous two regulations. All we are asking is that we put these matters before the Parliament for it to consider. That is not to say that we will disagree with them and we are not making a recommendation in justification for those fees. However, we are saying that the Act is unclear and that it can be made clear whether it has the power to set the fees without too much problem. What the committee strongly disagrees with is the fact that fees will be set without any reference to the Parliament or to the public of Western Australia. These fees will be set by the Minister or his delegated authority.

I owe the House an apology for going on in the way I have gone on.

Hon Mark Nevill: We accept your apology.

Hon TOM HELM: It was well meant. However, members of the committee will understand the reasons that I have gone on for so long. We met this morning, as we meet every Thursday morning when the House is sitting, to deal with regulations. This morning we met with officers of the Department of Land Administration because they brought matters to our attention in an explanatory memorandum. I congratulate them for the detail of that memorandum. However, it still left some things unclear as to their intentions and whether they are able to do things they want to do. Many of the public servants we invite to appear before the committee are cooperative. However, there are too many who are less than cooperative and, as is the way with human nature, Ministers and ministerial staff defend their public servants, particularly against a committee which seems to be taking upon itself the power of this Chamber. The committee has undertaken its investigations but it has to keep coming back to the Parliament to make sure that the things it is doing are right. That is why I am going into detail about the things that I am saying, because if we keep on disallowing regulations, one day somebody will wake up and say there is an alternative. A number of public servants have done that already. As I have said, we have developed a good rapport with a number of departments and we want to develop that rapport further, not only to make our job easier, but also to make our job more effective and, therefore, the system of Government more effective.

A simple matter of presenting an amendment to the Mines Regulation Act will allow the Minister and his delegated authority to set regulations concerning fees - we do not want that message to get out - but it will not allow them to set those fees by determination or notice. Not only am I asking the House to support the committee's recommendation, but also I am asking those officials whose business it is to read *Hansard* to support it. I know the people who work for Ministers read *Hansard*. Whether Hon Mark Nevill was right in saying that it is an academic argument whether we have the power to make the recommendation, the fact is that there should not be any doubt in anybody's mind, whether or not that person is a member of the committee, that this move is within the committee's power. Anybody with any brains will know that the majority of this House will not block an amendment which will

allow a cost recovery program to be set in place relating to the issuing of certificates or the costs that are associated with the issuing of certificates. I therefore request the House to disallow the Mines Regulation Amendment Regulations (No 2).

Debate adjourned, on motion by Hon N.F. Moore.

MOTION - WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY AMENDMENT REGULATIONS

Disallowance

HON TOM HELM (Mining and Pastoral) [2.59 pm]: I move -

> That the Western Australian Meat Industry Authority Amendment Regulations 1991 published in the *Government Gazette* on 12 July 1991 and tabled in the Legislative Council on 20 August 1991 under the Western Australian Meat Industry Authority Act 1976 be, and are hereby, disallowed.

This is the last of the recommendations from the Joint Standing Committee on Delegated Legislation and it relates to an entirely different regulation. The committee spoke to officers of the WA Meat Commission at great length about this matter. This is a draconian provision and is outside the powers of the Act. It is related to the emergency powers regulations that are used under the Health Act about which I have waxed lyrical in this Chamber before. It is a very dangerous piece of legislation, and if we do not do much else as a committee, our picking up this regulation has made our job worthwhile because it is like giving a machine gun to a five year old child. People thought that this could be dealt with without any reference to this Chamber. The regulation reads -

> **Citation**
>
> 1. These regulations may be cited as the *Western Australian Meat Industry Authority Amendment Regulations 1991*.
>
> **Regulation 4 amended**
>
> 2. Regulation 4 of the *Western Australian Meat Industry Authority Regulations 1985** is amended by inserting after subregulation (2) the following subregulation -
>
> (3) An inspector may -
>
> (a) enter any premises in or on which the inspector has reason to believe that -
>
> (i) accounts, invoices, receipts returns and other documents relating to the slaughter or sale of declared animals or prescribed animals are kept and make copies of any such accounts, invoices, receipts, returns and other documents; and
>
> (ii) has been used for or in connection with the slaughtering of prescribed animals or declared animals;
>
> (b) seize and retain any branding devices;
>
> (c) seize and retain any carcase of any prescribed animal or declared animal that has not been branded or slaughtered in accordance with these regulations;
>
> (d) do any other act or thing that is reasonably necessary for the purposes of carrying out the inspector's duties under the Act and these regulations.
>
> [**Published in the Government Gazette on 7 June 1985. For amendments up to 1 June 1991 see 1990 Index to Legislation of Western Australia p. 415.*]

This regulation gives the power to an inspector to do anything he may wish without fear of hindrance by anyone in this place or by anyone associated with the industry. During the debate on the disallowance of the Emergency (Ammonia Unloading) Regulations it was stated that the emergency powers regulations under the Health Act would give the power to anyone nominated by the Minister to do anything he wished under the regulations. In this

instance, if we accept this regulation we will give the power to the Minister, or to a person nominated by him, to take away prescribed animals, receipts and invoices.

With respect to the emergency powers Act, if there were a threat of something falling from the sky within a certain time frame, the emergency powers regulations would give a person the authority to do whatever was necessary to protect the lives of people and to protect property. However, ammonia does not fall from the sky; it is transported by ships. Many things affect the movement of ships, including the tide. The committee agreed that such emergency powers should not be given to people when no emergency exists. As elected members of Parliament we have an obligation to pass Acts which are available for scrutiny and are easily understood.

I refer again to the regulations applying to the unloading of ammonia and to the person whose business was affected because his shop was within the boundary of the declared emergency area. He was distressed that the business he lost resulted from a move to benefit the rest of the community. He was given no opportunity to argue with anyone about the decision. If he had been able to present his case he would have had the opportunity to prove that he had a valid argument, because on another occasion when the regulation was implemented the boundary was changed and only half of his shop was in the declared emergency area. Those regulations are determined by the Health Act, in the same way as the meat industry regulations.

The committee has not commented on whether the regulations are right or wrong, but it believes that these amendments should be implemented by way of an Act of Parliament. The Act could then be amended, if necessary. Many members of this Parliament are expert in this field; many of them own stock and I would welcome their comments. However, if this regulation is allowed to proceed their views will never be heard. The views of people affected by the regulations will not be heard either.

I hope that representatives of the Western Australian Meat Industry Authority will read my comments in *Hansard*. Anyone taking over from the people responsible for drafting the regulations will, on reading *Hansard*, understand how the committee and the Parliament felt about this matter. No-one can convince me that there is a need for emergency powers to be given to meat inspectors in the course of their duties. I imagine their duties include those outlined in the regulations. I am not in a position to determine whether they should have that power, but there are members in this place who are, and if they are not there are experts in the community who are in that position. The committee is concerned about the unrestricted powers being granted by way of regulation instead of by an amendment to the Act.

If a pattern were established that allowed the Executive to implement regulations that drastically change the power of an Act by publishing them in the *Government Gazette* there would be no point in our being elected to Parliament. If we do not have the ability to question the actions of the Executive, there is no need for us to be in this place. We could in one week pass a number of Bills consisting only of a heading and wait for the regulations to be published in the *Government Gazette*. If we choose to take that path, then so be it; that is our responsibility also. However, in this instance, we are not given the option of choosing what to do. We are not given the opportunity of agreeing or disagreeing. We are told that a regulation will be moved to strengthen the ability of Ministers - members of the Executive - to do virtually as they wish, without reference to or scrutiny by the Parliament. That is the point we must make about these regulations.

In respect of the meat industry amendment regulations, certain powers have already been granted under the Act, and the committee cannot understand the reason that it is necessary to include in the regulations the power "to do any other act or thing that is reasonably necessary for the purposes of carrying out the inspector's duties under the Act and these regulations". I am sure that if that provision were moved in this House, we would have some argument with "any other act or thing". I am sure we would question a person's ability to move such a provision without debate in this House. Yet in this case a regulation which allows that to happen has been gazetted, and we cannot allow that.

I explained during the debate on the emergency powers regulations under the Health Act, which allow the unloading of ammonia, that the committee intends to present to the Parliament some time next year a Bill that it believes will meet the requirements of this House and of the Executive, so that the Executive will be able to do what it wishes to do now

under the Act, and so that things which need to be scrutinised by the Parliament can be scrutinised as a matter of course. If regulations to change an Act or to strengthen an Act - depending upon to whom one is talking - were allowed, there would be no need for an emergency powers Act or any Act of Parliament, and there would be no ability to scrutinise the actions of the Executive in this place. That would be a dangerous situation. I have been advised that apart from the half day seminar that will be held before the end of this session, to which we will invite all public servants, members of Parliament and Ministers so that we can explain to them our terms of reference and the reason that we take our job so seriously, there will also be a seminar some time in the new year to discuss the proposed Bill that we hope to bring before the Parliament so that everyone may have an input into that Bill.

If public servants were allowed to exercise the right to gazette regulations as they chose because there was no committee scrutiny and no parliamentary scrutiny, the Executive would also be on a dangerous course, because no matter who were the Ministers, they would have to be very good Ministers to be able to dot every i and cross every t in respect of every piece of legislation that came across their desks. Ministers should not have to do that because their responsibility to the State is to make laws and regulations for the good of this State and to ensure the maintenance of good government. Good government can take place only when laws and regulations are scrutinised by the Parliament. If Acts and regulations are passed in our name as Western Australians and as parliamentarians, we should be obliged to ensure that we at least have the opportunity to scrutinise those Acts and regulations.

I do not believe for one moment that the emergency powers regulations under the Health Act will not be used again. I would like to think that the Western Australian Meat Industry Authority will not try again to pull a regulation like this. I think the message went out to that authority very clearly. However, I suspect that another authority or another group of ministerial advisers and public servants will be tempted to use this kind of regulation to do things that they consider to be in the best interests of the people of this State. We must be careful that when we are critical of regulations we do not blame people for doing things just for the sake of blaming them. We must ensure that what we do is for the highest of principles; namely, that it is in the best interests of the State. Members of the committee have the most difficult of jobs. We must explain to public servants that whether or not they think they are acting in the best interests of the State, we are elected to do what we think is in the best interests of the State, and the people who elected us expect us to take seriously that responsibility. Until the time comes that public servants are elected into their positions, their responsibility and their word will not override the word of the elected members of Parliament, and we should always have the ability to scrutinise what they do.

We have found over time that the memorandums that are presented to the committee to explain why regulations should be gazetted often contain acceptable arguments and a justification for what the public servants are attempting to do, and from the public servants' point of view those explanations are perfectly reasonable and logical because public servants are the workmen of the legislation. They are obliged to put into place the Acts and regulations to which we as elected members have agreed. The explanation for the particular regulation with which we are concerned is, as stated in regulation No 27, that -

> The Governor may, after consultation with the Authority, make regulations prescribing all matters that are by this Act required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to or achieving the objects of this Act and facilitating the exercise by the Authority of its powers, functions and duties under this Act and in particular -
>
> (a) prescribing the powers and duties of inspectors; . . .

We are saying that the Governor may, after consultation with the authority, make regulations which will be described by the authority prescribing the powers and duties of inspectors. The public servants who wrote that thought it was a perfectly acceptable and understandable regulation. In other words, to accept this is to accept that a body can draw up regulations without their having to be published in the *Government Gazette*. It provides for regulations which obviate the necessity to make regulations. It is part of the "Yes Minister" syndrome. I found the character of Sir Humphrey in that program to be very amusing. I suppose I found him to be amusing because what he did and how he thought was a reflection of the majesty and stability of the Public Service. The Public Service will always be there. Ministers,

Governments and politicians change. The structure that gives the politicians, and through them the Executive arm of Government, the ability to function has the background, the knowledge, the skills and probably the upbringing of Sir Humphrey. This situation is an example. It is fair to say that these officers would be quite at liberty to say, "Trust us; we are from the Government".

Hon Derrick Tomlinson interjected.

Hon TOM HELM: Is Hon Derrick Tomlinson asking if my speech is endorsed?

Hon Graham Edwards: Members on this side of the House are encouraged to adopt free speech. I invite Hon Derrick Tomlinson to join us. It is a very long and established tradition in the Labor Party.

Hon TOM HELM: I suggest that most of our public servants are conservative minded rather than Labor oriented.

Hon Graham Edwards: It coincides with this House.

Hon Peter Foss interjected.

The DEPUTY PRESIDENT (Hon J.B. Brown): Order!

Hon TOM HELM: It is not a criticism; it is a fact that public servants have been accustomed to making the rules and regulations. They have been accustomed to having the power and authority to put things in place for the greater good. If someone who is a rigger spoke in Parliament about the meat industry, they would be perfectly entitled to ask just what he knew about the industry. What I know about the meat industry is what I have learnt from debates in this place. Perhaps, Mr Deputy President, you may be able to explain to me in some detail many things about the meat industry that I should know. That is the beauty of the Labor Party. It allows its members to reach across boundaries.

Hon Peter Foss interjected.

Hon TOM HELM: We have some very good financial managers too.

Hon E.J. Charlton interjected.

Hon TOM HELM: To answer that unruly interjection, one is the State Secretary of the ALP; the other two are the assistant State secretaries, who are very good managers of Labor Party funds. I am referring to the Labor Party, not the Labor Government. If I needed financial advice, I would speak to them because they are the people the Labor Party elected to positions of power, both inside this Parliament and outside. In your case, Mr Deputy President, it was a good election.

Several members interjected.

The DEPUTY PRESIDENT: Order!

Hon TOM HELM: What I have said is the truth and we understand that. The myth must be exploded. Members of the Joint Standing Committee on Delegated Legislation are in the front line in trying to explode that myth. I am surprised that Hon Peter Foss agreed with that. Does the Liberal Party have a radical lawyer in its ranks?

Hon Peter Foss: You have been saying the things that I have said for the past few years. You have learnt while you have been in the House.

Hon TOM HELM: I hope there is some competition within the Liberal Party for membership of the committee, although the members it has elected so far do a very good job on its behalf and on behalf of this Parliament. We members of the committee are able to behave in that apolitical manner only because we appreciate our responsibilities and where they take us.

This House should not be under the misapprehension that it is the committee's aim to block every regulation; its aim is to interview people. So far, people's explanations have been perfectly understandable and acceptable to the committee. This morning the committee met to discuss the Department of Land Administration and, although members did not fully understand the explanatory memorandum it sent us, within an hour of hearing the evidence this morning we had decided it was quite acceptable. Points were mentioned by individual members with which we did not all agree. However, they were matters that can be debated

in this House on an individual member basis rather than a committee basis. At the end of the interview this morning the committee agreed that the request of the Department of Land Administration was within the powers of the Act. Its officers may have been sailing close to the wind on those matters, but the committee decided they came within the Minister's responsibility and were not something the committee could make comment about or scrutinise. That message should go out from this Parliament to the public servants.

Some of those public servants who have attended the committee and found the circumstances quite daunting have indicated by their demeanour that they thought they were in for an inquisition. They should know, as members of the committee try to underline, that our aim is to assist the Executive to do what it wants to do. The committee is charged by this House to act on its behalf to make sure we allow acceptable regulations under the Act and that the regulations are gazetted. However, it is not within the committee's powers to make any comment about whether the policy of the Executive or the Minister should be scrutinised or commented on publicly. To do that, someone must bring to our attention matters that concern that person, as members of the committee have done. They have advised the committee that they will take those matters back to their party rooms and that from a political standpoint they are opposed to a piece of legislation or a regulation. Some regulations about which the committee is aware are on the Notice Paper. However, it is not for the committee to say whether they should be allowed or disallowed. We make no comment on that. We do not criticise the Executive or the Minister; we make no comment about whether an individual member should be able to bring those things up in this House. We try to be as even handed and as fair as possible.

[Debate adjourned, pursuant to Standing Order No 195.]

MOTION - ATTORNEY GENERAL

Tabling of Documents - Parliamentary Order Non-compliance

Debate resumed from 16 October.

Adjournment of Debate

HON MARGARET McALEER (Agricultural) [3.32 pm]: I move -

That the debate be adjourned.

Question put and a division taken with the following result -

Division

Ayes (14)

Hon J.N. Caldwell	Hon Peter Foss	Hon P.G. Pendal
Hon George Cash	Hon Barry House	Hon R.G. Pike
Hon E.J. Charlton	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon Reg Davies	Hon N.F. Moore	Hon Margaret McAleer
Hon Max Evans	Hon Muriel Patterson	*(Teller)*

Noes (13)

Hon J.M. Berinson	Hon John Halden	Hon Sam Piantadosi
Hon J.M. Brown	Hon Tom Helm	Hon Bob Thomas
Hon T.G. Butler	Hon B.L. Jones	Hon Fred McKenzie
Hon Cheryl Davenport	Hon Garry Kelly	*(Teller)*
Hon Graham Edwards	Hon Mark Nevill	

Pairs

Hon D.J. Wordsworth	Hon Kay Hallahan
Hon W.N. Stretch	Hon Tom Stephens
Hon Murray Montgomery	Hon Doug Wenn

Question thus passed.

Debate adjourned.

BILLS (2) - THIRD READING

1. Road Traffic Amendment Bill (No 2)

Bill read a third time, on motion by Hon J.M. Berinson (Attorney General), and transmitted to the Assembly.

2. Acts Amendment (Evidence) Bill

Bill read a third time, on motion by Hon J.M. Berinson (Attorney General), and transmitted to the Assembly.

HOME BUILDING CONTRACTS BILL

Committee

Resumed from 16 October. The Chairman of Committees (Hon J.M. Brown) in the Chair; Hon John Halden (Parliamentary Secretary) in charge of the Bill.

Clause 3: Interpretation -

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

Page 4, lines 7 to 9 - To delete the definition of "owner" and substitute the following definition -

"owner" in relation to a contract means the natural person for whom home building work is to be performed under the contract where that person -

(a) has not entered into the contract; and

(b) has not held himself out as entering into the contract

for the purpose of resale or for the purpose of using the completed work in, or in the course of, trade or commerce.

Hon PETER FOSS: The general effect of this Bill is not so much to establish a fair contract between the parties, which is the suggestion that the Opposition made as to how the matter could be dealt with, but rather to shift the balance in dealings between a builder and owner in favour of an owner. The Opposition will support that in certain circumstances; for example, where an owner is not of an equal financial or expertise level with a builder and therefore is not of equal standing. Under those circumstances it is reasonable to tip the balance in favour of the owner to redress the inherent differences between their various positions. If the balance is to be tipped permanently as opposed to merely setting a fair contract there must be a reason for doing that: There must be an unbalanced position. Under the definitions proposed by the Government, the benefit of this consumer protection legislation will go to not only people who are disadvantaged, but also the Government. A builder who may be a very small businessman is not in a position of having the whole thing tipped against him even if the person he may be dealing with is the Crown. It seems unreasonable with operations such as Homeswest or LandCorp, with all their powers and ability to dictate the terms of the contract, to in addition tip the balance in their favour by this legislation. If the contract Homeswest and LandCorp serve up does not comply with the Act, it is not Homeswest and LandCorp who will miss out, it is the builder, who may well be a small business person who would not have the financial wherewithal to go to a lawyer to determine whether by accepting the Homeswest or LandCorp deal he was protected.

Rather than specifically including the Crown we should exclude the Crown. Consumers are ordinary people and therefore the legislation should be limited to natural persons, not companies. If a person has the sophistication and financial and business wherewithal to set up a company, he is not a consumer who needs to have the balance in his favour. We might have a sophisticated company on one side and an unsophisticated builder on the other side carrying the burden of the Act.

Hon Mark Nevill: I thought you could buy them off the shelf for $2?

Hon PETER FOSS: The capital could be $2, but it would cost the member an awful lot more to buy it.

People who are building to trade in houses, not because they are genuine consumers who want to live in the house but because their business is buying and selling houses, should not

be protected; they are not consumers but traders. Why should a trader in houses be protected? Of course, an ordinary individual who wishes to buy a home and live in it would receive the protection of the Act. The answer that has been given to that by the Government is, "So long as you obey the law, you have nothing to fear." That is hardly an argument where the balance is tipped in favour of one side. The illustration I gave of an unfair law was if Labor members of Parliament appeared in this House without their -

The CHAIRMAN: Order! I remind Hon Peter Foss of Standing Orders. If the member is repeating that for the edification of members we are all well aware of what was said.

Hon PETER FOSS: That is why it is not an answer. If a law is unfair it is hardly any compensation to the person whom it acts against unfairly to say, "If you behave and obey that law, you will not be penalised", or to say that other people in the community will not be affected at all. It is not right to say to the builder that all he has to do is obey the law when he is the one with all the penalties attending, whereas the owner has nothing to do whatsoever. We cannot take this unfairness and say, "All you have to do is obey the law." We cannot pick one section of the community and say, "There is no reason to protect you because all you have to do is obey they law; so why are you complaining?"

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

The CHAIRMAN: Members must remember that this is not a second reading debate. I have allowed members to canvass a wide area and it is up to all members to remember that deliberations at the Committee stage are on each clause individually. Not for one moment would I want to stifle debate; the Committee would not permit that to happen and I would not want it to happen. Members must be mindful of the purpose of the Committee stage of the Bill compared with the other two stages.

Hon JOHN HALDEN: The effort by Hon Peter Foss to remove certain groups of people from the application of this Bill is not for the reasons he suggests. In essence, he is putting up a bit of a smokescreen. I can understand the issue about the imbalance between the Crown and builders, corporations, family companies and individuals; however, I have great difficulty accepting that on every occasion they are able to disadvantage builders. We have a history in this State of builders being able, on the vast majority of occasions, to disadvantage consumers. He spoke about the poor old builder. Really! In the history of cottage building in this State we would have to go a long way to find a poor old builder. One could find a litany of poor old consumers, but not too many poor old builders.

We must be realistic and not resort to slinging off about left wing and right wing matters. We can all do that.

Hon George Cash interjected.

The CHAIRMAN: Order!

Hon JOHN HALDEN: Small businesses in this sector of the economy may have collapsed. However, they have not collapsed because of the efforts of the consumer, rather because of the economy. We should not be hearing any of the rubbish being put forward at the moment.

Hon P.G. Pendal: Is this your run for Hon Joe Berinson's job?

Hon JOHN HALDEN: Does Hon Phillip Pendal mean like his run for the President's spot? He failed.

The CHAIRMAN: Order!

Hon JOHN HALDEN: This amendment, like many other suggestions from Hon Peter Foss, would of course result in greater litigation. As I have said before - I will not be unfair - a significant sector of the legal profession hates the idea of tribunals and their widening use.

Hon Peter Foss interjected.

The CHAIRMAN: Order!

Hon JOHN HALDEN: It is fine for Hon Peter Foss to interject and abuse me, but he should pay me the compliment I paid him.

Hon Peter Foss: I am not abusing you.

Hon JOHN HALDEN: The principle part of this Bill is that it provides easier -

Hon Peter Foss interjected.

Hon JOHN HALDEN: If Hon Peter Foss had a few, we would be better off in this House.

The CHAIRMAN: Order! Perhaps someone wishes to go home early. I would like to see this debate continue in an orderly manner. I will not tolerate any more interjections. I had to say this yesterday. I do not mind an interjection, particularly in response to a question, but when it amounts to political point scoring I will not tolerate it any more. If a member wants to interject, or if the member on his feet is provocative, I will draw it to his attention and to the attention of the President. Members must understand that we are supposed to be having a mature debate on the clauses of the Bill. It should not be about party philosophy or leadership challenges or anything else. This stage is an important part of the procedures of this Parliament and I will ensure it is conducted in the right manner. The next member who interjects will receive my wrath and a report to the President.

Hon JOHN HALDEN: Thank you, Mr Chairman, for your protection. Hon Peter Foss again tried to cover up his intent when he spoke about individuals and about selling on houses. We are not given clear information on what that might mean; therefore, where does the "poor old builder" stand? We do not know whether the person is building a house to sell it; the poor old builder will not know. Which contract should he bring out; the contract he gives to the corporation, or the contract covered by the Bill? We do not know. By virtue of the amendment proposed by Hon Peter Foss, the poor old builder is well and truly bamboozled. The amendment is concerned with glossing over the real intent and making sure that the effect of the tribunal is minimal. I can accept that the Crown may be an equal partner.

Point of Order

Hon PETER FOSS: I may have misheard the honourable member, but he seemed to be indicating that my intention was to minimise the effect of the tribunal and make work for lawyers. I might be wrong, but that was my understanding.

The CHAIRMAN: There is no point of order; there was no intention. I heard what the Parliamentary Secretary said.

Committee Resumed

Hon JOHN HALDEN: A very strange point of order!

The CHAIRMAN: Order! I have made my decision.

Hon JOHN HALDEN: I want to go into the implications made by the honourable member. We could have a trust which decides to build a house for a family trust. That family trust will build a family home for the trust valued at under $200 000. That contract will not be covered by the Bill under this proposal. How ludicrous! We are establishing two types of consumers. In the example given to the House by Hon Peter Foss, there were two types of consumers, Labor and Liberal. These two types of consumers are doing the same thing; they are building a cottage house valued at under $200 000. Why should they not all be covered by the one piece of legislation? Surely to goodness they ought to be. Surely to goodness, on the basis on any reasonable piece of legislation, this amendment ought to be defeated.

Hon PETER FOSS: I wish to draw the attention of the Chamber to a piece of legislation which I mentioned before, and another which I did not. The difficulties which Hon John Halden foresees have not occurred in another piece of legislation which makes this very distinction, and that is the Trade Practices Act. The wording of this amendment is taken almost directly from the Trade Practices Act. Incidentally, that same wording was copied in the Fair Trading Act of this State introduced by this very Government in this Parliament. If what Mr Halden is suggesting is a difficulty, it seems strange that these words would have been included in the Trade Practices Act where the definition has caused no difficulty, and after causing no difficulty there, it was copied by this Government in another piece of consumer legislation.

What I am saying is that there are people who are consumers and there are people who are not consumers. If a person is buying and selling houses, he is not a consumer of houses, he is a trader in houses. If one goes to a retail trader or a wholesaler and buys a thousand packets of soap, one is not a consumer because the intention is not to consume or use those

goods, so one is a trader. Similarly if someone goes along and buys a house in order to sell it, he does not intend to consume it - that is, use it - but sell it or trade it. He is not a consumer but a trader. It is not a matter of distinguishing between one consumer and another; one person is a consumer and the other is not. That is the point which was well understood by the Federal Parliament when it introduced its Trades Practices Act, and it was well understood when it was introduced into the Fair Trading Act.

The second point in regard to dealing with natural persons is that we pick out consumers. Why pick out consumers? Of all the people in our community, why do consumers need extra protection? Is it simply because they have the word "consumer" tattooed on their chests? No, it is not. The reason they get protection is because they need it. This Parliament does not pass legislation purely for the fun of picking out one part of society and saying, "We will give you protection." We are looking around to see the people in our society who need it, and that is normally the poor, the disadvantaged and the weak. Those are the people to whom we give protection. If people have financial sophistication and bargaining power, we do not give them protection. Unsophisticated people buy houses and sophisticated people also buy houses. In the same way we have builders who are sophisticated and builders who are unsophisticated. It would be wrong to say that the mass of builders in this State is a homogeneous one. There are some very large builders; they produce large numbers of houses. But there are also some small builders. The degree of sophistication between those people is just as varied as between those who purchase homes. All we are saying is that no-one need say that the Crown is a consumer. The Crown does not intend to live in one of these houses. It is not a consumer; it is not disadvantaged; it does not lack any sophistication or means. People who purchase in the name of a company do not lack sophistication.

It is well known that one suffers many disadvantages if one uses a family company. For example there are certain concessions with respect to land tax and stamp duty and with regard to the Family Law Act. It is well recognised that if one wishes to organise one's affairs in a sophisticated manner, that is fine. There are tax advantages and many others. We cannot have it all our own way. We cannot gain the advantages without also suffering the disadvantages. There are those who are able to engage lawyers and accountants and give themselves family companies and take advantage of the tax rules, but by definition they are not the people we are supporting. It is the people who cannot afford lawyers, accountants and family companies whom we need to protect.

Hon J.N. CALDWELL: I have had many consultations with my National Party colleagues during the last 48 hours during which this Bill has been discussed. We concur with Hon Peter Foss' submissions about the inclusion of an agency of the Crown in this definition of "owner". I see no reason for including any agency of the Crown in this interpretation clause. This could refer to many other Acts as well.

The amendment clearly defines "owner" as "the natural person for whom home building work is to be performed under the contract where that person has not entered into the contract . . . for the purpose of resale or for the purpose of using the completed work in, or in the course of, trade or commerce." Hon John Halden has pointed out already that we do not really know whether someone who enters into a building contract will later sell the house. Once the house is completed the owner may decide he likes it so much he does not wish to sell it. I am not comfortable with the phrase "including an agency of the Crown" being included in the definition of owner. I have consulted with the Clerk of this place and found that the National Party cannot move an amendment to exclude those words. However, the National Party would be satisfied if the Parliamentary Secretary gave some confirmation that this clause would be recommitted and those words excluded from the definition of an owner. Hon Peter Foss has referred to the definition of an owner in other Bills, but we are dealing with this Bill and the definition of owner is very clear cut. The definition that the Government has put forward, excluding the phrase "agency of the Crown", is preferable.

Hon DERRICK TOMLINSON: Hon Peter Foss has drawn the distinction between an owner who is a consumer and one who is a trader. For Hon John Caldwell to draw the red herring of a person who has a house built under contract with the intention of selling it and who then decides it is so attractive that he would rather live in it, is to present an argument quite contrary to the intention of Mr Foss' amendment. Mr Foss is referring to a person who has entered into a contract for the purpose of resale; in other words, a person who quite deliberately makes a contract with a builder with the stated intention of selling the house

when it is completed. The home owner who enters into a contract with a builder specifically with the intention of having a home built in which he will live is quite different from the person who deliberately enters into a contract with a builder for the purpose of trading in houses. I feel that Hon John Caldwell has misinterpreted the purpose of the amendment, which is to protect the consumer and to distinguish between the consumer and the trader. The trader has protection under other aspects of the law.

Hon JOHN HALDEN: I am happy to give a commitment to Hon John Caldwell to recommit the Bill in order to exclude the words which are within the brackets. I will clarify some of the issues raised and I will reaffirm his position in the matter. The issue put forward by Hon Peter Foss is that somehow companies and trustee companies are terribly sophisticated; however, these types of financial arrangements are entered into by farmers. A farmer may build a small house in the metropolitan area and may decide to live in that house and to make it his second abode for a whole range of reasons. However, some way down the road, maybe three months, 12 months or 18 months later, he may well decide to sell it. So, which contract does the builder provide? Under the proposed amendment the builder must double guess the farmer's intentions. How does the builder know whether he is dealing with a trader or a consumer under this Bill? Someone who purchases a house for less than $200 000 is a consumer, no matter what. They are not all so sophisticated as Hon Peter Foss would suggest. The proposition is clear, and having made a commitment to recommit the clause in order to exclude the Crown, that is the end of the road.

Hon PETER FOSS: I am disappointed in the attitude of the Parliamentary Secretary. Even if the Government maintained its attitude on corporations I would have thought it would be prepared to accept this amendment without the word "natural", so that at least we exclude traders as opposed to consumers. A piece of consumer legislation should not be protecting people who will not consume the goods. It is a contradiction in terms in a piece of consumer legislation to protect the person who is not a consumer. The difficulties that have been suggested do not happen. They have not happened under the Trade Practices Act or the Fair Trading Act, which Acts apply to home building contracts. In particular, the Trade Practices Act will necessarily continue to apply to home building contracts ahead of any law that we might pass, because being a Commonwealth law it will override any State law. If the Parliamentary Secretary thinks this amendment will create some differences between one lot of persons and another, the differences already exist and will continue to exist. If he thinks it will be difficult to work out whether a person is a consumer or a trader, that difficulty exists right now. Under the Fair Trading Act and the Trade Practices Act a builder must know whether he is dealing with a person who is a consumer or a trader. My amendment proposes to make the legislation more consistent with the Trade Practices Act and the Fair Trading Act when dealing with consumers. The Government is making a distinction, in this case, that does not exist under the other two Acts. Rather than proposing something that is new, the Government is getting out of step with the law as it applies to contracts under those two Acts. I urge members to accept the amendment as I have moved it, but with the deletion of the word "natural". The effect of deleting the word "natural" would be to include both corporate and ordinary individuals, but it would exclude people who are not consumers but in fact traders. I urge that by way of compromise on the Government because I see that as being a very useful way of keeping consistency between the legislation and also doing what we intend doing as a Parliament, which is to protect consumers.

Division

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell I give my vote with the Noes.

Division resulted as follows -

Ayes (11)

Hon George Cash	Hon P.H. Lockyer	Hon R.G. Pike
Hon Max Evans	Hon N.F. Moore	Hon Derrick Tomlinson
Hon Peter Foss	Hon Muriel Patterson	Hon Margaret McAleer
Hon Barry House	Hon P.G. Pendal	*(Teller)*

Noes (16)

Hon J.M. Berinson	Hon Graham Edwards	Hon Mark Nevill
Hon J.M. Brown	Hon John Halden	Hon Sam Piantadosi
Hon T.G. Butler	Hon Tom Helm	Hon Bob Thomas
Hon J.N. Caldwell	Hon B.L. Jones	Hon Fred McKenzie
Hon Cheryl Davenport	Hon Garry Kelly	*(Teller)*
Hon Reg Davies	Hon Murray Montgomery	

Pairs

Hon D.J. Wordsworth	Hon Kay Hallahan
Hon W.N. Stretch	Hon Tom Stephens
Hon E.J. Charlton	Hon Doug Wenn

Amendment thus negatived.

Clause, as amended, put and passed.

Clause 4: Home building work contracts to be in writing etc. -

Hon GEORGE CASH: I move -

Page 5, line 19 - To delete "$2 000" and substitute "$500".

It is very important to read carefully the specific words contained in clause 4 which imposes specific obligations on building contractors. Listed on the Notice Paper is a number of penalties which I intend to amend. In the wording of clause 4, members will note that, while a building contract in excess of $6 000 is required to be in writing, it also requires that all the terms, conditions and provisions of the contract must be in writing, that the date must be shown on the contract and that the builder and the owner or their respective agents must sign the contract. I am not concerned greatly with those provisions. I think they are not unreasonable. However, when one considers the breadth of all the terms and conditions and then notes further in clause 4 that, where any of the requirements stated in subclause (1) are not complied with by the builder - I stress "the builder" - the provisions of clause 19 of the Bill come into effect. Clause 19 is a termination clause and if the provisions set down in clause 4(1) are not carried out to the letter, clause 19 allows the opportunity for the contract to be terminated and the other party to the contract can walk away from the contract.

If the builder does not set out in writing all of the terms and conditions of the contract, a penalty of $2 000 applies. That is unreasonable. That penalty is not consistent with some of the smaller matters that might inadvertently be left out of a contract. For instance, if, following the erection of a retaining wall that cost more than $6 000 it was found that a minor detail had been left out of the contract - for instance, if the consumer was not happy with the colour of the bricks - could the consumer not use the fact that inadvertently the builder had neglected to reduce to writing all of the terms, conditions and provisions of the contract, and terminate the contract under clause 19? If this is to be true consumer legislation, we should not set out to punish the builders; we should try to assist both the building contractor and the consumer.

The Parliamentary Secretary said that one of the aims of the legislation is to assist in reducing costs to consumers. Building contractors who are faced with these very substantial penalties will ensure that additional costs are added to the contract to insure their jobs and themselves against a contract being terminated and a penalty imposed should not all of the conditions be reduced to writing.

I certainly do not defend building contractors in those cases where they deliberately set out to mislead consumers by not including all the terms and conditions in the contract. Most builders are reasonable people and they are ready to carry out a service to their consumers. They are keen on repeat business and they want to protect their good name and build up the goodwill of their business. They do not all set out to mislead their consumers, which is why I question the need for such a severe penalty for a contravention of this clause. Small business is under extreme pressure. While the Parliamentary Secretary argues that most small businesses are making huge profits -

Hon John Halden: That is an exaggeration.

Hon GEORGE CASH: Of course it is and I am glad that the Parliamentary Secretary is prepared to accept that. Earlier he was of the view that building contractors were making huge profits. If he looks at the latest bankruptcy statistics he will soon learn how many people connected with the building contract industry feature in those statistics. The last thing this Parliament should do is attempt to impose additional penalties on small businesses; to do so would make them reluctant to enter into contracts with their consumer customers. More than that, it will cause an additional cost burden to be borne by the consumer. The costs associated with additional conditions that this Parliament imposes on the business community will result in the consumer having to pay in the end. I am more than happy to agree to consumer legislation which protects the consumer. However, we should not have consumer legislation that is punitive in a sense that one party is considerably disadvantaged.

This legislation deals with contracts between $6 000 and $200 000 and I ask the Committee whether it is reasonable for a penalty of $2 000 to be applied to a contract which is worth $6 500. The realistic maximum penalty is $500 and I ask members to support my amendment.

Hon JOHN HALDEN: Hon George Cash said that he agreed with what is in the Bill and then he said that the penalty is too severe. The $2 000 penalty in the Bill is the maximum penalty and it means that the penalty which would be applied to a first offence would most likely be, based on the rule of thumb, 10 per cent of the maximum penalty; that is, $200. If the penalty is amended to $500 it would mean that the penalty for the first offence would be $50. Hon George Cash then had the effrontery to say that the legislation has the potential for the builder to add the cost of the penalty to the contract. What sort of industry is he trying to protect? We are dealing with a reasonable and realistic penalty for not adhering to this legislation. For a first offence it is most unlikely that a builder would be fined $2 000 for not complying with this clause,. Most building contracts will be between $40 000 and $80 000 and not $6 500. Associated works have already been deleted from the legislation.

Hon George Cash: Would a retaining wall costing $6 500 not be included?

Hon JOHN HALDEN: Hon George Cash cannot use that argument, because contracts worth $6 500 have been taken out of the Bill.

This is not a new principle; it is the same principle adopted in the Real Estate and Business Agents Act which was introduced by a conservative Government in 1978. I fail to see the logic of the member's argument that the fine should be less than $2 000 because builders will include that sum in their contracts in case they are apprehended for not complying with the legislation. That is outrageous. If we fine builders $50 for a breach of this clause we may as well hit them with a wet feather! The amendment does not reflect consumer protection. The Leader of the Opposition does not have an argument and I ask members to reject the amendment.

Division

Amendment put and a division called for.

The CHAIRMAN: Before the teller's tell I give my vote with the Noes.

Division resulted as follows -

Ayes (12)

Hon J.N. Caldwell	Hon Murray Montgomery	Hon Derrick Tomlinson
Hon George Cash	Hon N.F. Moore	Hon Margaret McAleer
Hon Max Evans	Hon Muriel Patterson	*(Teller)*
Hon Peter Foss	Hon P.G. Pendal	
Hon P.H. Lockyer	Hon R.G. Pike	

Noes (13)

Hon J.M. Brown	Hon John Halden	Hon Sam Piantadosi
Hon T.G. Butler	Hon Tom Helm	Hon Bob Thomas
Hon Cheryl Davenport	Hon B.L. Jones	Hon Fred McKenzie
Hon Reg Davies	Hon Garry Kelly	*(Teller)*
Hon Graham Edwards	Hon Mark Nevill	

Pairs

Hon D.J. Wordsworth	Hon Kay Hallahan
Hon W.N. Stretch	Hon Tom Stephens
Hon E.J. Charlton	Hon Doug Wenn
Hon Barry House	Hon J.M. Berinson

Amendment thus negatived.

Clause put and passed.

Clause 5: Owner to be given copy of contract -

Hon GEORGE CASH: I move -

Page 6, line 12 - To delete "$10 000" and substitute "$500".

If a builder fails to provide to the owner a copy of the signed contract, the penalty proposed by the Government is $500. However, if the builder does not comply within seven days with a request by the owner for a copy of the contract, the penalty is proposed to be 20 times that amount; that is, $10 000. While an argument can be sustained that a $2 000 penalty is reasonable for a builder not reducing to writing the terms and conditions of the contract, it is absolutely ridiculous to require a builder to suffer a penalty of $10 000 if he does not hand over to the owner within seven days a copy of that contract. That penalty cannot reasonably be sustained; it is five times the penalty for the builder not having written up the contract in the first place. We must recognise the vastness of this State and that at times a period of days may elapse between when the request is received and when the contract can be dispatched to the owner. The Government's proposal is unrealistic, and it will not serve this Parliament any good at all if we move to such inconsistent legislation.

Hon JOHN HALDEN: I am again amazed by the line of argument put by the Leader of the Opposition. The Government is being accused of being heavy handed about what is the most sacrosanct or key element of this legislation: The contract. Hon George Cash failed to mention - and I am not suggesting he did it deliberately, but I will correct him - that the $10 000 penalty, or any portion of it, will be imposed only after seven days has elapsed from the time the owner requests the builder, in writing, for a copy of the contract. If, after going through that reasonable process, the builder still says no, then that is a fairly serious offence.

Hon George Cash: He does not have to say no.

Hon JOHN HALDEN: If the builder does not comply with that request -

Hon George Cash: If it arrives on the ninth day, he will be fined $10 000.

Hon JOHN HALDEN: Bearing in mind that days have elapsed since the signing of the contract, and that seven days have elapsed since the request has been made in writing, I believe there have been plenty of days. There have been at least eight days. That is a fairly reasonable request when one is dealing with a contract, and the penalty ought to be severe for non compliance. The issue is that the penalty would not be $10 000 for a first offence. It is more than likely it would be 10 per cent, or $2 000. This is not an unreasonable penalty for depriving the owner of the copy of a contract for what will probably be the most important purchase of his life. I stand to be corrected, but I believe that the penalties in similar legislation in this country are far in excess of the penalties in this legislation. The penalties in this Bill fall within the medium range. They are not excessive. This request to lower the fine, in what is again an effort to take a feather to the wrists of builders, for what is a most serious offence, is very silly.

Hon DERRICK TOMLINSON: I accept what Hon John Halden has said about the request being in writing and the builder having seven days to comply with that request, but I ask - and this is a serious question, and I hope the Parliamentary Secretary will not treat it flippantly - if the contract is central to the function and purposes of this Bill, why will the penalty for not complying with clause 4 be $2 000, when the penalty for not complying with clause 5(3) will be $10 000, or five times that amount? I would like an explanation of the considerable difference between the two penalties, when the proposition is that it is the contract which is central to the purpose of the Bill.

Hon JOHN HALDEN: A degree of reasonableness is provided in that the Bill states that the builder must provide the contract in a time which is reasonably practical. However, at that

time the consumer still does not have the contract. He then writes and asks for a contract after that reasonable time has elapsed. In order to provide a deadline, clause 5 states that that should be within seven days, which is not harsh or draconian.

Hon Peter Foss: Why is that worse than the breach that costs $2 000?

Hon JOHN HALDEN: Because one does not have the contract. That is the central purpose, as I have said before.

Hon Peter Foss: The contract exists, doesn't it?

Hon JOHN HALDEN: It may exist, but one may not recall what one had agreed to unless the contract is with the consumer.

Hon Peter Foss: One is the real thing, the contract; the other is the piece of paper.

Hon JOHN HALDEN: I understand what Hon Peter Foss is saying, but we must accept that the contract is central and that the provision is reasonable. Members opposite must also realise that the Bill was negotiated with the Master Builders Association and the Housing Industry Association, both of which agreed with the provision.

Hon Peter Foss: So!

Hon JOHN HALDEN: They represent builders. We must be realistic. One should not just say, "So!" The member can put forward an argument and I could say "So!", but I am not that rude, of course. I will try to answer the question.

Hon Derrick Tomlinson: I accept what Hon John Halden has just said, but I want an explanation about why five times the penalty in clause 4(4) is reasonable. The issue is not whether it has been negotiated with Tom, Dick or Harry, but what is reasonable. Why is that reasonable?

Hon Peter Foss interjected.

The CHAIRMAN: Order! I cannot hear what members are saying across the Chamber. If I cannot hear, I am sure Hansard is having a great deal of difficulty. Each person will have an opportunity to ask questions. I will allow questions across the Chamber, but not a question and answer situation.

Hon JOHN HALDEN: In answer to Hon Derrick Tomlinson, I can say only what I have said before: Possession of the contract is crucial and central to the issue. If the contract is not handed over to the consumer after a period, plus seven days, a penalty must be imposed. I cannot explain the matter any clearer than that.

Hon PETER FOSS: I bring a slightly different aspect to the question of penalties. A fundamental issue which we have been addressing all along -

The CHAIRMAN: Order! We are dealing only with penalties in clause 5, we are not discussing a range of penalties.

Hon PETER FOSS: I am referring to the penalties in clause 5 and supporting the proposition that we should delete the penalty of $10 000.

All the penalties should be deleted from the Bill and I will now outline the reasons for that. One of the aims of this legislation is to reduce recourse to the law and the need for people to litigate; it is preferable that they do not even go to the disputes tribunal. I hope the Government will agree with that. It occurs to me that some penalties are what I call self-enforcing. As I mentioned before, by far the best penalty is one where we do not have to go to court to prosecute someone or chase him up; enough incentive is provided in the legislation for people to do what is required of them. A number of those self-enforcing penalties are in this Bill. One is dealt with in the next subclause, which states that if any requirement of subsection (1) is not complied with by the builder the contract may be terminated by the owner in accordance with section 19. That is a far better penalty because it allows the owner to terminate the contract. That is far better than having to persuade people to bring a prosecution. I certainly do not think an owner would bring a prosecution, because that would be far too expensive. He must therefore persuade people to prosecute. If he has the right to terminate the contract he is in a fairly powerful position. That provides a great incentive for builders to comply with the law.

The other penalty used in various places in the Act is to provide that the builder cannot

recover moneys under the contract. That is also self-enforcing and avoids having people go to litigation. It may be said that in some ways those penalties are more draconian than a mere financial penalty because the amount of money ultimately involved can be greater, but at least they avoid the necessity to institute legal proceedings. To allow an owner to unilaterally terminate a contract is a better way of achieving the aim of the Bill, which is to prevent matters continually ending up with prosecutions or in the disputes tribunal.

It would be far better to remove that pecuniary penalty which is imposed after a prosecution and make a greater use of penalties which are self-enforcing by disentitling a builder from recovering his money or allowing the owner to unilaterally end the contract. I support deletion of the penalty and ask the Parliamentary Secretary to consider this point.

Hon JOHN HALDEN: I have considered Hon Peter Foss' suggestion and reject it. The penalty involved would not require great litigation; it would be up to the Registrar of the Builders Registration Board to take the matter on.

Hon GEORGE CASH: I am not satisfied with the answer provided by the Parliamentary Secretary. I get the impression he is not prepared to agree to the amendment. Clause 5(3) provides that the request by the consumer must be met within seven days, but given the earlier argument about the vast size of the State, country people may have some difficulty in complying with that seven day rule.

Therefore, not conceding my argument that a $10 000 penalty is too much, would the Parliamentary Secretary give consideration to amending the seven days to 14 days to make the time more realistic?

Hon JOHN HALDEN: I have great difficulty in accepting that. With today's modern technology, it is possible in almost any place in the State to communicate with someone within seven days. I do not imagine that too many houses will be built in the Great Sandy Desert or anywhere else remote from communication facilities. There is every likelihood that this is a reasonable request but I am not prepared to accede to the Leader of the Opposition's compromise.

Hon DERRICK TOMLINSON: We are talking about a signed copy of a contract which would have to be delivered by mail in some instances. Those of us who have the privilege of living in the city would probably have contracts delivered by hand, in most instances within seven days of the request for a copy of the contract. However, it is conceivable that people living quite a distance from the builder with whom they have contracted to build a house would require delivery of a copy of the contract by mail. In some parts of this State, from the time of posting to the time of receipt, mail deliveries may take up to three weeks. That is not a condemnation or criticism of Australia Post or any of its agents; it is a simple fact of the logistics of delivering mail in this State. Given those simple facts about delivery - and I am sure rural dwellers will be very conscious of this - I suggest to Hon John Halden that the proposition of 14 days is quite a reasonable one.

Hon PETER FOSS: Sometimes building contracts provide for some security to be given by the owner in order to ensure payment to the builder. I do not see anything in the Bill which would prevent that being a term of the contract. If that were the case, stamp duty would probably be payable, and there would be an obligation for the contract to be submitted by the builder to the Commissioner of State Taxation to be stamped. There may be some problems if the contracts are sent by post. Without wishing to criticise the State Taxation Department, the turn around there is not what it used to be.

Hon Garry Kelly interjected.

Hon PETER FOSS: I think the matter is quite beyond the control of that office, and that would seem to pose another problem. I do not know whether the Government wishes to ignore those difficulties and carry on, or whether it wishes to try to do something about it.

Hon J.N. CALDWELL: I believe the request of Hon George Cash is a reasonable one. Being a country person myself, I know that the mailing authorities have difficulty delivering mail on time. We must remember that the penalty provided in this Bill is very substantial. The time limit of seven days within which to supply this information to the owner, especially in country areas, and even in some of the suburban parts of the metropolitan area, would be difficult to comply with. Hon George Cash's request is a reasonable one because of the problems involved in delivery by mail.

Progress

Progress reported and leave given to sit again, on motion by Hon John Halden (Parliamentary Secretary).

JURIES AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon J.M. Berinson (Attorney General), and read a first time.

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [5.45 pm]: I move -

That the Bill be now read a second time.

This Bill contains three issues relating to the selection of jury panels. The first deals with a proposal to reduce from eight to four the number of peremptory challenges available to both the prosecution and the accused. The second refers to a proposal to abolish the prosecution's right to stand aside jurors. The third relates to the need to increase the number of reserve jurors in long criminal trials.

The first two proposals can be discussed together because they are interrelated. Under existing legislation both the Crown Prosecutor and the accused have a peremptory right to challenge eight jurors. In addition to the right of peremptory challenge of jurors, the Crown has the right to have four potential jurors stand aside. No reasons need be given when the right to peremptory challenge or stand aside is exercised. However, both the prosecution and the accused have the right to challenge any juror for cause. There is no limit to the number of potential jurors who may be challenged for cause.

The right of peremptory challenge and to stand aside jurors means that each jury trial must have present at least 32 potential jurors. Statistics maintained by the Sheriff's Office indicate that an average of 46 per cent of jurors who attend for jury service are never used. This is most inconvenient to a large number of the public called upon to render jury service and adds considerably to costs for no real benefit. The maximum number of peremptory challenges and stand asides are rarely used, and the need to provide for that possibility in every trial is wasteful of resources. There is a trend in other jurisdictions towards reducing or eliminating peremptory challenges. For example, in New South Wales the Juries Act was amended in 1988 to reduce the number of peremptory challenges from eight to three for both the Crown and the accused. The Crown has no stand asides. In South Australia the existing provisions allow for both the Crown and the accused to have three peremptory challenges. Again there is no provision for the Crown to stand aside jurors.

The number of peremptory challenges available to the Crown and the accused in Western Australian criminal trials is excessive, having regard to the random process for selection of jurors, the fact that the maximum number of challenges is rarely exercised, and the right to an unlimited number of challenges for cause. A reduction in peremptory challenges would be consistent with changes in other jurisdictions, and would have the benefit of reducing inconvenience to the public and avoiding unnecessary public expense.

The third element of this Bill relates to a proposal to increase the number of reserve jurors from three to six. The concept of reserve jurors was introduced in 1975 to reduce the possibility of a trial being aborted for want of a sufficient number of jurors being present during the whole of the proceedings. The present provisions allow the trial judge a discretion to direct that, in addition to the usual 12 jurors, up to three reserve jurors be empanelled at the commencement of the trial. Those jurors take a modified form of oath, sit with the jury, and follow proceedings should they be required to replace an incapacitated juror during the trial.

The risk in terms of costs, both to the community and to the accused, would be substantial if a trial had to be aborted because of insufficient fit jurors. In recent years more and more long, complex trials are being encountered. Latest indications are that a trial expected next year might last 12 months. Based on experience elsewhere, it is considered that three reserve jurors will be insufficient. It is therefore proposed that the maximum number of reserve jurors be increased from three to six to cover the contingencies of illness and other difficulties over such a long period.

I commend the Bill to the House.

Debate adjourned, on motion by Hon Derrick Tomlinson.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON J.M. BERINSON (North Metropolitan - Leader of the House) [5.50 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Legal Professional Privilege - High Court's Attitude - Attorney General's Statement

HON PETER FOSS (East Metropolitan) [5.51 pm]: During question time the Attorney General referred to me and said that I would be purple in the face when defending legal privilege. It is fair to say that lawyers have always defended legal privilege, mainly for the reason, as he said, because it is not a privilege of a lawyer but of a client. Obviously, anything a lawyer can do for his client he is obliged by the law to do. I do not see it in any way as being unusual that lawyers defend professional privilege.

Hon J.M. Berinson: I did not suggest it was.

The PRESIDENT: Order!

Hon PETER FOSS: The main reason we do it is that we see an advantage to our clients. There is a difference to be seen in this Parliament with regard to legal professional privilege, because we in this Parliament are not taking a partisan view on behalf of any one particular client but on behalf of the State.

Hon J.M. Berinson: Your interest in the outcome is equally for Bond Corporation as for the State Government Insurance Commission?

Hon PETER FOSS: We are taking a view of what is proper for the State, not merely to advance one point of view.

Hon J.M. Berinson: What could be improper in a State instrumentality expecting the same rights as Bond Corporation would expect?

Hon PETER FOSS: I agree entirely. That was one of the interjections the Attorney General did not hear during his statement. It was quite proper for the State Government Insurance Commission to insist upon its privilege - I have never said otherwise. That is not why I rose to speak. I wish to correct a statement made by the Attorney with regard to the High Court's attitude to legal professional privilege. The Attorney said that, whatever else it might have done, the High Court jealously preserved legal professional privilege in this country. I disagree with the Attorney because there has been a quite substantial move by the High Court from the position relating to legal professional privilege as previously existed and as has been enforced by the House of Lords. Rather than my bothering members with all the details as to how this occurred and what the particular difference is, the important point I make is that we have now in Australia what is called the sole purpose test. Under the sole purpose test certain legal documents, in order to receive the benefit of legal professional privilege, must have been brought into existence for the sole purpose of litigation. This is different from the principal purpose test where there can be a number of purposes for which the document was brought into existence, but the principal purpose is that of litigation. It does not take a lot of imagination to work out that a sole purpose test is a more strict test than a principal purpose test.

Hon J.M. Berinson: Are you suggesting that at whatever level the present test is pitched, the SGIC's position in this matter would not have been upheld?

Hon PETER FOSS: I have not seen the document so it is rather hard for me to comment.

Hon J.M. Berinson: You know the nature of the document as a document providing legal advice.

Hon PETER FOSS: I am not canvassing the debate that took place in a motion before the House, but correcting a statement which I tried to correct during the course of question time, but the Attorney did not hear me; that is, the Attorney was wrong in stating that in Australia the High Court - whatever it might have done to release some of the other things that have

been protected - had done nothing to reduce the rights of legal professional privilege. I think the Attorney is wrong in saying that.

Hon J.M. Berinson: Am I correct in understanding that you are correcting me in respect of generalities, but not in respect of the SGIC's particular position?

Hon PETER FOSS: Yes, I am correcting the Attorney in respect of a general statement on the law which he used to bolster a particular statement. I will not be canvassing that statement now. I would take issue on some of the matters but it is not appropriate now. I wish to correct the Attorney on one point: He said that the High Court had protected the position of legal professional privilege. Certainly that privilege still exists in Australia, but it is quite plain that it has been severely cut back by the High Court. It is also fair to admit it was cut back with a great deal of reluctance on the part of lawyers. Nonetheless, certain lawyers, who are members of the High Court, did cut it back and there has been a significant reduction in the protection. That is why it is rather difficult now - even if I were to read this document - to say that this document is protected, simply because unfortunately with the tests the High Court has made, one really needs to know more about the purpose of the document before one can say whether it is protected. It is fair to say that the privilege would apply, and that is one of the reasons the Opposition was so keen to indicate immediately to the SGIC that it would do everything necessary to protect that privilege. We have taken that attitude all the way along. However, I do not dispute that particular point, but correct the Attorney, rather than have members of the opinion that the High Court has adopted an attitude that is not sustained by the legal cases.

Adjournment Debate - TAFE - Federal Control Bid - State Rejection

HON R.G. PIKE (North Metropolitan) [5.56 pm]: The House should not adjourn until it takes note of an article in today's *The Australian* headed "States reject federal bid for TAFE control". I support and compliment the attitude taken by the Minister for Education, Hon Kay Hallahan.

Several Opposition members: Hear, hear!

Hon R.G. PIKE: The article states -

> The West Australian Education Minister, Ms Hallahan said Mr Dawkins should concentrate on tackling unemployment instead of trying to wrest control of TAFE.
>
> The States should continue to fund TAFE with a top-up grant from Canberra.

The function of an Opposition - and I think Lord Brougham was the first to say this - is to oppose, propose and support.

Hon T.G. Butler: There is not too much support.

Hon R.G. PIKE: Very infrequently does the media in this place give any recognition to the complete functions of an Opposition. However, we should properly acknowledge the efforts of a Minister who is going out to fight for the State, for the retention of control. It is a matter that should not pass unremarked, but it is something upon which we should remind ourselves; that is, at the very time this Minister is taking this action, we have a motion of which I gave notice earlier today. I know the Attorney General was in this Chamber a year ago during the Estimates debate when his officer indicated the Federal Government was thinking of taking over the Electoral Act. We now find it is moving to take over absolutely the control of the Electoral Act in this State. Mr Berinson supported the proposition in regard to the Australian Securities Commission - or I thought he did - until three or four months ago when he totally capitulated and gave in.

Hon J.M. Berinson: I did nothing which did not have the support of the Liberal Party.

Hon R.G. PIKE: The Attorney will have his turn in a moment.

Hon J.M. Berinson: How about dealing with the facts for a change?

The PRESIDENT: Order!

Hon R.G. PIKE: The Attorney began, in my view, in a quite proper way by telling the Commonwealth to get photographed in regard to its takeover of the ASC, but in the end he dismally capitulated. That is a matter of record.

Hon J.M. Berinson: Are you saying that you and your party capitulated?

Hon Peter Foss: Part of that was done by David Smith.

Hon R.G. PIKE: All right, we will include David Smith as well.

Hon J.M. Berinson: Should I claim to have been misrepresented?

Hon R.G. PIKE: For the benefit of all: Successive Commonwealth Governments - Liberal or Labor - historically have adopted the attitude of creating a problem within the sovereign rights of States' areas of jurisdiction, usually by withholding funding. When that causes the problems like those TAFE now has, the Commonwealth comes to the States and says, "We will save your bacon, here is the money." However, the quid pro quo, literally the quids in this case, is that the Commonwealth also wants control. Our Minister, Hon Kay Hallahan, is over there today and is, I understand with the support of South Australia - another Labor State - telling the Federal Government that it can go no further; it may not have control. To the degree that any legislation will need to be passed and inflicted upon us, I will be voting against it. It is proper that we acknowledge the fact that the Minister is taking the proper action against her own Federal Labor ministerial colleague who seeks to take control.

In conclusion, as I now speak, to the best of my knowledge from research I am doing the following State Government departments are under threat, immediate and long term, from the Commonwealth Government in the transfer of their powers. I name a few: The Police Department; the Ministry of Education; the Health Department; matters dealing with the environment; most certainly industrial relations; most certainly transport; most certainly road and rail as part of transport; most certainly fisheries; and, of course, control of companies has already gone. The pace with which the Commonwealth is proceeding in this matter is such that, in 20 years' time, there will be no problems between the upper and lower Houses of this Parliament because there will be no Parliament at all. How many members remember when our legal tender had on it "Commonwealth of Australia". That has now gone. How many members remember that the first item of the Commonwealth Constitution refers to the "Commonwealth Government of Australia" and how many now refer to it instead as the Australian Government? How many members remember that the Commonwealth Taxation Department is now called the Australian Taxation Office? By attrition and erosion, and by successive bastardised decisions made by Commonwealth Governments and at various times by a politically appointed High Court, the founding fathers' Constitution and the powers of the sovereign states have been so continuously eroded by both parties, that we wonder today what will happen with TAFE tomorrow, and each time the sovereign state's principles and powers are eroded, we are the worse off. The House must not adjourn without wishing the Minister well and complimenting her for her actions.

Adjournment Debate - Potato Marketing Board - Abolition Support

HON SAM PIANTADOSI (North Metropolitan) [6.03 pm]: I will not keep the House long.

Hon P.G. Pendal: Soccer again?

Hon SAM PIANTADOSI: I will talk about employment tonight, an area in which the member should have some interest. Most members are aware of the problems associated with the Edgell-Birds Eye cannery and the difficulties being experienced by that region because the cannery cannot get enough potatoes. In fact, they are being imported into Western Australia from the Eastern States.

Hon Derrick Tomlinson: At the right price.

Hon SAM PIANTADOSI: Yes, at the right price. I am glad that a member who represents part of an area associated with horticultural production agrees with me. Produce is being brought into this State from the east. I have been telling this House for some years what should happen with the Potato Marketing Board. In fact, over many years I have canvassed the opinions of many members opposite, including the former Opposition spokesperson, Mr Colin Bell, about this matter. They shied away from my proposal to get rid of the Potato Marketing Board. Members opposite talk continually about freeing up the market and breaking down the regulations relating to the wharves and other areas. However, one of the best closed shops in this State is the Potato Marketing Board. Only a select number of people are able to produce potatoes. Members opposite support that closed shop and have done so for many years. This industry which has supported the Manjimup region for many years may close because not enough potatoes can be produced in this State; they must be imported.

Hon Derrick Tomlinson: I don't know whether you have your facts correct.

Hon SAM PIANTADOSI: I will debate the issue with the member publicly and demonstrate to him that my facts are correct. The lack of knowledge by members opposite of the horticultural industry amazes me. They do not have a bloody clue.

Withdrawal of Remark

The PRESIDENT: Order! The member knows that he cannot use that language in this Chamber. I ask him to withdraw it.

Hon SAM PIANTADOSI: I withdraw that remark.

Debate Resumed

Hon SAM PIANTADOSI: Members opposite are ignorant about what is happening in a certain section of the agricultural industry. As far as the majority of members opposite are concerned, agriculture is nothing more than sheep and wheat.

Hon P.G. Pendal: We take a very close interest in horticulture.

Hon SAM PIANTADOSI: The last time Mr Pendal ventured into the environment he ran into problems. He cannot even find locations in the metropolitan area let alone find a place like Manjimup.

I urge members opposite to support the abolition of the Potato Marketing Board. We could lose a company that brings $20 million a year to that area. It is the responsibility of the Opposition to take up this issue to ensure that we do not lose the industry. We should look at ways of retaining it and we should have the guts and determination to get rid of the marketing board and open up potato production to other growers to ensure an ample supply for the cannery. If members opposite are genuinely concerned about retaining jobs and industry in country areas, this is a prime opportunity for them to act. Support for this industry will ensure jobs for the area and incomes for more people than just a select few who are able to grow potatoes. Mr Tomlinson could not grow potatoes even if he wanted to; he would not be allowed. I remember only too well the same argument of gloom and doom expressed by members opposite some years ago when the onion board was abolished. You, Mr President, remember that also. Support for this cannery and the abolition of the board will ensure growth for the Manjimup area and jobs for the local people. I urge members opposite to take up the challenge and get rid of this closed shop.

Adjournment Debate - Legal Professional Privilege - High Court's Attitude

HON J.M. BERINSON (North Metropolitan - Attorney General) [6.09 pm]: Houdini has nothing on Hon Peter Foss. Give him any situation and he can be guaranteed to slide out of it with the greatest of ease.

Hon Peter Foss: Not as well as you.

Hon P.G. Pendal: He has been around for a long time.

Hon J.M. BERINSON: I am paying the member a compliment. I am suggesting that he is able to slide out of any situation.

Several members interjected.

The PRESIDENT: Order! I ask the Attorney General to ignore those members who are interjecting and to address his remarks to the Chair or I will take the necessary action.

Hon J.M. BERINSON: I will continue with my offer of this tribute to Hon Peter Foss by saying that he is able to slide out of any situation with the greatest aplomb and self-assurance. Mr President, you will know that I am far too modest to attempt to compete with Hon Peter Foss in any discussion of the law. He, after all, has the advantage of a quarter of a century more of practical legal experience than I have and he also has the advantage of a vast and immensely superior intellect, which cannot be measured in the same way as his years of practice but which he constantly assures us that he has. In those circumstances I do nothing more than indicate in the most tentative way that Hon Peter Foss' contribution to the adjournment debate really could do with some further consideration. I put to Hon Peter Foss, without being dogmatic about it and without even being certain for that matter, that raising the sole purpose test does not allow the Opposition to move away from the assault it has made on the important right to legal professional privilege.

Hon P.G. Pendal: Absolute nonsense!

Hon J.M. BERINSON: As I understand the position, and whether or not the High Court has moved away from any earlier position, the High Court still recognises two distinct and important types of document which are entitled to legal professional privilege. One is the sort of document which is brought into existence to enable legal advice to be given. The second refers, as I understand it, to documents brought into existence for the purpose of litigation. With the second category there might well be room for argument as to whether there is more than one purpose to a document. With the first category, however, it is either a document to provide legal advice or it is not. If it is a document to provide legal advice, it would appear to me that the sole purpose test, however it is to be applied, would support the legal professional privilege of that document.

Relating back to the particular position that we faced earlier this week, and without getting into any discussion on the merits of the motion -

Hon P.G. Pendal: You have been reflecting on that for a week now. Why have you changed your mind about it now?

Hon J.M. BERINSON: When I say I do not reflect on the merits of the motion, I mean that I do not discuss the merits of the motion. If the member is asking me whether I hold the terms of that motion in contempt, the answer is yes. In that sense I am reflecting on it, but I do not want to reflect on it now. The place for that was in the debate and we are not talking about that; we are talking about the applicability of the current High Court view of the relevance of legal professional privilege. I think I can complete my comments quite quickly.

Hon George Cash: Mr Berinson, you are a good pharmacist, but you lack a little in law.

Hon J.M. BERINSON: That is Hon George Cash's judgment and I am properly humbled by it to the extent that his judgment is worth anything.

Hon P.G. Pendal: One out of 10!

Several members interjected.

Hon J.M. BERINSON: I say again, since I have been somewhat diverted from my original track, that I do not intend to discuss the merits of the motion, but in the context of a discussion -

Hon Peter Foss interjected.

The PRESIDENT: Order! Order! If Hon Peter Foss interjects once more I will take some action against him. He is defying the Chair and he seems to have the idea that the rules do not apply to him. The same applies to Hon Phillip Pendal. Both members are sailing close to the wind, as is Hon Tom Butler.

Hon J.M. BERINSON: That seems to leave Hon Sam Piantadosi and Hon Fred McKenzie in the quarterfinals.

Mr President, I am sorry to have to say it for the third time, but it is important to get the argument into some sort of sequence. I have no current interest or intention to discuss the merits of the motion that was before the House, but the least that can be asked is: Does the motion refer to documents which are clearly caught by the current High Court standards, whatever they are, on legal professional privilege attaching to documents brought into existence for the purpose of providing legal advice? The answer to that question comes from the opening words of the motion, which calls for the tabling of papers relevant to "the legal opinion given to the State Government Insurance Commission". That was what the whole debate was about: It was about the legal opinion given to the State Government Insurance Commission. Legal advice is one of the two distinctive categories which attract the continued protection of legal professional privilege. Whether the High Court has moved from its position in other respects is totally irrelevant to the discussions in this House. The question is: Are we dealing with the sort of paper which under current standards would attract legal professional privilege?

I conclude by answering the question in this way: I am not in a position to say so because I do not have the paper and, like Hon Peter Foss, I have not read it. If it is not a legal opinion it should not have been tabled, because that is all that the motion calls for and is the basis for reference to any other document. If there is not a document with legal opinion there cannot

be any other document relevant to it and nothing at all should have been tabled. I am not relying on my own view of that paper or on its connection with legal professional privilege; I am relying on the SGIC's concern, which is directly based, as Hon George Cash and Hon Peter Foss well know, from direct contact with the SGIC. It is based on the SGIC's concern based, in turn, on unqualified legal advice by the private legal advisers of the SGIC. That is the position in a nutshell. That is all we have been considering, and peripheral discussion about the movements in High Court standards really are not helpful to the very serious issue which we have had to deal with in this House this week.

Question put and passed.

House adjourned at 6.19 pm

QUESTIONS ON NOTICE

ATMOSPHERE - LEAD LEVELS

935. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

(1) Is it correct that only three times in the past nine years, atmospheric lead levels in the Perth inner city area have been recorded below the National Health and Medical Research Council/Australian Environmental Council recommended air quality guideline for atmospheric lead and the World Health Organisation standard?

(2) Is it correct that high lead levels have been linked with such adverse effects as birth defects, learning difficulties, hyperactivity and pancreatic and liver damage?

(3) If so, what action is being taken to address this serious matter?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) Yes, between 1982 and 1990 as detailed in the EPA report published in June this year.

(2) High - above 25μ.g.dL-1 - blood lead levels have been associated with adverse effects. Atmospheric lead, however, contributes only a small proportion - about 10 per cent - of the blood lead level.

(3) Following release of the EPA report in June, I asked the EPA to meet with BP to arrange a reduction in lead levels in WA leaded petrol from 0.8 grams per litre to 0.6g/L immediately and to 0.4g/L - in line with other States - by 1996. This strategy will be confirmed in regulations under the Environmental Protection Act and will ensure NHMRC/ANZEC standards are met.

CONSERVATION AND LAND MANAGEMENT DEPARTMENT - WILDLIFE RESEARCH DIVISION
"Annual Waterfowl Counts in South-Western Australia 1988-89" Report

939. Hon MURIEL PATTERSON to the Minister for Education representing the Minister for the Environment:

(1) Did the wildlife research division of the Department of Conservation and Land Management provide any input into technical report No 25, "Annual Waterfowl Counts in South-Western Australia 1988-89"?

(2) If so, what input was provided?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) Yes.

(2) The 1988-89 waterfowl counts in south Western Australia were a joint program between the Department of Conservation and Land Management and the Royal Australian Ornithologists Union. A CALM senior research scientist was the senior author of technical report No 25, and the other three authors were an RAOU project officer and two CALM technical staff.

ELLENBROOK CREEK - HOUSING DEVELOPMENT
Rare Fauna and Flora

950. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

(1) Is the Minister aware that a large housing development, involving Homeswest,

being considered for the Ellenbrook area in the Upper Swan district is likely to endanger rare fauna and flora species?

(2) Has any environmental study been done on such a proposal?

(3) Is the Minister aware that residents of the area would like to see this tract of land become a national park?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(3)

The Environmental Protection Authority had advised me that the Ellenbrook development is subject to a public environmental review requirement. I understand that the development is currently being prepared. During the assessment of the proposal environmental issues, including those of concern to the local community, will be evaluated prior to advice being given to the Government.

ELLENBROOK CREEK - POLLUTION

952. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

(1) Is the Ellenbrook Creek which flows through Upper Swan and the Pearce Air Base considered to be polluted?

(2) If so, what is the source of the pollution?

(3) If the status of the creek is unknown, will the Minister carry out an investigation to determine the cause of river bank staining, apparently by a coffee-type substance from the water, especially in the area near the junction of the creek and the Swan River?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) No; however, Ellenbrook contributes a relatively high level of nutrients, particularly phosphorus to the Swan River.

(2) Nutrients come from a wide range of rural and urban land use practices.

(3) A dark coffee or tea like colour in the streams and rivers of the south west of Western Australia is very common. It is caused by decaying organic matter and tannin, and is a natural process. The Swan River Trust is conducting investigations collaboratively with the Shire of Swan to determine the nutrient status of Ellenbrook and identify any sources.

MT MAGNET BATTERY - DEMOLITION PROPOSAL

963. Hon N.F. MOORE to Hon Tom Stephens representing the Minister for State Development:

(1) Is it proposed to demolish the Mt Magnet Battery?

(2) If so, why?

(3) Has any consideration been given to relocating the battery as part of the town's museum and, if not, will such consideration be given?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1)-(3)

As part of the realisation of the assets of the former State Battery Service, the Mt Magnet battery was sold several years ago to the mining company Hill 50

Gold Mine NL, a subsidiary of Western Mining Corporation, and the future of the battery is in the hands of the company.

RUBBER TREES - NORTH WEST
Commercial Growing Inquiry

980. Hon P.G. PENDAL to the Minister for Police representing the Minister for Agriculture:

(1) Has the possibility of growing rubber trees for commercial purposes in the north west of Western Australia ever been canvassed?

(2) If so, with what result?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following response -

(1) Yes. Possibilities of rubber production from Hevea rubber trees and other latex producing crops such as guayule have been canvassed.

(2) Hevea rubber trees are considered unsuitable from the viewpoint of climatic adaptation. Other latex plants such as guayule have been extensively examined and, although technically suitable in some locations in northern Australia, to date economics have not justified their development.

DOGS - BARKING COMPLAINTS
Environmental Protection Act Amendments

982. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

With reference to the Environmental Protection Act -

(1) Are any amendments proposed, to regulations under the Act, relating to restrictions on barking dogs which become noise nuisances for nearby neighbours?

(2) If so, is it being considered that, if three complaints are received regarding a particular animal's prolonged barking, that action could be taken, for example, by the local authority?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) No.

(2) Section 79 of the Environmental Protection Act already makes adequate provision.

SHARK BAY - WORLD HERITAGE LISTING

983. Hon P.G. PENDAL to the Minister for Education representing the Minister for Environment:

(1) Is the Minister aware whether the Commonwealth Government still intends to nominate Shark Bay for World Heritage Listing?

(2) Does the Minister know the Commonwealth's nomination timetable and its subsequent legislative timetable?

(3) Does the Minister acknowledge that by nominating the area under present Commonwealth arrangements, the potential for the area to pass from State to Commonwealth control increases substantially?

(4) Would the Minister consider a joint Government/Opposition proposal under which the Commonwealth law would be repealed and by which such nominations would proceed under existing Western Australian law?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(2)

The nomination is with the Bureau of the World Heritage Committee and a decision is expected in December. I understand that drafting of the Commonwealth's complementary legislation is proceeding and it is expected to come before Federal Parliament next year.

(3)-(4)

No.

PORT HEDLAND DUST ABATEMENT COMMITTEE - ESTABLISHMENT

968. Hon N.F. MOORE to the Minister for Education representing the Minister for Environment:

(1) When was the Port Hedland dust abatement committee formed?

(2) Was there a public launching of the committee and if so -

(a) what was the cost of the launch and where did the funds come from;

(b) who officiated at the launch; and

(c) which organisations were represented at the launch?

(3) Who are the members of the dust abatement committee and who is the Chairman?

(4) How many times has the committee met since it was established?

(5) What recommendations has the committee made with respect to dust abatement in Port Hedland?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) 21 November 1989.

(2) As far as I am aware the committee was launched at a meeting convened by the Mayor of Port Hedland and attended by -

Mr J. Groves - Mt Newman Mining
Mr J. Lawless - Mt Newman Mining
Mr P. Rooney - Mt Newman Mining
Mr B. Cunning - Leslie Salt
Mr J. Rinkens - LEAF
Mr D. Crowe - Port Traders Association
Ms J. Napier - CALM
Mr M. Knee - Mines Department
Mr P. Garland - Mines Department
Mr D. Sykes - EPA
Mr D. Sandison - Port Hedland Port Authority
Mr P. Maitland - Port Hedland Port Authority
Mr L. Graham, MLA - Member for Pilbara
Cr R. Chapple - Councillor Town of Port Hedland
Cr A. Eggleston - Councillor Town of Port Hedland
Cr J. Merrin - Mayor Town of Port Hedland
Cr I Duggan - Councillor Town of Port Hedland
Mr T. O'Connor - Town Clerk Town of Port Hedland
Mr R. Hadlow - Secretary Town of Port Hedland
Mr J. Randall - Principal Health Surveyor

I understand that the costs associated with the launch were borne by the Port Hedland Council.

(3) Representatives of -

Mines Department
Port Hedland Port Authority
Hedland Port Traders Association
CALM
Leslie Salt Company
Environmental Protection Authority
Department of Agriculture
Mining Union Association
Local Environmental Affinity Group
Mt Newman Mining Company
Port Hedland Town Council
Chairman - Mr Larry Graham MLA

(4) Two - 21 November 1989 and 8 June 1990.

(5) I understand that the meeting of 8 June 1990 made several resolutions concerning tree planting, grant application and dust monitoring, however, no correspondence has been received from the committee on these matters.

ENVIRONMENTAL PROTECTION ACT - AMENDMENTS
Tyres Dumping Ban

1013. Hon GEORGE CASH to the Minister for Education representing the Minister for Environment:

When does the Government intend introducing legislation to amend the Environmental Protection Act to ban dumping of used vehicle tyres as announced in the *Kalamunda Reporter* dated 1 October 1991?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

Regulations were gazetted 30 August 1991.

DROUGHT - LOCAL GOVERNMENT DECLARATIONS
Government Assistance

1014. Hon MARGARET McALEER to the Minister for Police representing the Minister for Agriculture:

(1) How many shire councils have applied to be drought declared and how many indications has the Minister received that other shire councils may need to apply?

(2) Which shire areas are affected in both categories mentioned in (1) above?

(3) Under the current guidelines, what assistance will be given to farmers in drought declared areas?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following response -

(1)-(2) The Shire of Cue applied to be drought declared. The Shires of Mukinbudin, Mt Marshall, Perenjori and Ravensthorpe have advised of their intentions to seek drought declaration for part or all of their areas.

(3) The Commonwealth and the State are currently negotiating assistance arrangements to deal with drought and other risks of farm enterprises.

INDONESIA - MINISTERIAL AND BARDI TRIBE VISIT

1027. Hon GEORGE CASH to the Minister for Police representing the Minister for Agriculture:

(1) What was the purpose of the Minister's recent visit with members of the Bardi tribe to Indonesia?

(2) What was achieved by the visit to Indonesia?

(3) Will the visit to Indonesia reduce the number of Indonesian fishermen taking trochus shell from Australian waters?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following response -

(1) The basis of the recent visit was a cultural exchange between the Bardi people of One Arm Point and the Rotinesi fishermen of Indonesia.

(2) Achievements included an improved understanding between the groups regarding significant social and economic issues, and commitments from village fishermen to aid in the deterrence of other Indonesian fishermen heading to Australia.

(3) The visit represents a preliminary achievement on which further steps to reduce numbers can be based. Sound foundations for future contact and greater understanding have been set.

DAIRY INDUSTRY - DEREGULATION
Milk Vendors' Association Submission

1028. Hon GEORGE CASH to the Minister for Police representing the Minister for Agriculture:

(1) What is the current status of the Government's intention to deregulate the milk industry in Western Australia?

(2) Did the Minister receive a submission from the Milk Vendors' Association outlining the difficulties that milk vendors would suffer should the industry be deregulated?

(3) Has the Minister met with representatives of the Milk Vendors' Association since receiving the submission?

(4) If not, why not?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following response -

(1) Following discussions with all industry sectors and the Dairy Industry Authority, a paper entitled "Proposed Strategies for Reducing Regulatory Impediments in the Western Australia Dairy Industry" and dated 5 July 1990 was released to all interested parties.

(2)-(3) Yes.

(4) Not applicable.

THYLACINES - RESEARCH

1029. Hon GEORGE CASH to the Minister for Police representing the Minister for Agriculture:

(1) Is the Minister aware of the article titled "The Thylacine: A Case for Current Existence on Mainland Australia"?

(2) What research, if any, is directed to the existence of thylacines in Western Australia and how successful has the research been?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following response -

(1) No.

(2) Research by the Agriculture Protection Board has been confined to investigating reports of thylacine sightings over many years. No evidence of their actual existence has been found.

QUESTIONS WITHOUT NOTICE

PERMANENT BUILDING SOCIETY - REPORT TABLING
Copies Request

608. Hon GEORGE CASH to the Attorney General:

I refer to papers No 735A and B tabled by the Attorney General earlier in this day's sitting in respect of the Permanent Building Society. Will he, as a courtesy, provide a copy of the report to me and to the leader of the National Party? It is a voluminous report. Other members are keen to view the tabled paper and some difficulty is being caused to the Opposition by its not having its own copy of the report.

Hon J.M. BERINSON replied:

The reports are being duplicated by the administrator. There would be no difficulty in providing a copy of volume 1 of the report to Mr Cash and Mr Charlton. Volume 2 presents some production difficulties because it has folded papers, I am told. If volume 1 is sufficient I will arrange for that to be made available tomorrow.

Hon George Cash: Thank you.

AUSTRALIAN SECURITIES COMMISSION - COOPERATIVE SCHEME LAWS
Formal Agreement - Ministerial Council

609. Hon PETER FOSS to the Attorney General:

I refer the Attorney General to the formal agreement leading to the cooperative scheme laws and the Ministerial Council under that formal agreement. With the introduction of the Australian Securities Commission, what has happened to that agreement and to that Ministerial Council?

Hon J.M. BERINSON replied:

I hesitate a little on this because, by coincidence, most of the work that was done at Ministerial Council meetings on this matter was done in my absence. I was represented by Mr David Smith. My understanding of the position, however, is that both the previous Ministerial Council and the previous formal agreement have gone by the board and are replaced by the current arrangements in connection with the ASC. That, of course, still has a Ministerial Council, but it is a Ministerial Council where the role of State representatives is very much reduced. If Hon Peter Foss wants any elaboration on that I may be able to help now. However, if not, I will secure a response from the department.

AUSTRALIAN SECURITIES COMMISSION - COOPERATIVE SCHEME LAWS
Formal Agreement - Ministerial Council

610. Hon PETER FOSS to the Attorney General:

My reason for asking the question is that, pursuant to the terms of the previous cooperative scheme laws, extensions of time for bringing prosecutions after five years has to be given by the Ministerial Council. I have been unable to ascertain any substitution for the extension of these periods of time. Has the formal agreement been abrogated and has the Ministerial Council been formally abolished?

Hon J.M. BERINSON replied:

I am reasonably confident in saying that the previous Ministerial Council no longer exists. As to the significance of that in respect of the ability on the part of any person or body to extend time, I am happy to have inquiries made on that and respond to the member direct. Mr Foss will be aware that a number of remaining functions of the National Companies and Securities Commission - by which I mean incomplete activities of the NCSC - have been transferred to the ASC for further action. I do not know whether the capacity to extend time is associated with any of those transfer measures. However, I am prepared to take that on notice and provide a more detailed reply subsequently.

POLICE - LEAVE REPLACEMENTS

611. Hon E.J. CHARLTON to the Minister for Police:

As a consequence of widespread dissatisfaction by a number of country shires about the non-replacement of police during leave periods and the drop-off in police numbers in country police stations, when was the relevant initiative put in place and how long is it likely to last?

Hon GRAHAM EDWARDS replied:

I ask that the question be placed on notice and I will obtain a full answer. The member may be aware that a similar question was asked recently and some assumptions that were made were found to be quite incorrect.

QUESTIONS WITHOUT NOTICE 588, 589 - SOLICITOR GENERAL'S ADVICE

Written or Verbal Advice

612. Hon PETER FOSS to the Attorney General:

I refer the Attorney General to questions without notice 588 and 589 of 13 September 1990, a copy of which I have sent to him. Will the Attorney General tell the House whether the advice of the Solicitor General referred to in those answers was written or verbal advice?

Hon J.M. BERINSON replied:

I do not know. I was not in the House when Mr Foss spoke yesterday on the motion to table papers. In other circumstances - by which I mean had other members been speaking - I might have suggested that I was sorry that I was out of the House while the member was speaking, but I cannot honestly go that far in this case.

Hon J.M. Brown: I was here.

Hon J.M. BERINSON: Mr Brown says that he was present at the time and he is sorry that he was present. Despite my absence I have noted the comment by Mr Foss in the debate last night. I had only reached that point in the *Hansard* shortly before question time and I have not yet had an opportunity to have an appropriate search made in my department. I will do that at the first opportunity. I believe that it is most unlikely that there is any separate material in my office, whether from the Solicitor General or otherwise, that is relevant to the original motion to produce. However, having had the possibility raised by Mr Foss, I will ensure that it is thoroughly explored.

PERMANENT BUILDING SOCIETY - LIQUIDATION

Withdrawable Shareholders and Depositors

613. Hon GEORGE CASH to the Attorney General:

I refer to his answer to question without notice No 602 asked by Hon Max Evans yesterday concerning the Permanent Building Society. Will the Attorney General explain to the House the justification for the Government's

considering treating withdrawable shareholders and depositors of the Permanent Building Society in a similar manner in the distribution of funds in the case of a liquidation?

Hon J.M. BERINSON replied:

I thought I covered this matter very fully yesterday. In fact, I had the impression that Hon George Cash was getting impatient with me because of the time taken to explore the various factors. Rather than go through the whole of the answer again - I notice it takes the best part of a full page of *Hansard* - I ask the Leader of the Opposition whether there is any particular aspect of my reply yesterday that he would like me to elaborate on. Obviously I am prepared to go through the whole situation again, but I might be missing the point of the question in that way.

PERMANENT BUILDING SOCIETY - LIQUIDATION
Withdrawable Shareholders and Depositors

614. Hon GEORGE CASH to the Attorney General:

How can the Attorney General justify any change in the ranking between the withdrawable shareholders and the depositors in respect of the distribution of funds in the case of a liquidation? The Attorney General may argue that he has given an answer to that question, but I cannot see where it is given and I ask for a simple explanation.

Hon J.M. BERINSON replied:

I will not attempt to cover all the ground covered yesterday, but will focus on this one aspect and perhaps summarise, more clearly than I did yesterday, what the position is. It can best be put by saying that the practical difference between depositors and withdrawable shareholders is really one of terminology alone. That is to say, withdrawable shareholders have no right to dividends such as ordinary shareholders have. Conversely, they do have a right to interest on their deposits which ordinary shareholders do not have. In both of those respects the characteristics of the withdrawable shareholders are absolutely on all fours with the position of depositors.

If I remember correctly I pointed to the historical background of this situation and indicated that the difference in terminology goes back to the early days of one or other, and perhaps both, of the two societies which were eventually amalgamated to constitute the Permanent Building Society. The early rules required that depositors take out withdrawable shares and their deposits were issued in that form. The continued existence of withdrawable shareholders is really a hangover from that early period and the view of the Government is that given the identical position, for all practical purposes, of people who have invested as depositors and people who have invested as withdrawable shareholders the position is the same: They should be treated in the same way in the event that the society goes into liquidation.

In case I did not make the point yesterday I add that this question only arises in the case of liquidation. If, as we continue to hope, the administrator is able to sell the society in a way that avoids liquidation, depositors and withdrawable shareholders would be in the same position in any event and both of them, equally, would be in a different position from non-withdrawable shareholders.

TOWED AGRICULTURAL IMPLEMENTS REGULATIONS - CHANGES
Country Police Stations Notification

615. Hon MURRAY MONTGOMERY to the Minister for Police:

As 1 November is only a couple of weeks away has the Minister taken the necessary steps to ensure that all country police stations in the agricultural and south west areas of the State have been notified of the changes to the towing of agricultural implements regulations so that the interpretation of the regulations is carried out in a uniform manner?

Hon GRAHAM EDWARDS replied:

I thank the member for the question. I am sorry he did not preface his question by giving thanks to the police for the immense amount of work they have done in trying, with the various groups in the community, to have the regulations addressed in a very positive way. I am a little disappointed that he did not recognise the very positive attitude they have exhibited in the way they have dealt with this matter.

Already some very strong commitments have been made about how the police will handle the matter of regulations and I think that should be recognised by members. It has been a very exhaustive process and one which has been proceeding for some time. I hope that at the end of the consultative process the interests of rural groups and road safety have been best addressed. I will ascertain exactly what steps have been taken -

The PRESIDENT: Order!

Hon GRAHAM EDWARDS: Mr President, I was referring to the introduction of the towing of agricultural implements regulations. I will formally convey to the member, at a subsequent time, what steps are in place.

The PRESIDENT: I was not calling the Minister to order: I was calling the members who are carrying on their audible conversations to order.

PERMANENT BUILDING SOCIETY - WITHDRAWABLE SHARES
Conflict of Statements

616. Hon MAX EVANS to the Attorney General:

The report which was tabled today states that in October 1988 approximately $12 million was raised in fixed capital by way of issuing non-withdrawable and non-voting shares. In the statement the Attorney General made about changing the legislation in regard to the withdrawing of deposits he referred to withdrawable capital of $10 million. Is the Attorney General aware that there is a conflict between the statement he made about $10 million withdrawable shares and the statement in the report that withdrawable shares total $12 million?

Hon J.M. BERINSON replied:

The report, as members will know, goes to about 500 pages. I did read quite a bit of it, but I must confess that I flicked over the parts that consisted of the accountants' summaries of the position. They are very difficult for me to follow and certainly too difficult for me to attempt to comment on. I am happy to take up Mr Evans' suggestion and to have people who are better qualified than I pursue any relevant matters.

BICYCLE HELMETS - LEGISLATION
Exemptions

617. Hon SAM PIANTADOSI to the Minister for Sport and Recreation :

(1) When will legislation to make compulsory the wearing of bicycle helmets be introduced?

(2) What exemptions, if any, will be allowed for?

Hon GRAHAM EDWARDS replied:

I thank the member for his question and for some notice of it. I know it is a matter that occasions a fair amount of interest.

(1) I am pleased to say that the legislation will be introduced into the House next Tuesday; and, as has previously been announced, it is planned to have that legislation come into effect from 1 January next year. That is, of course, dependent upon its passage through the Parliament.

(2) Exemptions have been allowed for in the following circumstances -

(a) Where certain medical conditions as determined by the Police Department's Medical Officer apply.

(b) Where there is membership of religious or cultural groups where the wearing of particular headdress makes the wearing of helmets impossible or very difficult.

(c) For postal officers while they are delivering mail. This exemption will not include postal officers commuting to and from work. It is planned to review this situation after two years.

(d) In the case of bicycle hire businesses, where we are planning for a 12 month exemption from this provision.

STATE GOVERNMENT INSURANCE COMMISSION - LEGAL OPINION TABLING

Leader of the Opposition's Comments

618. Hon FRED McKENZIE to the Attorney General:

Is the Attorney General aware that in a radio interview earlier today, the Leader of the Opposition, Hon George Cash, said, referring to yesterday's debate on the tabling of the State Government Insurance Commission's legal opinion: "We will continue to ask and demand that documents be produced, if it is that the Government wants to continue with what it has done in the past; that is, to attempt to conceal from the community in Western Australia just exactly what happened as a result of WA Inc." Can the Attorney comment on that statement?

Hon J.M. BERINSON replied:

Yes I am aware of that statement, and yes I am able to comment on it. That statement made today by the Leader of the Opposition was as misleading and improper as his whole performance yesterday. Mr Cash knows as well as I do that there is no possible question of concealment in this matter, and certainly no question of concealment by the Government. Mr Cash knows as well as I do that the Government has responded fully and promptly to innumerable requests for documents, and it is not exaggerating the position to say that these documents have been provided to the House by the barrow load. What we have here is not concealment but the protection of the SGIC's legal professional privilege; or, to put it another way, the protection of the important, basic and fundamental right of the SGIC to ensure that its position in the current major litigation in which it is involved is not prejudiced.

Hon P.G. Pendal: It is a pity you did not worry about the SGIC before you lost about $800 million.

Hon J.M. BERINSON: I know that legal professional privilege has a sort of abstract or esoteric ring about it. I was astonished earlier today to hear that someone thought it was a privilege for the protection of lawyers. It is nothing of the sort, of course. In different circumstances Mr Foss, in his professional capacity, would go blue in the face before he would concede that there was any possible circumstance where legal professional privilege could be overridden. It is a fundamental legal right, and it is basic to the security of every individual in our society. Without that right, no individual, firm or company could go to a lawyer, discuss the position, receive frank advice, and have that discussion and receive that advice with any assurance that the matters that were being discussed would not at any time become public property. A legal system cannot operate on that basis. That is among the many reasons that despite a tendency by our courts, particularly the High Court, to gradually erode a number of other established privileges, they remain rock solid on the question of legal professional privilege. It is not a privilege for lawyers, and no more is it a privilege for Governments. It is a

privilege for the legal rights of everyone in this State; and anyone who wants to undermine that can do that only at the cost of a basic and essential right of us all.

In respect of the SGIC specifically, we are not dealing with any abstract, esoteric, airy fairy question but with the hard core of a situation where, as we all know, the SGIC is engaged in litigation involving $150 million and more, and where it is entitled to protect its position to the maximum extent, and certainly to the extent that its legal advisers indicate is necessary. I add that neither I nor the Crown Law Department are involved in any way with the advice to the SGIC which has been widely referred to. The SGIC takes its advice from its own private legal advisers, and their view has been expressed in unqualified terms; namely, that the SGIC should resist any voluntary surrender or waiver, whether partial or whole, of the legal professional privilege attached to the document referred to in the motion before the House.

Another important issue to emphasise is that the objection to the production of these documents was not an objection by the Government. I am staggered that the media as late as this afternoon could still be asking questions in Mr Cash's terms; that is, in terms of the Government concealing documents. We have responded, as I have said, to every request for a document, and we have not objected to the production of this document. The objection has come from the SGIC; and that was a very proper and responsible position for the SGIC to take. It only remains to be said that no-one has to take my word on it. The Liberal Party, the National Party, and Hon Reg Davies, as an Independent in this House, were all approached separately by the SGIC, at the absolute, independent initiative of the SGIC, to get them to understand what is the basis of the SGIC's objection to the production of the document. It has nothing to do with Government objections; it therefore can have nothing to do with the peculiar references to -

Hon P.G. Pendal: It has everything to do with people not believing you any more.

The PRESIDENT: Order! I have allowed the Attorney General to proceed in the hope that I am wrong in the deduction that I have made that he is debating the subject matter of a motion that is on the Notice Paper. I hope he will tell me it is entirely in relation to answering the question asked by Hon Fred McKenzie. However, I am finding it difficult to associate what he is saying with the question asked by Hon Fred McKenzie.

Hon J.M. BERINSON: The association is not all that difficult to draw. To put it another way, the dissociation from yesterday's motion is not all that difficult to draw. That motion concerned the position of the Government. The point I am making is that, on the question of confidentiality, we are not dealing with the Government's position but the position of the State Government Insurance Commission. The reluctance to produce that document did not stem from any wish by the Government to conceal anything at all. That would be totally inconsistent with its conduct over at least two years now regarding the production of documents. The matter had nothing to do with any wish for concealment by the Government. It is important to add, as this is the only possibility to which Hon George Cash could be referring on the radio today in his reference to concealment, that it had nothing to do with a wish for concealment by the SGIC board for its own sake. Nothing could be more absurd than that. I should at least have Hon George Cash's confirmation, given his knowledge of the SGIC board which is now in place.

Hon Peter Foss: It is a very good board.

Hon J.M. BERINSON: I am thankful for Hon Peter Foss' confirmation. As I was saying, I should at least have Hon George Cash's confirmation of the Opposition's recognition that this attack, whatever its intentions in attacking the Government, has constituted an attack on the SGIC, because that is from where the resistance to the tabling of this document came. I reiterate that that resistance was absolutely proper and responsible and I go so far as to say that

any failure to have resisted as far as it did would have been irresponsible. That is the position we are facing. It was a proper and responsible wish by the SGIC to ensure that its legal interests in this litigation were not jeopardised. It hardly needs to be added that, if the SGIC's interests are jeopardised, the interests of the people of this State generally are jeopardised since our interests are in common.

Hon P.G. Pendal: Since your Government lost a billion dollars.

The PRESIDENT: Order!