Legislative Assembly

Tuesday, 27 August 1991

THE SPEAKER (Mr Michael Barnett) took the Chair at 2.00 pm, and read prayers.

PETITION - HARVEY TOWNSITE

Reticulated Sewerage Connection

MR BRADSHAW (Wellington) [2.02 pm]: I have a petition expressed in the following terms -

> To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned demand that the remaining section of the Harvey Townsite be connected to a reticulated sewer system.
>
> Along with houses, this area holds a number of flats, businesses and the Harvey Hotel, which would benefit from the area being on reticulated sewerage.
>
> As this is the only section of the Harvey Townsite not connected it seems logical to complete the system to benefit the owners and residents of this area.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

I have an interest in that area as I own some property.

The petition bears 104 signatures and I certify that it conforms to the Standing Orders of the Legislative Assembly.

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

[See petition No 85.]

PETITION - DUCK SHOOTING

Prohibition Legislation Support

MRS WATKINS (Wanneroo) [2.05 pm]: I have a petition couched in the following terms -

> To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned petitioners of Western Australia and residents, urge you not to declare Duck Shooting Seasons and to legislate for the prohibition of any future Duck Shooting in this State because of the cruelty inflicted on our wildlife; the loss of significant waterbird breeding habitat; the pollution of the wetlands from lead pellets, cartridges and other rubbish, and community disapproval of recreational shooting of wildlife.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears 612 signatures and I certify that it conforms to the Standing Orders of the Legislative Assembly.

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

[See petition No 86.]

PETITION - RAILWAYS

South West Suburbs Passenger Service Extension Support

MR THOMAS (Cockburn) [2.06 pm]: I have a petition expressed in the following terms -

> To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned support the extension of the suburban passenger rail service to the suburbs of the south west corridor.

This part of the metropolitan area is growing and is widely recognised as one of the most desirable options for the long term expansion of the City of Perth.

Moreover, as recent international events have shown, it is prudent to minimise dependence on oil and environmental considerations support the extension and enhancement of our public transport system.

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

The petition bears 42 signatures and I certify that it conforms to the Standing Orders of the Legislative Assembly.

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

[See petition No 87.]

PETITION - GOVERNMENT PROPERTY, ORRONG ROAD, RIVERVALE

Demolition Request

MR MacKINNON (Jandakot - Leader of the Opposition) [2.08 pm]: I have a petition couched in the following terms -

To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We are concerned with properties which have been purchased/resumed by Government Departments in Orrong Road Rivervale, between Chamberlain Street and Newey Street, (formerly Salisbury Street), Rivervale and we request that these properties be removed or demolished as soon as they are vacated for the following reasons -

For 3 years our neighbourhood has been subjected to an ongoing sequence of terror, torment and noisy disturbances, with no relief in sight. When we contact appropriate Government Departments with our complaints, we are told nothing can be done, "just call the police, when something happens".

One particular rental property has been vacated since Easter and now the house has become "a squat and squallor" (Homeswest's own terms). Sometimes up to 2 dozen teenagers, including children as young as 6/8 years running riot all night with no control.

These are some incidents which frequently occur:-

Yelling, screaming, abuse till 4 a.m., with obscene language.

Police raids at any time of the day or night.

Ambulances, under police escort at night.

Fighting and drinking in residents gardens. (we have to clean up the broken glass and litter).

Glue and petrol sniffing, alcohol abuse.

Children being assaulted to/from school.

Intimidation at all hours of the day and night.

Trespassing in peoples properties and on their roofs at all hours of night.

Stolen cars and bicycles being taken around the back of the rented properties, and being taken to the streets after dark.

Stolen cars driven at high speed around our immediate vicinity.

Stealing from nearby properties.

Tormenting of domestic pets.

The above incidents are not exaggerated, but are facts, and have directly or indirectly affected all of us.

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

The petition bears 30 signatures and I certify that it conforms to the Standing Orders of the Legislative Assembly.

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

[See petition No 88.]

PETITION - FORESTS

Mature Native Forest Heritage Protection

MR McGINTY (Fremantle - Minister for Housing) [2.09 pm]: I have a petition couched in the following terms -

To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, support:

1. Greater Government efforts to protect Western Australia's mature native forest heritage.
2. An expanded National Park and Nature Reserve system to include all CALM's proposed reserves with additional areas in the wandoo, southern jarrah and karri forests.
3. An independent inquiry into Western Australia's woodchip/timber industries and forest management.
4. Restructuring of Western Australia's woodchip industry so that it only uses sawmill residues and resources from plantations established on already cleared land.

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

The petition bears 51 signatures and I certify that it conforms to the Standing Orders of the Legislative Assembly.

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

[See petition No 89.]

NOTICES OF MOTIONS - READING PRACTICE

THE SPEAKER (Mr Michael Barnett): A practice is developing whereby members are reading two or three notices of motions. It is not proper. Members should remember that only one notice at a time should be read.

MATTER OF PUBLIC IMPORTANCE - MARANDOO PROJECT

THE SPEAKER (Mr Michael Barnett): Earlier today, within the appropriate time frame, I received a letter from the member for Nedlands seeking to debate as a matter of public importance the continuing confusion and indecision regarding the approvals process for the Marandoo project.

If sufficient members agree to this motion, I will allow it.

[At least five members rose in their places.]

The SPEAKER: In accordance with the Sessional Order, 30 minutes each will be allocated to the Government and the Opposition and a further five minutes, if necessary, will be allocated to any Independent who wishes to speak.

MR COURT (Nedlands) [2.12 pm]: I move -

That this House condemns the continuing confusion and indecision in relation to the approvals process for the Marandoo project and in particular -

(a) the conflicting advice given by the Government on whether or not the

Government's further anthropological study will be made public to all the parties involved;

(b) the personnel to carry out that study;

(c) the failure of the Government to discipline senior Government advisers who are publicly criticising the Government on its handling of this issue; and

(d) the Premier's assertion that Hamersley Iron has legal advice that the company's 1977 approvals are not valid; and

calls on the Government to provide a more balanced approach and clearer guidelines for all parties involved in the approval processes.

In this House last week we debated the confusion and indecision surrounding the approval processes for all types of developments in this State. In particular we discussed the approvals process for the Marandoo and Yakabindie projects. I have moved this motion today because the Premier's so-called initiatives have added to the confusion and indecision surrounding the Marandoo project, which is extremely important for this State. The matter concerns an investment of approximately $500 million. As has been pointed out by Hamersley Iron Pty Ltd and the Government, that project is important for the long term wellbeing of 15 000 jobs in the Pilbara. If that project proceeds, it will provide almost 4 000 construction jobs.

Mr Taylor: How many jobs did you say?

Mr COURT: I said 15 000 in the long term if the project proceeds.

Dr Lawrence: How did you reach that conclusion?

Mr COURT: CRA Exploration Pty Ltd - through Hamersley Iron - has its investment in the iron ore industry in the Pilbara and currently employs, directly and indirectly, 15 000 people. It has said that if it were not allowed to proceed with the project, within 10 to 15 years it would need to wind down its activities.

Dr Lawrence: That is hypothetical.

Mr COURT: It is not at all. If the Premier wants to dispute it, I was reading the figures -

Dr Lawrence: I accept what you have said, but I do not accept the conclusion.

Mr COURT: Does the Premier not accept the figures?

Dr Lawrence: They are based on a series of assumptions which I find extraordinary. I am not denying that CRA employs 15 000 people. However, the statement that those jobs will be lost is based on an assumption which I cannot accept.

Mr COURT: I was referring to an advertisement by CRA in the newspaper outlining the number of people currently employed directly or indirectly by that company.

The first point on which some clarification is needed is the anthropological study announced by the Premier. During debate in this Parliament, I asked the Premier whether the company would see that study. She responded as follows -

Yes, of course, because it must be the basis for any application it might make for either avoiding or destroying sites.

Mr COURT: The Premier clearly stated that the company would see the study. However, on Friday, 23 August the company released a statement saying that, although the Premier had assured the company and Parliament that Hamersley Iron Pty Ltd would be given a copy of the report, Government officers had told Hamersley Iron on 22 August that that would not be the case. A contradictory situation has arisen. It is important that either the Premier or the Minister for Aboriginal Affairs clarifies the matter.

Dr Lawrence: We are happy to do that, there is no conflict on the matter.

Mr COURT: Can the Premier clarify that?

Dr Lawrence: That will be done during the debate in order that the matter is absolutely clear.

Mr COURT: Can the Premier understand why confusion exists? She has said one thing in Parliament and the company has been approached by a Government officer who has said something different. One does not know what goes on inside the Government. Nevertheless it is important that that matter be clarified in the debate today.

The second issue concerns the personnel who will carry out the report. It was reported in *The West Australian* on 24 August that the two anthropologists on the Aboriginal Cultural Materials Committee had written to Premier Lawrence seeking an urgent meeting. The anthropologists are threatening to resign from that committee because of some of the actions taken by this Government. Will the Minister for Aboriginal Affairs give us the names of the two anthropologists who will be carrying out this survey for which taxpayers will be paying, and if those anthropologists resign, whose services will she call upon to carry out that survey?

The third interesting point is that on Thursday - the day after we debated this matter in Parliament - in an interview on regional radio one of the Karijini Corporation's coordinators, Noel Olive, made it clear that the Karijini Corporation would be involved in carrying out the anthropological study. He said in that radio interview -

> The professional worker will come under the control of the Aboriginal - the Karijini Aboriginal Corporation's Executive.
>
> ROS LEHMAN (reporter): So, this is an appropriate safeguard, that's why you've agreed to the survey?
>
> OLIVE: This is the appropriate safeguard, and it does enable a proper precedent to be made in terms of professional workers and Aboriginal communities in this area.

I will not quote the entire interview, but when asked about what had happened previously, Mr Olive said -

> Well, previously there's been no contracts entered into. There's been no agreements between Aboriginal people and anthropologists in this nature in mining communities because the agreements have always been entered into between the anthropologists and the miners and, therefore, the Aboriginal people have been shut out of the sort of contractual basis of protection of their own culture and that, indeed, is why there has been some legitimate dispute about Marandoo.
>
> LEHMAN: So, what's changed now? We've got more Aboriginal control then?
>
> OLIVE: We have now a Government-appointed - or a Government-proposed anthropologist who will come under the control of the Aboriginal community's Executive, that is the traditional owners' Executive, whilst they conduct the survey.

Therefore, the Karijini Corporation is saying that it will be controlling the new survey. Will the Minister for Aboriginal Affairs explain if that is the case? Will the Karijini Corporation be involved in this survey and will it be controlling what is taking place? That is a key issue in this matter.

The fourth point I want to cover deals with the Government's decision, under the Aboriginal heritage legislation, to appoint its own people to carry out this further study. Under that legislation the Government has gone to the Aboriginal Cultural Material Committee and asked it to carry out this further survey.

Dr Lawrence: For most of the sites it is the first time that any survey has been undertaken.

Mr COURT: The company denies that.

Mr Taylor: How could the company say otherwise if the corridors were not excised until last October?

Mr COURT: The Premier just made a broad, sweeping statement that this was the first time there had been a study carried out in this area.

Dr Lawrence: For part of the area.

Mr COURT: The company has assured me that - separate from the mine site - it has carried out its own studies, because it did not intend to go ahead with a major investment without being sure of what was intended for that area.

Dr Lawrence: It is not that they have not -

Mr COURT: The Premier will have her chance to speak in a moment. Under the legislation these people will be working for the Government. They are advisers to the Government yet they are publicly criticising the Premier, the Minister for Aboriginal Affairs and the

Government. It is a rather unusual situation for people who are being employed by the Government to carry out a survey - their original place of employment may be the University, but in this case they are being employed by the Government - to publicly attack the Government. However, we do not hear anything from the Government. We do not hear about any disciplinary action against these people. It is an unusual situation for the Government's employees to publicly dispute what the Government is doing and criticise the job for which they were appointed. That indicates confusion in the Government and it is a situation we cannot accept.

The fifth interesting point occurred when the Premier walked out of this House on Wednesday. She was reported in *The West Australian* the next day as saying that her advice was that there were no sites which would jeopardise the project. I find it strange that when parties are meant to be working together to try to get a project off the ground, the Premier says there is no need to worry about the next survey because there are no sites involved. The anthropologists have become hot under the collar because the Premier has pre-empted what they are meant to be doing. If there are no sites involved why is the Government bothering with the further survey? The Premier also said in the House last week -

> . . . and I will bet London to a brick the advice Hamersley Iron has as well - is that the approval is not valid. It is not extensive enough, for a start; it does not cover the eastern or western corridors . . .

Later in the debate the Minister for Aboriginal Affairs said -

> It is clearly acknowledged that there is no site clearance for the Marandoo project. The consent provided in 1977, to which Hamersley Iron has been clinging, is not valid.

Both the Premier and the Minister for Aboriginal Affairs have said that the company does not have the legal approvals to go ahead with the project. The Premier is actually saying that she would bet London to a brick that the company has legal advice that it does not have those approvals. The company has advertised publicly in the newspapers and said that it does have legal advice saying that it has the approvals.

Dr Lawrence: I know they have the legal advice and I was punting on its content.

Mr COURT: The Premier may punt on the content of that legal advice but she is saying the company is lying because it has already published in the newspaper -

Mr Taylor: Do not put words in people's mouths.

Mr COURT: The Premier has seen the advertisements and the Press statement in which the company has said it has legal advice that it has the necessary approvals.

Dr Lawrence: For the whole site.

Mr COURT: It is interesting that the Premier said that the company was punting, because it has made it clear that it has the proper approvals in place. If the Government has advice to the contrary why does the Premier not give it to the company?

Mr Taylor: We have given it to them.

Mr COURT: The Premier's comment is that if the company has legal advice, why does it not test it in the High Court?

Mr Taylor: No-one said that.

Mr COURT: The Minister should read the debates.

Mr Taylor: We are talking about what we said just now.

Mr MacKinnon: Go back and read what you said.

Mr COURT: The Premier's comment was that if the company thinks it is legally in the right it should fight the case in the courts. That is a great way to speed up the process.

Finally, the Premier said that she was consulting the company on this matter. We were given the distinct impression that the Government was liaising with the company and the Karijini people about resolving the matter. The Premier knows that the reality is that the Government did not talk to the company in the preceding weeks. On Thursday, the Chairman of Hamersley Iron Pty Ltd said that "Hamersley was not consulted in the discussions which led to the deal regarding the new survey."

Mr Taylor: I will prove to you that that is not right.

Mr COURT: If the Minister can say that, so be it; that is what this debate is about. The Government has to make the position clear because the company said it was not involved in the discussions.

It has become obvious that the Government needs to have a more balanced approach when handling these issues. It is all very well for it to say that it will do a further study and have advisers carry out further work. As I said last week, the Aboriginal Legal Service is setting the agenda for the approvals process. If this Government is committed to looking after all of the parties involved - the Aboriginal community, the company and the people of this State - it will not allow itself to be hijacked by the Aboriginal Legal Service. The Opposition believes that the operations of the Aboriginal Legal Service need to be examined closely.

In handling this matter, the Government has not shown any commonsense or taken a realistic approach to resolving it. It is captive to political advisers and certain academics who are calling the shots and it is not treating everyone's interests fairly. The Minister for Aboriginal Affairs believes that, by pandering to certain groups involved in Aboriginal politics, she is helping Aboriginal people. It has to be brought home to the Government loud and clear that Aboriginal communities want different things. Some want to maintain a traditional lifestyle, they all want to protect sacred sites, and many want education, training and employment. The people I talk to say that this is an opportunity for Aboriginal people to get training and employment and it is being denied them by this Government, which is delaying this operation. The Government has established a bureaucracy in this State that is now turning around to bite it. Some bureaucrats have agendas of their own and those agendas are anti-development. That was highlighted by the fact that the very people the Government is going to employ to carry out the further studies publicly criticise the Government when they do not like some of the things it does. We will not accept a situation in this State where they and not the Government run the agenda. In this matter, the Government has not shown the direction required and the key questions we have asked in this debate today must be answered.

DR LAWRENCE (Glendalough - Premier) [2.34 pm]: A number of matters need to be cleared up principally because of the lack of clarity by the Opposition and, in some respects, the company. However, at the outset I make it clear that our goal in handling this and other matters has been precisely to be fair to all parties. It is not always easy to do that, as the member for Nedlands will find out if he ever gets to be a Minister because in his case he would have the impossible task of trying to reconcile in his own head the two portfolios for which he is responsible.

Mr Court: Is this your new personal attack approach?

Dr LAWRENCE: No, I said it would be difficult for anyone to handle the two portfolios the member has been given as a shadow Minister.

Mr Lewis: You know that is a lemon statement.

Dr LAWRENCE: The member for Applecross may make all of his statements with an eye to getting media coverage; I do not. Unlike the member for Applecross, I am not given to extravagant descriptions of Aboriginal heritage, either. It is characteristic of this Government that it has tried to deal fairly with this issue. I will take the House through some of the history of this matter and the Deputy Premier will go into it in more detail. Last year this Parliament passed a Bill to excise from a national park, against the wishes of a considerable number of people, a mine and its corridors, west and east. That was done by agreement with all members.

Mr Court: You said it was against the interests of the community; you did not say boo about that in the Parliament.

Dr LAWRENCE: It is important that the member listens. I gave him the credit of listening to his argument, even though I did not agree with all of it and some of it was inaccurate. I said that the legislation was passed against the wishes of some sections of the community who disagreed with the decision. They still do - I still get letters about it - and some members of the Opposition do. The issue was not an easy one for the Parliament to determine because allowing mining in national parks, far from being anti-mining, is pro-mining. At the time, the company and the mining industry commended the Government

for that decision, which was made because we understood the need for Hamersley Iron Pty Ltd to expand operations into Marandoo, to support its existing operations, to provide for material to replace that at its minesites which is running down in volume, and to ensure a high level of continuing employment in the Pilbara. Investment and employment were the principal reasons for our undertaking that development in the first place and we understood that there would be an opportunity for Aboriginal employment. They, as members of the community, are as entitled as anyone to expect they will be considered for employment, particularly in areas where they are significant in number. Far from being anti-mining, this Government took a step which was regarded by some conservationists in this State as undesirable.

Secondly, we handed over to the company, as is appropriate, the task of achieving the necessary approvals for environmental protection and Aboriginal heritage. We supposed the company would get on with the job. No-one has disputed that the Karijini people have an interest in the area. We agree that they no longer live in the Hamersley Range National Park. However, members should look at our history to understand why that is so. The shadow Minister for Aboriginal Affairs has to understand that they have a traditional link with the land which would be upheld under the Act and which this community and this Parliament, if they are serious about supporting that legislation, should also see as legitimate.

The question of who should speak on behalf of those people is difficult to establish. However, I have heard no argument about those people being the traditional owners and custodians of the area under dispute, not even from members opposite and certainly not from the Chamber of Mines and Energy or from Hamersley. That puts that to rest. These people are the ones who should be consulted about the existence of sites and their significance and that is what the company had to do. There can be argument about whether the 1977 approval to go ahead which was given to a former leaseholder of that site was valid. I said in the debate last week that our advice, when we realised the parties were coming to an impasse, was that it is not valid for a variety of reasons. I suggested that the company might be aware of the reasons, not least because the Deputy Premier told it what our advice was as soon as the Government got the advice. He can go through that in detail. Not only did we advise the company that its belief that it had an approval was incorrect, but we also pointed out to it - the company has never disputed this - that no approval has ever been given over a large section of that area.

The member for Nedlands told me something that I had not heard before, even from Hamersley, and that is that the company has undertaken studies of the area. I have checked with the Minister for Aboriginal Affairs and the Government has no information about that. If it has done that, we would like to see that information. If the company has employed anthropologists and others to consult the Karijini about where the other sites are and it has a clear understanding of where they are, it has not informed us. The member for Nedlands probably has his wires crossed. Certainly Hamersley Iron Pty Ltd has information relating to the 1977 "approval", but it has nothing in relation to the western and eastern corridors. It has acknowledged that, otherwise it would not have spent weeks negotiating with the Karijini Aboriginal Corporation, as it did, to try to reach a position where it could make the necessary applications under the Act. It is quite clear that the company did, for several months, negotiate with the Karijini on that issue. If it thought it had all the necessary approvals, it would not have done that.

Mr Lewis: Is it wrong for it to do that?

Dr LAWRENCE: No, but it clearly indicates that the company knew that at some stage it would have to -

Mr Lewis: It does not mean that. It says it wanted to start on the project with goodwill and harmony.

Dr LAWRENCE: I am sure the Deputy Premier will enlighten members about that. The members opposite must remember that the Government has had discussions with Hamersley and the Chamber of Mines and Energy. The Deputy Premier has spent hours in discussion with Hamersley and we have spoken to senior partners in CRA Exploration Pty Ltd, and on not one occasion was it suggested to us that the company did not believe it needed some form of clearance on those sites. Certainly there has been argument about the validity of the initial approval for part of the area affected.

Mr Court: Hamersley has been seeking to give Aborigines the opportunity to review the situation, but we have been advised by people acting for the Karijini Aboriginal Corporation that they do not wish to discuss these matters with the company and they will not discuss development with the mining unions involved.

Dr LAWRENCE: That is precisely the problem that was faced by Government: There had been earlier discussions and they could not agree on how the work should be conducted. That is what it boils down to. If Hamersley and the Karijini are open about the matter they will tell the Opposition that the question on how the work is to be undertaken is the question on which they became stuck.

The Government tried to bring the parties together for precisely the reasons the member for Nedlands said it should; that is, to be fair to the Karijini about their traditional beliefs and to be fair to the mining company so that it could get on with its operations. At no stage did the Government stand back and say it was too hard - it was actively trying to resolve the impasse. In the normal course of events those negotiations are undertaken between the Aboriginal people and the company concerned and the Government does not get involved. Finally, in frustration, the Government said that that was enough and it would undertake the work - it is under the Government's control to provide the necessary information about the entire site. The company acknowledges this is necessary or it would not have been involved in discussions with the Karijini. Information about the entire area - the western corridor, the site and the eastern corridor - had to be obtained so that if there are areas of significance that need to be disturbed or avoided it will be available to the company. The company can then make the necessary applications under the Act. The member for Nedlands is suggesting that the Government should endorse the company's acting illegally. As a member of Parliament that is an extraordinary proposition. The company cannot proceed with that investment without obtaining the necessary approvals under the Act.

Mr Court: You sound as though the company has become the enemy.

Dr LAWRENCE: Not at all. The company cannot proceed without the necessary approvals and it knows that otherwise it would not have held discussions with the Karijini in the first place. It is essential that the Opposition realises that the Government is not getting into the company. As members of Parliament we are responsible for legislation under which this State operates, and in this instance the legislation involved is the Aboriginal Heritage Act and the Environmental Protection Act. The company is yet to obtain the necessary clearance on environmental matters.

Mr Court: We went through that last week.

Dr LAWRENCE: It is a relevant point. To be told that the company is being held up in commencing its project because of the Aboriginal heritage situation is simply to fly in the face of the fact that it does not have the approvals which are necessary for it to proceed.

The Government has encouraged the company at every stage. It is certainly true that the Government did not sit down with the company in the past few days and discuss the question of whether the Government would employ the -

Several members interjected.

Dr LAWRENCE: Before the decision was made. The Deputy Premier could probably indicate from his diary how many times he has spoken to Hamersley or CRA officials. In my case it numbers more than half a dozen meetings.

The company and the Karijini reached the point where they were irreconcilable. I am not blaming either party for that. I am simply pointing out that in trying to act as an advocate for the company in this House the Opposition has overlooked the fact that the Government has clearly encouraged the company, passed the necessary legislation, attempted to act as an advocate on its behalf to get the project under way and has tried to suggest ways and means of its doing it more quickly. However, in the end the company took the view, for reasons I do not understand, that it could not negotiate with the Karijini people and it would not take the necessary steps. Maybe the company reached the point where it needed the Government to intervene, and it did. I can understand that the company does not like it because that action makes it look as though it was incapable of achieving a result. What the Government will hand to the company on a plate is the information necessary for it to seek any approvals which may prove necessary under the Aboriginal Heritage Act. That process could have

been completed by now, but sadly it is not. I am more concerned that anyone in this House about the possible impact that will have on the Pilbara and employment investment in this State. However, we have a law and we need to abide by the law, and for me to give Hamersley or any other company the comfort of believing that it can bypass, ignore or override the Statutes would be in contempt -

Mr Court: It would never do that.

Dr LAWRENCE: The member is suggesting that somehow this process could have been bypassed - it cannot and it could not.

The fact that the company did not reach first base in its discussions with the Karijini people is, in the end, not relevant because it must obtain the necessary approvals under the Act before it can proceed with the project. The company, the Government and the Karijini people cannot avoid that and the Government will be employing an anthropologist to undertake the necessary work.

The member for Nedlands made an observation about the behaviour of the Aboriginal Cultural Materials Committee and the outrage expressed in sections of the anthropological community. It is my observation that they were contradicting one another. That was not in relation to Marandoo, but it was in relation to Yakabindie. Some of those people objected that the Government did precisely what the member for Nedlands is suggesting it should do - it intervened and said the approvals in relation to Yakabindie are bona fide and legal and as far as the Government is concerned that is the end of the matter. Some people in the anthropological community, urged by certain people who it is agreed do not represent the Yakabindie community, take the view that the Government should have another report and it has said no and that enough is enough. If they cannot agree on the sites and who should be negotiated with, the original approvals must stand. The approval for Marandoo has never been given. Lawyers will argue about the original approval but finally the company and the Karijini will have to know where the sites are. One of the important outcomes of this project will not only be investment in the Pilbara and employment for the people who live there or who might move to the area to seek employment, but also much needed employment and training for Aboriginal people and that is the reason the Karijini community will cooperate fully in this process. Therefore, there will be no suggestion from the company that when it obtains the environmental approvals it has not got its heritage approvals.

DR ALEXANDER (Perth) [2.49 pm]: A few myths are flying around about this matter. Firstly, that all mineral development projects by inference are being delayed. Last week's debate clearly showed that was not the case. Secondly, that we should somehow down-play Aboriginal interests when it comes to mineral development projects. Anyone who looks at the history of the development of this State, whether under Liberal or Labor Governments, soon comes to the realisation that there has always been a clash between the traditional owners of land in Western Australia; that is, the Aboriginal communities, and those seeking to develop the land. That has not occurred in every mineral development project, but that conflict of interest has arisen in many notable cases. Governments on both sides of the House have tried over the years to make legislative provision for the better incorporation of Aboriginal interests into the mineral development process. From where I sit, the Government of the day has not gone far enough. In many instances Aboriginal interests have not been given sufficient attention and, indeed, the proposals in the land rights Bill introduced some years ago would have given Aborigines a much stronger stake in the whole development process. Regrettably, that legislation was defeated in the upper House and the Government of the day, under a previous Premier, chose not to proceed with the legislation. Many people in the Labor Party at the time, including me, were extremely disappointed with that decision. Many people in the Aboriginal community were not only disappointed with that decision but also sadly disillusioned, firstly, by the rejection of land rights by the conservative dominated upper House and, secondly, because the Government of the day made no further commitment to formal land rights legislation. Since that time some Aboriginal communities have been granted long leases over land but there is little doubt in my mind, from what I have heard from Aboriginal communities affected, that they would prefer more secure land tenure.

Mr Thomas: Ninety-nine year leases are not bad.

Dr ALEXANDER: It is a reasonably secure form of tenure but, in the minds of the

Aboriginal communities - and I agree - it is not as good a situation as the land rights legislation would have led to. In this situation it has been suggested by the member for Nedlands that the Aboriginal Legal Service has hijacked the debate. I do not believe that is the case. Later this week I shall be meeting with some of the people involved in this debate to find out more about the issue, but my preliminary information suggests that the debate has not been hijacked by the Aboriginal Legal Service, no matter how hard the Opposition tries to portray the situation in that light. The ALS is working on behalf of the community and although in Yakabindie apparently there is a division of opinion within the Aboriginal community, that does not appear to be the case in the Marandoo situation. I understand the Aboriginal communities are very interested in participating in the project and joining the labour force but, naturally, they want their sacred sites to be protected. Those two interests need not necessarily conflict. I hope the planned surveys will sort out that question. I do not consider that undue delay has occurred. I am one of the people the Premier mentioned who, late last year, was disappointed with the decision to excise a portion of the national park. After all, that area was declared a national park after Hamersley Iron Pty Ltd received its original lease for exploration and mining, and not before. Parliament set that aside with hardly any debate late last year. The more debate that takes place on this question where Aboriginal and environmental interests are concerned, the better it will be in the long run for the progressive social, as well as economic, development of the State.

MR COWAN (Merredin - Leader of the National Party) [2.54 pm]: The National Party is pleased to support this motion. I listened to the comments of the Premier to try to find out whether progress had been made on this important matter. All political parties and all citizens in Western Australia want this project to proceed as quickly as possible. I wanted to hear some forecast from the Premier about when the controversy would be resolved and when the company would receive approval to proceed with its mining operations at Marandoo. I noted with some dismay that the Premier did not indicate when progress was likely to be made. It is important for the company's forward planning that it have access to the Marandoo ore body; it needs that ore for blending with other ores of lesser quality to enable it to continue to export to its customers for as long as possible ore of suitable quality. I have some personal opinions on the phobia in this country about exporting raw materials in vast quantities, but that is another debate.

I did not learn from the short speech made by the Premier that any progress at all has been made. I am quite sure - at least I hope - that when the Deputy Premier and the Minister for Aboriginal Affairs speak on this issue, they will give some indication of the progress in resolving this matter. There is no point in arguing about whether Hamersley Iron had approval for the entire site or for only the mining area. I have not been advised by Hamersley Iron or by anyone else on this matter, but I strongly suspect that if it were relying on Texas Gulf to seek approval under the appropriate legislation, that company would have sought approval only for the mine site area and not for the corridors. In many respects that is immaterial. In this case it is important that the project is not unnecessarily delayed. There is no point in trying to apportion blame, but there is a great deal of point in somebody telling the Parliament what has been done and in providing a timetable for the future. We heard last week that the Government would appoint its own anthropologists to examine the area in order to ascertain whether there were Aboriginal sites of significance not only within the proposed mine site area but also within the related corridors. I would like to know how far the Government has progressed with those matters. Has the Government appointed somebody to conduct that survey and report to the Government? When does the Government expect the report to be made? How soon after that can the Government act? Can someone tell me whether the investigation into Aboriginal sites of significance and the investigations by the Environmental Protection Authority to assess the mine site and access areas are interrelated? Can an application in respect of the environmental matters be dealt with separately from the survey of the area for sites of Aboriginal significance? If that is the case, has someone told Hamersley Iron that it can perhaps begin the environmental impact assessment and have it prepared and delivered for scrutiny by the Environmental Protection Authority?

This Parliament should be dealing with those matters for one very simple reason: Irrespective of whether the Opposition thinks someone has taken over the debate or has been obstructionist, at this time during the present economic recession - when Western Australia

has the highest unemployment in the nation - it does not matter how strong the arguments made by the Aboriginal community or the mining company, we need that project to proceed as quickly as possible, without further delay. That should be happening and the Government should be taking the appropriate action. It can be fairly said that by not achieving that objective, the Government has been negligent in its duty.

MR TAYLOR (Kalgoorlie - Deputy Premier) [3.00 pm]: I will pick up, first, on the final remarks of the Leader of the National Party. Hamersley Iron-cum CRA is well aware that it was the excision of the temporary reserve and the eastern and western corridors from the Hamersley Range National Park that set the scene for the Marandoo iron ore project to proceed. That excision process created a position where Hamersley Iron, from my advice and to my knowledge, said that it wanted approvals for this project to be in place by the end of 1999. Those approvals were to include environmental ones. Hamersley Iron agreed, I understand without qualms, to the environmental review and management program level of approval now under way. In addition, it must obtain the necessary clearances relating to Aboriginal heritage matters to resolve these issues.

Mr Court: This company wanted to get its work under way and was told by the Aboriginal Legal Service that if company representatives flew over that site it would take action against the company.

Mr TAYLOR: I have a copy of a letter which I received the other day and which was sent by the Aboriginal Legal Service to Hamersley Iron clarifying its position on that issue. I will not become involved in the nonsense of whether one can fly or walk over this land or where one can or cannot go on this land. The company wants approvals in place by the end of this year. Those approvals will be in place by then, due more to the hard work of the Government than the understanding of some of these issues shown by the parties involved.

I will deal with some side issues on this matter. People have suggested that there are resolutions to these Aboriginal heritage issues outside the subjects discussed today. For instance, Peter Ellery from the Chamber of Mines and Energy - a person for whom I have a lot of time - said today or yesterday that it was vital that a register of Aboriginal sites be established in Western Australia. He went on to say that there was potential for as many as 750 000 sites, which would all have to be registered. If we waited for all those sites to be registered we would be waiting from now till kingdom come. The same applies to the suggestion from the Leader of the Opposition that we should have a register of every Aborigine or Aboriginal group and the areas in which they have an interest. If we went down that path it would take years to establish that register. The Northern Territory Government has found that one of the greatest problems with its land rights legislation is establishing who should have the right to ownership of land in particular areas. Solving that problem could take years. If we go down the path of trying to establish registers of either supposed entitlement or tribal ownership of Aboriginal sites it will take a long time. However, the Museum has an ongoing register of established sites.

Mr Lewis: It is not available to the public.

Mr TAYLOR: It is open to companies to seek information from that register. The member for Applecross is wrong - it is available to the public. I do no have time today to go through the details of that, but I will do so on another occasion. However, I will go through the details of what the company should be doing and how it can go to the sites committee. I have some correspondence about this matter.

Mr Fred Tubby: Do you know that a group of Aborigines turned up at Tom Price asking for directions to Marandoo.

Mr TAYLOR: I have heard that story, which came directly from Hamersley. I have a letter from the people involved with Aboriginal sites which states that clearly the earlier in the planning stage Aboriginal people are consulted and surveys are carried out the easier it will be to avoid potential land use conflicts. The letter goes on to say that developers should be encouraged to get involved with the trustees and talk to them about these sorts of issues before they look at a project so they can understand what may already be available in these sorts of areas.

Mr Lewis: It is a moving target.

Mr TAYLOR: It is not. I will now outline some of the meetings and discussions that took place with Hamersley Iron about this matter. In March 1991 I met with Hamersley Iron and

agreed to facilitate a meeting with the Karijini. On 16 April I met with the Karijini. They said they had sent me a letter advising how they saw a special council or committee that they wanted me to establish. On 1 May I advised Hamersley Iron of the outcome of the meeting. I had several contacts with the Karijini to clarify their position relating to their involvement in the decision making process. On 13 June Hamersley Iron requested certain licences be made available to it. I agreed to provide the company with a Crown Law advice indicating that the clearance was not valid. That is interesting - that on 13 June 1991 I had a discussion with Hamersley Iron about the 1977 clearance. As the Leader of the National Party has quite rightly said, we should not get bogged down in that. At that time I said I would provide the company with a copy of a Crown Law advice to me about that clearance, which it now has.

Judyth Watson met with the Karijini at that time to arrange a meeting between them and Hamersley Iron with, thank God, no lawyers present! On 19 June 1991, Judyth Watson met with the Karijini and set an agenda for a meeting with the company. On 21 June the company said it was unhappy with comments made by her about the validity of the 1977 clearance. I advised the company that a problem existed with the clearance for a temporary reserve and that no clearance existed for the eastern and western corridors. On 3 July 1991 company representatives and the Karijini met unsuccessfully. Hamersley Iron failed to make contact with the Karijini representatives prior to the first possible meeting time. That did not help the process. The company objected to the work clearance model and the Karijini's choice of anthropologist. The company also wanted access to the reports. On 3 July 1991 I suggested to Hamersley Iron's representatives that the Government should appoint an anthropologist to sort out the problem. That is now happening. For the company to say that it did not know about this is incorrect.

Mr Court: I am merely quoting their words; that Hamersley Iron was not consulted during the discussions.

Mr TAYLOR: On 3 July 1991 I put to Hamersley Iron that the Government should appoint an anthropologist to sort out the matter. We then suggested a compromise proposal for Hamersley Iron and the Karijini. The proposal was -

(i) The Minister for Aboriginal Affairs will appoint an anthropologist to carry out an archaeological and ethnographic study of the Western Corridor and the Temporary Reserve. Ideally the selected person should be acceptable to both the Karijini and Hamersley Iron. Should this not be possible the Minister will refrain from selecting any of the persons either side have shown an aversion to.

(ii) As indicated the procedure will include only the Western Corridor and the T.R. however the government is committed to the provision of an Eastern Corridor which it regards as central to the orderly development of the Pilbara. Consequently the government will undertake to negotiate a clearance for the Eastern Corridor.

(iii) The process of clearances will not be titled (ie Site or Work Area).

Apparently people have a bit of a hang-up about the wording associated with that. The proposal continues -

The process will involve:

(a) the entire Western Corridor and T.R. being examined

(b) no site will be pin pointed however "no-go" areas will be shown around areas which contain significant sites

(c) should negotiations between Hamersley and the Karijini fail to identify a construction program that can avoid the identified "no-go" areas Hamersley will have recourse to section 18 of the Aboriginal Heritage Act and the Government will grant a Miscellaneous Licence over the Western Corridor to facilitate such action

(iv) The report prepare by the anthropologist will remain the property of the sites department of the Museum.

(v) Both the Karijini and Hamersley Iron sign an agreement to proceed as per the foregoing proposal.

That was put to both Hamersley Iron, which rejected the agreement out of hand within a day, and the Karijini, who considered it. After that discussion we obviously had on the one hand Hamersley Iron being advised by its lawyers not to go down that path and the Karijini, on the other hand, of their own volition in some cases and on the volition of the Aboriginal Legal Service in others, deciding they had problems with that approach. We made a decision that if we were to take the problem by the scruff of the neck and sort it out the way to do it was to do what other people and I had suggested some time ago - that a Government appointed anthropologist do this work and sort out this matter.

Mr MacKinnon: Can we see that report?

Mr TAYLOR: The company will see that part of the report which it is necessary for it to see.

Several members interjected.

Mr TAYLOR: What more do members opposite want? The company, quite properly, will not have access to those aspects of the report which may be regarded as being secret from the point of view of the Aboriginal attitude to those sorts of areas. That is what has existed in this State for a long time. In my view it should continue to exist. If, for example, there are special, secret initiation areas, I have no problem with the Aboriginal people saying, "That is a secret area." But what they say is, "That is a no go area." The companies have accepted this for years and years.

Several members interjected.

Mr TAYLOR: Initiation sites do not move all the time. I will repeat what I said the other day in relation to these issues: A degree of goodwill is required on all sides, but particularly on the part of the mining companies such as Hamersley Iron. There needs to be an understanding by these companies of how to tackle these sorts of issues. In my view they do not understand how to tackle them. Members opposite can read this in any way they like. I have said it to them face to face. It is no secret how Hamersley Iron has handled this issue. The company must, as some of the other major companies do, employ the right sort of people to tackle these sorts of issues. Hamersley Iron must learn from the bitter experience of CRA in Bougainville how these things can go terribly, terribly wrong. CRA in particular should know the consequences of not paying attention to these sorts of ethnic-type issues involving Aboriginal communities.

Mr Court: What does Bougainville have to do with it?

Mr TAYLOR: Bougainville is an example of how not to deal with people such as Aborigines in relation to these sorts of areas. It is very important to employ people who have an understanding, who have a depth of knowledge, who have the ability to negotiate, sit down and talk things out. It is important in these issues to have the sort of people who are prepared to make an absolute commitment on employment and training.

Several members interjected.

Mr TAYLOR: I will tell members opposite how many Aboriginal people Hamersley Iron employs. Outside of some special gardening and cleaning up contracts, Hamersley Iron employs another seven Aborigines. The company could do a lot better, and it can do a lot better when dealing with these sorts of issues. It is not blackmail; it is a matter of saying to Hamersley Iron and CRA, "You can do a lot in relation to these issues." Those companies know that they can do a lot better; they accept they can. I believe that clearances will be in place at the end of 1991, which is what Hamersley expected when it received the clearance in October or November 1990. On these issues, with a little goodwill on both sides, the problem will be resolved. I can tell the member for Nedlands that the Noonkanbah sort of approach, or the belief that one can crash and bash through, will not work. It is not on with this issue.

Mr Court: You have just said we will have a Bougainville situation.

Mr TAYLOR: The member for Nedlands must not try to put words into my mouth. What I said about Bougainville was that companies like Hamersley Iron, which are very closely related to CRA, should recognise that they have a responsibility to understand these sorts of issues. CRA certainly did not show that sort of understanding at Bougainville. Companies like this need to understand that they must sit down and sort out these things with people. They are capable of doing that, as I said the other day, with environmental issues. The Opposition shows a very great lack of understanding of these issues. It followed the path of

the member for Wellington, who seemed to think that the Noonkanbah style was the way to tackle these issues. That is completely out of keeping with today's requirements. Hamersley needs to sit down and sort out these things with the people. That is what Hamersley will do, that is what we will do, and we do not need help from the Opposition.

MR BLAIKIE (Vasse) [3.14 pm]: As usual, the Deputy Premier is running very late. I take the opportunity to put the record straight and indicate where the Government has failed. It has failed as a result of indecision, as a result of a lack of clear guidelines, and that is causing frustration not only to industry but to the people of Western Australia. The Deputy Premier mentioned such places as Noonkanbah and Bougainville, and he took great pains to say that he was concerned that the company employed only seven Aboriginal people. If that is the reason for the Minister's indictment against this company, for God's sake tell it!

This motion moved by the member for Nedlands states that the House condemns the continuing confusion and indecision surrounding approvals for the Marandoo project, and it makes a series of recommendations. It calls on the Government to provide a more balanced approach and clear guidelines for all parties involved in the approval process. The Government has told us all the things it is not doing about Marandoo. What the people of Western Australia want to know, what the company wants to know, what I want to know and what the Parliament wants to know, is what the Government is going to do to expedite Marandoo. We have had all the reasons why the project will not go ahead, but we have not heard what is being done to encourage it to go ahead and what the Government is doing to expedite that process.

In November last year the Parliament decided to excise two per cent of the Hamersley Range National Park to create this Marandoo area. There was no opposition to that; the motion was approved. Parliament decided to approve the excision of the transport corridors for the Marandoo project. Since then the Government has prevaricated and done nothing. What the Government could well have done 12 months ago was to have reintroduced the Marandoo agreement Bill. The Government could have set down the conditions under which the operations would take place, and it could have allowed the project to get under way.

Mr Court: An agreement Act was introduced in 1972. What the member is saying is, with all these projects, the Government should have brought in a new agreement Act.

Several members interjected.

Mr BLAIKIE: I know what I am talking about. The Parliament could have had a Marandoo agreement Act introduced in 1990 or 1991 so that the project could proceed under certain conditions. But no; the Government prevaricated. It has shown a complete lack of commitment in this and in other areas. I would be delighted to take on the Government over its prevarication in the Beenup project. The Government is petrified of criticism from the Aboriginal Legal Service. It should remember that the member for Bunbury supported my contribution on Beenup, as did Hon Doug Wenn in the other place. The Government is petrified of the thought of the Federal Government's intervening. The Government is walking on eggshells and it is not making decisions. As a result Hamersley Iron is virtually held in limbo. The Parliament can make decisions about how the project should go ahead, what level of environmental controls should be imposed, and the level of Aboriginal heritage. I believe that the will of the Parliament is not being acknowledged by this Government. While it prevaricates, this project cannot go ahead. The Minister, and all Ministers, are condemned for their lack of action and clear policy guidelines.

Opposition members: Hear, hear!

DR WATSON (Kenwick - Minister for Aboriginal Affairs) [3.20 pm]: Mr Speaker -

Mr MacKinnon: Two minutes! What a good way to insult your Minister.

Several members interjected.

The SPEAKER: Order!

Dr WATSON: I endorse all the comments of the Deputy Premier and the Premier.

Mr Court: They conflicted with each other.

Several members interjected.

The SPEAKER: Order! The Minister should resume her seat. I think it is highly inappropriate and extremely bad manners for members to act in that way when a member of this House, from wherever he or she may sit, rises to speak. If members look at *Hansard* they will see that the Minister has probably said three or four words, and three or four members have taken up far more space in *Hansard* than that. It is extremely rude and I ask that it stop.

Dr WATSON: Thank you, Mr Speaker. We have seen from the information the Deputy Premier has provided that the delays have not come from Karijini or from the Government but from Hamersley Iron Pty Ltd. The company thinks it can take short cuts and that it can start its mine on the basis of a piece of consent that has no legal validity. That consent must be ratified, and it can be ratified only if there is a survey of Aboriginal sites in the temporary reserve and the corridor. That survey can start on Monday. It will be done by a Government anthropologist -

Mr Lewis: In a helicopter?

Several members interjected.

Dr WATSON: - and I am assured that we can have the report to the trustees of the Western Australian Museum in four weeks' time.

Mr Lewis: Will they be allowed to drive over the ground?

The SPEAKER: Order! Two of the three members who have continued to interject since I made my comments have not even seen fit to contribute to the debate yet; that is the first point. The second point is that the third of the three who continued to interject was not interjected upon at all during the six words that he uttered during the debate, and I would appreciate the same sort of courtesy being afforded to the member on her feet.

Dr WATSON: We have a statutory duty to protect Aboriginal heritage; we have a statutory duty to protect the environment. Those duties will be fulfilled.

Mr Blaikie: And you have an obligation to get the State on the go.

Dr WATSON: Karijini have an absolute commitment, not only to the protection of their heritage but also to the fulfilment of some sort of justice for their children through material benefits from mining. As the member for Perth pointed out, nothing has flowed to Aboriginal people from mining.

Mr Court: Why won't they talk to the company, if that is the case?

Dr WATSON: I had to get the company to talk to them, because it is reluctant to talk to them.

Mr Court: You are living in dream land.

Dr WATSON: The member for Nedlands is living in dream land and he will never reconcile his two shadow portfolios.

Question put and a division taken with the following result -

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Ayes (21)

Mr Ainsworth	Mr Cowan	Mr McNee	Dr Turnbull
Mr C.J. Barnett	Mrs Edwardes	Mr Nicholls	Mr Watt
Mr Bradshaw	Mr Grayden	Mr Omodei	Mr Blaikie *(Teller)*
Mr Clarko	Mr Kierath	Mr Shave	
Dr Constable	Mr Lewis	Mr Strickland	
Mr Court	Mr MacKinnon	Mr Fred Tubby	

Noes (23)

Dr Alexander	Dr Gallop	Mr Marlborough	Mr Thomas
Mrs Beggs	Mr Grill	Mr McGinty	Mr Troy
Mr Catania	Mrs Henderson	Mr Pearce	Dr Watson
Mr Cunningham	Mr Gordon Hill	Mr Read	Mr Wilson
Mr Donovan	Dr Lawrence	Mr D.L. Smith	Mrs Watkins *(Teller)*
Dr Edwards	Mr Leahy	Mr Taylor	

Pairs

Mr House	Mr Ripper
Mr Trenorden	Mr P.J. Smith
Mr Wiese	Mr Bridge
Mr Bloffwitch	Mr Graham
Mr Minson	Mr Kobelke

Question thus negatived.

SALARIES AND ALLOWANCES AMENDMENT BILL

Second Reading

MR D.L. SMITH (Mitchell - Minister for Lands) [3.27 pm]: I move -

That the Bill be now read a second time.

For some time there have been conflicting legal opinions as to the date from which newly elected members of the Legislative Council are entitled to remuneration. This Bill seeks to clarify the position by providing that payment can be made to newly elected members of the Council only upon the commencement of their constitutional term of office; that is, from 22 May. No doubt many newly elected members commence assisting their constituents as from the date of their election. However, as they cannot sit or vote in the Council prior to 22 May they cannot constitutionally be regarded as members. Payment prior to 22 May therefore appears unjustified. In particular, the amendment precludes the possibility of two people being paid in relation to one office where a retiring member of the Council has not been returned at a general election but remains a member, and is paid accordingly, until 22 May. It is in line with the practice of the Commonwealth Parliament where senators are paid only from the July in which they take up their seats. I commend the Bill to the House.

Debate adjourned, on motion by Mr Blaikie.

HOME BUILDING CONTRACTS BILL

Committee

Resumed from 22 August. The Chairman of Committees (Dr Alexander) in the Chair; Mrs Henderson (Minister for Consumer Affairs) in charge of the Bill.

Progress was reported after clause 5 had been agreed to.

Clause 6: Proof of receipt of documents -

Mr C.J. BARNETT: This clause suffers from the same defects as some previous clauses; that is, it places the onus on the builder to provide the documentation. In the case of tenders the builder will be responsible for the document even though it is not his document.

Mrs EDWARDES: Clause 6 indicates that the document must be signed by the owner "acknowledging receipt of a notice referred to in section 4(2)." Proposed section 4(2) is a particularly important provision and reads -

> A notice containing an explanation of the relevant provisions of this Act is to be prescribed.

Therefore, it refers to the guts of this Bill with the requirements to be applied. Clause 6 states -

> A document signed by the owner acknowledging receipt of a notice referred to in section 4(2) or of a copy of a signed contract, or both, and showing the date of receipt is evidence that the notice or copy of the contract was received by the owner on that day.

This differs from common law in a major respect; that is, under common law proof of posting is sufficient evidence that a document was received. Members would be aware that secretaries can make typographical errors and a wrong address or street number can be placed on an envelope, and a document may be sent to the next door neighbour of the intended party. The postal pixies do their utmost in endeavouring to deliver mail to the correct address; however, that does not happen in the minority of cases. Therefore, this

clause turns the onus of proof around from what is required under common law. This clause is not practical. It would be better to state that evidence of posting is sufficient evidence that a contract was posted. That would be easy to do and, as I have done in the past, it is a matter of compiling a statutory declaration indicating that such a document was sent on a certain day. However, in normal instances contracts of this sort would be sent by classified mail, or whatever postal arrangements one made whereby one is able to obtain a receipt. It is quite normal and appropriate to follow this procedure rather than have a requirement that evidence be provided that the notice or a copy of the contract was received by the owner on a particular day.

Mrs HENDERSON: This is another example of jumping at shadows. The member for Kingsley would know that the matter of document posting is covered in other legislation. The Bill before the House does not preclude proof of posting; it provides an alternative through proof of receipt. If two people sign the document in an office, the contract would not require posting; in that case it would be sufficient to have proof of receipt of that document. However, the legislation does not wipe out the postage provision.

Mrs Edwardes: So it is not exclusive?

Mrs HENDERSON: No.

Mrs Edwardes: It reads as exclusive.

Mrs HENDERSON: No, it does not. The member would be aware that other Acts, such as the Interpretation Act, cover postage. This Bill would not wipe out those provisions. It provides a means whereby if someone signs a piece of paper indicating that he or she was handed the document - that is a contract which complies with the other provisions of the legislation - that would be enough to be proof in a court of law. This provides an alternative to meet the situation in which most people sign housing contracts.

Clause put and passed.

Clause 7: Variation of contract -

Mr C.J. BARNETT: This clause suffers from many of the problems we discussed last week. It emerged from answers given by the Minister in previous debate that any building work on any site with a value of $6 000 or more would be caught by the provisions of the Act. This is a further example of the bureaucracy and inefficiency the Bill entails. The clause indicates that any variation to a contract must be in writing and must include all the terms and conditions. Therefore, the same problems emerge as arose in earlier clauses regarding statutory terms and conditions. If one term or condition were omitted in the contract, the owner could walk away from the contract. Also, the clause indicates that any variation of a contract must be signed by the builder and the owner. That might be easy and sensible for metropolitan houses, but it will create problems for country builders who may be distant from the owner. The legislation will prevent the builder from applying the variations immediately to satisfy the requirements of the owner. He must have the contract signed by both parties. This will slow the building work and create extra work. This will be a source of frustration due to a loss of flexibility for the owner, and will not be to the benefit of the consumer. Page 7 of the Bill contains a provision which reads -

> A builder who is a party to a variation of a contract must ensure that the requirements of subsections (1) and (2) are complied with in respect of that variation.

Again the builder is given responsibility for variations within the contract. However, most variations come from requests by the owner and not the builder. This will make it difficult for the builder to comply with what are seen normally to be reasonable requests from the owner. If the builder does not produce a signed contract containing the variations, and the due processes are undertaken, the builder will suffer a penalty of $1 000. This is quite unreasonable. Therefore, I move -

> Page 7, line 8 - To delete "$1 000" and substitute "$500".

Mrs HENDERSON: One of the most common problems regarding building projects is when people disagree as to what was agreed in a variation. One of the most common complaints for consumers and builders is when a verbal agreement is made between the parties and at a later stage the parties disagree as to what was agreed. I have no doubt that the Opposition will find that building contractors will not thank them for seeking to amend this clause; it is

crucial for resolving some of the problems which currently beset variation contracts. As the member indicated, variations to contracts are extremely common - so are disagreements about what was agreed with the variation. The matter of the terms and conditions of the contract was debated previously, and the difference between requested terms and implied terms was pointed out. That was explained at some length and I leave it to the Chamber to consider why the member for Cottesloe should raise that point at this stage.

Mr C.J. Barnett: It was not redebated; we will redebate it if you wish!

The CHAIRMAN: Order! That is a matter for the Chair to judge.

Mrs HENDERSON: The matter was resolved to the satisfaction of the Chamber, and it is commonly understood by anybody with legal knowledge that it is unnecessary to set out the implied terms of the contract; for example, it is a total nonsense to suggest that local building by-laws should be expressed in the contract. The member for Cottesloe went on to say that clause 7(3), which requires that the builder must ensure that subclauses (1) and (2) are complied with, is somehow discriminatory for the builder. Again, that demonstrates that the member for Cottesloe has not bothered to find out what is the normal sequence of events. When a consumer seeks a variation to a contract, he would normally explain to the builder what he wanted to change. The builder would then describe the changes to the existing plans or materials because he has the expert knowledge about the quantities, materials or products which would be used in the variation. Obviously, it would be the builder who drew up the variation to the contract, not the consumer.

We have discussed penalties previously and, as has been said, this is a key part of the Bill and an area in which many problems have occurred. The penalty of $1 000 is the maximum fine. I understand the most common practice is that a first offence is 10 per cent of the maximum fine which, in this case, would be $100. No-one could claim that $100 is a draconian penalty.

Mr C.J. Barnett: If you wanted the fine to be $100, why did you not include $100 in the Bill?

Mrs HENDERSON: That question indicates the member's ignorance. The courts know how to interpret the requirements of the Bill and have no difficulty in ascertaining whether an offender has committed a first or second offence even if the member does.

The member for Cottesloe argued that some difficulty may occur in signing variations. In the same way that country people will be required to sign contracts, the Government believes it is sufficiently important to both country builders and country home owners that they sign variations. They do not both have to be in the same place and sign them at the same time. The document can be signed by a party in one place and then posted or facsimiled to a party in another place for signing and confirmation.

Mr C.J. Barnett: Do you think there would be a fax on the back of a truck in the bush?

Mrs HENDERSON: That would not be necessary. As the member would know - perhaps he does not - when an owner finds something wrong with the building he usually meets the builder on site and explains to him what is required.

Mr C.J. Barnett: Does that happen in the country?

Mrs HENDERSON: That does happen in the country. How else does an owner know he wants to have a change made? Either an owner meets the builder and explains the change on the site plan or, more commonly, they meet on the site and discuss the building. It will not be difficult to write on a piece of paper - many parties already do that - the changes which have been agreed to.

Mr C.J. Barnett: Under the provisions in the Bill, the parties could not just write on a piece of paper; they must draw up a formal variation and must, therefore, both attend the site and have all the documentation ready at a convenient moment.

Mrs HENDERSON: The clause requires the variation must be in writing; it must include the date, the cost and the nature of the variation. That is all it requires; it does not stipulate that a long complicated document must be drawn up or that it must be on a printed form.

Mr C.J. Barnett: Must all the terms and conditions be included?

Mrs HENDERSON: It relates to the terms and conditions of the variation; not the terms and conditions of the original contract. For example, an owner may wish to change the colour of some tiles from blue to white; that information will be the terms of the variation. If the member for Cottesloe had any contact with consumers and builders he would know they welcome this suggestion. It will put paid to the hundreds of complaints received by the Ministry of Consumer Affairs about disputes over variations.

Amendment put and negatived.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Implied conditions as to necessary approvals -

Mr C.J. BARNETT: I do not have any major argument with the building licence under part XV of the Local Government Act being issued within 45 working days from the date of the contract, although I wonder whether 45 days is necessary. However I am concerned about subclause (1) paragraphs (b) and (d). Subclause (1)(b) will impose unnecessary red tape on the parties. Through ignorance, the owner is likely to fail to comply with that requirement. Both those paragraphs should be deleted to make it easier for consumers and builders to comply with the legislation.

Mrs HENDERSON: Those paragraphs are included for a very good reason; they relate to areas where changes to the original contract may arise as a result of requirements of a local Government authority or the Western Australia Water Authority. It is very important to bear in mind that in many cases those changes may involve a change in the price of the house, for example. If one of those authorities places some additional conditions on the permit to build, it is important that both the owner and the builder are aware of and accept those conditions. Many people have complained to me as a local member that their local authority had placed additional requirements on the building permit and that information had not been passed back to them. Obviously that additional requirement cannot be disputed, but at the end of the day it presents an extra cost which the consumer may not have been aware of. Subclause (1)(d) provides protection for the owner by ensuring the builder makes the owner aware of directions given by an authority.

Mr LEWIS: Clause 9(1)(c) refers to the "Water Act". I do not believe there is a statute in existence called the "Water Act".

Mrs Henderson: I will need to check the exact title of that Act and I am happy to be corrected.

Mr LEWIS: This legislation refers to a Bill currently before a Select Committee of this House. Twelve pieces of legislation control water resources in Western Australia and there is no current legislation in existence called the "Water Act".

Mrs Henderson: But there will be.

Mr LEWIS: The Minister has been giving the Opposition lessons in law. She cannot pass legislation referring to an Act that does not exist. The Minister should make the appropriate amendment.

Mrs HENDERSON: One way around the matter would be to insert the names of the seven Acts which I do not have in front of me. Alternatively we should insert in clause 9(1)(c) the word "Bill" in place of the word "Act". By the time the legislation progresses through the upper House, I have no doubt the Water Bill will have been passed.

Mr Lewis: Will you concede?

Mrs HENDERSON: Yes, I am more than happy to concede that the words "Water Act" were put in in anticipation of the new consolidated Act being passed. I am more than happy to replace it with the names of the various other Bills and Acts which have been consolidated, for which names I will have to refer to my colleague, the Minister for Water Resources.

Mrs EDWARDES: The Minister has failed to tell us what effect clause 9 will have on contracts. She has spoken about implied terms for approvals and the consequences of the failure to fulfil any of the conditions set out in schedule 1. The schedule has been referred to previously and I again refer members to it so that they are fully aware of the consequences of

non-fulfilment of some of the conditions. The conditions set out in clause 9(1) may not apply under certain conditions set out in clause 9(5). Clause 9(5)(a) deals with a condition not applying to a contract "to the extent that the subject matter of the condition was completed before the contract was entered into" and, therefore, it cannot be an implied condition. A condition will also not apply to a contract under clause 9(5)(b). That refers to "associated work" which answers the questions raised last week about this Bill having more to do with work other than home building works. Paragraph (c) refers to "any other prescribed home building work". The Minister failed to alert the Committee to the effects of this clause.

The CHAIRMAN: The Water Act is defined in clause 9(6) as including the Metropolitan Water Supply, Sewerage and Drainage Act 1909, the Country Towns Sewerage Act 1948 and the Country Areas Water Supply Act 1947. I suspect that solves the problem.

Clause put and passed.

Clause 10: Deposits and advance payments -

Mr C.J. BARNETT: I move -

Page 11, line 8 - To insert after "materials" the following -

or services

It is regrettable that the deposit of 6.5 per cent referred to in this clause is so low. While it has been argued previously that that figure may be acceptable for typical home building work in the metropolitan area, as we discovered last week this Bill now has far wider application by covering "associated work" which does not have to be associated with anything. That figure is far too low to be reasonable. If someone is having a wall built or a swimming pool installed, particularly in a relatively isolated location where all the risks and site works may not have been attended to, that figure may prove to be unnecessarily restrictive. It may be appropriate for the building of a home, but it is certainly a low deposit in the case of small jobs which require a fairly minimal level of deposit and will be very much to the disadvantage of small contractors who do small jobs in relatively isolated places.

For the same reasons outlined, a penalty of $10 000 is horrendous. No doubt the Minister will bleat on about the figure of 10 per cent but the maximum penalty is too high for builders and definitely too high if the Government intends applying the Bill across all small business contractors who build walls and fences, do landscaping and so on.

Mrs HENDERSON: I understand what the member for Cottesloe is trying to do. However, it is unnecessary because the clause refers to "a genuine progress payment for work already performed". "Work already performed" must include any service provided such as the laying of bricks, the pouring of concrete or some other kind of building work. I am advised that the words "work already performed" encompass service provided-

Mr C.J. Barnett: What about work done by way of a service but not on a site?

Mrs HENDERSON: The Bill does not say that work has to be performed on a site. My advice is that the words "work performed" are wider and broader in their understood meaning than "services provided". I am advised also that the clause as it stands does not introduce the possibility of conflict between "services provided" and "work performed". Work performed is readily understood to include all services. The member for Cottesloe said that a deposit of 6.5 per cent is too low. I suggest that he look at the latter part of the clause which refers to progress payments. Normally a deposit is paid when a contract is signed and before work commences, and this Bill allows for a series of progress payments to be made whether the contract relates to the construction of a house, a wall or a swimming pool.

Mr C.J. Barnett: Do you imagine it will happen on a $7 000 wall? You show no understanding of what takes place in the real world.

Mrs HENDERSON: If the member for Cottesloe is suggesting on the one hand that a bricklayer constructing a wall will not be able to cope with a 6.5 per cent deposit because it is not enough cash up-front, I suggest it is ridiculous to argue in the same breath that the bricklayer will not ask for progress payments. In all probability, in such a case the bricklayer would require a deposit at the point at which agreement is reached, plus a further amount after a certain number of bricks have been laid.

Mrs Edwardes: He needs the bricks first.

Mrs HENDERSON: He certainly does. Part of the way in which business operates is that money is paid after goods and services have been provided, which covers the situation referred to.

Mr Strickland: You do not understand how bricklayers operate.

Mrs HENDERSON: I know exactly the way in which bricklayers operate and purchase their bricks. I have had a brick wall built myself.

Mr Strickland: I bet you bought the bricks.

Mrs HENDERSON: No, I did not.

Mr C.J. Barnett: How much deposit did you pay?

Mrs HENDERSON: I think it was five per cent. The member for Marangaroo brought to this House examples of some appalling building contracts which involved a number of people left high and dry by a builder who required deposits of 30 per cent and 40 per cent.

Mr C.J. Barnett: Did we argue for 30 per cent?

Mrs HENDERSON: The Opposition has not specified the size of deposits it wants. It has said that 6.5 per cent is not appropriate. Many people in the marketplace, unregulated, have asked for deposits of 30 per cent or 40 per cent. Any person who has provided that large a deposit, and whose home is not built, has no hope of recovering the situation.

Mr C.J. Barnett: A deposit of 10 per cent would have been a sensible compromise.

Mrs HENDERSON: Discussion has taken place for two years on this point, and a deposit of 6.5 per cent was agreed to by the building industry and by the Government. The industry is happy with that. The Opposition wants to increase the required deposit to 10 per cent although 6.5 per cent is seen as reasonable by everybody else.

The CHAIRMAN: Order! I remind members to keep to the amendment before the Committee which is to insert the words "or services" after the word "materials".

Mrs HENDERSON: The member for Cottesloe fails to take account of the fact that the Government has allowed for persons making an up-front deposit of 6.5 per cent and to also pay for the cost of drawing up the documentation. In some cases the total cost of providing the documentation plus the 6.5 per cent deposit may approach a total of 10 per cent of the contract value. In my view that is a reasonable amount for a home buyer to pay at the beginning of the construction of a house.

Mr DONOVAN: Nitpicking is allowable in this place, and will probably always happen, but I suggest to members opposite that they refer to the definition of "perform" at line 10 of page 4 of this Bill. That definition clearly alludes to all the services the member for Cottesloe seeks to cover.

Mr C.J. Barnett: Not according to the advice we have been given.

Mr DONOVAN: I understand the member's outrage because it offends his sensibilities - and consumer protection obviously does that - but when a clear definition and clause are provided, that kind of nitpicking does neither his cause nor anybody else's much good.

Amendment put and negatived.

Mr C.J. BARNETT: I move -

Page 11, line 10 - To delete "$10 000" and substitute "$2 000".

Amendment put and negatived.

Clause put and passed.

Clause 11: *Minimum defects liability period* -

Mr C.J. BARNETT: The Opposition agrees with extending the minimum defects liability period from 90 days to 120 days. However, it is concerned that the definition of the term "practical completion" is somewhat vague. Other terms in the clause, such as "reasonably capable" and "intended purpose", are similarly vague and in time will prove to be areas of dispute. I ask the Minister to clarify the meaning of subclause (3).

I mentioned earlier in the debate that although the contract contains the date of signing, no reference is made to an estimated date of practical completion. It will be difficult to define the 120 day period without that further date.

I indicated in the second reading debate that no mention is made in the Bill of the handover period. Generally, when a house is nearing completion the builder will allow owners access to the house to enable them to measure for curtains, carpets and so on. Because of the penalties contained in this clause I believe builders will harden their attitude and will not allow that access before the house is finally completed. This Bill purports to protect the consumer, but I suggest that this is a further example of how consumers will suffer as a result of this legislation. Fearful of heavy fines, builders will be forced into being uncooperative with customers and not allowing them entry to these houses. That is one of the by-products of this legislation, which is prescriptive. It will work against flexibility and stop consumers from taking what would be regarded as reasonable action. At present owners usually have access to choose carpets and whatever else.

Mrs HENDERSON: I am perplexed about some of the comments made by the member for Cottesloe. I cannot see anything relating to access by owners, and I cannot see anything about penalties.

Mr C.J. Barnett: The problem arises in the case of defects.

Mrs HENDERSON: Where is the penalty?

Mr C.J. Barnett: There are penalties all the way through the Bill.

Mrs HENDERSON: We are talking about clause 11.

Mr C.J. Barnett: In view of the penalties which apply throughout, and in view of the tenor of the legislation, builders will be very restrictive. They might even ban owners from getting into their properties, and that would be to their disadvantage. That is what the builders tell me. They tell me that owners are always allowed to come in and look around, but as a result of this legislation they believe they will not be able to do that.

Mrs HENDERSON: What the member for Cottesloe does not seem to appreciate is that there is currently a liability period for defects. It is currently 90 days, and we propose to increase it to 120 days in order to make sure that every house goes through at least one winter so that people can check, for example, whether the roof is leaking. There is nothing new or different about this; it has not caused problems in the past. Defect liability is understood by all builders, and it is currently included in other legislation.

Mrs EDWARDES: Subclause (2) defines a "defect". I refer members to paragraphs (a) and (b). These terms have been expanded and debated at length in many court cases, and they are understood. However, subclause (2) says that a defect does not mean a failure for which the builder is specifically declared by the contract to be not liable. There may well be a defect, but if the contract specifically declares that the builder is not liable for it, it will not be regarded as a defect within the meaning of clause 11.

This is where this Bill will fall down. These contracts will be signed by owners and many small contractors. People will be erecting sheds, undertaking landscaping, building swimming pools and doing many other minor things, and they will have to know what must be included in their contracts for which the builder will not be specifically liable as a defect. These things will be added to a standard form of contract which the builder and the owner will have to understand.

If we were talking about a Bill for home contracting, which was our understanding of the intention, we would not have a difficulty, because we would be dealing with a group of builders who would be far more used to these sorts of things. They would be familiar with completing contracts and they would have the understanding and knowledge necessary to complete these contracts. All those people completing contracts will need a knowledge of the defects envisaged in clause 11.

Turning to subclause (3), I would like the Minister to explain what exemptions are contemplated. We will have here a piece of delegated legislation in the regulations. How will the bricklayer, the landscaper, or the person putting in the brick paving, know about the regulations? If this Bill were limited to home building and not extended to people carrying out all this associated work, it would have been far easier. These people would have been in

a position to be advised through their associations or as a result of knowledge gained over a number of years. This Bill requires people who have never entered into a contract before to know about such things as regulations. They will have to know what regulations will result in an exemption from the minimum defects liability period.

Mrs HENDERSON: Both the matters raised by the member for Kingsley give some flexibility to this section. This is in contrast to the comments that the Bill was too prescriptive. We have spoken about a failure for which the builder is specifically declared by the contract to be not liable. I remind members opposite of the discussion we have just had where the Water Authority, for example, sets down a specific requirement in relation to a particular contract. If the builder complies with that requirement, as he would be required to do, that would be an example of where the builder was specifically not liable. The builder is clearly liable for the defects in paragraphs (a) and (b); he must perform the home building work in a proper and workmanlike manner and in accordance with the contract, and he must supply materials that are of merchantable quality and reasonably fit for the purpose for which the owner required the home building work to be performed.

It may well be that the builder will be expected to ensure that a stove is working when it is put into a house, but most stoves have a 12 months' guarantee. The builder is not responsible if, six months later, the stove breaks down; the manufacturer of the stove is responsible. We are allowing some flexibility for liability. The builder is required to ensure that the materials are of merchantable quality and fit for the purpose. That does not mean that the builder continues to be responsible where a manufacturer might well be responsible.

Mrs Edwardes: I understand what you are saying, because that is covered under paragraphs (a) and (b). That is normal practice. But clause 11 states that it is specifically declared by the contract that the builder is not liable. In the case of a stove, that will not be in the contract. The builder will not be specifically declared not to be liable. The manufacturer is responsible.

Mrs HENDERSON: It is not uncommon for a contract to include a clause to say that in complying with the requirements of a local authority or the Water Authority, the builder is not liable should those requirements have been given in a manner which was wrong. I have given an example of where there may be a clause in a contract which exonerates the builder from responsibility for a failure arising out of a direction by the Water Authority or a local authority.

Subclause (3) which deals with exemptions provides some flexibility - something which the member for Cottesloe should welcome after his comments about the prescriptiveness of the legislation. There will obviously be some associated work where the 120 days' minimum liability period might be inappropriate. It gives the possibility for the regulations to be gazetted.

Mr C.J. Barnett: What are we agreeing to?

Mrs HENDERSON: I am asking members to agree to a clause which is common to many pieces of legislation which pass through this Parliament. It allows for regulations to be gazetted in exactly the same way as dozens of pieces of legislation that I have administered and overseen. It is not an unusual provision. People in the community do not have the problem that the member has; they are aware of regulation governing Acts of Parliament. In this case, many associations are busy drawing up documents which will comply with the legislation. That will ensure that the documents will take account of the regulations. Nothing is unusual or different about the regulations. The clause gives more flexibility to make changes -

Mr Fred Tubby: It takes away flexibility. It is a disgrace.

Mrs HENDERSON: It allows for the regulations to be changed without going through a long process of parliamentary debate. That is precisely the process that has been used in this Parliament since its inception.

Clause put and passed.

Clause 12: Understatement of prime cost items etc. -

Mr C.J. BARNETT: This is a serious clause which will prevent fraud. I agree with the provision, and that a significant penalty should apply. However, because of the wide

application of the provision beyond home builders to small business contractors, serious as an offence may be, a penalty of $10 000 is too high. Any builder or contractor who deliberately sets out to understate a prime cost item is guilty of fraud. In the case of a builder, such an offence would provide grounds for the removal of a building licence. Contrary to what the Minister might say, the Opposition believes in consumer protection. However, we do not adopt a patronising attitude and assume that people cannot organise their own affairs.

Mr Cunningham: What about County Homes?

Mr C.J. BARNETT: The member for Marangaroo had a grievance on that matter. I made inquiries about that. I do not defend County Homes at all, on the basis of my inquiries. We were amazed when the member raised that issue that the Minister did not go ahead with the legislation. For whatever reason, the Minister has allowed the matter to slide for quite some time. I move -

Page 12, line 30 - To delete "$10 000" and substitute "$5 000".

Mrs HENDERSON: I am pleased that members support the clause. I oppose the amendment. I remind members opposite that at the height of the building boom a common complaint received by the Ministry of Consumer Affairs was that as a rule of thumb builders were quoting $500 or $1 000 for site works which ended up costing $2 000 or $3 000 in many cases. As a result of the level of activity, site visits were not being made and calculations were not being carried out correctly. A rule of thumb was the easiest and most convenient to use. That was a widespread problem because to maintain a competitive edge, as soon as one builder did that it happened on a widespread scale as other builders fell into line. On a contract of $60 000 or $70 000, we should introduce a strong deterrent to ensure that the underpricing of, say, site works does not become as commonplace as it was during the building boom. A maximum penalty of $10 000 is not draconian at all.

Mr C.J. BARNETT: Such a penalty would not be draconian for a builder. However, the Bill will apply to small contractors as well. No distinction is made between the two. The provision of a penalty for understated prime costs is a serious issue. We would support a move to deregister builders in those cases; however, the problem with the legislation is that it applies not only to builders but also to small contractors carrying out landscaping or the building of garden walls, and other small jobs. The penalty is relevant for builders who build houses but when applied to small business people the penalty is too high.

Mrs HENDERSON: The member for Cottesloe fails to appreciate that this is a maximum penalty. The court can inflict a fine of $200 or even $50.

Mr Fred Tubby: You said 10 per cent.

Mrs HENDERSON: I said that figure was the standard rule of thumb. This is a maximum penalty. Obviously, if a builder puts up a shed to the value of $500 and a complaint is made subsequently regarding an understatement of cost, the body determining matters will take into account the total cost of the contract. That body will not be unreasonable in the application of the Act. The member wanted the provision to apply to contracts of up to $350 000, so what kind of deterrent would a penalty of $5 000 be?

Mr Fred Tubby: You are patronising the consumer.

Mrs HENDERSON: If the provision is not needed why did the Opposition call to have it extended from $200 000 to $350 000?

Mr C.J. Barnett: To remove the anomaly; to minimise challenges to the legislation.

Mr LEWIS: I once had a problem with a prime cost overrun. While I accept that builders should be required to be exact with prime costs, in some instances it is difficult to put an accurate figure on the costs. For example, at Leda or Parmelia the area is sand over limestone. One would think that only the sand needed to be shifted around; however, the moment the machinery digs beyond three metres into the earth it strikes cap rock. That creates an entirely different engineering problem, and involves the placing and removal of heavy machinery to deal with the cap rock to enable the footings to be built. Often, legitimate reasons exist for the underestimation of prime costs. The estimates are made on the basis of the landform and considered opinion. No provision is made for an escape clause for anyone who is legitimately caught. Builders will say to clients that they will not wear a

fine of up to $10 000 on the basis of their making a mistake with prime costs. They will want the engineers to drill and to work out exactly what the costs will be. Once we start getting into quantities and engineers become involved it costs a lot of money. This clause will probably impact on clients and owners as builders will not be prepared to take risks. They will increase their estimate of the costs to cover themselves, and some clients may not proceed with projects. The Opposition's proposition neither is contrary to the legislation nor will it soften the legislation. We are endeavouring to bring some reality into the debate and to make the legislation workable. A $5 000 fine would make any builder sufficiently conscious of his responsibilities. This clause will cost the consumers and will not achieve what the Minister is trying to achieve.

Mrs HENDERSON: Clause 12(2) was included for precisely the reason the member for Applecross raised. He will see that "ought reasonably to have been known" takes account of that. In other words, if the builder did not know what rock was under the ground and could not have reasonably known what was under the ground, that is taken into consideration when determining whether the amount is misstated. This clause gives the builder the opportunity to talk about what is known when the estimate is given, and what would be reasonable to know. It does not allow the builder to say that he did not know the land sloped, because the builder should have known that. It is not reasonable that the builder should have to dig a hole to find out whether there is limestone or a stump under the surface. The clause was included to cover the situation where builders were sitting in offices and estimating site costs without looking at the blocks of land.

Mr Lewis: I hope it will work, but I do not think it will.

Mrs HENDERSON: We shall see, but its intention is to ensure that no-one is disadvantaged.

Amendment put and negatived.

Clause put and passed.

Clause 13: Rise-and-fall clause prohibited -

Mr C.J. BARNETT: The prohibition of a rise and fall clause within the contract seems to be a denial of people's rights under common law. Specifically, clause 13(4) allows a builder to increase the stipulated price to reflect further costs he incurs as a direct consequence of a written law of the State or the Commonwealth. What is the case with a national wage case decision, an amendment to an industrial award, alteration to local allowances or agreements by the Industrial Relations Commission to a site allowance for perhaps a multiunit development? Does a site allowance qualify as a law of the State or Commonwealth? That typically would be the most important cost adjustment that the builder would face during the course of the construction period. Subclause (6) does not apply to a contract for the building or installation of a swimming pool or spa if the rise and fall contract was included at the request of the owner, but that seems spurious as it would be difficult if not impossible to establish whether in fact it was at the request of the owner. Why did the Minister pick out swimming pools and spas when all sorts of other works could be covered? I am not sure of the implications of outlawing rise and fall clauses, which are very common in home building contracts in country areas, and in earthquake zones in particular. I suspect it will create serious problems for builders and consumers in the non-metropolitan area in particular.

Mr LEWIS: I agree with the member for Cottesloe that this does not take into account a force majeure clause; that is, something which happens beyond reasonable expectations that should be taken into account. When I was in the surveying industry the day after we signed a contract for work on the North West Shelf gas pipeline four inches of rain fell and the earthworks machinery became bogged. It took four or five weeks for that country to dry out, and no work was done during that period. Because the contract contained a force majeure clause we could claim the reasonable costs associated with that delay. Clause 13 would render such a claim unlawful. The clause covers not only the metropolitan area but all of Western Australia - places like Karratha and Port Hedland, where construction is on land with a lot of clay content and where sites can become unworkable for weeks as a result of rain. This clause locks out the builder; he could be forced into a loss situation because of something over which he has no control. That may be all very well for the client, but it is not reasonable or fair for this legislation to restrict the builder in claiming for what, to my mind, would be a legitimate expense. This clause will cause builders to increase their margins to

cover possible increases in industrial awards or whatever. As the member for Cottesloe asked, does that mean that those increased costs are exempt or will it lock out the builder? If that is the case it is unreasonable because such things are beyond the ability of the builder to take into account or to do anything about. Therefore, a builder is in a no win situation without any right of compensation for those unforeseen costs. Builders may initially be caught but they will soon get smart and increase their margins accordingly to take into account those unforeseen circumstances.

Mrs EDWARDES: I support my colleague's efforts to include in this clause a force majeure. Since the turn of the century the words "force majeure" have become a common term in contracts. It is a term taken from the Code Napoleon and, although judges in the past regretted the introduction of foreign words, force majeure does have a natural interpretation today. Force majeure will make provision for totally unexpected circumstances during a building's construction. The case of Matsoukis v Priestman & Co [1915] 1 KB at page 681 states -

> . . . At the same time I cannot accept the argument that the words are interchangeable with "vis major" or "act of God". I am not going to attempt to give any definition of the words "force majeure", but I am satisfied that I ought to give them a more extensive meaning than "act of God" or "vis major". The difficulty is to say how much more extensive . . . I think that the complete dislocation of business . . . as a consequence of the universal coal strike . . . did come within the reasonable meaning of the words "force majeure" . . . So far as the shipwrights' strike is concerned it comes within the very words of the exceptions clause. As to delay due to breakdown of machinery it comes within the words "force majeure", which certainly cover accidents to machinery.

Several examples of force majeure were highlighted by the judge in that case. In another case Hackney Borough Council v Dore [1922] 1 KB at page 431 it states -

> By a local Order, a borough council were bound to supply energy to premises in their district when requested . . .

In this case the council was unable to supply that energy; however, because there was a force majeure clause in the agreement the judge defined it as being -

> In my view force majeure in this case means some physical or material restraint . . .

It is unreasonable to include in this Bill a clause which will prohibit rise and fall and not provide for a builder to recoup ordinary and reasonable costs as a result of something totally unexpected happening. From the wording of subclause (4)(c) it is clear that the Minister actually contemplated that instances would occur which would prevent a builder from commencing building beyond 45 days of the date of the contract and, therefore, the subclause provides that the builder should be able to recoup the losses caused by that delay.

Mr Lewis: It may be due to an injunction from a neighbour or something like that.

Mrs EDWARDES: Yes, things which are totally unexpected. This clause should be amended to include a force majeure provision to allow a builder to recoup his losses when such an exceptional event occurs.

Mrs HENDERSON: The member for Cottesloe wanted to know what would happen with home building contracts in the country. The experience of the Department of Consumer Affairs is that the vast majority of domestic building contracts in this State do not contain rise and fall clauses. Obviously, determining a lump sum contract requires, on the part of the builder, a degree of foresight about what will be the total cost and the time that will be taken to complete construction. The members for Cottesloe and Kingsley raised the question of national wage decisions and suggested that I should have included provision for that in subclause (4).

Mr C.J. Barnett: We asked whether they were covered by a site allowance or location allowance.

Mrs HENDERSON: They are not covered by that subclause. Most builders engage people on a subcontract basis to construct various components of the building. They are usually engaged in that work for a lump sum and they are usually not affected by national wage case decisions. Also, they are not considered to be employees of the builder and, indeed, had we

included in this Bill a provision that the decisions of a national wage case should flow on to those people engaged in the construction of houses, the members for Cottesloe, Applecross, Roleystone and Kingsley would have said that I was trying to unionise the entire cottage building industry. That has been the underlying tone of this entire debate.

Mrs Edwardes: What is the agenda?

Mrs HENDERSON: There is no agenda. However, I am aware of the paranoia which affects the Opposition on that issue. This Bill does not need to include any mention of national wage decisions because they do not normally impact on the lump sum contract price made with subcontractors.

Mr C.J. Barnett: What about a site or location allowance?

Mrs HENDERSON: Site allowances are normally restricted to commercial building sites. I do not know of any builder who has gone to the Industrial Relations Commission and been granted a site allowance for the construction of a house. Perhaps the member for Cottesloe does know of such a case. I am not aware of any subcontractors entering into agreements which include a breakdown of location allowances. Normally, a lump sum is agreed to for the laying of bricks or electrical wiring by the subcontractors. Such a provision would not have any relevance to this legislation because this legislation deals with the cottage building industry. The member for Applecross spoke about unforeseen circumstances which would affect the construction of a pipeline.

Mr Lewis: I gave an analogy.

Mrs HENDERSON: This Bill does not cover the construction of pipelines or any other commercial construction. Those people who work in the north west would be better aware than most people in this Chamber about what are the normal wet conditions at a certain time of year. Those people know at what time of the year they should construct houses.

Mr Fred Tubby: In Roleystone exactly the same thing happens after heavy winter rains. In many cases the machinery cannot be taken off the quarter acre blocks.

Mrs HENDERSON: That is exactly right, and what kind of building contract covers the construction of a house in that area? The contracts do not have rise and fall clauses in them. I have had a few people from Roleystone visit me at my electorate office about their building contracts and I have yet to see one contract with a rise and fall clause in it. I appreciate that the clay soil and washaways can create problems, but they are normally sought to be resolved by inserting a rise and fall clause in the contract.

The member for Kingsley pointed to the clause in the Bill which provides for an unforeseen event caused by a third party. It does not have to be something caused by an act of nature. It could be something caused by a third party - not the owner or the builder - which delays the commencement of a building. Many things can occur in the course of construction which will delay the completion of the building and those things vary from the brickie being ill, there being heavy falls of rain which result in water having to be pumped from the site and the bricks from the kiln not matching the bricks on site. Every contract I have looked at allows for a certain amount of time to cover those delays. Builders are competent people and they know how to allocate the extra time to cover those eventualities, but it does not get away from the fact that most home building contracts do not have a rise and fall clause in them. Commercial contracts do have a rise and fall clause, and it is the Government's intention to ensure that that clause does not intrude into home building contracts.

Mr C.J. BARNETT: I move -

Page 13, line 9 - To delete "$10 000" and substitute "$2 000".

Page 14, lines 17 to 21 - To delete the subclause.

The Minister did not indicate in her reply the reason for the necessity for subclause (6).

Mrs HENDERSON: I oppose the first amendment for the reasons I have already given.

The reason for subclause (6) is that some contracts include the construction of a swimming pool and it is not unusual for that to occur at the end of the contract. In most cases the site has been cleared and the building completed before the swimming pool is constructed. It could be nine months after the commencement of the construction of the house before the

pool is constructed, and it would be unreasonable to expect the swimming pool manufacturers and installers to work out the price for the construction of the pool when the building contract is signed. We must bear in mind that the pool may be constructed many months after the building has been commenced. In many cases the pool manufacturer and installer are at the mercy of the rate of construction of the house.

Mr Lewis: You have destroyed your own argument.

Mrs HENDERSON: I have not. This subclause allows the owner and the manufacturer to agree to waive that part of the contract and to insert a rise and fall clause. It is my expectation that that will occur where a swimming pool is part of a house being constructed and is being installed separately. In the case of a pool being constructed on a block where a house already exists the consumer would be unlikely to waive his right to have no rise and fall clause in the contract.

Amendments put and negatived.

Clause put and passed.

Clause 14: Cost plus contracts -

Mr C.J. BARNETT: Clause 14(1)(a) states that a builder must not enter into a cost plus contract with an owner for the performance of home building work unless the contract is in writing and the written contract has a heading at the beginning that includes the words "cost plus contract". I do not disagree that such a contract should have a heading, but it is absolutely over the top to set a penalty of $10 000 should the heading be omitted from the contract. Therefore, I move -

Page 14, line 31 - To delete "$10 000" and substitute "$2 000".

If someone inadvertently omits the heading, the penalty prescribed in the Bill is out of the ballpark for what is reasonable.

Mrs HENDERSON: The only thing that will distinguish a cost plus contract from a normal contract is that it has the heading "cost plus contract". There is no way that a consumer, looking at a contract, would immediately know that it is not a normal standard fixed price contract unless it is headed as such. Why does the Opposition object to having the contract labelled the kind of contract that it is? Why would anyone seek to leave off that heading?

Mr Lewis: By errors and omissions.

Mrs HENDERSON: No, not by that. They will be printed contracts. The only reason that a heading would be omitted is that the builder would be seeking to mislead the consumer. I remind members of the basic difference between a fixed price contract and a cost plus contract. A fixed price contract is for a fixed amount of money, and the person involved borrows the money from a bank. They have some degree of certainty of the cost of the house. With a cost plus contract the builder and the owner start off with a certain figure, but the exact figure is not known until the end of the construction. Most people who borrow money to build a house could not contemplate entering into a cost plus contract. Most of the cost plus contracts which are entered into are for mansions like the Hancock mansion which take three years to build and no-one knows how much the final cost will be. If the owner cannot read on the contract that it is a cost plus contract, the whole purpose of this Bill is destroyed. If my prejudice in favour of consumers is showing, I am pleased, because that is my job.

Mr LEWIS: The Minister is presuming that consumers cannot read. The Minister said that there is no difference between the contracts. I accept that if someone was illiterate -

Mr Catania: You are presuming that people know the difference between a fixed price contract and a cost plus contract, but that is not the case.

Mr LEWIS: When people enter into a building contract for a cottage, whether it be for $40 000 or $60 000, they should at least read the contract. For the Minister to say to the Committee that people do not understand the difference between a cost plus contract and a fixed price contract -

Mr Catania: Many people don't know the difference.

Mr LEWIS: Does the member think that having "cost plus contract" written at the top of the contract will make any difference? It will not, because those people will not even read that.

Mrs Henderson: It will alert them to what kind of contract it is.

Mr LEWIS: They will not read that.

The DEPUTY CHAIRMAN (Mr Kobelke): Order! I draw the attention of members who are interjecting and the Minister to the fact that we are discussing an amendment. The interjections may be made in an attempt to be helpful, but members should restrict themselves to addressing the amendment and not the clause.

Mr LEWIS: The amendment seeks to reduce the penalty for someone who does not comply with the clause from $10 000 to $2 000. This legislation does not necessarily apply to the building of houses only and impacts on all contracts involving an amount exceeding $6 000. The Minister has said that if someone types up a contract, such as one between a bricklayer who is to build a screen wall for a residence and the owner, and they happen to not put on the top that it is a cost plus contract -

Mr Catania: Subcontractors do not work on a cost plus basis.

Mr LEWIS: I have just had renovation work done at my home on a cost plus basis. Renovation work is usually done on that basis because the renovator does not know what is behind a wall, in a ceiling or where the plumbing is. Builders are cautious about entering into a contract that is not cost plus in those circumstances.

Mrs Henderson: Did you object to the contract being headed "cost plus contract"?

Mr LEWIS: The Minister is missing the point. We are not arguing about the words "cost plus" at the top of the contract but about imposing a penalty of $10 000 on somebody who legitimately enters into a contract on the top of which someone does not type the words "cost plus" thereby leaving them liable for a penalty of $10 000. That is beyond the pale! The amendment should be accepted.

Amendment put and a division taken with the following result -

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Ayes (20)

Mr Ainsworth	Mr Court	Mr MacKinnon	Mr Strickland
Mr C.J. Barnett	Mr Cowan	Mr Minson	Mr Fred Tubby
Mr Bradshaw	Mrs Edwardes	Mr Nicholls	Dr Turnbull
Mr Clarko	Mr Kierath	Mr Omodei	Mr Watt
Dr Constable	Mr Lewis	Mr Shave	Mr Blaikie *(Teller)*

Noes (22)

Dr Alexander	Dr Edwards	Mr Leahy	Mr P.J. Smith
Mr Michael Barnett	Dr Gallop	Mr Marlborough	Mr Taylor
Mrs Beggs	Mr Grill	Mr Pearce	Mr Wilson
Mr Catania	Mrs Henderson	Mr Read	Mrs Watkins *(Teller)*
Mr Cunningham	Mr Gordon Hill	Mr Ripper	
Mr Donovan	Dr Lawrence	Mr D.L. Smith	

Pairs

Mr House	Mr Bridge
Mr Wiese	Dr Watson
Mr Trenorden	Mr Graham
Mr Bloffwitch	Mr Troy
Mr Grayden	Mr Thomas

Amendment thus negatived.

Clause put and passed.

Clause 15: Conduct or terms of contract that are unconscionable etc. -

Mr C.J. BARNETT: I move -

Page 15, line 15 to page 16, line 20 - To delete the subclauses.

This clause says that a builder may not enter into a contract or promotion of an

unconscionable, harsh or oppressive nature. We agree with that in relation to conduct and the written content of a contract. However, the Bill seeks to define "unconscionable" and that is where it gets into trouble. It mentions words such as "relative strengths", "bargaining positions", "not reasonably necessary", and "legitimate interests". It says that owners must understand a contract and talks of "undue influence or pressure". All those terms are emotive ones and inappropriate in the text of the legislation. They are the sorts of expressions the Minister could use in her second reading speech. However, it is not up to the legislation to define in a vague way what is unconscionable, harsh or oppressive. I have moved this amendment so that the clause shows that builders should not enter into that sort of contract.

Mrs EDWARDES: This example is similar to ones I have highlighted throughout the Bill where it seeks to rewrite contract law or, in this case, equity law. The common law has never provided remedies for unconscionable conduct. The courts and equity laws have taken that into account over the centuries. Therefore, the sorts of things the Minister seeks to define, such as "unconscionable, harsh or oppressive" conduct, are redefining what has become well established practice. The difficulty in doing that is the limitation it will place on the meaning of the words "harsh", and "unconscionable" conduct. The Minister is limiting matters to those examples. It will not be able to go wider. It is always a difficult thing to do. The Minister for Consumer Affairs is putting a tribunal in place, and although I do not agree with the plethora of tribunals being set up, this one will have at its head a solicitor, who will know what unconscionable conduct is. It is absolutely irresponsible for the Minister to try to rewrite and redefine what is already a well known, well understood and well established practice.

Mrs HENDERSON: The debate offered by the Opposition has been characterised by its contradictoriness. In some cases when words have been used in this Bill that Opposition members believe are general and open to interpretation, they have said so. In cases such as this, where we are outlawing unconscionable conduct and have sought to provide some guidance as to what it is so that people will know, members opposite express concern about that. Most people would welcome some guidelines as to what kind of harsh, unconscionable and oppressive conduct we are talking about in the Bill, and that is why we have provided it.

Mr C.J. Barnett: One hundred years of common law have done that. You will not make a great contribution on top of that.

Mrs HENDERSON: I think this makes a considerable contribution to the volume of law that has been developed over time. I oppose the amendment.

Mr C.J. BARNETT: I am very disappointed. It should be clear to everyone in this Chamber that there are defects in this legislation. By moving this amendment, the Opposition is trying to remove one future cause of conflict between owners and builders, and probably between the proposed disputes committee and the court system. It does not add anything to the legislation for the Minister to attempt to define unconscionable conduct. As the member for Kingsley has pointed out, that is well established under common law, and the Minister's attempt to define it here will result only in confusion. If the Minister has some comments to make about what was intended by this clause she should have made them in her second reading speech - indeed, she should make them now so that they may be recorded in *Hansard*; but she should not try to include in the Bill terms such as "bargaining position". What are "the legitimate interests of the builder"? What does the Minister mean by "bargaining position"? What is "relative strength"? How does one measure market strength? I do not know what the Minister is talking about; no one in this Chamber knows; the disputes committee and the courts will not know either and, as the member for Kingsley has said, they will resort to the 100 years of common law where it is well established. This clause adds absolutely nothing to the legislation. It is not a point of party political or philosophical difference; we are trying to remove something that will create problems. However, the Minister is so obstinate that even when we try to improve her legislation she will not agree to it.

Mrs EDWARDES: Will the Minister explain what she understands to be the meaning of the words "the legitimate interests of the builder" in clause 15(2)(b)?

Mrs HENDERSON: The member for Kingsley and the member for Cottesloe seem to imagine that somewhere a book or some tablets have been written which represent common law; that, somehow or other, these concepts are written up and defined already and that this

clause somehow will contradict them. What a load of nonsense! Common law has accumulated over a century of judgments.

Mr C.J. Barnett: These are well understood terms.

Mrs HENDERSON: This is more clear.

Mr C.J. Barnett: One hundred years of common law topped by the Minister!

Mrs HENDERSON: These things are not without precedent. The Credit Act, which passed through this Parliament, also seeks to define harsh and oppressive conduct. I do not recollect the Opposition's leaping around saying that it contravened common law and would not work. What nonsense! Let us hear it for what it is: It is simply part of the stonewalling obstinacy we have seen from the Opposition today. This clause provides a guide to the disputes committee. The committee will be able to look clearly at what is harsh and unconscionable in the terms of the Act. If that were not provided for in the Bill the member for Cottesloe would have been the first to leap to his feet and ask, "What do you mean by 'harsh and unconscionable'? Who will decide what is harsh and unconscionable?" The Bill is defining it.

Mr C.J. Barnett: Answer the question put by the member for Kingsley: What is the meaning of "the legitimate interests of the builder"? I will ask another: What is meant by "undue influence"? Define those terms for us. They are in your legislation and you should know what they mean.

Mrs HENDERSON: I suppose the member for Cottesloe will ask me to define "the" as well. The tribunal will determine these matters of legitimate interest and relative strength. If the member does not think that the common usage and understanding of those words is known by most people in the community, he is showing his ignorance by consistently raising nitpicking points designed to delay this legislation. The consumers of this State will not thank him for seeking to delay legislation which they need.

Mrs EDWARDES: The Minister has failed to answer my question. A Minister who has debated legislation with her officers before bringing it to this place in order to have it passed should understand it and know what it contains. Again I ask the Minister what she understands to be the meaning of the words "the legitimate interests of the builder".

Mr DONOVAN: As we have said repeatedly, it is clear that the Opposition, by and large, has some quite profound philosophical problems with consumer legislation.

Mr C.J. Barnett: You have said that; no-one over here has said it.

Mr DONOVAN: I said members on this side. For members opposite to say that 100 years of common law will somehow provide a tablet of stone upon which a disputes committee - not a court of law, but a disputes committee - is to adjudicate is a nonsense.

Mr C.J. Barnett: But this will be in courts of law.

Mr DONOVAN: The member for Kingsley should know - she is a lawyer. She will not find in 100 years of common law an ethos, a feeling, or an impression about, or a sensitivity to, consumer affairs. That is not what common law has been about over its 100 years, and the member knows that as well as we do. Of course one cannot go to a disputes committee and say, "We want the committee to supervise and to enact important measures for consumer protection", and then say, as the member for Cottesloe suggested, "By the way, if you want to understand what we mean by that, look up the Minister's second reading speech." What a ridiculous proposition.

Mr C.J. Barnett: Can you tell me what "the legitimate interest" means? It is in your legislation.

Mr DONOVAN: Of course common law will not provide a disputes committee with that kind of blueprint; therefore, the Bill must give the disputes committee some indication, some road map, upon which it can adjudicate. That is the whole point about this Bill: It is about fairness and equality. The Minister for Consumer Affairs and others have repeatedly reminded members opposite that the Housing Industry Authority and the Master Builders Association have been consulted widely on this Bill.

Mr C.J. Barnett: They are not very happy.

Mrs Henderson: They are happy.

Mr DONOVAN: It is not as though the industry has not been consulted. However, I know that the Minister, and certainly I, would make no apologies for the fact that this is an attempt to protect the consumer in a situation about which I have files of complaints and concerns from people - as no doubt have members opposite. Those people, especially during the peak of the building industry which we experienced a couple of years ago, have felt depowered by builders, have lost thousands of dollars, and have been held up not just for weeks or sometimes months, but in some cases for a couple of years or more.

Mr C.J. Barnett: You were not listening when I said I agreed with the objectives of the legislation.

Mr DONOVAN: The question consistently put to me, and no doubt to other members of this place, by constituents facing these kinds of situations was, "How can we ever win against this industry?" The answer is that they could not, and that is the reason for this Bill. That is why clause 15 as it is cannot simply be wiped out because the member for Cottesloe suggests it might be an improvement to the Bill. It is central to the operation of the Bill; it is central to the thinking which must guide the disputes committee, precisely because 100 years of common law will be absolutely no help to it.

Mrs EDWARDES: Mr Chairman -

The CHAIRMAN: Order! The member for Kingsley has made three contributions to this debate.

Mrs Edwardes: I have still not had an answer.

The CHAIRMAN: That is not my jurisdiction.

Mr LEWIS: This clause relates to whether the owner understood the contract. If a dispute arises and goes before the disputes committee in which the owner pleads that he did not understand the contract, will that militate against the builder's case in that dispute? Virtually any owner in dispute could plead that way to the disputes committee. Is the Minister indicating that this situation will be all right because the builder understands the contract and the consumer does not? In that regard any consumer who states that he does not understand the contract would be regarded as having a legitimate complaint and could enforce that claim to the disputes committee. That is absolutely unreasonable and shows an absolute bias.

A contract is drawn up between two parties, yet a clause in the legislation allows one party to cop out of the agreement on the basis that he or she did not understand the contract. If that person did not understand the contract, he or she should not have entered into it in the first place. They should purchase a spec home; that is, one which is pre-built. Perhaps such a person is not capable of understanding the contract - perhaps he or she is illiterate. However, that is not an excuse -

Mr Donovan: That is one of the most intellectually arrogant comments I have ever heard!

Mr LEWIS: It is not arrogant - I am making a reasonable point. If a person does not understand the contract, and pleads such to the committee, that person should not have entered the contract in the first place.

Mrs HENDERSON: The concept of what is "harsh" and "unconscionable" is not appearing for the first time in the legislation under consideration. This is a common concept which has been adjudicated upon in various courts and tribunals for many years. Courts of law take into account, and in some cases are directed to do so, the kinds of factors listed in the legislation. This includes such things as the relative strength of the bargaining positions. What I think the words "relative strength" mean, as was asked by the member for Kingsley, is irrelevant. The opinion that the disputes committee will form regarding these words is what is important. What I think about the "legitimate interests of the builder" is irrelevant. It is up to the disputes committee to consider that matter as part of the claim of harsh or unconscionable behaviour. The member for Kingsley understands that.

Mrs Edwardes interjected.

Mrs HENDERSON: I understand the common usage of the words. Some kind of explanation of my opinion of those words is neither here nor there. We are asking the committee to take into account those factors in determining whether harsh and

unconscionable behaviour has occurred. Issues such as whether the owner understood the contract, whether undue influence or pressure was exerted on the person, or whether unfair tactics were used against the owner are matters for the disputes committee to decide based on the evidence provided.

Mr Lewis: Who will they be? Your cronies?

Mrs HENDERSON: What a bizarre and stupid comment. We are talking about the Chairman of the Builders Registration Board, who will head this body, and the member makes such a comment.

The legislation gives clear guidance to the disputes committee regarding what matters it should consider. If someone were to bring an application to the committee on the basis that they did not understand the contract, that would not mean that the application would be upheld. That case would be considered by the committee. These are important components in this clause, and I oppose the amendment to delete them.

Amendment put and negatived.

Mrs EDWARDES: The Minister is doing herself a disservice in saying her understanding of the words "legitimate interests of the builder" is irrelevant to this Chamber. The Minister would have asked why these words should be included in the Bill when it was drafted, and it is important that she indicates what is meant by them. If the Minister does not relay her understanding of the words, perhaps she could explain the reasons given to her by her advisers. That is a reasonable request. Also, what is the projected time frame for the procedures outlined in subclause (4)?

Mrs HENDERSON: The disputes committee will be established under this legislation once it is proclaimed. I do not know whether the committee will be able to act expeditiously regarding a case put before it; however, the disputes committee has wide powers, and will not be constrained by having to sit at certain times and that type of thing. In regard to my understanding of the meaning of certain words, I refer the member for Kingsley to my earlier comments - she understands them only too well.

Clause put and passed.

Progress

Progress reported and leave given to sit again at a later stage of the sitting, on motion by Mrs Henderson (Minister for Consumer Affairs).

[Continued on p 3927.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Kelly, Hon Gary, Resignation - Jones, Hon Beryl, Appointment

Message from the Council received and read notifying that Hon Garry Kelly had resigned from the Joint Standing Committee on Delegated Legislation, and Hon Beryl Jones had been appointed to take his place.

[Questions without notice taken.]

Sitting suspended from 6.00 to 7.30 pm

ACTS AMENDMENT (FINANCIAL ADMINISTRATION AND AUDIT) BILL

Receipt and First Reading

Bill received from the Council; and, on motion by Dr Gallop (Minister assisting the Treasurer), read a first time.

Second Reading

Leave granted to proceed forthwith to the second reading.

DR GALLOP (Victoria Park - Minister assisting the Treasurer) [7.32 pm]: I move -

That the Bill be now read a second time.

[Leave granted for the following text to be incorporated.]

This is a simple and straightforward piece of legislation, the purpose of which is to amend the Curtin University of Technology Act 1966 and the Edith Cowan University Act 1984 to extend to those two universities exemptions from sections 21, 22, 42, 44 and 58 of the Financial Administration and Audit Act in line with exemptions which currently apply to the University of Western Australia and Murdoch University. These exemptions were granted to the University of Western Australia and Murdoch University by the Acts Amendment (Financial Administration and Audit) Act 1985, assented to on 4 December 1985.

The Review of Higher Education in Western Australia 1989 gave strong support to adopting a common approach to all four institutions with respect to exemptions to give them greater administrative flexibility without offending requirements for full accountability under the Financial Administration and Audit Act.

Each of the universities is largely Commonwealth funded and its financial affairs are the responsibility of the university senate or council, which is predominantly composed of external members who exercise appropriate control over the financial affairs of the university. The traditional autonomy of universities should be respected for all four universities equally if they are to be placed on a similar footing of public regard.

In order to assist members to understand the background to the present legislation, I remind them of the 1990 report of the Auditor General which commented on the financial reporting of tertiary institutions. In particular, reference was made to the absence of standard reporting formats; the exemptions provided to tertiary institutions; and the widely divergent accounting policies adopted on common issues, which result in the accountability requirement for disclosure of institutions' financial positions not being met in a way which enables consistently meaningful comparisons to be made.

The Auditor General reported that a working party comprising representatives of the four higher education institutions - all of which are now universities - and Treasury, had been established to address the reporting issues. Areas under review were: Standardisation of financial statements; standardisation of financial performance indicators; and standardisation of exemptions from the Financial Administration and Audit Act 1985. Once agreement had been reached concerning standardised financial statements, responsibility for the working party was transferred from Treasury to the Western Australian Office of Higher Education to address the standardisation of performance indicators and exemptions from the Financial Administration and Audit Act 1985. This action was consistent with the recommendations of the Review of Higher Education.

The working party finalised its report on standardisation of reporting by Western Australian higher education institutions in a manner acceptable to the institutions. This report was considered and endorsed by the Western Australian Higher Education Council at its meeting on 31 August 1990 and covered both performance indicators and exemptions. Treasury has agreed that exemptions to sections 21, 22, 42, 44 and 58 of the Financial Administration and Audit Act should apply to all four universities, including Curtin University of Technology and Edith Cowan University. Following amendment to the Financial Administration and Audit Act last year, affiliated bodies of institutions have been made publicly accountable.

All the issues raised by the Auditor General on the financial reporting of tertiary institutions in his 1990 report, and the Review of Higher Education report, have now been addressed. Passage of this legislation will finalise exemptions to the Financial Administration and Audit Act for the universities. I commend the Bill to the House.

Debate adjourned, on motion by Mr Blaikie.

HOME BUILDING CONTRACTS BILL

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Dr Alexander) in the Chair; Mrs Henderson (Minister for Consumer Affairs) in charge of the Bill.

Progress was reported after clause 15 had been agreed to.

Clause 16: Disputes Committee's jurisdiction limited -

Mr C.J. BARNETT: This clause refers to the proposed disputes committee to be set up within the Builders Registration Board by an amendment to the Builders' Registration Act.

This is yet another tribunal, another quasi-court, which is being set up. There will be problems of duplication between this committee and the courts. The legislation could have been handled through the Local Court or the District Court. There will be problems with jurisdiction and additional administrative expenses. One of the problems of conflict will occur with respect to contract law. Members have already pointed to the problems involved where someone builds a house for less than $200 000 compared with a person who builds a house for more than $200 000, for which contract law then comes into play. This clause limits the role of the disputes committee to the prescribed amount, which is $100 000, to cover the value of the work done. There is also a limit on the orders which may be granted.

We have the bizarre situation that the Bill applies to work up to a value of $200 000. Above $200 000 the Bill flips out of existence. The disputes committee applies to work for less than $100 000. We have one set of rules up to $100 000; another set of rules from $100 000 to $200 000, and a third set of rules above $200 000. If members do not agree that this is an ingredient for conflict, I cannot say any more.

Mrs HENDERSON: I understand that the Opposition opposes the establishment of a tribunal to deal specifically with problems relating to contracts. It is unfortunate that the member for Cottesloe says that if people want their disputes resolved they can go to the Local Court or the District Court. It is precisely because these disputes are not being resolved by the Local Court and the District Court that the legislation is before us. Ordinary consumers cannot afford to hire lawyers to appear before the District Court over a cupboard installed in a kitchen. That argument indicates how far out of touch the Opposition is. For the member for Cottesloe to say there are three different layers is as nonsensical as to suggest that people should go to the court system with these sorts of disputes. This legislation covers contracts up to $200 000. This clause makes it clear that the maximum amount which can be awarded by the committee is $100 000, but that $100 000 can be awarded in relation to contracts up to $200 000. This legislation does not create three different rules. The Bill is intended to provide an efficient, cheap, effective and speedy means of resolving disputes. The creation of this disputes committee is a key element of the Bill.

Mrs EDWARDES: Upon what basis was the figure of $100 000 arrived at?

Mrs HENDERSON: From our experience it was the maximum amount that could be part of a dispute. Currently most disputes reported to the Ministry of Consumer Affairs are relatively small amounts. However, we are dealing with contracts up to $200 000. When the legislation was drafted originally it was open ended and allowed for any contract to be covered. This provision is in line with the situation in other States. It is the amount considered to be the most likely upper limit of claims under this type of legislation.

Clause put and passed.

Clause 17: Applications for relief, and orders -

Mr C.J. BARNETT: I move -

Page 18, line 25 - To delete "$10 000" and substitute "$5 000".

Amendment put and negatived.

Clause put and passed.

Clause 18 put and passed.

Clause 19: How contract terminated -

Mrs EDWARDES: This clause deals with the circumstances under which a contract may be terminated under sections 4(5), 10(4) or 14(3) and includes some of the instances laid out in schedule 1. This provision is to rewrite the law of contract, as it provides the circumstances in which a contract can be terminated - which is not possible at present. This will blur the rights and obligations of people rather than assist them.

Clause put and passed.

Clause 20 put and passed.

Clause 21: Remedy for breach of section 15 -

Mrs EDWARDES: This clause deals with a circumstance where an owner claims that a builder has committed a breach of clause 15 where a contract contains any provision that is

unconscionable, harsh or oppressive. Subclause (2) refers to an application in respect of a contract; that is, where the owner claims a builder has committed a breach he can apply to the disputes committee for relief. The application must be made within three years of the contract or when the breach first occurred, whichever is the later. I am amazed at the three year time limit, considering occurrences in the past. Can the Minister give the reason for such a time limit being put in place?

Mrs HENDERSON: Three years is a reasonable time. In a whole range of legislation the general period within which people must take action is six years. The three year time limit commences from the time the parties entered into the contract. It may take 18 months to build a house. The time from the date of completion of the house until a person takes action may be only 18 months. I have heard of examples of people entering into a contract to build a house and two years down the track the house is still not completed. Three years is not an unreasonable time.

Mrs EDWARDES: The clause specifies that the disputes committee may grant relief. An owner may apply to the disputes committee regarding unconscionable, harsh or oppressive conduct and in granting such relief the committee may declare a contract or any provision of the contract against which relief is sought to be void from the beginning. Therefore, a section of a contract, or a whole contract, could be declared void; the provisions of a contract may be modified in such manner as the disputes committee considers just; and the disputes committee may order the repayment to the owner of any amount paid by the owner under a contract or a provision that has been declared void or modified. For the purposes of carrying out these provisions the committee may make such orders and give such directions as it considers necessary or expedient. If a contract is declared void, we will still provide for payment to the owner of fair and reasonable costs. Therefore, if the whole contract is declared void it is not likely the owner will receive the whole amount. However, with a three year time limit the disputes committee - not a court or tribunal - will grant relief by declaring either the whole or part of a contract void and ordering payments as required by the owner as relief.

Compared to some people, I have been involved in the law for a short time. I hope that the Minister can allay some of my fears and advise under which circumstances these provisions will be effective, bearing in mind that the sum involved is limited to $100 000? How has the need for these requirements been put to the Minister? What is the reason for the three year time limit, given the remedies available to the disputes committee?

Mrs HENDERSON: The clause that the member for Kingsley read from at length relates clearly to a contract which is alleged to be harsh, unconscionable and oppressive. It is not the intention of the Government to wipe out the whole contract as it may be to the disadvantage of all the parties to do that. It is the intention to void only the particular clause which is judged as harsh or unconscionable, or to modify the clause in such a way that the disputes committee would consider fair and reasonable, or that the owner be paid a certain amount of money so that the contract can be modified in theory. The Bill was drafted very carefully bearing in mind that it would be a major disincentive to someone who felt that part of the contract was unjustified and unreasonable if that person faced the process of having the whole contract quashed and of finding another builder. It was deliberately designed in such a way so as not to do that. Clause 21 provides remedies for breaches of clause 15 in relation to the provisions of the contract and sets a period of three years from the date the contract is signed or when the breach first occurs. It may be that the particular section of the contract believed by the owner to be harsh and unreasonable does not emerge until the construction of the building.

Mrs Edwardes: I am not talking about defects.

Mrs HENDERSON: Nor am I, but the way in which the contract is invoked during the course of construction where it emerges that the owner believes it is harsh and unreasonable. That could be three years after the date on which the contract was signed. It has been my experience as Minister for Consumer Affairs that it is not unusual for these contracts to drag out over that length of time, and it may be that the section of the contract which emerges as being harsh and unreasonable to the owner is not seen in that light until something occurs during the construction. It is our intention to make it quite clear that the consumer should be able to pursue that even if the construction of the house has dragged on for longer than one would expect.

Mr Lewis: Could this clause be brought to bear if it were for defects?

Mrs HENDERSON: We are discussing the terms of the contract, and if the contract were written in an unusual way. For example, to make it virtually impossible to claim there were any defects would make it harsh and unreasonable by all those various criteria that we suggested. It could arise out of any clause of the contract depending on the manner in which that clause was written and intended to be carried out. This clause refers to the wording of individual clauses of the contract and the way in which those clauses are executed.

Mr WIESE: It is most unfortunate that the Minister in replying to the previous question used the word "unreasonable" because that frightens me. It is bad enough that we are worrying about the terms "unconscionable, harsh or oppressive" which are actually in the Bill, but the Minister uses the word "unreasonable" and that is probably what is in her mind when she talks about this legislation. The home owner would have gone right through his contract and looked at it all - presumably with advice - and signed that contract in good faith, as would the builder. However, clause 21 empowers the disputes committee to declare void a contract that has been willingly signed by the home owner three years after it has been entered into. That is a horrific power and far more than is acceptable to anybody in the community. If the contract is not declared void, certain parts of it can be declared void, and the disputes committee has the power to require the builder to repay the money and to apply that sort of punishment - that is what it is. Members must bear in mind that we are discussing a contract - not the quality of the building - that has been willingly entered into by the home owner. To then be able to void that contract, to use the Minister's own word, is unreasonable.

Mrs EDWARDES: The Minister failed to address the basics of this clause. Perhaps she is confused about how clause 21 relates to clause 15. Clause 15 relates to the terms of a contract, and the conduct that is carried out either in the formation or the execution of that contract. If someone has entered into a contract, surely at some earlier point in time than three years the owner should have realised that a breach had occurred. To allow the disputes committee to keep this type of complaint open up to a three year period is to load up a disputes committee. The Government is taking away from the normal processes in allowing an owner to think that three years down the track that contract or part of that contract can be determined harsh, unconscionable or oppressive. That is too long a period to allow relief by way of the disputes committee ordering repayment to the owner of any amount paid by the owner under that contract or provision.

Clause put and a division taken with the following result -

Ayes (25)

Mr Michael Barnett	Dr Gallop	Mr Marlborough	Mr Troy
Mrs Beggs	Mr Graham	Mr McGinty	Dr Watson
Mr Bridge	Mr Grill	Mr Pearce	Mr Wilson
Mr Catania	Mrs Henderson	Mr Read	Mrs Watkins *(Teller)*
Mr Cunningham	Mr Gordon Hill	Mr D.L. Smith	
Mr Donovan	Mr Kobelke	Mr Taylor	
Dr Edwards	Mr Leahy	Mr Thomas	

Noes (23)

Mr Ainsworth	Mrs Edwardes	Mr Minson	Mr Fred Tubby
Mr C.J. Barnett	Mr House	Mr Nicholls	Dr Turnbull
Mr Bradshaw	Mr Kierath	Mr Omodei	Mr Watt
Mr Clarko	Mr Lewis	Mr Shave	Mr Wiese
Dr Constable	Mr MacKinnon	Mr Strickland	Mr Blaikie *(Teller)*
Mr Court	Mr McNee	Mr Thompson	

Pairs

Dr Lawrence	Mr Bloffwitch
Mr Ripper	Mr Grayden
Mr P.J. Smith	Mr Trenorden

Clause thus passed.

Clause 22: Avoidance of concurrent proceedings -

The CHAIRMAN: Order! The level of background conversation has increased remarkably since the division and I suggest that conversation be taken elsewhere.

Mr C.J. BARNETT: Will the proposed disputes committee have exclusive jurisdiction? If so, would that deny people access to the courts? If not, and if conflicts arise, can the matters go between the court and the disputes committee? How will such conflicts be handled?

Mrs HENDERSON: There is a desire to avoid such conflicts and under the provisions of clause 22 it is quite clear that if the matter is before the disputes committee it cannot simultaneously be initiated in another court. However, if the matter is before the court it can order the transfer of that matter to the disputes committee. The intention of this legislation is to provide a cheap, quick and efficient means of resolving disputes in the building industry and, certainly, the intention is to encourage consumers and builders, wherever possible, to take the matter to the committee established especially for that purpose.

Mrs EDWARDES: If the dispute has been before the court previously can the court still proceed with resolving the dispute? If an application to the disputes committee is withdrawn or not pursued can the other party proceed with the matter to the court?

Mrs HENDERSON: I thought I had made it clear that if the matter is before the disputes committee it cannot be taken by the other party to the court. If the matter is in the court first, the court can direct that it be transferred to the disputes committee. However, if the court chooses not to direct that the matter be transferred to the disputes committee it will be dealt with by the court.

Mrs Edwardes: Subclause (b) says that applies only if an application to the disputes committee is withdrawn and not pursued; therefore, is the matter then able to be heard in the court?

Mrs HENDERSON: Absolutely.

Mrs Edwardes: Even after it has been proceeded with prior to the application to the disputes committee?

Mrs HENDERSON: That would depend on one party seeking to take that action.

Mrs Edwardes: Why?

Mrs HENDERSON: Because there is no other way it would end up before the court unless one of the parties decided to take it there. If that happens it is entirely within the province of the court to decide to transfer the matter back to the disputes committee.

Mrs Edwardes: In the instance where an application by a party to the disputes committee is withdrawn or not pursued, what time frame would be allowed for the non-pursuing of that application before the disputes committee or the other party's taking the application through the court? The other party can either agree to it or not. If they do not agree to the decision by the court, can they take that application to the disputes committee? Would the court then have to refer it back to the disputes committee?

Mrs HENDERSON: No; that is not what I said at all. If the matter went before the disputes committee and it was withdrawn, there is nothing to stop either party from going to court. That is the end of the matter. Neither party, unhappy with the outcome of the court, can go back and start over again in the disputes committee.

Mrs Edwardes: What happens if a writ is issued to the court and the other party wishes to stop it from proceeding? Can they make an application to the disputes committee even if they had started and withdrawn an application to the disputes committee previously?

Mrs HENDERSON: I have already said in my earlier comments that if the matter were initiated in court first the other party could not initiate it in the disputes committee. If one party initiated the matter in the disputes committee the other party could not initiate proceedings in the court.

Mrs Edwardes: What time frame is being considered for an application to be dropped? When the other party takes out a writ in the court can the party which originated the action in the disputes committee, having withdrawn it or not pursued it, again come back to the disputes committee?

Mrs HENDERSON: It is clear that that cannot happen. If the matter is withdrawn obviously the task of the registrar of the disputes committee is to pursue the party which lodged the application to ascertain whether it is to be continued with. For that reason there is no time frame because it would depend on what kind of documents one of the parties would want to gather before the next step could be proceeded with. In these sorts of tribunals the administrator has the clear task to make sure that the dispute is either progressed or withdrawn. Once the dispute has been completed or withdrawn it is not a matter that has been resolved by the disputes committee and it comes back to the beginning; that is, if one party goes to the court, while the court can transfer the case the other party cannot go to the disputes committee to have it dealt with.

Clause put and passed.

Clause 23 put and passed.

Clause 24: Settlement by conciliation -

Mr WIESE: This clause contains many provisions which may make it very difficult for the parties to such a dispute to have a proper and fair hearing. Clause 24(1)(a) states that the disputes committee may interview the parties in private, either with or without a person who may be representing either party. Is the disputes committee able to decide whether a legal representative of one of those parties will be barred from the hearing? If that is the case it would be very unjust to at least one of the parties to the dispute. Subclause (2) states that nothing said or done in the course of any attempt to settle proceedings under this clause may subsequently be given in evidence in any proceedings under this part of the legislation. I find it hard to accept that anything said during a private hearing of the disputes committee is disallowed as evidence in any future proceedings. That is grossly unfair and I ask the Minister to comment.

Mrs HENDERSON: My understanding is that this is quite a common provision. When parties meet in a conciliatory fashion to discuss matters it is not possible for a transcript of the discussion to be tendered as evidence if the matter fails to be conciliated and proceeds to the next stage of the process. The evidence at the next stage of the process must be first hand. In other words, the disputes committee must start taking evidence again and call people to put forward their claims and points of view. If that provision were not in the legislation it could be argued that it is unreasonable for two parties to have a discussion in private and the transcript of matters discussed could be given in evidence to the hearing of the disputes committee. It is a basic requirement for justice to be seen to be done.

Mr Wiese: Therefore is it okay to say anything that may be untrue in a private hearing?

Mrs HENDERSON: It is not a matter of truth. If the matter is to be reintroduced as evidence in the disputes committee hearing, the evidence must be first hand. It cannot be transferred from a previous private discussion. That is a greater protection of justice than to allow those matters to be transferred to the disputes committee.

Clause put and passed.

Clause 25: Presentation of cases before Disputes Committee -

Mrs EDWARDES: This clause is considerably different from the existing section of the Act in which case there is a difficulty with solicitors helping in the presentation of a case and/or the presenting of a case for owners or consumers. Subclause (2)(b) states that the monetary amount or value of work for which an order is sought by the applicant, as determined by the disputes committee, must exceed $10 000. Unless both parties agree or the disputes committee is satisfied that any party which is not represented will be unfairly disadvantaged or unable to appear it will mean, if one party does not agree and the disputes committee does not determine, that party cannot be represented by a solicitor if the amount is between $6 000 and $10 000. The only person who could be unfairly disadvantaged under this clause could very well be the consumer. I know there are other safeguards in the legislation, but why have it in this clause when there is already a provision for the parties to have legal representation and the added protection of the disputes committee to determine whether a person is unfairly disadvantaged?

Mrs HENDERSON: The intention of this clause is to set up a procedure that does not escalate to become a highly legalistic process involving lawyers. The bulk of most disputes

involve amounts of between $6 000 and $10 000 and most of them will be resolved quickly by this process. It is the view of most people in the community that once both parties have lawyers acting for them the length of consideration of the matter is escalated and the question arises as to how long the dispute will continue. If we were not seeking to resolve these matters quickly we would have left the situation as it is in the existing legislation; that is, a person can hire a lawyer, if they can afford one, to have the matter heard in the Local Court.

A deliberate decision was taken not to involve lawyers when the sum involved was between $6 000 and $10 000. I appreciate that lawyers are opposed to that approach and that the member for Kingsley is putting the argument that other lawyers have put to me - that they are ideologically opposed to any forum from which they are exempted. I accept their view and the fact they wish to protect the profession and their bread and butter. However, they would be before the tribunal representing not only consumers, but also builders and others. I do not dispute that right, but this legislation is designed to be expeditious, cheap, and effective and it is reasonable to set an amount of between $6 000 and $10 000 as the area where lawyers will not be involved. I move -

> Page 23, lines 4, 7 and 13 - To insert after the semicolon in each of the lines the following -
>
> or

This amendment makes clear that paragraphs (a), (b) and (c) of subclause (2) are not required to be satisfied in order for legal practitioners to appear before the disputes committee.

Mrs EDWARDES: My point relates to paragraph (b) of subclause (2). If that is deleted nothing is taken away from the desire to provide a cheap and inexpensive tribunal where people can go without a solicitor. The Minister is making a provision relating to sums between $6 000 and $10 000 and creating a difficulty for people who want a solicitor to represent them. It makes no difference whether paragraph (b) appears in the subclause. It is not needed because either party can agree to have a solicitor represent them. If the disputes committee is satisfied in certain circumstances that a person will be disadvantaged if they are not legally represented then it can ensure that they are so represented. There should be a provision that in cases involving an amount between $6 000 and $10 000 a person who wants a lawyer but whose request is disagreed to by the opposition may proceed as in paragraph (a) where all parties agree. The person most hurt by paragraph (b) is the consumer who has work performed costing between $6 000 and $10 000 and needs assistance to enable him or her to present their argument forcibly and clearly without the emotion that sometimes goes into the presentation of cases.

Mrs HENDERSON: The member for Kingsley has misread the subclause. Paragraph (b) allows a party to have a lawyer even in cases involving an amount in excess of $10 000 and even if all the parties do not agree or the disputes committee is not satisfied that one party will be disadvantaged.

Mrs Edwardes: I said $6 000 to $10 000. I made that clear.

Mrs HENDERSON: If that paragraph is removed it removes the capacity for a person to engage a lawyer where the amount exceeds $10 000 and the two parties are not in agreement.

Amendment put and passed.

Mr C.J. BARNETT: It is a sad day when a piece of consumer legislation introduced by a Government moves to restrict the rights of consumers to legal representation as this clause does. The Minister has made many comments about what is a large amount of money during this debate. An amount between $6 000 and $10 000 is significant. This Parliament should not be restricting the rights of consumers to legal representation if they want it. It is wrong to restrict consumers' rights in that way, particularly within a piece of consumer legislation. I move -

> Page 24, line 6 - To delete "$5 000" and substitute "$1 000".

Mr WIESE: What exactly is this penalty applied to? It appears to me it could not possibly be applied to someone who has legal representation. I presume the disputes committee will be dealing with that problem. Is the penalty of $5 000 to be applied to somebody demanding or receiving a fee?

Mrs Henderson: Yes.

Mr WIESE: Then I support the amendment. An amount of $5 000 is foolish and excessive.

Mrs HENDERSON: It is important to consider what this penalty is for. The Bill says that only a legal practitioner can represent a person. It is not a minor matter for someone to go to a consumer or builder and misrepresent himself or herself as a legally qualified practitioner who will represent the litigant before the disputes tribunal for a fee when they are not a legally qualified practitioner; that is to mislead in a serious way.

Mr LEWIS: If a consumer or builder sought legal advice from a practitioner but was not represented would that invoke the prescribed penalty?

Mrs HENDERSON: The Bill outlines clearly who can appear before the tribunal. A legally qualified practitioner or an interpreter or the other persons clearly set out in the Bill can appear. Subclause (4) says that a person must not demand or receive any fee or reward for appearing before the disputes committee unless he is a legal practitioner or one of the other persons outlined in the subclause. In other words, if a person misrepresents himself or herself as complying with the Bill and is not one of the persons outlined in it, that person contravenes the legislation.

Mr WIESE: Subclause (2) states that all or any of the parties may be represented by a legal practitioner or any other person if all the parties agree. There is no requirement to be represented by a legal practitioner. A litigant can be represented by any other person.

Mrs Henderson: We are talking about demanding a fee.

Mr WIESE: I will get to that. The Minister was implying to the Chamber that that fee would be demanded only by a legal practitioner. It is not so, because a person who represents a home owner in a dispute does not have to be a legal practitioner. He can be, as the Bill says, any other person. If I, an ignorant consumer who knows nothing about the home building process, ask a builder to help me in a dispute, why am I not allowed to pay him a fee to make up for the time he loses in representing me at the hearing? It does not have to be a legal practitioner at all; it can be a builder, or an architect, or one of those "any other persons" referred to in the Bill. It is not unreasonable to expect that I should be allowed to recompense that person for the day he spends representing me at the hearing. Why does the Minister say it is unreasonable, and why does this Bill have the power to impose a fine of $5 000, either on me as the person who has asked someone to represent me and has paid him for doing so, or on him as the person who received a fee for doing so? This clause is absolutely unreasonable because it ensures that the ignorant home owner or home builder can have absolutely nobody to assist him unless that person is prepared to do it gratis. I do not think that is looking after the interests of the consumer at all.

Mrs EDWARDES: Apropos the point raised by the member for Wagin, if a consumer has a legal practitioner presenting his case, often that legal practitioner will receive advice from architects, engineers, builders and other people who are able to assess the building and who therefore, under clause 25(4), are "assisting a party to proceedings". Are those people prohibited from charging fees too?

Point of Order

Mr DONOVAN: I may have lost track of the debate but I understood we were debating the amendment moved by the member for Cottesloe to delete $5 000 and insert $1 000.

The CHAIRMAN: That is correct.

Mr DONOVAN: Then the debate should be about penalties, and not consist of arguments about subclause (4)(a), (b) and (c).

Mr Wiese: That is the point I was making.

The CHAIRMAN: That is not a point of order. However, I urge speakers to remain on the topic. It is pretty difficult to speak specifically to the penalty unless one discusses what it is for, so I allow latitude on that point.

Committee Resumed

Mrs EDWARDES: Will clause 25(4) prohibit somebody from employing a person with expertise to assist in the preparation of a case rather than to actually represent the consumer at the disputes committee hearing?

Mrs HENDERSON: It is quite clear from the legislation that a person can engage or obtain the services of any person - a surveyor, an engineer, a quantity surveyor, or whomever he likes - to go into the tribunal and assist him, but that person is not able to demand a fee for doing that. I imagine the member for Wagin would end up having quite a strong argument with the member for Kingsley about this, because in most circumstances most legal practitioners believe it is their job to act as advocates for others.

Mrs Edwardes: Answer my question.

Mrs HENDERSON: I listened to the member for Kingsley in silence. These people are appearing on behalf of the builder or the owner, and they can appear to assist them, but they certainly cannot levy a fee to do so, because under normal circumstances an engineer's or a surveyor's occupation does not include appearing before a tribunal, which is not greatly dissimilar to a court of law, and acting as an advocate on behalf of a builder or consumer. That is an area which the lawyers have claimed for themselves. Such a person has every right to present his own case and obtain assistance from other persons, but it is not reasonable for those other persons to demand fees and in particular to enter into that as an occupation - that is, to go along to these tribunals and start demanding fees - because the question then arises as to what is a reasonable fee for an engineer to appear before the tribunal and present a case on behalf of a consumer or builder, or what is a reasonable fee for a surveyor to do so. If that argument is raised about lawyers, at least lawyers can have their costs taxed. They have a scale of fees which sets a measure, whereas engineers and other such professionals do not.

The clause was drafted in cognisance of the Legal Practitioners Act, which is referred to on page 24 of the Bill. That clearly preserves the position of legal practitioners as advocates; it does not disfranchise people from having professionals appear on their behalf, but they cannot demand a fee.

Mrs Edwardes: You have not answered my question. I, as a legal practitioner representing a consumer before the disputes committee, might want to receive professional and expert advice from an architect, an engineer or a building surveyor to help me prepare that case for the consumer. Clause 25(4) quite clearly says that a person must not demand or receive any fee or reward for assisting a party to proceedings. That would prohibit me from obtaining that expert advice.

The CHAIRMAN: I think the member for Kingsley has made her point. She is making a speech, not an interjection.

Mrs HENDERSON: What the member says is quite true - the person could not demand a fee to do that. That is precisely what the Bill intends. It is not intended to escalate into mini Supreme Court hearings these disputes about matters up to $10 000. We are concerned about the consumer, who I believe will not have any difficulty with this legislation. If we reached the stage where an engineer, a surveyor and a lawyer were lined up for the builder, and the consumer probably could not afford anybody to represent him, what kind of balance is that? The member for Kingsley should think ahead to the implications of opening up this provision to allow any professional person to demand fees and become expert in representing people before the tribunal. Whether they represent a party or assist in preparing the material to be presented before the tribunal amounts to the same thing in the end. The member for Kingsley would be aware that this is not an unusual provision. It is not unusual for Bills to provide that the only person who can be paid to act as an advocate in these circumstances is a solicitor. I have seen that in many Bills.

Mr DONOVAN: In spite of the best efforts of the Minister for Consumer Affairs, members opposite still seem to be forgetting the overall purpose and thrust of this Bill.

Mr Wiese interjected.

Mr DONOVAN: I heard the member for Wagin in absolute silence, and since the Chairman ruled on a point of order - and I hope that licence applies to me?

The CHAIRMAN: Yes, it does, to the same but not a greater degree.

Mr DONOVAN: As the Minister has repeated often, the purpose of the Bill is to provide a cheap, ready forum for resolution by consumers of grievances in connection with the building industry. Extending the Minister's very thorough response to the member for

Kingsley, if the Bill did not contain this provision - and members should not forget that legal practitioners are included, as are representatives of bodies corporate and interpreters - we would also run the risk of opening up quite a viable and lucrative enterprise for professional advocates before this committee which was never intended, and is not intended, by this Bill.

Mr C.J. Barnett: That will happen because of the complexity of this Bill. The Minister is the lawyers' friend.

Mr DONOVAN: The member for Cottesloe says it will happen. I presume that he does not want it to happen, but at the same time he wants to exclude these provisions that will do most to prevent that happening. If one debates the capacity to levy the fee, apart from the three persons prescribed, one is ensuring in a practical manner that the member's fear is not realised.

The CHAIRMAN: Order! I remind members to relate arguments to the fee.

Point of Order

Mr LEWIS: Mr Chairman, is the 10 minutes remaining on the time clock correct? Should it not be 15 minutes?

The CHAIRMAN: The member has spoken twice before on this amendment.

Mr LEWIS: I have not spoken before on this amendment.

The CHAIRMAN: Our records indicate otherwise. The member has another opportunity if he wishes to speak, so I suggest that he use the time at his disposal. If the member wishes to dispute the record, that is a separate matter. However, he is entitled to speak three times.

Mr LEWIS: I have not spoken before!

The CHAIRMAN: Our records show that the member has spoken. The member should use the nine minutes available to him, and the subsequent 10 minutes if necessary. Perhaps then the dispute can be looked into further.

Mr LEWIS: I object; I suggest that the records be checked.

The CHAIRMAN: We will check them.

Committee Resumed

Mr LEWIS: This clause impacts on consumers quite considerably.

Mrs Henderson: It is unlike you to show concern for consumers.

Mr LEWIS: The Minister should listen and try to get her very biased mind to look at legislation which prescribes for all people in this State, rather than adopting her usual bent attitude.

I am a professional surveyor and I have appeared in a court of law on quite a few occasions.

Mrs Henderson: Would you not do it for love?

Mr LEWIS: I appeared as a professional witness to prosecute a case for clients when a builder built a building on the wrong line.

Mrs Henderson: That is a serious error.

Mr LEWIS: It is a very serious error. This legislation prescribes that one will not be able to bring a licensed surveyor as a professional witness before a disputes committee when he is paid a fee. Therefore, a surveyor, licensed under the Licensed Surveyors Act, cannot give evidence that a building was built on an incorrect line. In examining the Statutes the Minister would find that licensed surveyors are the only persons competent to give professional witness in such a case.

Mrs Henderson: It does not stop them giving evidence.

Mr LEWIS: Of course it does. Does the Minister believe that a licensed surveyor will go to court and sacrifice a day of his or her time for love? The world operates on profit; we are not in a socialist system in which the State orders a person to appear. The surveyors in question have to make a living. This legislation prescribes that a person, who is the only one who has the capacity to give professional witness, cannot give evidence for a fee.

Mrs Henderson: It is a simple, expeditious forum.

Mr LEWIS: The Minister is making it untenable for consumers to go before the disputes committee. Who will represent them?

Mrs Henderson: We will see whether people will go.

Mr LEWIS: The Minister is hung up. I have come to the conclusion that the Opposition can take only one course; that is, it must vote against the entire Bill. The legislation is contrived to impact against the consumer, whom the Minister is trying to protect. This Bill will be a disaster. One of the most prevalent complaints in building disputation is that of buildings being constructed in the wrong place.

The CHAIRMAN: We are discussing the penalty within the clause; I ask the member to keep to that point.

Mr LEWIS: The penalty applies in a case before the disputes committee in which a building - whether it be an outbuilding or a house - is built in the wrong place, and the person who is expert in land surveying, recognised at law, and could state categorically whether the building is located incorrectly is not allowed to be paid for that service. No-one will represent consumers because no-one in my profession will go to the disputes committee for love; unless, of course, the consumer and the surveyor are kin.

This legislation, in practicality, is contrary to its intent. It will make it difficult for consumers to prosecute a case when a building has been constructed in the wrong position. It is a nonsense to deny a consumer the right to hire a quantity surveyor - a licensed surveyor - for boundary disputation, or an architect to give professional witness to the disputes committee. It is an abrogation of rights. What chance does a consumer have in putting a case to a disputes committee if he or she does not understand such building matters? The Minister should look at this clause. If she takes advice, she will remove the clause entirely.

Point of Order

Mr WIESE: Is it correct that I am on my second turn in speaking to the amendment?

The CHAIRMAN: Our records indicate that the member is on his third contribution.

Mr WIESE: The records are blatantly wrong.

The CHAIRMAN: It is possible that we have made an error. However, we have been in Committee debate all evening, and the Clerks do an excellent job in keeping track of who has spoken in the debate.

Mr WIESE: Can you, Mr Chairman, advise me on how I can set the record straight?

The CHAIRMAN: It is your word against my and the Clerk's assessment. I cannot see any easy way of resolving a dispute like that.

Mr Pearce: It could be checked by *Hansard*. You should not need three goes at this.

Several members interjected.

The CHAIRMAN: I am in the Chair. Strictly speaking, none of this debate should be occurring. Very few speakers have related their remarks to whether the penalty should be $1 000 or $5 000. Most speakers have concentrated on whether a penalty should be applicable. However, I have allowed latitude in the spirit of the debate and speakers have had a fair go. If the Chair has made a minor error we will look at it. At least 10 minutes are still available so the member should use that time instead of arguing whether he is having a second or third turn at speaking on the amendment.

Committee Resumed

Mr WIESE: I believe this is my second turn on speaking to the amendment. I spoke previously wholly and solely on the fact that I believed the penalty imposed under this clause was horrific. I do not carry a candle for the legal profession, but I will not put my comments on record about it now with due respect to my colleagues. I am concerned that the clause will greatly disadvantage the consumer. It is time the Minister took off her glasses and had a look at the matter. The consumer will be prevented from getting help in a dispute with a builder. The person most likely to assist him would be a builder or, as suggested by the member for Applecross, other people in the building profession with the expertise to assist the consumer. The builder knows exactly what the procedure is because building is his

livelihood; he has built hundreds of houses, and he knows the industry inside out. Because of that clause, the consumer will attend the hearing with no assistance and no protection because the Minister insists no fee can be charged by an expert witness and the penalty for doing so is $5 000. That is unreasonable. The clause will also prevent the disputes committee itself from seeking advice from an expert witness during a hearing because the expert will not be able to receive a fee. Subclause (4) requires that a person cannot demand a fee.

Mrs Henderson: It does not apply to assistance for the tribunal.

Mrs Edwardes: Will the State pay for the expert evidence?

Mrs Henderson: This argument is bizarre and a nonsense.

Mr WIESE: By interjection the Minister is saying that the disputes committee will be able to hire an expert witness.

Mrs Henderson: There is nothing in the Bill which prevents that.

Mr WIESE: Does that mean the committee can employ an expert witness and pay that witness? The builder is an expert in the field, but if he needs assistance he cannot pay anyone to clarify matters in a dispute. He could be dealing with complicated engineering or surveying matters.

Mrs Henderson: The builder or the home owner can seek assistance from a witness but that person cannot command a fee.

Mr WIESE: In that case, how on earth will anybody receive expert assistance in a hearing before the disputes committee? I do not believe the clause is reasonable or that the Minister has thought about its consequences. I do not believe she is assisting the consumer. I also believe the prohibition on seeking a fee is unreasonable. The Minister said that not only can the expert not be paid for assisting a party before the disputes committee, but also that the home owner or the builder - I am more worried about the home owner - cannot pay a fee for assistance received prior to his going before the committee. Home owners must ask an expert for advice, but they are not allowed to pay him a fee. The Minister must be joking. I do not believe she realises the consequences of this clause. It is a nonsense and the clause should be thrown out.

Mrs HENDERSON: It is disappointing to see the debate taken to these levels. Members opposite are aware that the intention of the disputes committee is to provide an expeditious way of resolving disputes. It comprises a builder, a legally qualified chairperson and a consumer representative. It has available to it inspectors to inspect buildings; it can call on the services of architects, engineers, quantity surveyors or anyone it likes to independently assess problems and report to the committee.

The member for Applecross should realise that it is not the Government's intention to set up a committee which will allow builders to bring in engineers and surveyors when the poor old consumer is faced with doing the same thing. The Government does not want disputes to escalate to that level. The committee is an expert committee and can call any evidence allowed by its conscience. If the Government allows either side to call in expert after expert, at the end of the day, as the member for Wagin knows, the consumer could not afford to call in an army of experts. However, the Bill does not prevent those people from seeking information. It is not the intention of the Bill to provide an avenue for people to earn their living by representing builders and others before the disputes committee and to make a mockery of the Bill's intentions.

Mr LEWIS: We are talking about amending a penalty of $5 000 to $1 000. One of the main problems that arises from time to time - it is also one of the most expensive - is a builder, either by error or negligence, erecting a building in the wrong position on an allotment.

Point of Order

Mr DONOVAN: This is tedious repetition. We have already heard the argument about buildings in the wrong place on a site from this member.

The CHAIRMAN: Order! I do not think we have in relation to this amendment.

Mr DONOVAN: Specifically related to the amendment.

The CHAIRMAN: I draw the attention of the member to that Standing Order and ask him not to breach it.

Committee Resumed

Mr LEWIS: This amendment will relieve the consumer whom the Bill is trying to protect. As the member for Wagin has pointed out, the home owner will not be able to engage professional services even for advice to prosecute when a building has been built in the wrong position. If a building has been built in the wrong position and an extension such as a patio, a pool or a garage cannot be built because the original building is in the wrong place, only one person at law is recognised as being able to determine where the structures should have been built. The Licensed Surveyors Act 1909 recognises those professionals who are able to validate the boundaries of an allotment which are delineated in the Office of Titles or the Department of Land Administration. If a person believes that a building has been put in the wrong position or if fences have been erected in the wrong position - the most common problem - that person has the right to approach a disputes committee without any professional understanding and even a case unless a practitioner such as a licensed surveyor is prepared to give a certificate for nothing.

I respectfully suggest to the Minister that this legislation is detrimental to the consumer because the consumer cannot -

Mr Donovan: The Minister has explained this to you.

Mr LEWIS: The member for Morley should get away from his bigoted attitude. Unfortunately, I have lost confidence in the Minister because she is so biased that she cannot recognise that her legislation is flawed.

Mrs Henderson: You don't listen to what is said in this House. If someone thinks his house is in the wrong spot and goes to a disputes committee, an inspector is sent to survey it and ascertain whether that is so and a report is made to the disputes committee.

Mr Wiese: How is the consumer going to find out?

Mrs Henderson: He will find out during the conciliation process. A surveyor will do an inspection, look at the title and the plans for the house and produce a report.

Mr LEWIS: The Minister is really showing her ignorance by suggesting that a building surveyor can ascertain whether something is built in the wrong position. That is why persons are licensed under the Statutes of this State to determine boundaries. I have met hundreds of people who thought their fences were on the boundary, but they were not. That is why the Crown recognises experts who can determine -

The CHAIRMAN: Order! I advise the member for Applecross that we have heard this argument before.

Mr LEWIS: No.

The CHAIRMAN: The answer to that is yes. I ask the member to relate to the amendment, the level of penalty.

Mr LEWIS: Is a surveyor, an architect or a quantity surveyor prepared to accept a fine of $1 000 rather than a fine of $5 000? That certainly would detract from his giving any professional advice to a consumer. The member for Morley may wave his head around; the only thing he has ever known is social work. He knows nothing about commerce.

Mr Donovan: The fine is for misrepresenting yourself.

Mr LEWIS: The fine is for giving professional advice to a consumer to support that consumer at a disputes committee. That is what it is about. The member is saying that no consumer can seek professional advice under a penalty of $5 000. The Minister believes that people will give that advice when they can be sued because of non-professional conduct or incompetence. Is she not aware that professionals can be sued if they give incorrect advice? She is suggesting that people should do it for nothing and then be in a position of being sued in a court of law because the advice they gave was wrong.

This clause is an absolute nonsense. It impacts in the extreme on the consumer. I am absolutely amazed that the Minister, with her compassion for the consumer, cannot

understand what it does. The Minister, unfortunately, is hung up about this question that people who provide advice to consumers should not be paid.

Amendment put and negatived.

Mrs EDWARDES: With reference to subclause (4) we now know that the Minister will not allow consumers to seek expert advice prior to or during the proceedings before the disputes committee. Bearing in mind that the jurisdiction of the disputes committee extends to matters to the value of $100 000, and given the nature of some of the matters that may be brought before the committee, the disputes involved could be fairly extensive. The Minister has indicated that the disputes committee may seek its own expert advice. Of course, this is socialism at its worst. Who will pay for it? The State will pay for the expert evidence which assists the disputes committee to make a determination. The State will pick up the tab for any costs involved in seeking expert evidence or advice. Will the Minister advise the line figure that has been projected for the cost of implementing this Bill?

Mr WIESE: I have been disappointed by the Minister's attitude many times during the debate on this Bill but never more so than in her attitude to this clause. The provisions of this clause mean that the consumer who appears before the disputes committee with a problem he hopes to resolve will not be able to access advice from any expert witness or have an adviser with him during the hearing. On the other hand, the party against whom that person has a grievance, the builder - who in many cases may be a corporate entity - may have at the hearing an engineer, architect, quantity surveyor, building surveyor and so on who is able to assist him during the hearing. The Minister states that she is trying to protect the interests of the consumer, but that is utter and complete garbage. She is setting up the consumer in a no-win situation. This clause is an absolute abomination as far as looking after the interests of the consumer is concerned. It ensures the vulnerability of the consumer in his dispute with a building company.

Mrs HENDERSON: I do not want to repeat the points I made earlier, but I indicate that members opposite have lost sight of the aim of the Bill. The first step in the process is an attempt at conciliation. The consumer will begin the process by seeking conciliation, and at that point an inspection will be carried out and a report made, just as it currently is when a complaint is made to the Builders Registration Board about workmanship. If a complaint requires expert advice or the opinion of an engineer, surveyor or whatever, that advice will be sought during the conciliation process. If, for example, a building has been placed on the wrong spot on a block, it will be evident from the report of the surveyor who checks boundaries and the relationship of the building to the block that that is the case. When the consumer goes through the conciliatory process any person can engage any expert he or she wishes.

Mr Lewis: You are making it up on the run.

Mr C.J. Barnett: Some consumers need advice about whether they have a valid case. You are denying them that right.

Mrs HENDERSON: Members opposite rant and rave, but in other States this legislation is in place. The outcome is that the majority of cases are resolved at the conciliation point; the party lodges a complaint, an inspection is made, an expert's report is called for, if needed, and it clearly shows the nature of the complaint. If the dispute is not resolved at that point, it goes to a full hearing before the disputes committee. Contrary to what the Opposition has said, it is not the consumer who will call in an army of experts, it is more likely to be the other party which has the resources to do so.

It is certainly not the intention of the Government to set up a process in which the parties call not only for their own legal advocates, but also for engineers, architects and so on to appear before the committee. I tell the member for Applecross that while he may seek to throw doubt on it, this legislation will work. If Western Australia is the same as every other jurisdiction where this sort of thing is in place, it will work extremely well. Consumers in this State will not thank members of the Opposition for this obstruction and stonewalling which it has carried on for the last eight or 10 hours. It has nothing to do with protection for consumers; it has to do with the Opposition's own petty point-scoring debate.

Mr Lewis: It will get crunched.

Clause, as amended, put and a division taken with the following result -

Ayes (24)			
Mr Michael Barnett	Mr Graham	Mr Marlborough	Mr Taylor
Mrs Beggs	Mr Grill	Mr McGinty	Mr Thomas
Mr Catania	Mrs Henderson	Mr Pearce	Mr Troy
Mr Cunningham	Mr Gordon Hill	Mr Ripper	Dr Watson
Mr Donovan	Mr Kobelke	Mr D.L. Smith	Mr Wilson
Dr Edwards	Mr Leahy	Mr P.J. Smith	Mrs Watkins *(Teller)*

Noes (19)			
Mr C.J. Barnett	Mrs Edwardes	Mr Minson	Mr Fred Tubby
Mr Bradshaw	Mr Kierath	Mr Omodei	Mr Wau
Mr Clarko	Mr Lewis	Mr Shave	Mr Wiese
Dr Constable	Mr MacKinnon	Mr Strickland	Mr Blaikie *(Teller)*
Mr Court	Mr McNee	Mr Thompson	

Pairs	
Dr Lawrence	Mr Bloffwitch
Mr Bridge	Mr Grayden
Mr Read	Mr Trenorden
Dr Gallop	Mr Nicholls

Clause, as amended, thus passed.

Clause 26: Access for inspection of building work -

Mr WIESE: I have two problems with this clause, the first being the provision for a fine of $1 000 if the person does not act in accordance with the contract, or under such provisions as are prescribed. Can the Minister indicate what sort of provision we are talking about? We need an indication of what these provisions will be in order to make some sort of judgment about the harshness of that penalty of $1 000. I note there is an amendment on the Notice Paper in relation to that penalty.

The second matter I raise refers to subclause (2). This is a lot more important. How does the Minister envisage this will work? It seems to me that it would be quite legal and aboveboard for a provision to be written into the contract which would restrict access by the home owner or his representative to the building or the building site except during the builder's normal working hours. Can the Minister explain whether that is correct? If a clause in a contract restricts access to the building by the home owner to the hours during which the building is actually being constructed, or while the builder is actually working there, would such a clause come under the provisions of clause 15 as "unconscionable, harsh or oppressive?" I believe that such a provision would be very unconscionable, harsh and oppressive and should not be written into a contract at all. Clause 26 would allow it to be written into the contract, and it would therefore restrict the home owner's access to that building site.

Mrs HENDERSON: Clause 26 allows access by an owner or a person acting on behalf of the owner to inspect the building site. The member asked about the provisions prescribed. Effectively the Bill cannot prevent the owner or an authorised person from inspecting the building in accordance with the contract or other prescribed conditions. This provision came into being as a result of a situation where the owner might like to bring in a third party to inspect the building because the owner is unhappy with the way the building is progressing. It may be that the prescribed conditions say that the owner can bring on to the site a qualified engineer, surveyor, architect, another builder or whatever, but the builder may not wish to have the owner bring unprofessional or unqualified persons to wander around the building site. Effectively, the provision allows us to prescribe the kinds of persons in a format which is sufficiently flexible that if a problem arose regarding those persons the regulations in the normal way could be changed more easily than if we prescribed the nature of the persons. That was the intention. It came from an independent inquiry in the industry, and from home owners who had disputes and were upset that in some cases they were prevented from bringing in someone to give a second opinion. This clause is designed to allow them to do just that.

Mr Wiese: Does it restrict the owner's access to buildings in normal working hours?

Mrs HENDERSON: If any contract provides for a restriction of inspections, that is void - except to the extent that it allows it to happen during normal working hours. The builder, not unreasonably, would be concerned about people wandering over the building site at the weekend when no-one is there. The safety of the site is the responsibility of the builder. He might want to say that an owner can bring in a third party to inspect the site but only when the builder is present. The builder might say that he does not know what people will do; they might say they will take measurements and so on but in the process they might damage the building and create a dispute between the builder and the third party. This clause is a way to overcome the situation where a builder does not want a third party on the site. We are trying to find a compromise but one which is reasonable for the builder so that we are not giving open slather on the weekend for an owner to bring in whoever he likes, in contravention of what the builder said, and end up with a situation where the builder feels that the third party has damaged the building.

Mr WIESE: The Minister has confirmed my worst fears; this is exactly what I was afraid of. The clause enables a provision to be written into a contract which will say that an owner cannot go onto a building site to inspect his home except during the hours that the builder is on the site working. That is absolutely laughable because the reality is that at most times most people are working to earn money to pay the builder. During the hours that the owner is working, the builder is working; when the owner is not working, the builder is not working.

Mrs Henderson: The builder can do that now; he can write that into the contract.

Mr WIESE: If a builder tried to write that into a contract that I was to sign, I would not be working with that builder.

Mrs Henderson: Nothing stops that right now. This clause provides protection; it does not make it compulsory.

Mr WIESE: Does the Minister believe that a clause which restricts a person, as a home owner, from looking at his own home which is in the process of being built, would be unconscionable, harsh or oppressive? I believe it would be. It is a dreadful clause.

Mrs Henderson: A builder can write that into a contract now. It will not contravene any law. An owner can take his business elsewhere. Under this provision an owner can take his business elsewhere but this clause at least only gives builders the capacity to write in a clause restricting the owner's access or that of a third party on behalf of an owner in certain ways. It guarantees the owner and a third party some access. This does not need to be standard access; obviously the consumer can shop around in the same way as currently. The clause provides minimum access.

Mr WIESE: This clause will prevent a home owner from going onto his own home site to inspect his own home being built. That is contrary to everything relating to consumer protection.

Mrs Henderson: You did not listen to what I said.

Mr WIESE: I listened closely; it was gobbledygook. A clause which enables a person to be banned from looking at his own home site is unconscionable. This clause should not be passed.

Mrs Henderson: The member has misread it; it provides minimum not maximum access.

Mr WIESE: I disagree. To all intents and purposes, the clause makes sure that the home owner - the consumer whom the Minister should look after - will not have access. If the Minister is talking about providing the consumer with protection, the clause should guarantee access to the consumer or his adviser - perhaps an architect, or a builder mate - at any stage during the home building process. That would be consumer protection, not the provisions contained in this clause.

Mr C.J. BARNETT: I move -

Page 24, line 22 - To delete "$1 000" and substitute "$500".

Amendment put and negatived.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Contracting out forbidden -

Mr C.J. BARNETT: This penalty is too high; therefore, I move -

Page 25, line 21 - To delete "$10 000" and substitute "$5 000".

Amendment put and negatived.

Clause put and passed.

Clauses 29 to 35 put and passed.

Schedule -

Mrs HENDERSON: I move -

Page 29, line 9 - To delete "the next" and substitute "a".

This provision relates to when the payment should be made. The schedule as it stands stipulates that it should be made at the next progress payment. It might be that in line with the increase and the work associated with the increase, the next progress payment may not be the most appropriate one for the additional payment. The substitution of "a" for "the next" allows for the payment to be made at the following progress payment, if that is more appropriate at the time the work is performed.

Amendment put and passed.

Schedule, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

BUILDERS' REGISTRATION AMENDMENT BILL

Second Reading

Debate resumed from 28 March.

MR C.J. BARNETT (Cottesloe) [9.45 pm]: It is with some trepidation that I rise to respond to the second reading speech of this Bill. The Builders' Registration Amendment Bill is enabling legislation attached to the Home Building Contracts Bill, which has 35 clauses and took just over a week to deal with. The Bill to amend to the Builders Registration Board has 46 clauses and on that extrapolation it will take two weeks to deal with; however, members can relax.

This Bill sets up the board's building disputes committee. It will be chaired by a legally qualified chairman, it will have industry representatives from the Master Builders Association of Western Australia and the Housing Industry Association, and consumer representatives, although from where they will come we are not advised. One of the problems in setting up the disputes committee is that the Builders Registration Board, which is an experienced and long established body, will be left simply with the task of builders' registrations. The establishment of this disputes committee leaves the board's role diluted and somewhat unbalanced. Another issue is that the disputes committee will have Statewide jurisdiction; it will handle matters referred to within the Home Building Contracts Bill and therefore disputes can arise on a State basis. The disputes committee will be set up under the auspices of the Builders Registration Board and will be funded by the board. The important point however is that the Builders Registration Board has jurisdiction over only the southern part of the State and is therefore funded by builders in the southern part of the State. The disputes committee will be able to hear disputes all over the State, but will be funded by builders only in the southern part of the State, so there is a clear inequity within the Bill.

The Bill addresses complaints brought before the disputes committee. However, it does not address - nor did the second reading speech - the fact that about one third of these complaints can be regarded as trivial, do not require any action and should never have come before either the Builders Registration Board or the disputes committee. There is no penalty for people bringing forward trivial complaints. Those complaints are not without cost; they will

tie up the committee and cost the builder and the taxpayer money, yet people can bring trivial complaints and off they go.

Mrs Henderson: What are you basing that figure on? Who told you that?

Mr C.J. BARNETT: I have been advised by people associated with the Builders Registration Board, not in a malicious way but simply saying that one third -

Mrs Henderson: I am just asking.

Mr C.J. BARNETT: I am answering. It is very difficult when the Minister asks a question and then wants to answer her own question.

I am advised by reputable builders that one third of the complaints are probably trivial. The Minister is writing that down. She will want to make a Press release tomorrow and we will look forward to that.

Mrs Henderson: That really upsets the member, doesn't it?

Mr C.J. BARNETT: No, it does not, but the Minister is so obvious.

There should be some check to stop people bringing forward trivial complaints, and perhaps a modest charge or levy would be a good thing as it would make sure that significant and genuine complaints are dealt with -

Mrs Henderson: Did the Builders Registration Board tell the member that it considered one third of the complaints to be trivial?

Mr C.J. BARNETT: The Minister is trying to put words in my mouth. I said that a reputable builder had given me that opinion from his dealings with the Builders Registration Board. The debate on the Home Building Contracts Bill started at 7.30 pm last Tuesday and has continued since then.

Mrs Henderson: Because the Opposition has stonewalled the debate.

Mr C.J. BARNETT: The Opposition has not stonewalled the debate. The Minister for Consumer Affairs came into this House with a rotten and poorly drafted piece of legislation. It has taken a week to debate it and the debate has uncovered all sorts of inconsistencies in the legislation. The Minister assumed that it would not come under the scrutiny of this House and that it would simply pass through to the other House. Every time the Minister and her cohort accuse the Opposition of stonewalling they are saying that the representatives of the people of Western Australia should not examine the Government's legislation. I am sorry, but we intend to examine the Government's legislation in detail. This Bill will be examined again when it goes to the other place because it is an exceedingly poor piece of legislation. The Minister does not want the people's representatives to examine this rotten piece of legislation because it is so flawed and has so many deficiencies. She has not bent one inch and has denied consumers representation.

Mrs Henderson: They will see you for what you are; you have no concern for the consumer whatsoever.

Mr C.J. BARNETT: The Minister expressed her concern for consumers when she denied them representation and advice.

Mr Marlborough: She is the finest Minister for Consumer Affairs we have seen in this State. That is what is upsetting you.

Mr C.J. BARNETT: I am not upset at all.

Mr Cunningham: You are representing rogue builders.

Mr C.J. BARNETT: The Opposition does not represent rogue builders.

Mr Cunningham interjected.

Mr C.J. BARNETT: The member for Marangaroo can have his say in a moment.

Mr Lewis: You have been asleep for six months and you wake up now.

Mrs Henderson: You are very nasty tonight.

Mr Marlborough: You are upset that she gets 10 stories in *The West Australian* and you don't.

The ACTING SPEAKER (Mr Kobelke): Order! It is getting late and we have spent a lot of time on this legislation. We are now dealing with the Builders' Registration Amendment Bill and I ask the member for Cottesloe to address that Bill. I also ask members to cease interjecting.

Mr C.J. BARNETT: The Builders' Registration Amendment Bill is an enabling piece of legislation. I remind members that when the Home Building Contracts Bill was introduced in the spring session of last year it passed through this House but did not get to the other place. It was, in fact, lost in between. Some members have said that the Opposition agreed to the passage of that Bill. There is a distinction between the passage of the Home Building Contracts Bill and the passage of the Builders' Registration Amendment Bill. In the past 12 months many of the provisions of the Home Building Contracts Bill have come to my attention and that is why I have changed my attitude, and indeed the Opposition has changed its attitude, to the legislation. The Opposition has consistently supported the objectives of the Bill. However, we examined it in detail and read the submissions, and because the Government did not have its act together and took 12 months to reintroduce it, we have identified many problems and vindicated our decision to oppose the legislation.

The passage of the Builders' Registration Amendment Bill is even more fascinating. Last December the Minister wanted to push through the Home Building Contracts Bill because she wanted to issue a Press release. However, the Minister had not consulted with the building industry about the amendments to the Builders' Registration Act, so the Minister skulked around and introduced the Home Building Contracts Bill first because the Builders' Registration Amendment Bill did not have the support of the building industry. The fact that the Home Building Contracts Bill could not be enacted without the passage of the Builders' Registration Amendment Bill did not seem to matter to the Minister. The events last year were a most cynical exercise.

Mrs Henderson: That is very cynical.

Mr C.J. BARNETT: I will tell the Minister how cynical her actions were. I went to our colleagues in the Press Gallery at that time and predicted that in half an hour they would receive a Press release from the Minister for Consumer Affairs. I congratulate the Minister because the Press release arrived within 20 minutes.

Mrs Henderson: That really upsets you!

Mr C.J. BARNETT: No, because I submitted my Press release before the Minister had submitted hers. It was terrific! The defects in the Home Building Contracts Bill impinge on the disputes committee which will be set up by the Builder's Registration Amendment Bill. The types of problems with which the disputes committee must contend will deal with conflicts between the Home Building Contracts Bill and common law. Those conflicts occur in many places, particularly those buildings valued over $200 000. The disputes committee must deal not only with home building work but also with associated work. Therefore, there will be disputes about landscaping, fencing, installation of pools and spas, the erection of walls and the construction of sheds. Those disputes will arise not only in respect of work being carried out on existing homes but also on the construction of new homes. The member for Kingsley quite rightly wanted to know how much that would cost and who would pay. There will be a queue a mile long at the disputes committee with complaints about all types of building.

Mrs Henderson: Do not be so ridiculous; where do they go now?

Mr C.J. BARNETT: For a week we have listened to the Minister and she has not given us any answers. She has not been able to tell us who will pay and how much it will cost; yet we will find that all types of people will come before the disputes committee. Both builders and home owners will discover that their rights have been held back. That is an appalling situation.

The Opposition does not have much to say about the Builders' Registration Amendment Bill; however, I reiterate the Opposition's position on both pieces of legislation. The detail of these Bills is so bad and the drafting is so inconsistent that the Opposition is not embarrassed to admit that it has changed its position on the Bills. Last year the Opposition was willing to let the legislation pass but its attitude has changed over the past 12 months. As a result of the debate which has gone on over the past week, even more problems have arisen. It will be up

to our colleagues in the other place to examine the Home Building Contracts Bill and the Builders' Registration Amendment Bill. It is regrettable that the Minister has adopted such an inflexible approach. She knows that when this Bill goes to the upper House it will be referred to the Standing Committee on Legislation which will invite submission on these Bills. The legislation will come back into this House once again. We could have saved a lot of time and progressed more quickly if the Minister had the commonsense to be flexible and listen to many of the points raised. Many questions were asked and very few answers were given in the debate.

MRS EDWARDES (Kingsley) [10.00 pm]: I do not intend to repeat the comments I made during the debate on the Home Building Contracts Bill about the establishment of a tribunal. As a general principle I am opposed to the establishment of independent tribunals to review and generally supervise disputes by way of separate Acts. In the past independent tribunals have not always provided speedy relief and they have not been as effective as was suggested they would be when the legislation was debated in the Parliament. The Minister has failed to answer any questions on the cost of implementing that legislation. Surely the Minister must have some idea of the proposed increase in the number of complaints resulting from this legislation.

Mrs Henderson: How am I supposed to project that figure?

Mrs EDWARDES: If she has come to this place without any information on that she is irresponsible.

Mrs Henderson: Your colleague has said that the number of complaints will increase.

Mrs EDWARDES: It will because the Bill will extend the number of disputes in the areas of associated work.

Mrs Henderson: It is opening up the opportunity for people to complain.

Mrs EDWARDES: That is right and the Minister has not obtained any figures on the projected increase in the number of complaints. I give notice to the Minister that in the Estimates Committee debate, if we are not provided with the information before then, I will request a full costing of the implementation of the Home Building Contracts Bill. Those costs will include the setting up of the tribunal and the secretarial support services, as well as the proposed increase in the number of complaints. Surely the Minister's department has done some costing on the implementation of the legislation. If that has not been done when does she intend to implement the legislation - this financial year, next financial year or the following financial year? Surely she has some idea of the proposed increase in the number of complaints that will come before the disputes committee and the tribunal. I find the Minister's comments absolutely amazing.

MR WIESE (Wagin) [10.04 pm]: The reason we are debating the Builders' Registration Amendment Bill is that it is wholly and solely related to the Home Building Contracts Bill. The Minister handled the debate on the Home Building Contracts Bill in an appalling fashion. She chose not to answer any of the questions raised by members on this side of the House, including those questions which were not, as the Minister portrayed, anticonsumer. Those questions were raised with all the goodwill that members on this of the House could muster to try to protect the interests of consumers. The Minister went into that debate looking at the consumers' interests only. When members put to her many suggestions which would have improved the provisions of the Home Building Contracts Bill and would have provided consumers with greater protection, the Minister ignored them. I question whether we should contemplate passing the Builders' Registration Amendment Bill until the Minister has dealt with all the aspects that were put to her during the debate on the Home Building Contracts Bill.

Previous speakers have mentioned the major aspects of the Builders' Registration Amendment Bill. I have some reservations about it because the Minister will be able to direct the Builders Registration Board in its operations. I find that appalling and it should not be allowed to happen. I know the Minister is unable to direct the board in relation to a particular matter or person, but the legislation enables her to direct the board and I find that unacceptable. I repeat that until all the matters raised by members on this side of the House during the debate on the Home Building Contracts Bill are considered we are wasting our time debating this legislation.

MRS HENDERSON (Thornlie - Minister for Consumer Affairs) [10.06 pm]: I remind the House that this legislation is the result of an independent inquiry into the building industry.

Mr Lewis: It was not; it was a Government inquiry.

Mrs HENDERSON: Is the member for Applecross questioning the integrity of Professor Stanton and others who conducted the inquiry? Several inquiries have been conducted into the home building industry in Western Australia and they have all made similar recommendations. The main recommendation was that there should be legislation in Western Australia to regulate home building contracts. People constructing their homes in Western Australia, unlike in other States, have for too long had no protection or support from legislation. Members can bring forward the old hoary chestnut about poor drafting, but they know that the people who drafted this legislation are first class lawyers. When they say that the Bill has been drafted badly it means that they cannot understand it or that they are not prepared publicly to accept the concepts in it.

Mr C.J. Barnett: We said that last week.

Mrs HENDERSON: The member for Cottesloe said publicly that the Opposition supported the objective of supporting consumers, but then he tried to amend every clause in the Home Building Contracts Bill to make it unworkable.

The member for Marangaroo spoke in this House about the 30 or 40 consumers who were taken for a ride by a builder in this State who demanded deposits of 30 and 40 per cent, and then did not construct the houses in the way he should have. He is an absolute disgrace, and one of the members of the Opposition has complaints lodged against this builder, who, everyone knows, has behaved like a cowboy. This is the only State in Australia in which he could get away with such behaviour, because it does not have the relevant legislation. While members opposite come into this place and say the same thing over again, they will not kid the consumers of this State, because they know that this legislation will provide them, for the first time, with some rights and protection. The Opposition, at the end of the day, is not prepared to do that.

I know the member for Cottesloe has not been in this House for long, but if he wants a standard contract he must have a Bill to provide the framework.

Mr C.J. Barnett: You can have a code of practice attached to the Fair Trading Act.

Mrs HENDERSON: A code of practice is voluntary and it does not help the consumers who were taken for a ride by County Homes.

Mr Cunningham: The member for Mandurah, I believe, and I may be wrong, has refused -

Point of Order

Mr C.J. BARNETT: I believe the member for Marangaroo is about to make comments about the personal affairs of the member for Mandurah, which would be inappropriate.

The ACTING SPEAKER (Mr Kobelke): Does the member for Marangaroo wish to speak to the point of order.

Mr Cunningham: No.

The ACTING SPEAKER: There is no point of order.

Debate Resumed

Mrs HENDERSON: When I said that a member of this House had problems with that builder I was talking about the member for Mandurah. He may wish to comment. This legislation might assist him with the problem he has with County Homes. It might also assist the 30 or 40 people who have been taken for a ride by this builder and who have formed a consumer group to pursue him. Opposition members sit and tell us we do not need this legislation. They are so out of touch with consumers in this State that they sit here going on about legal technicalities, the common law, and everything else. However, their doing that does not hide the fact that they are not prepared to support consumer legislation. If at the end of the day the Opposition follows up its threat to send this legislation to the Legislation Committee, knowing that that will bog it down for six to 12 months during which period consumers of the State will remain unprotected, and thinks consumers will be unaware of what it is about, it has another think coming.

Mr C.J. Barnett: The Minister took 12 months to bring forward this legislation.

Mrs HENDERSON: The member is on touchy ground when he says that because I approached him on numerous occasions during the last session to debate this Bill and on every occasion he said, "I am not ready to deal with this Bill."

Mr C.J. Barnett: I told the Minister we would stick to the conventions of the House of allowing the Opposition one week and then we would be ready.

Mrs HENDERSON: I gave the member two weeks. The long and the short of it is that for all the histrionics, yelling, screaming and shouting the Opposition is trying to cover up the fact that when the crunch comes it is not prepared to support consumer legislation. The recommendations of the inquiry into the building industry are faithfully embodied in this Bill. Two years of consultation with the building industry and consumers has gone into this Bill which mirrors legislation applying in almost every other State in this country. However, the Opposition sits here saying that the Bill is poorly drafted, will not work, or is ridiculous. Despite that, consumers will see members opposite for what they are.

Mr C.J. Barnett: What about what the Law Society has said?

Mrs Henderson: The Law Society does not support the establishment of any tribunal that takes work which would otherwise go to the courts. It is time the member told the Law Society what I told it - that consumers cannot go to the District Court or the Local Court when they have a problem with their plumbing or kitchen cupboards because they cannot afford to do so. The member is not worried about those consumers because he said during the debate that it was not uncommon for houses in his electorate to cost $350 000. I have no such houses in my electorate. I can tell the member that my constituents have problems that might involve an amount of only $500, which may to him be peanuts but to my constituents is a lot of money.

Mr C.J. Barnett: An amount of $500 is not covered.

Mrs HENDERSON: If a building contract is for more than $6 000 and a problem arising from it involves $500, that is covered, which is what I have said. Consumers need a tribunal to go to and this legislation will set up a workable, expeditious tribunal, which is what this legislation is all about.

Question put and passed.

Bill read a second time.

Instruction to the Committee of the Whole

MRS HENDERSON (Thornlie - Minister for Consumer Affairs) [10.16 pm]: I move -

> The Committee of the Whole when considering the Builders' Registration Amendment Bill has the additional power to consider as one question an amendment to a number of clauses to delete the word "Tribunal", in each case where it appears in the schedule listed in the Notice Paper, and substitute "Disputes Committee", but otherwise Committee procedure remains unaltered.

Since this Bill was first drafted and introduced into this place last year an approach has been made to me on behalf of the industry to replace the word "tribunal" with the words "disputes committee". It has been put to me that the word "committee" gives the impression of something less legalistic and intimidatory and is embodied better in a process that starts with conciliation and may well be resolved by conciliation. It has been put to me that the word "tribunal" conjures up images of a determination rather than conciliation without an opportunity of conciliation first. The word "committee" creates a clear impression of a less formal body designed to conciliate rather than arbitrate wherever possible, which has always been the intention of this legislation.

Point of Order

Mr LEWIS: For the benefit of the House, could the Speaker or the Minister explain at what stage we are with this legislation? The Minister is presently debating something about which we currently do not have a motion before the House.

The SPEAKER: We had the second reading and are about to go into Committee. A notice of motion appears on the Notice Paper which has been moved by the Minister and which had

to be moved at this stage before we went into Committee as it is an instruction, if accepted by the House, for the Committee to take certain action.

Debate Resumed

Mrs HENDERSON: Rather than deal with the word "tribunal" every time it appears, this motion will allow the words "disputes committee" to replace that word wherever it appears in the Bill.

MR WIESE (Wagin) [10.18 pm]: I accept what the Minister seeks to do. If I am unhappy with what the Minister is trying to do, is now the time to speak, or should I speak during the Committee stage?

The SPEAKER: I will try to illuminate members more on this matter. If the House agrees to this motion it will still be necessary for the Minister to move the amendment during the Committee stage.

Mr Clarko: Will it be done holistically?

The SPEAKER: It will be done quite clearly, as mentioned in the motion.

Mr Lewis: It is not on the Notice Paper.

Mr Clarko: It is. It is an amendment.

The SPEAKER: It is my understanding - the Minister might correct me if I am wrong - that if she is successful in this motion, and the House agrees, when in Committee all the items on the top of page 12 of the Notice Paper under the word "SCHEDULE" will be put as one amendment. Is that clear?

Mr WIESE: That is clear. If I disagree with what the Minister is trying to do by changing the body from a tribunal to a committee, do I speak now or when we go into the Committee stage?

The SPEAKER: The member has three chances.

Mr WIESE: That is like a red rag to a bull! Acting on your advice, Sir, if I am to be offered three bites at the cherry, I am not one to knock back the opportunity. While I accept what the Minister is trying to do, I have not spoken to the industry to find out whether her comments are correct, but I always accept a person's comments at face value as being true until I have had the opportunity to find that that is not the case. If the Minister tells me that the industry desires to change the wording throughout this Bill from "tribunal" to "committee", I accept that that is the way the Government wants to go. I believe that whatever the body is called, this institution we are setting up is a tribunal. It will be a group of people meeting to deliberate upon disputes put before it. It will be able to take legal advice. The head of the committee will be a person with legal experience. It does not matter what the body is called, we should not mislead the general public into believing that this is to be a nice little committee meeting to talk about things and sort out problems. This body will be a tribunal. It has all the legal powers of a tribunal, and it will make rulings which will be binding upon persons. It will be able to make rulings which may void a contract. It will be able to make rulings which will force builders to forgo large amounts of income. It will have enormous powers. It is far from being a committee. For that reason I put it to the House that what the Minister is trying to put over here is a con job. This body will be a tribunal and nothing else.

Question put and passed.

Committee

The Chairman of Committees (Dr Alexander) in the Chair; Mrs Henderson (Minister for Consumer Affairs) in charge of the Bill.

Mrs HENDERSON: I move -

To delete the word "Tribunal" in each case and substitute the following -

Disputes Committee

SCHEDULE

Clause 8

Page 3, lines 20 and 24.
Page 4, lines 6 and 12.

Clause 12

Page 6, line 12.

Clause 15

Page 8, lines 27 and 29.
Page 9, lines 3 and 4.
Page 11, line 31.
Page 12, lines 3, 5, 6, 7, 12, 13, 16 and 30.
Page 13, lines 3, 5, 16, 17, 18, 20, 22 and 27.
Page 14, lines 2, 3, 4, 7, 10, 11, 16, 19, 23, 27, 28, 30 and 32.
Page 15, lines 6, 7, 8, 11, 12, 24, 32 and 33.
Page 16, lines 4, 8, 11, 12, 13, 16, 20, 21, 22, 23, 28 and 29.
Page 17, lines 2, 5, 12, 20 (twice), 23, 26 (twice), 28, 30 and 31.
Page 18, lines 13, 15, 21 and 26.
Page 19, lines 2, 3, 4, 7, 12, 21 and 23.

Amendment put and passed.

Clauses 1 to 3 put and passed.

Clause 4: Long title amended -

Mrs HENDERSON: I move -

Page 2, line 11 - To delete "tribunal" and substitute "committee".

Amendment put and passed.

Clause, as amended, put and passed.

Point of Order

Mr LEWIS: Does this Bill have a message?

The CHAIRMAN: It does not.

Mr LEWIS: Then I draw your attention to the ruling of the Speaker, previously reinforced and amplified to this House on many occasions, that any legislation requiring a message, whether Government, Independent or Opposition legislation, shall go to the bottom of the Notice Paper until a message is supplied.

The CHAIRMAN: That ruling is used in situations where a Bill clearly needs a message. Perhaps the member could indicate to the Committee why he thinks this Bill needs a message.

Mr LEWIS: I draw the Chairman's attention to clause 30, which authorises the payment of fees to members of the tribunal or committee as it would be constituted under this legislation.

The CHAIRMAN: Order! In order to facilitate this matter we must obtain a copy of the principal Act. I will suspend proceedings until the ringing of the bells.

Sitting suspended from 10.31 to 10.40 pm

Chairman's Ruling

The CHAIRMAN: The member for Applecross claims that the Bill has not received a message and, therefore, has asked that the matter be discharged. However, investigations show that the Bill does not require a message because I am reliably informed that the principal Act, covering the Builders' Registration Act, provides for the board to be self-funded; in other words, its expenditure comes from revenue from fees - which has been the subject of much discussion in this place. The Bill does not require a message. The circumstances under which a Bill requires a message are set out under the Constitution Acts Amendment Act, Part 3, Miscellaneous, where it explains that if a Bill requires an appropriation - meaning from the Consolidated Revenue Fund or from the Loan Fund - it requires a message. In this case, any expenditure will come from the funds of the board which are already in existence.

Point of Order

Mr LEWIS: Mr Chairman, I seek your advice; I do not question your ruling.

The CHAIRMAN: It is reliably documented. We have consulted the registrar of the board, who is in the building presently.

Mr LEWIS: If I wanted to take the matter further what action would I need to take?

The CHAIRMAN: I suggest that you consult the people from whom I have drawn my advice and see whether you are as convinced by their advice as I have been. There is no question about it, because the Builders' Registration Act 1939 to 1980 - which this Bill is amending - indicates clearly where the income of the board comes from. It does not come from consolidated revenue. If you check last year's Budget papers you will not find an allocation to the Builders' Registration Board. Probably an allocation was made when the board was set up but there is no annual allocation. Where we alter fees, and so on, that does not require an appropriation from consolidated revenue.

Mr Pearce: Because the Bill is being amended, we will not proceed to the third reading. The member for Applecross will have a chance to undertake alternative research before the third reading stage.

The CHAIRMAN: If you wish to dispute my ruling we will need to go out of Committee and have the matter heard by the Speaker.

Mr LEWIS: I am disturbed because we have heard no argument whether a message is required. The ruling of the Speaker has been that if no message is required a Bill goes to the bottom of the Notice Paper.

Mr Pearce: Only if it needs a message.

Mr LEWIS: Who is the adjudicator?

The CHAIRMAN: The Chairman or the Speaker. If you wish to dispute my ruling, you may proceed under Standing Order No 144; we will go out of Committee and you may put your arguments to the Speaker. I draw my conclusion on the basis of clear evidence in the Act and in the Statutes governing the conduct of Parliament.

Committee Resumed

Clause 5: Section 2 amended -

Mrs HENDERSON: I move -

Page 2, lines 14 to 17 - To delete the clause and substitute the following clause -

5. Section 2 of the principal Act is amended by inserting after the definition of "Company" the following definition -

" "Disputes Committee" means the Building Disputes Committee established by section 26."

Amendment put and passed.

Clause, as amended, put and passed.

Clause 6: Section 3 amended and transitional provision -

Point of Order

Mr LEWIS: Did the original Builders' Registration Act require a message?

The CHAIRMAN: That Bill was passed in 1939. We will get an answer for the member, but we cannot do so immediately. That in no way prevents progression of the Committee debate as I ruled on the original question. I am happy to participate in debate on my ruling if that is what the member wants. The member can proceed under Standing Order No 144.

Mr LEWIS: My point is that from time to time the Opposition has introduced private members' legislation in this place. The Speaker has pointed out - I dare say properly and correctly - that before the legislation could proceed to the third reading stage it required a message. If the original legislation - the Builders' Registration Act 1939 - required a message it would necessarily mean that this legislation requires a message.

The CHAIRMAN: No, that is not the case.

Mr LEWIS: This is an amendment to the original legislation. Clause 34, Expenses of the Tribunal, provides that the expenditure necessary for the functioning of the tribunal shall be

met by the board. Mr Chairman, you have made the point that the board is self-funding. However, the board may run into a deficit. Perhaps the necessary fees may not be available to support the operations of the board. I put to the Committee that the original legislation would have required a message. If that was the case, Sir, this amendment to that legislation - bearing in mind that it does require the expenditure of funds - also requires a message.

The CHAIRMAN: First, regardless of whether the parent Act required a message - and we are still checking that - my ruling is not altered. We are talking about a Bill for an Act to amend the Act - not the original Act, the amending Act. Second, the Speaker's ruling, as I understand it, regarding private members' Bills, or any others that require messages, is that where the implementation of the Bill when it becomes law would require an appropriation from consolidated revenue a message is required. If that message from the Governor of the day is not forthcoming, the Bill cannot proceed by that convention. In this case, however, if this Bill is passed it will not require a message because it does not require any appropriation of funds from the Government, or from consolidated revenue.

We have just discovered that the 1939 Bill did not have a message, for exactly the same reason; that is, because the Builders' Registration Board from its inception has been funded by fees for service.

Committee Resumed

Clause put and passed.

New clause 7 -

Mrs HENDERSON: I move -

Page 3 - To insert after clause 6 the following new clause to stand as clause 7 -

Various sections amended

7.The principal Act is amended by deleting "chairman" in the provisions referred to in the Table to this section and substituting in each case the following -

"chairperson".

TABLE

section 5A(1)	section 18(1)
section 5B(2)	section 20
section 5C(1) and (2)	section 20A(1)
section 6(2)	section 21(2)

This amendment simply replaces the word "chairman" with chairperson.

New clause put and passed.

New clause 8 -

Mrs HENDERSON: I move -

To insert after new clause 7 the following new clause to stand as clause 8 -

Section 5A amended

8. Section 5A of the principal Act is amended by repealing subsection (2) and substituting the following -

(2) The chairperson shall be a person who is a practitioner as defined by the *Legal Practitioners Act 1893* and who is nominated as chairperson by the Minister.

Mr WIESE: The Minister spent the whole of last week telling members what a marvellous job had been done with the drafting of this legislation. However, the Minister's amendment is trying to con members by assuring us that we are establishing a committee, and I object to that. The legislation will establish a tribunal with all the powers involved with that. This clause reinforces that point because the clause it replaces allowed any member of the Builders Registration Board to sit as the chairman of that board. However, a specific requirement will now be inserted that the chairman of the board shall be a legal practitioner.

New clause put and passed.

New clauses 9 and 10 -

Mrs HENDERSON: I move -

To insert after new clause 8 the following new clauses to stand as clauses 9 and 10 -

Section 5AA inserted

9. After section 5A of the principal Act the following section is inserted -

Further provisions as to chairman

"5AA.(1) The appointment of the chairperson may be made either on a full-time or a part-time basis.

(2) Where, immediately before being appointed a full-time basis as the chairperson, a person occupied an office under the *Public Service Act 1978*, that person shall -

(a) continue to retain existing and accruing rights, including rights under the *Superannuation and Family Benefits Act 1938* and the *Government Employees Superannuation Act 1987*, as if the person's service as chairperson were service as an officer under the *Public Service Act 1978*; and

(b) if the person resigns from the office of chairperson or that office ceases to exist or ceases to be held on a full-time basis, be entitled, if the person has not attained the age of 65 years, to be appointed to an office under the *Public Service Act 1978* not lower in status than the office that the person occupied immediately before being appointed as the chairperson."

Section 5B amended

10. Section 5B of the principal Act is amended by inserting after subsection (2) the following subsection -

"(3) A person may only be appointed as chairperson under this section if he is a practitioner as defined by the *Legal Practitioners Act 1893*."

New clauses put and passed.

New clause 11 -

Mrs HENDERSON: I move -

To insert after new clause 10 the following new clause to stand as clause 11 -

Section 5C amended

11. Section 5C of the principal Act is amended by inserting after subsection (1) the following subsection -

"(1a) The deputy chairperson of the Board -

(a) need not be a practitioner as defined by the *Legal Practitioners Act 1893*; and

(b) notwithstanding subsection (1), does not have the powers, functions and duties of the chairperson under section 27."

Mr WIESE: Does this mean that if the chairperson, a legal practitioner, is not able to attend, the deputy chairperson cannot fill that position? In that case is it necessary for somebody who has legal qualifications to take the chairperson's place or the board will not be able to sit?

Mrs HENDERSON: If the member reads the amendments, he will notice that we are discussing the deputy chairperson of the board. We are not discussing the deputy chairperson of the disputes committee. The position at the moment is that a lay person may chair the Builders Registration Board; however, under this legislation, because the person

occupying the chair of the disputes committee will also chair the board, that person must be a legal practitioner. If that person is absent from chairing the Builders Registration Board, any other member can be elected to fill the role for the day. That person might be a builder or a consumer representative; however, that is not the case with the disputes committee.

Mr WIESE: If the chairman of the disputes committee is not present for a sitting, who will chair that committee? I refer to the same situation I portrayed regarding the board: Will it be necessary for somebody from outside with the relevant qualifications to sit on the committee?

Mrs HENDERSON: I refer the member to page 9 of the legislation before the Chamber. It refers to "chairperson and deputies" and indicates that the chairman and the deputy chairman of the disputes committee must have the same qualifications. Therefore, they both must be legal practitioners. This is making a distinction between the deputy chairman of the disputes committee and the deputy chairman of the board.

New clause put and passed.

Clause 7: Section 7 amended -

Mrs HENDERSON: I move -

Page 3, lines 13 and 14 - To delete the lines and substitute the following -

deleting "its duties and functions" and substituting -

"the duties and functions of the Board and the Disputes Committee".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 8 to 13 put and passed.

Clause *14*: *Sections 23C and 23D inserted* -

Mr WIESE: This clause gives the Minister power to direct the board in the performance of its functions either generally or in particular matters and that the board shall give effect to such directions. I have grave reservations about such an all encompassing power and I seek some guidance from the Minister about the specific directions the Minister will give the board.

Mrs EDWARDES: I am concerned with proposed section 23D where the Minister has access to information for parliamentary purposes or for the proper conduct of the Minister's business. These two phrases are defined in proposed subsection (4) and while I do not have a difficulty with accountability, because it is essential at all times, I have a difficulty with the abuse of privacy and confidential information. We had an incident earlier this evening where private information about a member's affairs was going to be relayed to this House; that was a total disregard for another member in this House. Has the Minister given any consideration to the protection of privacy and confidential information in relation to proposed section 23D?

Mrs HENDERSON: Clause 14 was inserted at the request of Treasury. It is Treasury's view that in order to comply with the recommendations of the Burt Commission on Accountability these provisions must be included in the legislation: The Minister must have the opportunity to give directions to bodies such as this established under Statute so the Minister can be questioned and be accountable for the activities of that body, and so that ultimately that body is accountable to Parliament. Similarly, the proposed sections that give the Minister the opportunity to require information are part of that accountability. If the Minister is not able to obtain information it would be extremely difficult for the Minister to make a judgment about whether the body was carrying out its functions in accordance with the Act. The Minister must have the opportunity to gain information such as facts and figures about complaints resolved and matters being looked into. I cannot see that this provision relates to privacy at all because Minister's have access to all kinds of information about the lives of private citizens, and it generally is not a problem. I cannot see why there should be any more of a problem with the administration of this body than with a Minister administering a body like Homeswest, which has access to information about people's income and their housing situation, or a Minister administering any other Government department.

Mrs EDWARDES: In Bills that are coming before this Chamber, and in Bills that were

presented in previous sessions, there are constant requests from Treasury to have these accountability clauses inserted to comply with the recommendations of the Burt Commission on Accountability. I do not have difficulty with the recommendations made in the Burt report, but Ministers bringing forward Bills which include such clauses must have at least applied their minds to how privacy and confidentiality of individuals affairs will be dealt with. In this instance it is the first time the Minister has thought about it.

Mr WIESE: I take note of what the Minister has said and I understand Treasury's requirements relating to the financial functioning of the board. If that is what the Minister is trying to write into this clause perhaps the wording should be changed to limit the powers of the Minister to make directions specifically to those areas which come within the range of activities which the Treasury quite justifiably has an interest in. This clause gives the Minister power to direct the board to a particular matter; there is no qualification and it could be a general matter of the board's operations. The clause should be qualified to ensure the Minister gives directions purely on the financial operations of the board. I accept what the Minister is saying about Treasury, but the Minister should not have the power to direct a board such as this in the broad manner in which this clause is drafted. Before the Minister opens her mouth, I know that there are two areas where the Minister is not able to direct the board; however, leaving out the reference to particular persons or applications, the Minister still has the power to direct the board in a general manner about all sorts of things that are in no way related to the financial activities or interests of Treasury.

Mrs Henderson: The Burt Commission on Accountability's recommendations relate not only to financial accountability but also to the manner in which the objects of an Act are carried out by the body which comes under the control of the Minister. That accountability is spelt out clearly in the Burt report; it was not solely in relation to money and that is why this is so broad.

Mr WIESE: This gives a Minister the power to give directions to the board on policy. I do not believe that the board should be given such a direction; it must make judgments on the general policies it enacts, and for the Minister to be given power in that area is not acceptable to me.

Clause put and passed.

Clause 15: Sections 25 to 46 inserted -

Mrs HENDERSON: I move -

Page 9, line 3 - To delete "Tribunal" and substitute "Committee".

Page 9, lines 7 to 13 - To delete the proposed section and substitute the following -

27. (1) The chairperson of the Board by virtue of holding that office, also holds office as the chairperson of the Disputes Committee.

(2) The Minister may, in writing, appoint a person or persons, each of whom is a practitioner as defined by the *Legal Practitioners Act 1893*, to hold office as deputy chairperson or deputy chairpersons of the Disputes Committee.

Page 10, line 3 - To delete "the chairperson or a deputy chairperson" and substitute "a deputy chairperson".

Page 10, lines 19 and 20 - To delete "the chairperson, a deputy chairperson" and substitute "a deputy chairperson".

Page 11, lines 2 and 3 - To delete "the chairperson, as a deputy chairperson" and substitute "a deputy chairperson".

Page 11, lines 7 to 28 - To delete the proposed subsections.

Mr WIESE: How many legally qualified people will serve on the tribunal to enable it to function?

Mrs HENDERSON: A later clause in the Bill allows for panels of people to be appointed. It would be possible for three disputes committees to be available at any one time. That will enable disputes in the country, for example, to be heard expeditiously. We are not limiting the number of people who are available to three persons; that is, the chairperson, the consumer representative, and the building representative. The Bill spells out further how those panels will be nominated.

Mr Wiese: Will a number of tribunals be set up as required or will they be in place all the time and activated as needed? Will each of the tribunals have persons with legal qualifications as chairperson and deputy chairperson?

Mrs HENDERSON: The composition of the committee will be the same no matter where it sits in that there will be a legally qualified chairperson, an industry person and a consumer person. The Bill provides an opportunity for us to appoint a chairperson and two or more persons as deputies so that they are ready if they are needed. It does not mean they are paid; it means they are available so that should we need a deputy chairperson to sit the option exists for that to happen. For the same reason, we will set up panels of consumer representatives from which people can be drawn to form dispute committees.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 16: Schedule V amended -

Mrs HENDERSON: I move -

Page 20, lines 3 to 9 - To delete the clause and substitute the following -

16. Schedule V of the *Constitution Acts Amendment Act 1899** is amended in Part 3 by inserting, after the item relating to the Builders' Registration Board, the following -

"The Building Disputes Committee constituted under the *Builders' Registration Act 1939* including a member of a panel established under section 28 of that Act."

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

House adjourned at 11.16 pm

QUESTIONS ON NOTICE

CONSERVATION AND LAND MANAGEMENT DEPARTMENT
FORESTS DEPARTMENT
Housing Disposal Program

562. Dr ALEXANDER to the Minister for the Environment:

(1) How many -

(a) houses for removal;

(b) houses with land;

that belonged to the Forests Department and/or Department of Conservation and Land Management have been sold to -

(i) CALM employees;

(ii) others;

since CALM was formed in 1985?

(2) For every -

(a) house for removal;

(b) house with land;

what was -

(i) the date of sale;

(ii) the price;

(iii) the name of the purchaser and was the purchaser at the time of purchase a CALM employee?

(3) Would the Minister indicate in each case whether the sale was by tender or private treaty?

(4) Which CALM officer was responsible for the setting up and operation of the tender system for the sale of houses and land?

(5) (a) Has any comment on CALM's system for the sale of CALM houses and land been made by State audit;

(b) if so, what was the comment?

(6) Under what authority did CALM sell the houses and the land?

Mr PEARCE replied:

(1)-(3)

This information is not available and it will take some time to compile the required particulars. I will provide the answers as soon as the information has been collated.

(4) The tender system used was that which existed in the former Forests Department for contracts and the disposal of all kinds of assets. There were a number of officers involved in the operation of the system.

(5) (a) Yes.

(b) In September 1989 State audit sought comments on perceived shortcomings of aspects of the tendering system. In response, the department pointed out that the tendering procedures had been reviewed earlier in 1989 and action had been taken to address the areas which had been referred to.

(6) Cabinet approved the proposed housing disposal program on 9 December 1985.

NATIONAL PARKS - MT LESUEUR NATIONAL PARK PROPOSAL
Gravel Reserve 35593

978. Mr MINSON to the Minister for the Environment:

(1) Further to the debate on the motion to create a national park in accordance with the recommendations of the Environmental Protection Authority Bulletin 460, will there be a formal public Environmental Protection Authority assessment of excavation and subsequent use of laterite gravel from reserve 35593?

(2) Is there known or likely infestation of *Phytophthora* on reserve 35593?

(3) Is there any risk that use of gravel from reserve 35593 could lead to a spread of *Phytophthora* infection?

(4) If the laterite gravel is removed can the soil profile and vegetation association be re-established?

(5) Is the vegetation association on the laterite gravels of 35593 significantly less important or less diverse than that on top of either of the coal deposits?

(6) If so why?

(7) How has the Minister resolved the ambiguity of recommendation 1 in Bulletin 460 in regard to excavations on gravel reserve 35593?

(8) Are the laterite gravel and its overlying vegetation complex better represented in the remainder of the proposed park with reference to gravel reserve 35593?

(9) Are the EPA and the Department of Conservation and Land Management prepared to state that there will be no diminution in conservation values if any area or gravel reserve 35593 is developed?

Mr PEARCE replied:

(1) It is proposed that gravel extraction from reserve 35593 will be phased out. In the meantime gravel extraction will be subject to strict conditions of use, including hygiene conditions, and rehabilitation conditions.

(2) There are no known *Phytophthora* infestations on reserve 35593.

(3) The potential is there.

(4) The site could be revegetated and made stable, but it is unlikely that the area could be regenerated to the original soil profile and vegetation association.

(5) Yes.

(6) Reserve 35593 is representative of only the major vegetation unit represented in the proposed Mt Lesueur National Park. While this area is of conservation value and of soil type slope and aspect and microclimates that contribute to the extraordinary species' richness, and vegetation community diversity and rare flora, which is concentrated in the area where the coal mine and power station were proposed to be located.

(7) Extraction of gravel from reserve 35593 is to be phased out after which the area will be included in the Mt Lesueur Reserve.

(8) No.

(9) The EPA and CALM believe there will be a diminution of conservation values if extraction from the gravel reserve continues.

NATIONAL PARKS - KALBARRI NATIONAL PARK
Vegetation Survey

979. Mr MINSON to the Minister for the Environment:

(1) As table 12.2 of the Environmental Protection Authority Bulletin 424 shows that only five out of 16 existing and proposed national parks/nature reserves have been subject to vegetation surveys, why has the Kalbarri National Park not been subject to a detailed vegetation survey?

(2) Why have the remaining areas been proposed for reserve/park status without vegetation assessment?

(3) Is it therefore valid to claim that the proposed Lesueur National Park has the third highest plant diversity of proposed parks in Western Australia?

(4) Were there inadequate firebreaks and was there inadequate coordination of fire control during the outbreak of fire in Kalbarri National Park last summer?

(5) If no to (4) what was the basis of local fire fighters complaints in the Press?

(6) If yes to (4), given that national parks are meant to have management plans why was environmental protection overtly inadequate for the park?

(7) On the basis of the lack of vegetation surveys, fire control and *Phytophthora* control in national parks will the Minister demonstrate how the plant and animal communities of the Lesueur area will be better protected by the declaration of a national park.

Mr PEARCE replied:

(1) Kalbarri National Park has not yet had a detailed biological survey because available resources have had to be directed to those areas which clearly warranted such study. This is not to say that Kalbarri is poorly known - see (2) below - either.

(2) Table 12.2 in EPA Bulletin 424 provided data on the total number of species of vascular plants, mammals (excluding bats) birds and reptiles for several biologically well known conservation reserves in the south west of Western Australia so as to put the number of species within these groups known to occur in the proposed Lesueur National Park into context. Figures were only given for those areas where detailed and comprehensive surveys had been carried out so that the data presented were not biased. The species included in table 12.2 has been reserved or recommended for reservation based on available information that they are of very high nature conservation value. For example, preliminary data collation for Kalbarri National Park shows that about 600 species of vascular plants occur there, that at least 16 of these are endemic to the park and that many species reach their most northern or most southern distribution there.

(3) The data presented in Table 12.2, plus detailed information provided elsewhere in EPA Bulletin 424, plus an enormous amount of information available in the Western Australian Herbarium and in the scientific literature make it clear that the Lesueur area has the third highest plant species diversity of any place in the south west of Western Australia.

(4) (i) The boundary firebreaks at Kalbarri National Park are six metres in width and were maintained (ploughed) in December prior to the Kalbarri fire. They were therefore in good condition. In terms of the "adequacy" of the firebreaks, given the severe fire conditions, no firebreak would have been sufficient to stop the fires experienced at Kalbarri.

(ii) There were two fires in Kalbarri National Park last summer, the first in December, the second in April.

December Fire

This was detected early on Sunday 9 December and action was taken immediately to organise Department of Conservation and Land Management equipment and staff and local volunteers. The fire was coordinated initially by the ranger in charge of Kalbarri who is also a local bushfire control officer appointed by the local shire. On Tuesday the overall control of the fire was passed onto the chief bushfire control officer. There were some initial problems with radio communications in the first 24 hours which hampered efforts to coordinate volunteers and CALM staff. However, this was overcome

when a CALM radio technician was flown up to Kalbarri on the Monday. After this the radio network worked smoothly. Apart from this particular technical problem, there was adequate coordination in very difficult circumstances.

April Fire

This fire started on 4 April as a result of an escape from adjacent private property. This fire was well coordinated and no problems were encountered with communications.

(5) The complaints that were aired in the Press from local volunteers in respect of the December fire were generally based on misinformation. Some of the complaints/comments were -

(i) *Why wasn't action taken immediately? The fire could have been controlled on the first day.*

This is not true. Action *was* taken immediately and all techniques that could be safely implemented were carried out. Direct attack was not feasible as the fire was four kilometres from the nearest break and would have placed machine operators in unacceptable danger. Local people believed that back burning should have been carried out. Back burning was carried out late on the first day. Given the extreme weather conditions an earlier decision to back burn would have resulted in a larger fire and placed fire fighters in a very dangerous situation.

(ii) *CALM had to wait for Perth staff to fly up before decisions could be made. Why wasn't a local person in charge?*

As stated earlier, the local ranger in charge, who is a bushfire control officer, was in charge of the fire before it was passed onto the chief bushfire control officer. The only Perth CALM staff used at the fire was the radio technician who ameliorated the initial problems encountered with radio communications.

These issues were discussed thoroughly at the fire debriefing and my understanding is that those people who were critical at the beginning of the fire acknowledged they were not properly informed when making their earlier criticisms.

(6) Not applicable.

(7) This part is predicated on supposition. As demonstrated in (2) and (3) above, it is entirely valid to draw conclusions on the importance of the Lesueur area. Moreover, while fire management and *Phytophthora* control are not perfect, nor claimed to be, they are demonstrably superior to that occurring in areas which have no dedicated status. Also, on the basis of scientific knowledge and experience throughout Western Australia, it is clear that the vast majority of species of plants, animals and microorganisms cannot survive outside of intact - or near intact - viable, natural ecosystems and that the best method of protecting outstanding areas of biodiversity and natural beauty is to include them in the national park system. On the same basis it is also clear that natural ecosystems need to be managed to prevent the loss of biodiversity through such factors as feral animals, disease and inappropriate fire regimes.

ROTTNEST ISLAND - THOMSON BAY
Reef Blasting

982. Mr MINSON to the Minister for the Environment:

(1) Further to the Minister's reference to reef blasting at Thomson Bay, Rottnest in the Minister's second reading speech of the Environmental Protection Amendment Bill 1991, will the Minister provide a list of those sites blasted in Thomson Bay, with reference to position of the most proximate currently registered mooring and the approximate date of blasting?

(2) Did blasting of reef occur at Marjorie Bay and or Catherine Bay, Rottnest in the period leading up to the America's Cup yacht race at Fremantle?

(3) If yes to (2), was any member of the Rottnest Island Board, contractor to the board, or employee of the board aware of the moving of existing moorings and blasting of reef in Marjorie Bay in a reasonable period before or after the blasting at Marjorie Bay?

(4) If yes to (3), who?

(5) Was an existing mooring dragged out of its position in Marjorie Bay and blasting undertaken at a site either allocated to or about to be allocated to a Mr L.R. Connell?

(6) Which person(s) or what organisation(s) investigated or reported on the blasting?

(7) Will the Minister advise which Acts could have been used for prosecution at the time if the person(s) responsible had been identified?

(8) Will the Minister explain why Section 26 of the Fisheries Act 1905 could not have been used for prosecution of reef blasters?

(9) Did the Rottnest Island Board authorise blasting of the reef at Catherine Bay, Rottnest to provide access to additional mooring areas?

(10) Were any of the new moorings in Catherine Bay allocated after the blasting to persons out of queue to those routinely applying for moorings at Rottnest?

(11) If yes to (10), were those recipients of moorings commonly known to be friends and associates of the then Chairman of the Rottnest Island Board, Mr Dallas Dempster?

(12) Was an environmental review of the proposed blasting at Catherine Bay made by the Environmental Protection Authority and did it receive public submissions?

(13) Did the EPA assess the reef damage at Rottnest and compile an internal report?

(14) If yes to (13), is the report available?

Mr PEARCE replied:

(1) The reference to Thomson Bay in the second reading speech is an error. The reference should have referred to unauthorised blasting of reef at Marjorie and Catherine Bays.

(2) Evidence suggests that blasting of Marjorie and Catherine Bays occurred in September 1986.

(3)-(5) I have no knowledge of these matters.

(6) I understand the matter was investigated by the police. Also, marine environmental impact branch staff from the Environmental Protection Authority inspected sites in Marjorie and Catherine Bays.

(7)-(8) These questions should be addressed to the Minister for Police. However, it is understood that the police were unable to identify an alleged offender and no charges were laid.

(9) No.

(10) No.

(11) Not applicable.

(12) No. The blasting was unauthorised as I understand it. Moreover the issue predated the Environmental Protection Act 1986.

(13) Yes. The EPA's marine environmental impacts branch visited the area in

October 1986 and noted recent evidence of blasting, which they deduced probably happened in early September 1986, and which was probably carried out by a professional.

(14) I table it herewith.

(See paper No 532.]

"NEW FEDERALISM" - STATE-FEDERAL AGREEMENT
Parliamentary Approval

1036. Mr COWAN to the Premier:

Does the Premier intend seeking prior parliamentary approval before committing the State to any agreement with the Commonwealth Government over "new federalism"?

Dr LAWRENCE replied:

Parliamentary approval will be sought when and if legislation is required to give effect to the decisions reached by heads of Government at the Special Premiers' Conference.

EDUCATION MINISTRY - "STATEMENT OF ETHOS AND PURPOSE" BROCHURE

1042. Mr COWAN to the Minister representing the Minister for Education:

(1) With regard to the folder and brochure entitled "Statement of Ethos and Purpose" signed by the Chief Executive Officer on 26 April 1991 were copies sent to -

(a) all schools;

(b) all teachers;

(c) all other staff of the ministry?

(2) What was the overall cost of preparing and distributing the folder and brochure?

(3) Why was it considered necessary to divert ministry resources away from the classroom and into this venture?

(4) Is the Minister aware that the "Statement of Ethos and Purpose" makes no reference at all to the ministry's responsibility to parents and to the wishes of parents? Was this omission accidental?

(5) Given the statement's strong commitment to "social justice", what for this purpose does social justice mean and how will the ministry discover if that concept of "social justice" is what parents want their children to be exposed to or taught?

(6) Where the statement promises that "in future the process of priority-setting within the ministry will be more overtly participative process", does this mean a greater say for parents? If not, why not?

Dr GALLOP replied:

(1) (a) Yes

(b) Yes, on a school by school basis.

(c) Yes, through managers.

(2) All invoices have not been received. The anticipated total cost is $15 500.

(3) No resources were diverted from the classroom to support the development and publication of the statement. The expenditure derives from the requirement that all Government agencies undertake corporate planning, which in turn requires that all staff are aware of the objectives of their organisation. The ministry has funds for this purpose.

(4) The statement focuses on the educational needs of students themselves as the

prime focus of all ministry activities. However, references to participative decision making, and to open communication clearly imply a meaningful role for parents.

(5) The strong commitment to "social justice" refers to a key policy in the delivery of school education. It means that the ministry is committed to the achievement of optimum educational outcomes for all students.

(6) Yes. Greater opportunities will be created for parent participation through the establishment of school decision making groups. These groups will play an important role in the establishment of school priorities.

SCHOOLS - SCHOOL DECISION MAKING GROUPS
Regulations Gazettal

1050. Mr AINSWORTH to the Minister representing the Minister for Education:

When are the regulations relating to school decision making groups to be gazetted?

Dr GALLOP replied:

It is intended to have the regulations relating to school decision making groups gazetted within the next month.

EDUCATION MINISTRY - ALBANY EDUCATION DISTRICT
Capital Works Budget Allocation

1053. Mr WATT to the Minister representing the Minister for Education:

(1) What amount has been set aside in the current State Budget for capital works in the Albany education district?

(2) How much is to be set aside for minor works and how much is for program maintenance?

(3) Have any priorities been established for the expenditure of either or both amounts?

(4) If so, what are the details?

Dr GALLOP replied:

(1)-(4)

Details of funding allocations will be released after the Budget is presented to Parliament.

MARKET CITY - FRUIT AND VEGETABLE GROWERS
Consignment Sales Review

1062. Mr HOUSE to the Minister for Agriculture :

(1) Is the current system of the selling of fruit through the Metropolitan Markets on a consignment basis in the best interests of Western Australian fruit and vegetable growers?

(2) Do Western Australian fruit and vegetable growers have to pay for freight of their produce to the markets, whereas when market agents purchase similar lines from the Eastern States growers, the agents pay for the freight as well as paying for the produce at the farm gate?

(3) Does the current system encourage agents to sell the produce they have already purchased and paid for from the Eastern states before they sell Western Australian produce which is consigned on a commission basis?

(4) Have there been any instances where a market agent buys Western Australian produce themselves and either -

(a) repacks the produce and sells it back through the market;

(b) distributes it through a subsidiary company to retail chain stores?

(5) Will the Minister undertake to review the current system of market agents?

Mr BRIDGE replied:

(1) Whether or not consignment selling is in a grower's best interest is a matter for individual growers to determine. Consignment selling offers one options for the sale of fruit, and presumably, growers make judgments about the option which best suits their enterprise.

(2) Payment for freight depends on contractual arrangements between growers and agents.

(3) This practice could occur but no evidence is available on the extent to which it has occurred, and if so, where growers are necessarily disadvantaged by such practices.

(4) Yes.

(5) The current system has operated over many years. It is a commercial arrangement between growers and their agents. If both these parties see merit in reviewing the current system of consignment selling, I would be prepared to help facilitate such a review of these commercial arrangements.

STATE ENERGY COMMISSION OF WESTERN AUSTRALIA - COMPACT FLUORESCENT LIGHT GLOBES PROMOTION

Consumer Complaints

1063. Mr HOUSE to the Minister for Fuel and Energy:

(1) Have the compact fluorescent light globes promoted by him and the Government as a sound energy conservation measure, been the subject of consumer complaints?

(2) Have some State Energy Commission of Western Australia staff in the Albany regional office advised their head office that the compact fluorescent light globes promoted by the Government as being a responsible conservation measure, are a waste of time and money?

(3) Have consumers who have complained to SECWA about their supposedly long-life fluorescent globes blowing after a few months, received the above response?

(4) How many complaints has the Minister or SECWA received regarding the compact fluorescent light globes?

(5) What steps has the Minister taken to deal with these complaints?

Dr GALLOP replied:

(1) The compact lamp promotion has, if judged by sales, been an outstanding success. Some complaints have been received. These have generally focused upon the promotion of a single brand, the physical shape of the lamps and price of the lamps. Very few complaints have been received about their performance.

(2) No.

(3) It has been demonstrated that the lamps last for up to 8 000 hours when used in accordance with manufacturer's recommendations. I am informed by State Energy Commission of WA that any lamps failing prematurely, and these are few, are being treated by Phillips in the normal way, for example, replace or refund.

(4) Less than 100, out of estimated sales of 20 000 lamps.

(5) SECWA refers all customer complaints to the manufacturers.

SCHOOLS - FORRESTFIELD SENIOR HIGH SCHOOL

Enrolments

1074. Mr MacKINNON to the Minister representing the Minister for Education:

(1) What is the current enrolment at Forrestfield Senior High School?

(2) What has been the enrolment at the school over each of the last four years?

(3) What is the anticipated enrolment over the next four years?

Dr GALLOP replied:

(1) The enrolment at Forrestfield Senior High School on 29 July 1991 was 1 209.

(2)

1987	1 126
1988	1 163
1989	1 158
1990	1 202

(3)

1992	1 334
1993	1 388
1994	1 387
1995	1 418

SCHOOLS - FORRESTFIELD SENIOR HIGH SCHOOL
Performing Arts Centre

1075. Mr MacKINNON to the Minister representing the Minister for Education:

(1) Are there plans to construct a performing arts centre at Forrestfield Senior High School?

(2) If so, when will construction commence?

(3) What is the approximate cost estimate of such a facility?

Dr GALLOP replied:

(1) Yes.

(2)-(3)

Details of the Ministry of Education's Capital Works Program will be released when the Budget is presented to Parliament.

CREDIT UNION ACT - AMENDMENTS

1086. Mr MacKINNON to the Premier:

(1) Does the Government have any plans to amend the Credit Union Act?

(2) If so, in what general areas will those amendments be directed?

(3) When is it likely that those amendments will be forthcoming?

Dr LAWRENCE replied:

(1)-(3)

No. However, the subject of non-banking financial institutions is to be discussed at the November Premiers' Conference and may result in some amendments in 1992.

FIRE BRIGADE - EMERGENCY RESCUE TENDER VEHICLES
Metropolitan Area Statistics

1092. Mr MacKINNON to the Minister representing the Minister for Emergency Services:

(1) How many emergency rescue tender vehicles are presently located within the metropolitan area?

(2) What was the number of these tenders located in the metropolitan area the same time last year?

(3) Is it planned that the Fire Brigades Board will purchase a new heavy rescue salvage vehicle?

(4) If so, when is the vehicle to be purchased?

(5) At what cost will the vehicle be purchased?

(6) For what purpose will the vehicle be purchased?

Mr GORDON HILL replied:

(1) Three
- one at Perth station
- one at Fremantle station
- one standby.

(2) Same as above. Rescue equipment is now also carried on a major pumper in all metropolitan fire stations.

(3)-(4)
The vehicle has already been purchased and is due to go into service in the near future.

(5) Approximately $250 000 plus equipment.

(6) The vehicle will carry heavy rescue equipment which will allow the brigade to provide a better service to the community.

TAFE - MURDOCH CAMPUS
Site Decision

1099. Mr MacKINNON to the Minister representing the Minister for Education:

(1) Has a final decision been made on the exact location and size of the site for the new Murdoch Campus of Technical and Further Education?

(2) If so, what is the final definition of that site?

(3) If planning of the site has not yet been completed, when will it be completed?

(4) When will work commence on the construction of this facility?

(5) What is planned to be constructed during the first stage of this project?

Dr GALLOP replied:

(1) Yes.

(2) The site is comprised of 24.15 hectares of land which is situated between the Mitchell Freeway and Murdoch Drive north of Farrington Road.

(3) Planning for stage 1 will be completed by October 1991. Planning for stage 2 will be completed by May 1992.

(4) Construction is planned to commence on stage 1 in November 1991.

(5) The establishment of reticulated horticultural growing plots and the construction of support facilities including workshops, laboratories and classrooms.

GAS - NORTH WEST SHELF GAS PIPELINE
Gas Sale Studies

1101. Mr COURT to the Minister for Fuel and Energy:

(1) What studies has the Government completed into the sale of gas from the North West Shelf gas pipeline to the south of the State?

(2) What are the conclusions of those studies?

(3) Are any studies currently in progress in relation to the sale of gas from the pipeline?

Dr GALLOP replied:

(1) None.

(2) Not applicable.

(3) SECWA's major purchase and sale agreements have been in place for some time. SECWA is currently undertaking a study aimed in part at determining how gas can be used to promote economic development in the State.

COMMUNITY SPORTING AND RECREATION FACILITIES FUND - GRANTS
Reintroduction

1103. Mr COURT to the Minister for Local Government:

(1) Is it the Government's intention to reintroduce the system of community sporting and recreation facilities fund (CSRFF) grants as applied up until 1988-89?

(2) If yes, when will these grants be resumed?

Mr D.L. SMITH replied:

(1) Yes. Details regarding the administration of CSRFF grants will be made available after the Budget has been presented.

(2) See (1) above.

MINERAL SANDS - BEENUP
Power Line Route

1105. Mr COURT to the Minister for Fuel and Energy:

When will the Government make a final decision on the route of the power line to the new Beenup Mineral Sands mine at Augusta?

Dr GALLOP replied:

I understand that the EPA's final recommendations will be made to the Minister for the Environment by 1 December 1991.

URANIUM MINING - BAN, WESTERN AUSTRALIA
Federal Labor Party Policy

1108. Mr COURT to the Premier:

Is the Premier's ban on uranium mining in Western Australia subject to the Federal Australian Labor Party policy or independent of this Federal policy?

Dr LAWRENCE replied:

The policy of the Government of Western Australia has been consistent since it took office. The Government has been re-elected twice with that policy.

LOCAL GOVERNMENT - CANNING CITY COUNCIL
Dismissal - Council Elections, May 1992

1111. Mr KIERATH to the Minister for Local Government:

In reference to the dismissal of Canning City Council and the Minister's indication that a Commissioner would be appointed for a term of 12 months wherein by inference it would be expected that elections would be held in May 1992 -

(a) Does the Minister still hold with his promise of holding council elections for the City of Canning in May 1992;

(b) If not, why not?

Mr D.L. SMITH replied:

(a) The work of the commissioner is proceeding so well that I cannot see any reason not to have elections in May 1992.

(b) Not applicable.

STATE ENERGY COMMISSION OF WESTERN AUSTRALIA - MERREDIN-HINES HILL
Power Replacement

1119. Mr COWAN to the Minister for Fuel and Energy:

(1) When will the Merredin-Hines Hill power line be replaced?

(2) What is the estimated cost of replacing the Merredin-Hines Hill power line?

Dr GALLOP replied:

(1) The line will be replaced in two stages. It is expected that stage 1 will commence in March/April 1992 and stage 2 in early 1993.

(2) Stage 1 - $275 000. Stage 2 is expected to cost a similar amount.

EDUCATION MINISTRY - TEACHERS UNION OFFICERS
Central Office Employment

1121. Mr TUBBY to the Minister representing the Minister for Education:

(1) During the past twelve months have any Teachers Union officers been accommodated in the Central Office of the Ministry?

(2) If so -

(a) What was the reason for this arrangement?

(b) What was the duration of this arrangement?

(c) How many personnel were involved?

(d) Who paid the salaries of these officers?

(e) Who paid the telephone accounts?

Dr GALLOP replied:

(1) No Teachers' Union officers have been accommodated in the central office of the ministry.

(2) Not applicable.

SWIMMING POOLS - FENCING LEGISLATION
Pool Owner's Responsibility

1128. Mr CLARKO to the Minister for Local Government:

In regard to home swimming pool legislation -

(a) where the level of his land is raised so that the 1.2 metre fence that divides the land from a neighbour's pool, is now less than 1.2 metres; why is the pool owner required to reinstate the height of 1.2 metres and not the person who made the change;

(b) will the Minister, as a matter of urgency, take the necessary legislative or other steps to correct this injustice;

(c) will he also immediately advise the community, not only of what action he plans to take on this matter, but in addition clarify the matter regarding other items such as barbecues, trees, etc, adjacent to such a fence, which also similarly negate a 1.2 metre fence?

Mr D.L. SMITH replied:

(a) Private swimming pool regulations place the responsibility on the pool owner to comply with the legislation.

(b) A working party has been established with the WA Municipal Association to examine this and other issues with a view to amendments being introduced prior to 1 January 1992.

(c) See (b) above.

TAFE - RESTRUCTURING
Chief Executive Officer - Internal Audit

1131. Mr WATT to the Minister representing the Minister for Education :

(1) Is the Chief Executive Officer of Technical and Further Education prepared to put the total plan for the restructuring of TAFE into writing?

(2) Is the Chief Executive Officer of TAFE prepared to publish a time plan for the implementation of restructuring?

(3) Is the Chief Executive Officer of TAFE prepared to implement the three per cent salaries increase which has already been given to primary and secondary teachers?

(4) Has the Chief Executive Officer's continued absence overseas been of any significant benefit to the TAFE organisation?

(5) How long is it since TAFE has conducted an internal audit?

Dr GALLOP replied:

(1) Yes. The planned restructure of Department of TAFE has been published on several occasions.

(2) The restructure was to be negotiated over three years contingent upon agreements being reached with the union which are sustainable under the structural efficiency principles before the Industrial Relations Commission.

(3) TAFE lecturers have received two three per cent pay increases available through the 1989 memorandum of agreement associated with structural efficiency principles. The further pay increases obtained by primary and secondary teachers were received following the successful application of a work value case to school teachers.

(4) The chief executive officer has spent a total of 19 working days overseas in the past 12 months. These were all spent attending internationally recognised work related seminars.

(5) TAFE internal audits are ongoing.

WASTE WATER TREATMENT PLANT - SHENTON PARK
Odour Problems

1136. Dr CONSTABLE to the Minister for Water Resources:

(1) Has the Minister been made aware of the concerns of citizens living in the Floreat area in close proximity to the Shenton Park waste water treatment plant, of the offensive odours emanating from that plant?

(2) If so, what does the Minister propose to do about their concerns?

Mr BRIDGE replied:

(1) Yes.

(2) The Water Authority has proposed a number of experimental changes to processes early in the coming summer in an endeavour to overcome odour problems that arose last summer. I am supporting these initiatives in an effort to clear up the problem.

WATER AUTHORITY OF WESTERN AUSTRALIA - RESIDENTIAL WATER CONNECTION FEES
Increase 1 July 1991

1139. Mr McNEE to the Minister for Water Resources:

(1) Did residential water connection fees rise on 1 July 1991, from approximately $300 for headworks to over $2 300?

(2) If so, why?

(3) How is this consistent with the Government's policy of keeping charge increases below the consumer price index?

Mr BRIDGE replied:

(1)-(2) No. However, there have been increases in the standard headworks contributions.

(3) Headworks contributions are capital contributions which were increased to recover 33 per cent of the real cost and are not included in the Government's Family Pledge.

QUESTIONS WITHOUT NOTICE

ROYAL AUSTRALIAN AIR FORCE ASSOCIATION (WA) INC - AVIATION MUSEUM, BULLCREEK
Lancaster Bomber Assistance Request

291. Mr MacKINNON to the Premier:

(1) Has the Government been approached by the Royal Australian Air Force Association (WA) Inc for support to enable its museum to keep the Lancaster bomber located there rather than have to sell it to provide the necessary funds to maintain the museum?

(2) If so, what response has the Government given to the Air Force Association?

(3) Has the Government indicated the level of support it is prepared to provide to the museum?

(4) If yes, what is that level of support?

(5) If no response has yet been given, when can the association expect a reply?

Dr LAWRENCE replied:

(1)-(5)

I was aware of the issue and responded on talk back radio to one of the people who had been pressing for such assistance. The form of that request came to me later in a letter from the Air Force Association seeking unspecified assistance at that stage. The letter was not clear about what the Government may do to assist. It was suggested at the time by the caller about whom I spoke that the Government may consider running a special lottery. I took advice from the Minister responsible and apparently it is not possible to do that. However, he suggested the most immediate course of action available may be to apply to the Lotteries Commission for funds. I understand that, through new arrangements, the commission has funds available for heritage and conservation. I am not sure whether such an application would be successful, but I have written in those terms to the Air Force Association. I will give it every support in ensuring that the application to the Lotteries Commission is processed.

WHEAT - GOVERNMENT UNDERWRITING
Money Wastage Claims

292. Mr LEAHY to the Premier:

(1) Is the Premier aware of claims that the Government's decision to underwrite Western Australia's wheat crop is an exorbitant waste of taxpayers' money?

(2) Has the Government received representation from farmers and rural small businesses to suggest that that is the case?

Dr LAWRENCE replied:

(1)-(2)

That is an important matter. The question has not been asked just to draw attention to the fact that the Opposition, or at least the Liberal Party -

Mr C.J. Barnett interjected.

Dr LAWRENCE: Is the member for Cottesloe saying he was misreported?

Mr C.J. Barnett: The report is fairish.

Dr LAWRENCE: On that basis, I will reiterate some of the history of the matter. With the support of the National Party and the Liberal Party the Government agreed to guarantee a minimum price for wheat for the coming season. I remember specifically asking whether the Leader of the Opposition supported the proposal. In addition, the announcement was celebrated because it had a strong impact on rural community morale as much as anything else. The Deputy Leader of the Opposition in the Legislative Council, Hon Eric

Charlton, and I discussed the issue with a group of farmers in the northern wheatbelt. I assumed, therefore, that the Government had the support of all parties in the matter and that all that remained to be done was to work out the detail.

At the time it was made very clear by the National Party, growers' organisations and, I believe, supported by members of the Liberal Party, that targeted assistance of a welfare nature would not solve farmers' difficulties. Indeed, the National Party, the Western Australian Farmers Federation and the Government agreed that a guaranteed minimum price was the only way farmers and their related industries could be provided with the necessary confidence to grow their wheat crop this year. The question was not one of our helping out people in the farming sector or providing financial assistance to those who were in trouble. Rather, it related to the fact that most of them had their purses tightly zipped and were not about to pay for planting a crop or purchasing fuel or superphosphate unless they had greater confidence about the wheat price.

The Opposition should get its act together. The member for Cottesloe has clearly undermined the position of his leader, deputy leader and compatriots in the Upper House who have forcibly debated the proposition. I thought the Liberal Party had also supported it. It is not fair to the community for the Opposition to backtrack on an issue as important as this. The member for Cottesloe should fully support the guaranteed minimum price because it is essential to the confidence of growers to know that all members of Parliament are behind them in this matter.

BETTER CITIES PROGRAM - FEDERAL FUNDING

293. Mr COWAN to the Premier:

(1) Has the Federal Government advised the State Government of its share of the $56 million set aside in the Federal Budget for its better cities program?

(2) What is Western Australia's share of those funds and what are the conditions attached to their allocation?

Dr LAWRENCE replied:

(1)-(2)

As I understand the situation, and unless the Minister for Housing has had more recent advice, the Government has not been advised by the Federal Government of Western Australia's share of the $56 million. The Minister is travelling to Canberra on Friday to discuss, in part, those matters. In the normal course of events Western Australia should expect to receive roughly 10 per cent of that money. However, I am enough of a sceptic to know that that will not necessarily occur. The States were not particularly enthusiastic about the better cities program because of lack of definition. At the Premiers' Conference I was accused by the Prime Minister of nitpicking because I insisted on being given greater detail about the program. The problems Western Australians face are very different from those in Sydney and Melbourne particularly because of uncompleted sewerage in significant older areas of the metropolitan region. The questions of transport and other matters need to be addressed. The States have been asked to forward various model projects. However, we insisted that the word "programs" be inserted so that the project could not simply be a model development in the sense of a constrained geographic area with certain types of housing.

The States do not know how much money they will receive. They were concerned about the lack of detail. The Minister for Housing will be attending a conference of Ministers to discuss the matter, and at our insistence the actual Premiers' Conference agreement relates to programs as well as projects. Therefore, a capacity exists for some of those funds to come Western Australia's way to be spent on what are, for our city and this State, high priority areas.

THIRD PARTY INSURANCE - PRIVATISATION

294. Mr KOBELKE to the Minister assisting the Treasurer:

(1) Is the Minister aware of Press reports of private insurers calling for the privatisation of the third party motor vehicle insurance scheme, citing the New South Wales scheme as an exemplary model?

(2) Will the Minister outline to the House whether the Western Australian Government would consider adopting such a system, and if not, why not?

Dr GALLOP replied:

(1)-(2)

I am aware of calls by private insurers to privatise third party insurance here in Western Australia. It is important to outline the reasons the Government believes that would not be a proper course to take. Five very good reasons are as follows -

The Western Australian scheme is based on full common law, which is unlimited in its benefits to people injured as a result of negligence in the driving of a motor vehicle. There are no deductibles, no thresholds and no limits to benefits. The New South Wales scheme in comparison does not provide benefits to compensate injured people to the same extent or level as that in Western Australia; for example, the New South Wales scheme has a maximum of general damages of $180 000. There is a $15 000 sum deductible from general damages awarded up to $40 000. That amount is indexed. This deductible sum reduces by $1 000 for every $1 000 over $40 000 and stops at $55 000, and is indexed.

The Western Australian premium for this cover will be $199 a year for a private sedan after 1 October 1991, whereas in New South Wales, even with the petition introduced into the system, the premium is, on average, $265 plus a compulsory $40 levy. That means a minimum of $255 to a maximum of $305 plus $40 surcharge. In other words, the New South Wales scheme costs on average $305 a year; that is, over $100 more than is the case in Western Australia. It is important to note that those lower range premiums require policy holders to insure for other risks. As well, some of the lower premiums are conditional upon the owner's being over a certain age.

The Western Australian scheme provides low collection costs for premiums through the Police Department and centralised claims management. In New South Wales one must go through two processes to make sure one has a motor vehicle licence and third party insurance.

The Western Australian premium does not include a profit component and the SGIC does not have to pay Federal Government taxes. Both of these factors would add to the cost of third party insurance premiums if the scheme were privatised. Fifthly, the SGIC operates the third party scheme as a social insurance. It takes into consideration the financial position of claimants when making progressive payments and when pursuing recovery of moneys owed to it resulting from breaches to the policy or the Motor Vehicle (Third Party Insurance) Act.

I have spoken to some consumers in New South Wales over recent weeks and there is no doubt that the private insurance companies are adopting a very hard line attitude to consumers in that State. Like all good ideas -

Points of Order

Mr MacKINNON: The Opposition is endeavouring to use question time to obtain answers to questions. The Opposition made the point last week to the Minister for Health that if Ministers want to make ministerial statements there

is an appropriate time to do so. It is appropriate, after four minutes, for the Minister to wind up his speech.

Mr KOBELKE: I asked a question because my constituents are interested in the answer. I suggest there is no point of order. Perhaps the member making the point of order is suggesting that his constituents are not interested in the level of third party insurance. My constituents are, and I suggest that the Minister be allowed to continue his answer.

Several members interjected.

Mr Clarko: Testing the patience of the Speaker!

The SPEAKER: Order! What tests my patience is the difficulty that members have in giving me their learned opinion on a point of order when other members are interjecting ceaselessly. That should not happen during points of order. While the answer to the question may be interesting to everyone in Western Australia, nonetheless it is rather long. However, I had detected that the Minister was within one or two sentences of drawing his answer to a conclusion.

Questions without Notice Resumed

Dr GALLOP: Privatisation and deregulation are good ideas. However, when we do not take into account the context in which we will apply them and ruthlessly pursue them to their limits, they become bad ideas.

GNANGARA MOUND - SERVICE STATION

295. Mr LEWIS to the Premier:

Does the Premier endorse the actions of the Minister for the Environment in overriding the Environmental Protection Authority by approving Mr Bill Duffy's service station located over the Gnangara water mound against the wishes of the Western Australian Water Authority?

Mr Graham: Opposing development now, are you?

Dr LAWRENCE replied:

The member for Pilbara made an important point on this matter in that this is another example of the lack of consistency on the part of the member for Applecross. My discussions on this matter with the Minister for the Environment have been brief. He assures me that he has taken action which is consistent with others previously taken in relation to service stations of this type, that they are consistent with the printed regulations and, therefore, the expressed public policy of the Water Authority, and that he, like everybody else in this community, has serious concerns about the Gnangara water mound and other underground water supplies. That is why he has placed stringent conditions on that service station's development. Planning matters are to be determined and the outcome is as yet uncertain.

FOOTBALL - FOOTBALL FINAL
South West Transport Arrangements

296. Mr P.J. SMITH to the Minister for Transport:

Is the Minister able to advise the House of any special arrangements that have been made to assist people from the south west attending the football final to be played in Perth on Sunday, 8 September?

Mrs BEGGS replied:

Following the member's representations, Westrail will be running a special *Australind* service from Bunbury to Perth on the morning of the game. It will depart Bunbury at 8.50 am and will arrive at Perth station at 11.15 am after stopping at all stations. The return journey to Bunbury will be via the normal service that departs Perth at 7.00 pm.

Mr Cunningham: Can we have one from Rockingham.

Mrs BEGGS: No worries; special buses from Rockingham.

Anyone who wishes to use the service from Bunbury should make a booking with Westrail as soon as possible as I am sure that the service will be well patronised.

GNANGARA MOUND - SERVICE STATION

297. Mr LEWIS to the Minister for Water Resources:

Does the Minister endorse the action of the Minister for the Environment in overriding the Environmental Protection Authority by approving Mr Bill Duffy's service station located over the Gnangara water mound against the wishes of the Western Australian Water Authority?

Mr BRIDGE replied:

The member has read the newspaper -

Mr Lewis: Answer the question.

Mr BRIDGE: I will answer it. However, I remind the member that he has read the newspaper and he knows what I have said about that matter. I have not endorsed anyone's position. I have sought from the Minister to whom the member referred information and details on why he took that action.

Mr MacKinnon: So you support him?

Mr BRIDGE: No; I said until such time as I receive the information from the Minister.

Mr MacKinnon: So you don't support him?

Mr BRIDGE: The Leader of the Opposition should listen to me. I repeat that I said that I do not endorse anybody's actions at this time.

Mr MacKinnon: So you don't support anybody?

Mr BRIDGE: Not at this stage. Does the Leader of the Opposition not understand what that means?

Mr MacKinnon: You are sitting on the fence. You heard what the Premier said about people sitting on the fence.

Mr BRIDGE: If the Leader of the Opposition were as good a man as I am at sitting on the fence, he would be proud of his skills. I could buy and sell him before breakfast, seven times a week, and he knows it. The member has asked a serious question and I repeat the answer: The newspaper article said that I have sought from the Minister details which prompted him to make that decision and before I am prepared to go public in response to that matter, I want those details made available to me. That information was made available to me today.

Mr MacKinnon: Do you support him or don't you?

Mr BRIDGE: I will tell the Leader of the Opposition after today.

ELECTIONS - STATE AND LOCAL GOVERNMENT
Compulsory and Voluntary Votes

298. Mr READ to the Minister for Parliamentary and Electoral Reform:

(1) What was the percentage turnout at the 1989 State election under the compulsory voting system?

(2) What was the percentage turnout at the 1991 local government elections under the voluntary voting system?

(3) Which result is the most likely to accurately reflect opinion in our community?

Dr GALLOP replied:

(1) At the February 1989 State elections, the percentage turnout was 90.7 per cent.

(2) The percentage turnout at the May 1991 local government elections was 17.4 per cent.

(3) While members on this side of the House believe that the continued existence of vote weighting undermines the representativeness of both parliamentary and local government electoral systems, the comparative voter turnout figures speak for themselves. A system in which 90.7 per cent vote has got to be more democratic than one in which only 17.4 per cent vote. We believe that democracy, citizenship and voting form an indissoluble unity. To have a Parliament that accurately represents the choices made by the real majority is centrally important. Veteran political commentator, Laurie Oakes, said -

> Voting is analogous to other citizens' duties; paying tax, jury and military service, and sending children to school.

We believe that the system of voting we have is a good one because we believe in democracy.

FEDERAL ENVIRONMENTAL PROTECTION AUTHORITY - POWERS AND FUNCTIONS

Duplication of Services

299. Mr COWAN to the Minister for the Environment:

(1) Has the Minister contacted the Federal Government to ascertain what powers and functions will be conferred upon the proposed Federal environmental protection agency?

(2) Will he assure the House that the agency will not duplicate the operations of the State Environmental Protection Authority or encroach upon the constitutional responsibilities of the State?

Mr PEARCE replied:

(1)-(2)

It would be a brave soul who would say he could give guarantees on behalf of any Federal Government with regard to these things. At various times I have been concerned about the centralist tendencies of the Whitlam Government, I spent seven years trembling at the centralist tendencies of the Fraser Government, and although the Hawke Government has been less centralist than either of those, it has had its moments. I have been involved in extensive discussions not only with the Federal Minister for the Environment, Hon Ros Kelly, but also with other State and Territory Ministers for the Environment to get an arrangement for the Federal environmental protection authority which will ensure there is no duplication.

Mr MacKinnon: They create a new department to get rid of duplication!

Mr PEARCE: The Leader of the Opposition has not been involved in these discussions. The intention of the Federal Minister, set out in a paper she produced and indicated in discussions I have had with her, is not to seek to duplicate the role of the State Environmental Protection Authorities in those States where they exist. Some Liberal States, such as New South Wales, do not have them yet although I understand they may be on the way. It is intended to use the Federal authorities to establish guidelines which would apply across Australia for certain styles of project.

Mr Court: You have been here long enough to know that that means more duplication.

Mr PEARCE: The member for Nedlands should consider what the sense of that might be. For example, one of the areas in which Australian guidelines for effluent standards would be set would be for a pulp mill. The Opposition, like the Government, has been keen for a pulp mill to be established in Western Australia in due course, once the wood stock is available. If Australian standards that applied in all States were established for the environmental aspects of pulp mills, it would in many ways prevent what has happened in the

past. When individual projects have been proposed a huge argument has ensued in the respective States about the environmental criteria that should apply and all the rest of it. No-one so far has been able to get a pulp mill to work for that reason. That issue is about to be revisited in Tasmania. If the criteria that must be met for an application of this nature were established in advance on an Australia-wide basis, it might have the effect of getting projects started more easily than is currently the case. The Leader of the Opposition laughs at that statement.

Mr MacKinnon: Another Government department would help get projects off the ground? You must be joking. I am not sure that industries will be pleased to hear that you are in favour of setting up another Government department.

Mr PEARCE: The Leader of the Opposition should think about his political colleagues. The leader of the Liberal Government in Tasmania was patently unable to get a pulp mill going in that State.

Mr Clarko: Because he was overridden by the Federal authorities.

Mr PEARCE: A very perceptive response from the member for Marmion. If a Federal EPA had established in advance the criteria that must be met for a pulp mill in Tasmania, the Tasmanian Government would have been required to demonstrate only that the pulp mill met those criteria and the mill would be there now.

The Government is looking at the overall proposal, and it has approached it very suspiciously, with a great desire to see the detail and to ensure that it does not duplicate or override the functions of the State.

Mr Court: In other words, you have surrendered.

Mr PEARCE: The State has not been involved in a decision on this matter. It is still under discussion with the Federal and State authorities. The model which the Federal Minister has proposed, and which I have strongly supported, has a board for the Federal EPA comprising the seven or eight State Ministers and one Commonwealth Minister. The model proposed is not a bad one, if there is to be a Federal EPA. That is a matter the Federal Government will decide, and this Government does not have the capacity to influence that decision. All State Ministers have been involved in trying to set up an arrangement which works in a complementary way to the State authorities, and which has advantages over the current system where the Federal Government interferes in these matters on an ad hoc basis. Australia is littered with projects which have fallen by the wayside because of that ad hoc interference. The Government is not opposed to it in principle, if it can be made to work in a complementary way with the arrangements in this State. It is a longwinded answer, but multitudinous discussions have taken place on the matter and they are moving towards what might be a satisfactory outcome.

CHILD ABUSE - PROTECTION ACTION

300. Mrs WATKINS to the Minister for Community Services:

What is the Government's commitment to tackling the issue of child protection, given that last week was National Child Protection Week?

Mr RIPPER replied:

I thank the member for the question because it draws attention to an important issue which is also relevant to this week - Safety House Week. It is regrettable that many children in the community are subject to abuse within their families mainly, but also within the community. This is not new, but community recognition of the importance of it is becoming much more widespread, and our attempts to deal with what is a very emotive and complex issue are also becoming more determined.

Families are central when dealing with this issue, and we must first aim to support families in order to support children. That is a Government priority.

It cannot be dealt with by any one authority, but requires the cooperation of a multiplicity of Government agencies and people in the community. Coordination must be the key word. Recently the Government promoted coordination and rationalisation in this area by merging the child abuse unit with the advisory and co-ordinating committee on child abuse to create the new ACCA secretariat. The ACCA secretariat will ensure resources continue to be available for the implementation of the recommendations of the child sexual abuse task force. The new ACCA secretariat will also promote local panels to ensure that all Government agencies and interested people in the community are working together at a local level to protect children and to combat child abuse.

A number of Government agencies must be involved in this area. Within the community services portfolio the Department for Community Services has an important role, and in the last financial year $4.6 million was spent on providing child protection services for families, which includes counselling and support services for victims. In the current climate of political and public debate we often forget that children themselves are the victims of crime.

Mr Court: I hope this is not another ministerial statement.

Mr RIPPER: No, it is a statement about an important issue in answer to a question from a member of this House. The member's interjection is an indication that some people are not paying sufficient attention to child protection as an issue. If the member for Nedlands listens he will soon hear the conclusion of this answer. It is important to note that children are often the victims of crime. The Government has an ongoing commitment to helping all victims of crime. It is important for children from the point of view of their human rights and it is also important for the future wellbeing of the whole community. We need to make an investment now to protect children in order to provide for the future quality of life for the community.

RAILWAYS - ELECTRIC RAILCARS
Leasing Arrangements

301. Dr ALEXANDER to the Minister for Transport:

(1) Will the Minister confirm that the new electric railcars, still under protracted trial, are neither owned nor leased by Westrail but are, in fact, owned by Asea-Brown Boveri Credit of Sweden?

(2) Will the Minister also confirm, as suggested in information provided to me, that the cars are under lease not to Westrail but to the State Bank of South Australia, an organisation currently the subject of a Royal Commission in that State?

(3) Will the Minister inform the House of the reasons behind this rather unusual arrangement?

Mrs BEGGS replied:

(1) The arrangements for the leasing and the contractual arrangement with ABB are complex and I would prefer that the matter be dealt with on notice.

Mr MacKinnon: I bet you would.

Mrs BEGGS: To continue -

(2) This part of the question is absolutely wrong. I understand that the railcars are not leased to the State Bank of South Australia.

(3) I do not have the details with me.

GNANGARA MOUND - SERVICE STATION

302. Mr LEWIS to the Minister for Planning:

Will the Minister advise the House whether the Department of Planning and

Urban Development and the State Planning Commission support the siting of Mr Bill Duffy's service station on a water bore field over the Gnangara mound?

Mr D.L. SMITH replied:

The member for Applecross will be aware of the need for planning approval for this proposal. That matter has yet to come before me formally. He is probably familiar with the fact that two or three service stations have not been allowed in the past because of their proximity to the Gnangara mound and to the other communication networks in that area. However, on Mr Duffy's application I must wait until the matter comes before me and I am able to consider all the aspects included in the briefing notes that will come with it.