Legislative Council

Tuesday, 15 October 1991

THE PRESIDENT (Hon Clive Griffiths) took the Chair at 3.30 pm, and read prayers.

BILLS (2) - ASSENT

Messages from the Governor received and read notifying assent to the following Bills -

1. Skeleton Weed and Resistant Grain Insects (Eradication Funds) Amendment Bill
2. Human Reproductive Technology Bill

MOTION - CONSERVATION AND LAND MANAGEMENT (MISCELLANEOUS FEES) REGULATIONS

Government Gazette Notice - Disallowance

HON TOM HELM (Mining and Pastoral) [3.43 pm]: I move -

> That the Conservation and Land Management (Miscellaneous Fees) Regulations 1991 published in the *Government Gazette* on 31 May 1991 and tabled in the Legislative Council on 6 June 1991 under the Conservation and Land Management Act 1984 be, and are hereby, disallowed.

Members will be aware that recently the Joint Standing Committee on Delegated Legislation instructed me to move a motion in this place to disallow regulations associated with the collection of fees by the Rottnest Island Authority. When I asked the House to approve the committee's recommendation I pointed out that the regulation allowed the authority to increase fees other than by way of regulations. In other words, the regulation was being used to change the principal Act. The Act states that fees will be increased by regulation and that the regulations will be published in the *Government Gazette* in order to advise the public of Western Australia of the increase in fees. The regulations covered by this motion request us not to follow that procedure but to have the fees increased by ministerial decree. They request that a notice be published advising the public of the increase in the fees instead of publishing a notice in the *Government Gazette*, which is the carrier of bad news when fees are increased - fees are rarely decreased.

During the debate on the Rottnest Island fees the House agreed that it was within the committee's terms of reference to have made the decision it did and that it was a bad thing for parliamentary democracy when Ministers, the Executive, or public servants are given the opportunity of doing exactly what they choose without their decisions being scrutinised by the Parliament or by the joint Standing Committee which is charged with the responsibility of scrutinising notices in the *Government Gazette*. The House was told during the debate on that matter that the reason it had originally agreed to the establishment of the Joint Standing Committee on Delegated Legislation and to its terms of reference was that backbenchers did not have the opportunity of checking the *Government Gazette* each Friday to acquaint themselves with changes. It was considered that a committee needed to be set up to examine fee structures and regulations as they are gazetted. This House does not have the ability to hold an ongoing debate on changes to regulations because there are too many of them. The joint committee is now scrutinising about 60 regulations and this is the time of the year when fees are increased. We are told by Ministers, public servants and the Executive that fees should not be increased by regulation, but by notice of ministerial decree. The committee would be abdicating its responsibility if it allowed that to happen. One of the committee's strongest terms of reference is to make sure that all regulations and delegated legislation - legislation which does not need to come before the Parliament - are scrutinised. Everything the Executive does should be open to scrutiny.

This House has been asked in this instance to agree to a regulation that changes an Act. It does not amend the Act but it changes it substantially, as was the case with the Rottnest Island regulations. If a regulation is changed to this extent members of Parliament are entitled to debate those changes by way of a Bill to amend the Act. We are elected to this place to debate amendments to Acts. Amendments of this kind should not be made in

regulations which are published in the *Government Gazette* every Friday. I have been told of a need for a regulation to increase fees without that regulation being scrutinised. I put the contrary argument to the Department of Conservation and Land Management, which said that was only one reason. The department was informed that the responsibility of the committee was to ensure that the wishes of this place were carried out and that amendments of this kind were presented in the form of a Bill. CALM changed its argument and said that it was more convenient to increase fees by way of notice of a determination. The committee asked it to explain why it was convenient to increase fees in that way. If members read the notices which change fees in the *Government Gazette* they will be see that the same regulation is published year in and year out. The regulations are fair and honest and meet the requirements of the Parliamentary Counsel. The only thing that is different each year is that the figure is changed. However, for some reason, the view was that it was more convenient for administrative purposes to increase the fees as the Minister determined, or, as we know happens in practical terms, the Minister's public servants thought convenient. We explained to them that that was not an argument; that if the committee were to accept that argument there would be no need for this committee; and that if we took the argument to its logical conclusion there would be no need for a Parliament because the whole of an Act could be nullified by a regulation so that the Parliament would have no Bill before it and would have nothing to debate. We tried to explain to those public servants that that was our responsibility, but unfortunately we did not get anywhere. The first concern of the Minister and of the public servants was that the committee was disallowing the fee increase. However, I explained then, and I emphasise now, that nowhere in the committee's terms of reference is it empowered to interfere with any changes to the fee structure of any ministerial portfolio; and it would not do that. However, if the explanatory memorandum which accompanies a change to a regulation states that a fee is being increased by the rate of the consumer price index, and we find that the fee increase is in excess of 100 per cent, we point out gently to those people that we know the CPI in Western Australia is not 100 per cent, and we ask them to amend either the explanatory memorandum or the fee so that it complies with the memorandum.

The duty of the committee is to report to the Parliament about whether those sorts of activities are taking place; and, if they are, we ask the Parliament to disallow those regulations that are made outside of our terms of reference. It is sometimes difficult to take public servants down that path because some public servants - not all - believe they have, like Sir Humphrey, a God given right to rule and to determine how best to serve the public of Western Australia, and that the elected politicians, who are here today and gone tomorrow in the scheme of things, are just inconveniences who are standing in their way.

We explained to the public servants that it is not our job to make any comments about how much the fee can be increased, but that we must ensure that the Act of Parliament which has been passed by this Chamber is adhered to, and that in every instance we will move to disallow regulations that do not allow the Parliament to scrutinise what public servants are doing. We want to make it clear, and I hope the message goes out from this Chamber and into the corridors of power in ministerial offices, that we cannot - and we would be subject to criticism if we did - comment about the level of fee increase, even though there are many examples, in true "Yes Minister" style, of fees which are charged to recover the cost of collecting fees. We pointed out in one instance that a fee was being charged only to recover the cost of collecting a fee; and once we pointed that out, it was changed. However, our terms of reference do not allow us to tell Ministers and their staff that they cannot charge fees.

Hon Derrick Tomlinson: Was that the intention of the fee?

Hon TOM HELM: The intention of the fee was to recover the cost of collecting a fee. I pointed that out to demonstrate the difficulty the committee sometimes has in talking to public servants and in making them understand what are our duties and responsibilities. In that instance, the person realised the stupidity of what was being done, and changed it.

Hon Derrick Tomlinson: Was it a change upwards or downwards?

Hon TOM HELM: It was abolished. The fee could have gone up, and that is the problem. Members of this Chamber may not fully understand what is our job. Members may not realise that we sometimes go beyond our terms of reference in an informal way when we ask

departments to explain the reason that they are doing what they are doing, and that we sometimes make recommendations about how they can achieve what they want to achieve without their breaching the responsibilities with which the committee is charged. There is an ongoing dialogue between the committee and one department over some substantial changes that are being made to an Act, where the department is using the committee in an advisory capacity. The committee is advising the department about the changes so that they will meet our responsibilities and also what the department wants.

We suspect - and there is not a lot of proof - that one of the reasons that departments want to increase fees by notice is so that the committee will not be able to scrutinise what they are doing, because if fees are increased by way of delegated legislation and are not subject to debate in this Chamber, to all intents and purposes the departments can do exactly as they choose. However, we have advised them that if need be we will have our terms of reference changed so that we will be able to meet that possibility also. We advise departments that we cannot comment about the fee structure or the fee increase, and we believe that it is the simplest thing in the world for departments just to delete a figure in the regulation and insert an increased figure, because the committee cannot comment on that. If departments want to increase fees, that is all they need to concern themselves with. However, if they want to change regulations so that they can impose fees, that is where they can fall foul of the committee. On a number of occasions we have found fault with explanatory memoranda which have come to the committee, and we have been able to convince the departments or authorities that if they did things in another way that met with our responsibilities, they would get what they wanted and we would get what we wanted.

We stated in the second last report that we presented to the Parliament that we have set up an advisory committee to examine the whole fee structure. There are examples in other Parliaments of fees which are increased in a block structure. In other words, the fee is a cost recovery or revenue collecting exercise. It is not connected to a CPI increase but is intended to cover the costs of a particular inspectorial or functional part of the Minister's responsibilities. In Victoria, at the end of the Budget process, a Minister can say, "I will be raising so many fees under category A because of the increased cost of having more inspectors in a particular part of my portfolio or because I have more responsibility for issuing certificates for certain things." Then there may be category B increases, which relate to consumer price index increases or other costs. One reason for fees being increased may be to increase revenue for certain areas of the Minister's responsibility. We make no comment about this, but the committee is charged with looking at the structures in place so that we can give due consideration to a Minister's saying during the budgetary process that he or she thinks the fees should be increased by structure A, structure B, or structure C; however many structures the Minister may like.

I can understand the inconvenience which some departments may suffer in having to send to the committee explanatory memorandums giving reasons for fee increases. That has caused endless problems for some departments. We have had examples of memorandums in keeping with the Government's policy of no fees being increased by more than the CPI. Some fees have increased by 100 per cent. Some fees have been rounded up to the nearest dollar, to the nearest $5, to the nearest $25, or to the nearest $100. If that explanation is given to us, we make no comment. It may be unfair, but if we receive that explanation we make no comment on it. As long as the explanatory memorandum agrees with what the regulation does we make no comment, except that in this case we were told that the fees could be increased by decree for the sake of convenience and for the sake of people being able to do what they want to do. That has some merit.

There is also a need for the general public to understand the reason the Parliament appointed this committee. A situation may arise where fees are charged for a certain service the Minister is putting together in order to help to pay for another service. There is a fine line between our responsibility as a committee with our clear guidelines, and the guideline that we should look into unwarranted infringements upon the rights and liberties of the community. For instance, it may be that rock lobster fishing is a more lucrative industry under the control of the Minister for Fisheries than is the prawn fishing industry. I do not know. It may be the intention of the Minister to increase the fees on the more lucrative side of his ministerial responsibilities in order to compensate for a reduction in fees paid by prawn fishermen. We bring it to the attention of the draftsman preparing the regulations that

that might be seen as an encroachment on the civil liberties of and fairness to the rock lobster fishermen. I suggest that a different way of wording the regulations should be found.

The message needs to go out to Government departments that the committee has no authority to be dictatorial in its attitude to how fees are gazetted, how they are increased, or how they are put together. The intention of all members of this House and of this committee is that we are here to make the laws and regulations as easy to understand as it is possible to do. Most members would have seen regulations and sections of Acts drafted in such gobbledegook that one is not able to understand what is wanted. If the wording is such as to cloud the issue, or if it can be interpreted in a number of different ways, we advise the department or the Minister of our concern. If we as professional politicians have difficulty understanding what a regulation means, there is little or no chance of our constituents understanding it at all.

So that there is no confusion, I refer members to the rules of the Joint Standing Committee on Delegated Legislation, its terms of reference, and the modus operandi of the committee. Members should understand the sorts of things that we have to deal with. As members would be aware, the fees being increased relate to people entering national parks and using the facilities. The entry in the *Government Gazette* may refer to a very old Act of Parliament. We are lucky that this Act was passed in 1984, but in some cases an Act amending an Act or part of an Act may have been passed 100 years ago. In one instance the power to move a regulation was found only after a search in the Battye Library. The public servants in that ministry did not have a copy of the Act or the regulation to which they were referring, so our research officer had to search for it in the Battye Library so that we would know exactly where we needed to go.

Members should look at the *Government Gazette* so that they can understand exactly what it says. The regulation in the *Government Gazette* of 31 May on page 2647 says -

> These regulations may be cited as the *Conservation and Land Management (Miscellaneous Fees) Regulations 1991*.
>
> **Fees for entry to, and use of facilities in, marine parks**

This is the part we are asking to be disallowed -

> 2.(1) The Minister may impose such fees and charges as he or she from time to time determines upon persons, or in respect of vessels -
>
> (a) entering any marine park;
>
> (b) using any facility in a marine park.
>
> (2) Where a fee or charge is payable under subregulation (1) in respect of any vessel, the person in charge of the vessel is the person required to pay that fee or charge.

Under section 5(g) of the Act the Minister determines "from time to time" how the fee will be increased, how it will be collected, by how much it will be increased and in what sort of currency, and whether it will be paid on demand, or by cheque or by cash. Members are being asked to agree to a regulation that gives considerable authority to a person - and usually the Minister delegates that power to a CALM officer who is probably a very nice person, but who wears a brown shirt, and we all know about them; that is a worry. Members of the public will required to do what the Minister determines "from day to day"; however, they will not be aware of these day to day decisions because these decisions will not be printed in the *Government Gazette* or anywhere else. Only a CALM employee or someone on the Minister's staff will know of them. How can members of the public be expected to comply with something they are not aware of?

The regulation also states that refusal or failure to pay a fee when requested to do so by an officer of the department incurs a penalty of $200. If members allow this regulation to go forward anyone entering a marine park would need to have $200 sown into his sock, because he cannot be sure what sort of fee will be charged or in what currency it will be charged. That may be entering the realm of fantasy, but one of the reasons we are in this Parliament is to check on what the Executive and its public servants are doing in the course of their jobs, and how that impinges on the people we are elected to represent.

The committee has charged me to move that these regulations be disallowed and to make it clear to the House, to the public and to members of the Public Service why the committee does what it does. Public servants do not need to read our terms of reference or to follow everything the committee does all the time, but they must understand that our basic premise is commonsense and part of our responsibility is to preserve parliamentary democracy. We will not hand over all our powers as members of Parliament to members of the Executive no matter how much we love them. Members can imagine the attitude of some Ministers towards me because of my responsibilities as chairman of this committee; however, that does not matter. I was elected because I am a member of the Labor Party. I am a strong supporter of the Labor Party and will always defend and support my party. At the same time, one of the reasons I belong to the Labor Party is that it helps to preserve the democratic system. As a backbencher it is a matter of progression that I get to my feet and pursue that line. I cannot allow the Executive or its servants to institute regulations that take away my right to speak out on matters with which I disagree.

Hon Peter Foss: Is your name Paul? We have a damascene conversion.

Hon TOM HELM: Maybe one day the member will tell us what he means. Damascus is one of the few places I have not visited. If Hon Peter Foss listens he will understand that the point of his supporting this committee in disallowing regulations, particularly over the Rottnest Island Authority fee increases and this motion which follows on, is to take away from the Executive the power to do as it chooses without coming under the scrutiny of this Parliament. I ask members to pay attention to what the committee is saying and I ask them to support the motion to disallow this regulation.

Debate adjourned, on motion by Hon George Cash (Leader of the Opposition).

MOTION - FOREST AMENDMENT REGULATIONS

Government Gazette Notice - Disallowance

HON TOM HELM (Mining and Pastoral) [4.17 pm]: I move -

> That the Forest Amendment Regulations 1991 published in the *Government Gazette* on 31 May 1991 and tabled in the Legislative Council on 6 June 1991 under the Conservation and Land Management Act 1984 be, and are hereby, disallowed.

This regulation also relates to the Conservation and Land Management Act and the basic thrust of regulation 130A is that the Minister may impose fees for entry to State forests. Proposed regulation 130A states -

> (1) The Minister may impose such fees and charges as he or she from time to time determines upon persons, or in respect of vehicles, entering State forests and upon persons using camping sites or other facilities in State forests.
>
> (2) Where a fee or charge is payable under subregulation (1) in respect of vehicles entering State forests, the person in charge of the vehicle is the person required to pay that fee or charge.
>
> (3) A person shall not, when requested to do so by an officer of the Department, refuse or fail to pay a fee or charge that is payable by the person under this regulation.
>
> Penalty: $200.

This regulation is not much different from that covered by the previous motion that dealt with entry to marine parks. This is a very small regulation but it will affect many people. For example, on the weekend many of us load the family into the car and spend the day at one of our national parks or State forests; that is a good thing to do and many people do it.

There is no way one can know that the fee has been increased until one arrives at the national park. A family may be going on a picnic with everything they need to enjoy a good day at the forest but on arrival find that the fee is $25 - it may be only $10 for children - and that they do not have sufficient money with them. Not knowing what the entrance fee is, one must either take a sack full of money to pay the fee or not get in. However if, in order not to upset the children, a family decided to enter the forest - they may have taken friends - they would be liable to a fine of $200 for not paying the entrance fee.

Hon T.G. Butler: Can they use the plastic card?

Hon TOM HELM: The Department of Conservation and Land Management may well take the plastic card. We as the elected representatives should know the intentions of ministerial departments and the Executive. We have a duty to know at all times exactly what are the intentions of the Executives in order that, in the first place, we can advise our constituents. Furthermore, if our constituents feel it is necessary, we should be able to object to actions the Executive takes. Our democratic process allows us to do that and to bring to the attention of this Parliament matters of concern to us. The regulations of which I am speaking take away our right of scrutiny and our ability to make comment on what the Executive may be doing. The basic thrust of Parliament is to ensure that the ruling group - the Executive, the people who have been elected to power - is still answerable to this Chamber and to members of Parliament, including backbenchers.

As occurs in this place quite often, one or two of us may object to what the Executive is doing and, in this place, ask for support from the members of the Chamber. However, our objections may be overruled if the majority agree to the Executive's action. On the other hand, if our objections are supported, the Executive's intentions are not carried out. That process is the only way of maintaining the checks and balances - which we should support and be proud of - which were laid down in the past and fought for by our forefathers. If we allowed these regulations to go forward we would be giving away something that we may not have paid for; we did not have to go to war or fight anybody, others did it for us. We cannot afford to give away that democratic process.

It may be important to a family when they go out to enjoy themselves that they do not know what they will meet at the journey's end. However, it is important to acknowledge that our constituents have given us the responsibility of keeping a check on what the Executive and public servants are doing. We do not want to end up in a dictatorial situation, like in many nations in this world, where someone who thinks he knows better than us puts policies in place whether we agree or disagree.

Members of the Joint Standing Committee on Delegated Legislation are constantly exposed to the "Yes, Minister" syndrome; that is, the career public servant - thank goodness there are many who are not like that - who has seen all the politicians and Ministers come and go while he remains constant and, usually, conservative. In other words, he finds it difficult to change with the times, to be progressive in his outlook or to recognise that society is changing through the use of electronic media and instant information. The electorate, Parliament as an institution and our constituents are gaining more information and making a more reasoned judgment about the things with which they are faced. This regulation is an example of what we can disallow. It undermines the purpose of our being elected. It threatens the basic thrust of the reason for our election. We are elected to scrutinise matters and establish committees to scrutinise them and to bring them back to the House in order that they can be debated fully and completely and allowed or disallowed as the case may be.

The fact is that in some places the population agree - I think it realised its mistake pretty quickly - that career public servants who are involved in policy and law making on a regular basis are naturally more able to make the right decisions than politicians who are, I suppose, amateurs at law making and at understanding regulations and Acts of Parliament. However, it does not really matter whether we understand that CALM must increase park fees because it employs inspectors; or whether we believe public servants when they tell us that CALM must increase its fees to allow it to put in more pathways to make sure tourists do not walk in the wrong places or because there is a need to establish management practice to preserve parts of our State in order that future generations can enjoy them. What matters is the ability - even if we choose not to make a comment when regulations are put forward - to have increases in place so that at some time further down the track someone who completely understands what the increases mean will have an opportunity to put his point of view. If this regulation is not disallowed that opportunity is lost forever. If it proceeds and changes the Act in the way it is intended, there is no way the situation can be changed without a long and convoluted argument, or without amending the Act to reinstate those powers.

Some people find it quite acceptable and convenient to have Government by decree. However, I am trying to explain to this House and to public servants, through the medium of *Hansard*, that when Government takes place by decree, generally speaking it is because of

huge popular support for a particular person, be he a general, a lieutenant or a colonel - he is usually a member of the armed forces. That person takes away the ability of people to speak for themselves and takes it upon himself to act on behalf of the population. That was the intention of our forefathers going back as far as the Magna Carta. It does not stop the Executive from doing what it wants; it allows it to do things subject to the scrutiny of this Parliament and, therefore, the electorate.

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

MOTION - SOCCER FEDERATION OF WESTERN AUSTRALIA

Newsletter Attack, Piantadosi, Hon Sam - Select Committee of Privilege Referral

Debate resumed from 26 September.

HON TOM HELM (Mining and Pastoral) [4.33 pm]: I support the motion. If members opposite spent time in the Labor Party they would understand why it thinks that the privileges and responsibilities of members of Parliament are very much intertwined. I have just spent three-quarters of an hour explaining to the House -

Hon Peter Foss interjected.

The DEPUTY PRESIDENT (Hon J.M. Brown): Order! It would be far better if members did not interrupt the member making his speech.

Hon TOM HELM: In case nobody has read the motion, it states -

> That the matter of privilege arising from statements contained in a newsletter in which Hon Sam Piantadosi was attacked in his capacity as a member of this House be referred to a Select Committee of Privilege for consideration and report, the committee to report not later than Thursday, 7 November 1991.

The reason I ask that this motion be supported flows quite naturally from my explanation in my earlier speech of why the Joint Standing Committee on Delegated Legislation asked me to be particularly careful to explain to the House the reasons the regulations referred to in the previous matter be disallowed. If we were not able to express a point of view without fear or favour, we would not be able to fulfil our obligations as members of Parliament. I used the privilege of this Chamber once. Luckily enough, I was not attacked publicly for doing so, but I was certainly attacked privately. The House will recall that about two years ago at the beginning of the Robe River affair allegations were made that may have been libellous outside this Chamber. I used the privilege afforded to me to bring to the attention of the House many matters that were difficult for me to prove because of my limited legal capacity. However, I thought they were important enough to bring to the attention of the House.

Members who have read the *Hansard* transcript of the matters raised by Hon Sam Piantadosi will understand the sorts of things that we, as members of Parliament, are obliged to do. We have to explain and comment on certain matters that may be considered libellous outside this Chamber. It is a privilege that we should use carefully, and if anything is done to undermine that privilege we have to take action. I will not comment on the alleged attack on Hon Sam Piantadosi; he said he was attacked. Nor do I understand the circumstances surrounding the split in the soccer hierarchy of this State. Therefore, it is difficult for me to comment on the issue. However, because we are obliged to comment on matters such as this, we need to consider that such comments open us to attack from outside this place.

We have a job to do and that responsibility has been passed to us by others. That responsibility was fought for by our forefathers. The privilege of this place allows us to speak our minds. However, we have a responsibility to do that responsibly, as Hon Sam Piantadosi did in respect of this matter. He had something to say and said it and, because he said it, someone outside of this place used a publication to attack him. I do not know whether he was attacked in *The West Australian*, in his local newspaper or wherever. However, I suggest that a Privilege Committee has the responsibility to consider the comments made and to examine whether there was a breach of privilege. I make no comment about what was said or why it was said. However, I feel strongly about this matter and urge the House to support the motion.

Hon Derrick Tomlinson: What privilege has been breached?

Hon TOM HELM: Hon Sam Piantadosi said something to which someone from outside this place took offence and used a publication to express his objection to the member's comments. That is an attempt to undermine the privilege of this place. We have a privilege to say what needs to be said. I would suggest that there must be some check in respect of how one can be attacked for making a statement in this Chamber.

Hon Derrick Tomlinson: Do not ordinary citizens have an equal privilege to disagree.

The DEPUTY PRESIDENT (Hon J.M. Brown): Order! This question and answer session should cease and the member on his feet should confine his remarks to the question before the Chair.

Hon TOM HELM: The ordinary citizen has the right to disagree, but in this case one would assume that the person concerned did not have the ability to express his view on television or in the national tabloid and he handled it the way he thought best. People have the right to contact Hon Sam Piantadosi by mail or by phone, and the proposed committee should consider whether they have the right to publish comments in the Press. If it were me I would exercise my right by picking up the phone and speaking with the member concerned or writing a letter to him. Maybe some people do not have the ability to do that, but if the person owns a major media outlet or is a person of standing in the community it is a question of balance. The committee will have to consider whether there has been a breach of that balance and whether the issue should be pursued.

Hon Peter Foss: How has the member been attacked?

Hon TOM HELM: The member used his position as a member of Parliament to bring a matter before the House. Had he not been a member of Parliament he would not have done that. It appears from what I have read - I do not want to preempt the committee's recommendation - that the attack would not have happened had Hon Sam Piantadosi not been a member of Parliament because he would not have been in a position to say what he did. I urge the House to support the motion.

Debate adjourned, on motion by Hon Garry Kelly.

WATERFRONT WORKERS (COMPENSATION FOR ASBESTOS RELATED DISEASES) AMENDMENT BILL

Third Reading

Bill read a third time, on motion by Hon John Halden (Parliamentary Secretary), and returned to the Assembly with amendments.

FAMILY COURT AMENDMENT BILL

Second Reading

Debate resumed from 26 September.

HON DERRICK TOMLINSON (East Metropolitan) [4.44 pm]: The Family Court Amendment Bill which amends the Family Court Act has a single intention; that is, to change the maximum retiring age of judges of that court from 65 to 70 years of age. While that is an apparently simple and single intention it is complicated to a degree by the vagaries of inter-Government relations and it is complicated in a different way by the imminent 65th birthday of the Chief Judge of the Family Court, Mr Justice McCall.

In his second reading speech the Attorney General indicated that the birth date of Mr Justice McCall added some degree of urgency to the matter. I understand that the date of the judge's birthday is 5 November which is Melbourne Cup day and it is also the day after the Minister for Education turns 50 years of age. It is also Guy Fawkes day.

Hon J.M. Berinson: Is chivalry dead?

Hon DERRICK TOMLINSON: Given that date, the Opposition recognises the urgency of the matter because under the existing Act Mr Justice McCall would be required to retire as of that date.

The other complicating factor is the special relationship between the State Family Court and the Family Court of Australia. State legislation cannot be effective until matching legislation

is enacted by the Commonwealth Parliament. The Commonwealth Government's Family Law Act of 1975 deals with the same subject matter as the State legislation and, therefore, the Commonwealth legislation takes precedence over the State legislation and legislating a retiring age of 70 in this State and 65 in the Commonwealth would become meaningless. Section 23A of the Commonwealth Family Law Act establishes 65 as the maximum retiring age and that was inserted in the Act by an amending Act in 1977. Before that time Family Court judges were appointed for life, as were judges in other courts. That has some bearing on the commencement date and the Attorney General drew attention to the fact that the commencement date in clause 2 of the Bill is left open; this Bill will actually come into operation on such a day as is fixed by proclamation. There is no point in proclaiming this legislation unless concurrent legislation to amend the Commonwealth Act is forthcoming. I am advised by my colleagues in Canberra that amending legislation to the Commonwealth Family Law Act is now before the House of Representatives. It will, in all probability, be debated and passed in that House this evening and my colleagues anticipate that it will be introduced into the Senate tomorrow. The Opposition in Canberra has given an undertaking not to impede the passage of the legislation and, except for unforeseen happenings, it should pass all stages of the Commonwealth Parliament by the end of this week. Under those circumstances the Opposition in this House does not object to the Bill. It is quite consistent with the intentions of the 1977 referendum at which the Australian voters endorsed the recommendation that Justices of the High Court and other Federal courts should have a maximum retiring age of 70 years. That was confirmed in the Constitution Alteration (Retirement of Judges) Act 1977 which came into effect on 29 July, 1977.

The Bill before the House also brings the Family Court judges into line with judges of the Supreme and District Courts of Western Australia who, consistent with the expressed intent of the people of Australia in the 1977 referendum, are required to retire at age 70 years. This is consistent also with the First Report of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, September 1977. That report on the retirement age of judges of the Family Court of Australia recommended that the retirement age be 70. It is instructive to consider the reason given by the Government of the day in 1977 that the retirement age for judges of the Family Court was set at 65, in contrast with the judges of other courts who were required to retire at 70. The second reading speech on the Family Law Amendment Bill 1977, made on 7 September 1977 by Hon John Howard, states -

> . . . it is generally conceded that in family law, more than in most other areas of law, judges adjudicating over disputes should be aware of and keep abreast of current social values and attitudes. For this reason, and also because of the demanding and arduous nature of at least some of the disputes - notably, defended custody disputes - there seems to be a good reason for requiring judges of the Family Court to retire at least by the age recognised as the maximum retiring age for most other occupations in the community.

Hon Max Evans: Was it required that they be divorced before they became judges of the Family Court?

Hon DERRICK TOMLINSON: The assumption was that because judges at 65 are deemed to be young, their youthful inclinations will make them more aware of the social issues that are often under consideration in matters before the Family Court.

Hon George Cash: Mr Evans will soon dispute that.

Hon DERRICK TOMLINSON: Mr Evans may dispute that, but he would be disputing it with me because it is a matter with which I, as a youthful person, have some sympathy. The reason given in 1977 - that it was preferred that Family Court judges be younger because it was assumed that they would be more abreast of current social values and attitudes - contrasts with the implication made in the Attorney General's second reading speech, in which he indicated that the Chief Judge of the State Family Court has indicated a willingness to continue in office should the retirement age be increased and that his continued, widely respected service was highly desirable. One can read into that, whether one is invited or intended to read into that, that the wisdom and experience of the Chief Judge of the Family Court of Western Australia is much respected, even though after age 65 he may, according to Hon John Howard, lose touch with some social realities.

Hon J.M. Berinson: Had Hon John Howard had the chief judge in mind, he would not have made that comment.

Hon DERRICK TOMLINSON: Possibly he would not have.

The Attorney General stated also that the court would lose a great deal of the expertise built up since the court was first established. We have here a contrast between a Federal parliamentarian arguing in 1977 for the benefits of youthful interests in Family Court judges, and the State Attorney General arguing in 1991 for the benefits of the wisdom which is associated with age. I do not want to enter into this debate other than to say that, in the present circumstances, we should never overlook mature experience. While I am on the question of our never overlooking mature experience, I can see you, Mr President, nodding sagely, and I congratulate you on your re-endorsement for election to this place. I am sure you will continue to provide sage advice to some of the Johnny-come-latelys.

While I invite a contrast to be made between the reasons given in 1977 for the retirement age to be 65, and in 1991 for the retirement age to be extended to 70, another contrast should be brought to the attention of the House. That contrast is between the expeditious manner in which the matter of the retirement age of judges has proceeded and the tardiness of the response to a much more socially significant intention to amend the Equal Opportunity Act to abolish compulsory retirement and ban age discrimination. The Joint Select Committee of the Commonwealth Parliament to which I have referred dealt with the retirement age of Family Court judges at the request of the Attorney General in Western Australia, Hon Joe Berinson. I cannot divine why the Attorney General suggested to the Joint Select Committee that it should deal with this matter first, but the committee found it possible to do so and to report early because the information it had was sufficient for it to come to a decision. The report was brought down in September; and, as I have indicated, the subsequent amendments to enact the recommendations of the Joint Select Committee will probably pass Federal Parliament this week, or by the end of next week in the case of the State Parliament, and will certainly be proclaimed in time for the Melbourne Cup. This matter has been quite expeditiously dealt with, and I commend the Government for that, but we must contrast that with the report of Ms June Williams, the Commissioner for Equal Opportunity, and the Premier's media statement No P90/121 of 13 May 1990, which stated -

> Premier Carmen Lawrence today detailed proposed amendments to the Equal Opportunity Act, to cover age discrimination.
>
> Cabinet will consider a major report from the Equal Opportunity Commissioner June Williams which recommends an end to compulsory retirement and the banning of age discrimination.

The Premier indicated in that Press release that Cabinet would consider that recommendation the next day; I assume 14 May 1990.

In question 796, of which notice was given on 10 September 1991, Hon George Cash asked the Attorney General representing the Minister for Justice -

> When is it anticipated the legislation to amend the Equal Opportunity Act 1984 to cover age discrimination will be brought before the Parliament as announced by the Premier on 13 May 1990?

The Minister for Justice provided the following reply, through the Attorney General -

> Drafting of the Equal Opportunity Amendment Bill which includes discrimination on the ground of age has been completed and is expected to be introduced during the current session of Parliament once Cabinet has given approval to print.

At this stage we do not have the legislation in the Parliament; we anticipate that it will be introduced in the other place soon, but given the lateness of the hour as far as this sitting of the Parliament is concerned, it would seem highly unlikely that that legislation will complete its passage through both Houses before the end of the sitting, or before Christmas. One might then anticipate that the legislation will fall off the Notice Paper when the Parliament is prorogued. If the legislation is to proceed, it will not proceed before next year.
[Continued on p 5314.]

[Questions without notice taken.]

Point of Order

Hon P.G. PENDAL: I draw your attention, Mr Deputy President, to the fact that the Minister for Education gave an answer to a question without notice a few minutes ago and that, before the answer was circulated, she altered it. I want an assurance that the alteration has not been made in substance.

Hon KAY HALLAHAN: I seek leave to make an explanation.

The DEPUTY PRESIDENT (Hon Garry Kelly): I will get advice before the member does.

Hon P.G. Pendal: The Minister was changing the answer.

Hon KAY HALLAHAN: Look, thickhead, I will explain to you in a minute.

The DEPUTY PRESIDENT: Order! As the House is aware, I do not get into the Chair very often and I do not receive many point of orders. As far as I am aware, the rules of debate state that a point of order cannot be taken about something that took place in a previous debate.

Hon P.G. Pendal interjected.

Withdrawal of Remark

Hon KAY HALLAHAN: I want that withdrawn.

The DEPUTY PRESIDENT: If the Minister will sit down, I will ask for a withdrawal. I did not hear what the member said, but the Minister has taken offence. Will the Minister nominate the word she wants withdrawn.

Hon KAY HALLAHAN: Hon Phillip Pendal referred to me doing something illegal. I want that withdrawn.

The DEPUTY PRESIDENT: Hon Phillip Pendal will withdraw.

Hon P.G. Pendal: I withdraw, Mr Deputy President.

Point of Order Resumed

The DEPUTY PRESIDENT: I understand the rules of debate state that a point of order cannot be made about something that was said in a previous debate. Given that the words were spoken and despite the fact that the Minister may have withdrawn them, she cannot unsay something that has been said. If the Minister wishes to explain, I suggest that she seek leave to explain.

STATEMENT - BY THE MINISTER FOR EDUCATION

Answer Changes

HON KAY HALLAHAN (East Metropolitan - Minister for Education) [5.40 pm] - by leave: During question time I gave an answer to a question of which the member who asked it, Hon Phillip Pendal, had given notice. I expressed appreciation for notice of the question. When I was reading out the answer I indicated that I thought it was grammatically incorrect. The member opposite interjected and said that it was just as well I was Minister for Education and picked up on the fact that I thought it was grammatically incorrect. Two changes were made to the typewritten copy of the answer. The changes were part of my verbal response to the House. For the benefit of the member's cotton-picking little mind I will tell him what I said.

Hon P.G. Pendal: Why did you change it after consulting with your colleague?

Hon Graham Edwards: You have been caught out.

The DEPUTY PRESIDENT (Hon Garry Kelly): Order! The Minister is making an explanation to a point of order which was really out of order and we should hear her in silence.

Hon KAY HALLAHAN: Thank you, Mr Deputy President. The reason the member thinks I changed the answer after I spoke to Hon Graham Edwards is that when I scribbled on the typed copy of the answer I was on my feet and leaning on the table. I did that because it was not very clear and I feared that Hansard may not have picked up my verbal delivery to the House. Where the answer said "wrote" I scribbled in "in writing" and further on where it said "duck" I scribbled in after it the word "shooting". I said that as I spoke. I have not

added to or changed anything I said across the Chamber in the written record. I really resent the accusation that was made in the point of order.

FAMILY COURT AMENDMENT BILL

Second Reading

Debate resumed from an earlier stage of the sitting.

HON DERRICK TOMLINSON (East Metropolitan) [5.42 pm]: I was drawing the House's attention to the contrast between the expeditious manner in which the amendment to the Family Court Act was dealt with and the apparent tardiness in the stated intention of the Government to amend the Equal Opportunity Act to eliminate the provision relating to the compulsory age of retirement of 65 years. No doubt the Attorney General will ask, if I can anticipate his question, what has that to do with the Family Court judges. It has no relevance other than this: The Government has found it necessary to amend the Family Court Act to enable the chief judge to continue in office for a further five years.

The DEPUTY CHAIRMAN: Order! There is far too much audible conversation in the Chamber and I ask members to listen to the member on his feet.

Hon DERRICK TOMLINSON: I have a very gentle voice and it is sometimes very difficult to compete with some of the Ministers on the other side of the House.

Hon DERRICK TOMLINSON: The relevance of the contrast is that, whereas the Government acted expeditiously in this issue and brought it to a head in a matter of two months, the amendment to the Equal Opportunity Act has been sitting around since May 1990 when the Premier announced her Government's intention to amend the Act in accordance with the recommendations of the Equal Opportunity Commissioner

The DEPUTY PRESIDENT: Order! There is still too much audible conversation in the Chamber, particularly behind the Chair. I would like it to cease.

Hon DERRICK TOMLINSON: The net result of the announcement by the Premier of the intention to change the compulsory retiring age was that many people, mainly public servants, who anticipated retirement because they were approaching the retirement age had a false expectation that the Act was to be changed to enable them to continue working until after age 65.

I received an inquiry, not from one of my constituents but from a constituent of the Attorney General's, which was passed to me by the member for Nedlands. That person is a clerk in the Health Department and she will turn 65 in December this year. She was in a quandary because she had two choices available to her: First, she could retire at age 65, as the law now requires, in December this year on the day of her sixty fifth birthday or, second, she could accept the Government's offer of a redundancy package. She could have accepted that offer in October this year with very little financial difference from the package she would have received on her compulsory retirement in December, with the exception of a substantial taxation benefit. The redundancy package would be taxed at the rate of five per cent and the package she would receive on compulsory retirement would be taxed at the standard rate of taxation. Her choice was complicated by the fact that she did not want to retire at age 65. Like the chief judge, she had indicated her desire to continue working for at least another year after she turned 65. She wanted to know whether the legislation the Premier had anticipated in May 1990 was before the Parliament, when it was anticipated the legislation would be enacted and whether it would affect her retirement age. In other words, could she elect, as a result of the amendment to the Equal Opportunity Act, to continue working for at least a year after Christmas this year. The answer I was able to give her was that I did not know. We now have the situation where, in answer to a question by Hon George Cash, we have been told that the legislation will come forward in this sitting of Parliament. Even if it does come forward in this sitting of the Parliament it is highly unlikely it will complete its passage through both Houses before the Parliament rises and, therefore, before the Parliament is prorogued. People who for some 18 or more months have been anticipating action to the Equal Opportunity Act are frustrated simply because of the inaction of the Government.

While the maximum retirement age of judges should not be taken lightly - although it is

something we on this side of the House support sincerely - the other matter has much wider social implications, much wider social interest and much wider social relevance, and it has been lingering somewhere in the portals of power for some 18 months or more. The Government has the capacity to deal with legislation expeditiously, as it has done in the case of the amendment to the Family Court Act, but it is not acting expeditiously in other matters it has flagged. Instead of the Government building false expectations in the community I hope that in future when it announces its intention to amend legislation it acts expeditiously to bring the matter before the Parliament so that there can at least be an open public debate on it.

That point aside, the Opposition has no objection to the amendment to the Family Court Act to change from 65 to 70 the retirement age of judges of the Family Court. We hope this Bill will proceed through all stages of both Houses of the Parliament so that it can be proclaimed before the chief judge is compelled to retire. I support the Bill.

HON PETER FOSS (East Metropolitan) [5.51 pm]: I wish also to support the Family Court Amendment Bill. The last point made by Hon Derrick Tomlinson is very important: It is not a matter of how old one is but of who one is. It is unfortunate that the Government has on occasions raised the hopes of some people but at the same time caused other people considerable distress and difficulty in their decision making by announcing legislation which deals with this matter in a general manner but without actually dealing with it comprehensively; yet when it suits the Government and it is a matter of importance for one individual, the matter is dealt with rapidly. We must be conscious in this House that the announcement of things which may be grand and sound nice from a political point of view does affect people's lives, and that it is just as bad not to have legislation and to wonder whether one should make an important decision in one's life, as to have the legislation and to actually have to go through with a decision.

The Joint Select Committee report referred to by Hon Derrick Tomlinson includes some statistics about the age of retirement of Family Court judges. Members may recall that Hon Derrick Tomlinson mentioned that for a period of time the judges of the Family Court were appointed for life. It is interesting that during that time, hardly any of the judges retired after the age of 65, and most of the judges retired quite early, some of them only a year or so after their appointment. I do not know whether that indicates something about the Family Court or the early days of the operation of the Act. Even now that the retirement age has been changed to 65, people have seldom retired in accordance with the required limit as opposed to their retiring at a time prior to that limit; although more have gone to 65 since the 65 limit was imposed than when it was a matter of their being appointed for life. The same sort of argument was put when we discussed in this House whether we should have time limits on speeches. It was suggested that when we put a time limit on speeches, people tend to go to the end of the time limit, whereas if we do not put a time limit on speeches, people tend to take only as much time as is necessary to make their speech.

Hon J.M. Berinson: Here you go - talking about yourself again!

Hon PETER FOSS: I now have another 43 minutes to go on this matter.

It is a curious point, and perhaps it is a point in favour of our making it an appointment for life. I know the change was made in the Constitution due to a significant High Court appointment and a number of Commonwealth Industrial Court appointments where people were appointed for life and seemed to think they should stay beyond the period of time that everyone else thought it was appropriate for them to stay.

Hon Tom Helm: Longer than life.

Hon PETER FOSS: Beyond brain dead, I think was the case in respect of one person. I happened to appear before one of those judges at one stage.

Hon Tom Helm: Is he still there?

Hon PETER FOSS: None of them is there now. In fact, that one has gone. However, it is an interesting point, and it goes back to the other point that was raised by Hon Derrick Tomlinson; namely, whether it is appropriate to have a compulsory retirement age. No two people are the same, and whereas 70 may be the appropriate age for some people it may be an entirely inappropriate age for others either because it is too old or because it is too young. Many of us regret the somewhat arbitrary provisions of the Labor Party rules which prevent

members of the Labor Party standing for Parliament if they are over age 65. I am sure we all regret the fact that we will lose Hon Fred McKenzie in the next Parliament. He is one of the more contributing members to this Parliament.

Hon P.G. Pendal: And Mr Berinson; we will miss him a bit.

Hon PETER FOSS: I did not realise we would be losing Hon Joe Berinson for that reason. I thought he had just decided to call it a day.

That is an example of how an arbitrary figure, whatever may be that figure, always has the possibility of being wrong one way or the other. Therefore, I have those hesitations. However, I have no hesitation in saying that I fully support that Justice McCall be allowed to continue to occupy his position on the bench. He is a classic example of how an arbitrary provision of a retirement age of 65 would be disadvantageous to the State.

It is a little strange that the Bill states that it will come into operation on the date of proclamation. My understanding of the situation is that the only reason that we need complementary legislation between the Commonwealth and the State is the fact that it has become customary for judges of the Western Australian Family Court to also receive commissions as judges of the Family Court of Australia.

Hon J.M. Berinson: No; it is the Commonwealth-State agreement which established the State Family Court.

Hon PETER FOSS: The law, as I understood it, which arises out of the earlier cases in respect of the wearing of gowns and wigs in the Family Court plainly indicated that it was within the constitutional competence of the State to deal with all matters relating to the court and the conduct of the court. Therefore, it has been within the constitutional competence of this State to determine whether the judges of our Family Court will be appointed to age 50, 75, or for life, and that would govern their capacity to serve as judges of the Family Court of Western Australia.

Hon J.M. Berinson: The agreement had a specific reference to retirement age.

Hon PETER FOSS: I am glad to know that is the reason, because obviously it is not a constitutional provision. It is a self-imposed limitation on this State.

We should consider whether this is a matter that we should determine as a State, because we as a State should look more seriously at the limitations that are placed on people because of age, and the problems that arise when people who have a worthwhile contribution to make are deprived of the opportunity to go ahead. Many of these limitations are quite unnecessary because people are, generally speaking, able to make appropriate decisions about their retirement age. History has shown in the case of the Family Court that when there was a life appointment, people did not even go to age 65. I urge the Government in looking at the question of retirement age to see whether it may be more appropriate to deal with that at the same time as other legislation dealing with age discrimination, to ensure that no person is either tempted to stay on or is given premature cause to retire because his retirement age is fixed. Accordingly, I support the Bill, but urge that it be looked at in a wider context along with the legislation that was foreshadowed by the Government 18 months ago.

HON J.M. BERINSON (North Metropolitan - Attorney General) [5.58 pm]: I welcome the support which has been indicated for the Bill. Since I am not the Minister responsible for the Equal Opportunity Act, I am not well placed to respond in any detail to the references that have been made to the desirability of our bringing forward the age discrimination legislation. However, even without my having a close knowledge of the equal opportunity area, it is apparent that there are significant differences between a Bill such as the present one which seeks to amend only one word and a measure such as the age discrimination legislation which involves a large number of issues. In principle I agree with the view that once a measure has been announced, the move to its implementation should proceed as quickly as possible. However, a variety of factors go into the timetabling that applies to various pieces of legislation: The complexity of the issues that are involved; the extent of consultation which may be necessary; and, over and above all of those factors, the sheer technical or mechanical question of getting enough of the time of Parliamentary Counsel for the purpose, and of getting one's place in the legislative program of the Parliament. In short, I do not disagree in principle with anything that Hon Derrick Tomlinson has said, but there are considerable practical barriers in the way of our transplanting a simple measure like this

into a general feature of our whole legislative program. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Sitting suspended from 6.00 to 7.30 pm

Committee and Report

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

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

PROROGATION OF PARLIAMENT BILL

Second Reading

Debate resumed from 18 September.

HON J.M. BERINSON (North Metropolitan - Attorney General) [7.34 pm]: I would not normally participate in this debate, but the Minister for Parliamentary and Electoral Reform has brought a matter to my attention which in turn I need to draw to the attention of the House, and to you in particular, Mr President. As members will be aware, this is not the first time we have had a Bill of this kind before the House, even in identical terms.

Hon N.F. Moore: It is the third time in identical terms.

Hon J.M. BERINSON: I thank Hon Norman Moore for the detail, and I accept this is the third time. I can also remember quite well that on two previous occasions the Bill passed through this House. Until very recently, and certainly in our two earlier debates, no question has been raised about the constitutionality of the Bill. It is advice in this respect which the Minister for Parliamentary and Electoral Reform has now brought to my attention. I draw the attention of the House to the fact that the Minister indicates that he now has advice that because the Bill will "affect" sections 3 and 4 of the Constitution Act, a referendum would be required to enact this Bill, and the Bill is accordingly deficient without provision for that referendum. I understand that the advice is based on the combined effect of sections 3 and 4 of the Constitution Act and section 73(2)(e) of the Constitution Act.

There is a further implication of this advice for this Bill in that absolute majorities would be required for the passage of the Bill both in this House and in the Legislative Assembly. I am bringing this to attention on the first occasion that it is open to me, and I suggest, though it is a matter for the House or perhaps for Hon Norman Moore as the mover of the Bill to decide, that it would be preferable in the circumstances to adjourn the debate further to allow you, Mr President, to seek your own advice and indicate to the House what your conclusions are on this matter. I have no comment on the merits of the contents of the Bill as such.

Debate adjourned, on motion by Hon Fred McKenzie.

OLD SWAN BREWERY DEMOLITION ORDER BILL

Introduction and First Reading

Bill introduced, on motion by Hon Reg Davies, and read a first time.

Second Reading

HON REG DAVIES (North Metropolitan) [7.40 pm]: I move -

That the Bill be now read a second time.

To date the Government has chosen to ignore the directives of both Houses of Parliament which voted on motions for the demolition of the old Swan Brewery located on Mounts Bay Road. An impasse currently exists between those who now have no mandate to govern and the majority of the Parliament. Today I want to demonstrate through logical, down to earth reasoning that the old Swan Brewery, even if the building has some relevance to some people as a fairly recent yet nonetheless historic landmark or as an example of Western Australia's industrial buildings of yet undetermined date, is not so significant that the general welfare of

the community at large remains a lesser priority. The issues surrounding the demolition of the old Swan Brewery stand alone, but I am obliged to justify my position today.

Members will appreciate that buildings of eminent significance must be preserved at all cost. To destroy structures of vital and historic importance because there is not enough cash around at a particular time or for no significantly compelling reason would be tragic. The fact is that the arduous brewery argument is not what the Government would have the public believe. The general public's perception of the issues has surely been influenced by distortions of the truth. The Government has tried to disguise the controversy as a disagreement over what amounts to aged and derelict bricks and mortar and their relevance to this society. The real issues which underlie their intractability have been further clouded, to the gratitude of several Government members, by focusing on relatively recent Aboriginal activism over their claims to former ownership of the site on which the brewery buildings were erected. Clearly an Aboriginal who often appears to act as a Government spokesperson for the Aboriginal community, Mr Ken Colbung, articulated the very special religious or sacred significance of the said site to the Nyungah Aboriginal group in a report to Ms Liz Bloor, a cataloguer from the Aboriginal Sites Office in 1986-87. It should be acknowledged that in this document Mr Colbung's original description of the path of the rainbow serpent is consistent with the decision specified in the Aboriginal Heritage Act, and reflects what the wider Aboriginal community believe to be true. If members want this tabled I am quite happy to do so.

It is my understanding that the Government's position in respect of Aboriginal claims to the site has in fact changed since the original purchase. My perception at the time of the purchase in 1985 was that the Government was sympathetic to Aboriginal claims. The Aboriginal population wanted to see the wider society acknowledge them as a worthwhile group. Our resolve to preserve their sacred site would be a statement from the people who make the laws of this State that what Aboriginal people believe is being fairly evaluated and justly and effectively considered - not blasphemed against, ridiculed and denied. A High Court ruling last year endorsed the Aboriginal right to be heard on this issue. Yesterday a Supreme Court ruling significantly undermined that decision.

Hon J.M. Berinson: I do not think that is right. Yesterday's ruling indicated that the High Court requirement will be met.

Hon REG DAVIES: That is a matter of personal assessment.

All this has just served as an effective smokescreen for the Government's real agenda on the Swan Brewery. It is not being up front with just why that hotchpotch of derelict structures into which millions of dollars in scarce taxpayers' funds have been poured is being maintained, seemingly at any cost. At least $13 million has been spent on the development to date with a proposal to spend an estimated $30 million. That is money which could be better spent on more important incidentals in society such as improved education for youth who are currently being lost to the system or hospital care for those who urgently need attention. When we speak about the cost to the community of the rebuilding of this site we must consider that human cost.

Prominent members of the medical profession have made many comments regarding the danger factor of the traffic on Mounts Bay Road. I refer to the likes of Sir George Bedbrook, who was well known for his work with paraplegics, and who was particularly outspoken in his resistance to redeveloping the area. The cost to this State and to the Federal Government of supporting just one paraplegic can be in the order of millions of dollars. These costs are made up of initial intensive and follow-up medical care, social security payments, and compensation for injury. When one considers that improved medical care has significantly extended the life expectancy of spinal injury patients it is not hard to appreciate what these costs to the taxpayer can add up to. The stretch of road which passes the brewery is widely acknowledged as one of the major danger areas for traffic in this State and is second only to Albany Highway. Incidents on this road since 1966 have resulted in 16 deaths. Any sort of development with traffic leaving or entering Mounts Bay Road at this dangerous bend would be adding significantly to the threat to the safety of road users. I have before me a list of notable Perth identities taken from The Western Australian *Who's Who*, such prominent people as Sir Ernest Lee-Steere, the Right Hon Sir Paul Hasluck, Brigadier Able Dacre, and Mr David West, the RAC chief executive, all of whom are adamant that the old brewery

buildings should be removed. This is a classic example of the process of the public submission principle falling into disrepute. Their submissions have largely been ignored.

I believe the motivation for the Government's strong stand against the demolition of the old Swan Brewery is hidden in an algebra of deals between the Government and Perth's former nouveau riche entrepreneurs over the past decade. The Government is attempting to justify the restoration of the old Swan Brewery, the second brewery to be developed in this State, as the extant buildings built between 1896 and 1905. This is false because today little of the original architecture remains. Most of the buildings that can be seen today were built between 1927 and 1938.

I ask members to be patient while I give a very brief summary of the financial wheeling and dealing which went on between the Western Australian Government and big business - a short synopsis which underscores the veiled reality of the Government's reluctance to bow to public pressure to do away with those profoundly overstated and derelict buildings on Mounts Bay Road. About 25 years ago in 1966 the brewery stopped production and became a warehouse. The Swan Brewery company in 1978 sought the sale of what had come to be identified by many people as a prize piece of real estate. The Nyungah Aboriginal population's claim to the site was espoused by the then chairman of the Aboriginal Lands Trust, Mr Colbung, who called for Nyungah acquisition of the site because of its historical significance to those people. Mr Colbung published his own ideas for an Aboriginal cultural centre. His proposal was exactly the sort of distraction the Government would later latch onto. Here were Aboriginals tolerating the existence of buildings on that land.

There was controversy within the Aboriginal population itself, with different groups espousing various ideas on land usage at that place. Later on some Aboriginal groups took up residence at the brewery site and the public were significantly bewildered by issues relating to the mythological Wagyl. The infighting between Aboriginal groups, accompanied by confrontations between the police and Aboriginals and their European supporters, was to set the scene which later on so successfully disguised, or took the heat off, the Government's deals with big business.

It was during the late 1970s that Perth's nouveau riche entrepreneur players became involved with the Government. At that time the Swan Brewery company was involved in the acquisition of land at Canning Vale for a new brewery. Its activities were viewed by the Federal Government as nothing but an attempt to set up a "legitimate" tax avoidance scam and stop at that level. The Swan Brewery company was only one of Perth's business establishments which was becoming inventive in developing sophisticated legal and accounting manipulations. Their diversification meant that finance became a growth area. Alan Bond's acquisition of 10.4 per cent of the Swan Brewery company prior to Christmas 1980 was coincidentally during the same week that Yosse Goldberg and partner paid $4 million for the old brewery site.

The end of 1981 saw Goldberg in severe financial difficulties and Bond successfully winning a takeover battle for the old Swan Brewery. Bond bankrolled Goldberg in a rescue operation which gave the upwardly mobile entrepreneur a number of Goldberg's major property holdings. It also involved Bond in a 24 hour ownership of the old Swan Brewery site for a fee of $900 000. The story unfolds like an elaborate game of Monopoly. Sadly though, the intrigue is infinitely more serious. It was members of the unsuspecting public who were ultimately to pay for the games of the Government and its friends in big business - the entrepreneurs who had become demigods in their own society, adulated by a significant proportion of those who eventually, one way or another, became their victims. Goldberg continued to hold the potentially valuable Mounts Bay Road property. We heard no more from Bond and the brewery equation except perhaps his support of other millionaires who later became involved in the saga.

The Burke Labor Government was elected in February 1983 and began creating the special relationship with big business which became known as WA Inc. Perth based millionaires who had made their money in the mining boom of the 1960s and 1970s were increasingly assisted by Premier Burke, who used the purse and the powers of the State to help them along with their business ventures. The most important of these Government instrumentalities, the Western Australian Development Corporation, was used to direct public money into joint ventures with local entrepreneurs. The Labor corporatism of the

1980s saw active Government participation in business ventures. The old brewery site was purchased in support of public opposition to development and at the same time the Government bought other properties and interests such as hotels, mineral resources and industrial and property developments and later, to its ultimate peril, became involved in finance and banking. One could submit that it is possible that previous conservative State Governments might also have been friends of private enterprise, but more shrewdly, at arm's length.

The former chairperson of the WADC, businessman John Horgan, has given a telling description of his organisation when he said, and I quote -

> WADC is a corporation wholly owned by the Western Australian Government and managed by private sector people. . . (W.A.D.C.) is an invitation to the private sector to assist where possible, in helping to run the business of Government.

Doubtless, the entrepreneurs saw the manipulation of the public purse as their public duty and at the same time they grasped the opportunity to help themselves. I ask myself at just what point the old Swan Brewery represented one of the deals between the Government and big business? Members will recall the sweetener sought by Mr Pearce to clinch the purchase of the site from Mr Goldberg. In September 1985 the John Curtin Foundation was established to provide a financial base through which business could play a further role in the running of the Australian Labor Party itself. Alan Bond donated funds, followed by other builders and developers. The development of Western Australia during that time was shaped by the deals which proliferated, most of which were shrouded in secrecy. Commercial confidentiality protected their interests. The freewheeling WADC was not accountable to Parliament. Corporatism took on a new or expanded meaning tending towards the legitimising of corrupt practices. Politicians knowingly, or unwittingly, were riding a tiger. They were unable to extricate themselves from the web of transactions, favours or friendships into which they had been sucked. What they had come to perceive as the harsh realities of the day were demonstrated through realistic and pragmatic Government.

Those who had once upheld the idea of fighting for the underdog had become the oppressors. Anyone who doubted the wisdom of policies and practices of this supposedly successful entrepreneurial Government was confronted with the spectre of the conservative right, which in its view offered no alternative way. The 1989 election verifies this. What we cannot afford to lose sight of is the fact that the Government bought the brewery from Yosse Goldberg in order to prevent commercial development there. The then Premier, Brian Burke, said that the purchase was to ensure that no development took place on the site. However, I believe that by now we have a clearer picture of the motivation behind the Government's determination to push on with development of some sort at the old brewery site in spite of all odds and opposition.

Yet, under scrutiny, the old Swan Brewery buildings have no real aesthetic significance. In fact, the only buildings classified by the National Trust were the stables, which were badly damaged by fire and subsequently bulldozed by LandCorp.

Hon P.G. Pendal: At Mr Pearce's insistence.

Hon REG DAVIES: Granted. If millions upon millions were spent on the buildings the only remaining structure with actual historical significance would be parts of the 1897-built five arch, freestanding facade which faces Mounts Bay Road. If many millions were spent on the restoration or, more correctly, the rebuilding of the rest of what remains - I understand this would even involve reclamation of some riverbed to replicate the old stables - we would possibly have an interesting curiosity. Its usage as any sort of public attraction is out of the question. At the end of the day we would have only a reproduction of a brewery which, at various stages of former development, once occupied that site; it would certainly not be the old buildings restored.

Once the building was completed, the logistics of moving people in and out of the venue would present a problem which would be nothing short of ridiculous. Any ideas of ferry services being able to facilitate sufficient business to substantiate the venue as self-supporting are fairytale in their substance. They are a joke. The prospect of having traffic increased in that area to facilitate entry to the tourist attraction would significantly increase

the dangers of this hazardous road. This area of Mounts Bay Road is viewed by the medical profession in general as a disaster.

However, we should not attempt to kid ourselves at any time that it is the brewery per se that is the centre of controversy. By restoring the old Swan Brewery the Government, in rather loose terms, would be cashing in on the memory of a bygone era; certainly not just patching up the old brewery so that the buildings would maintain any authenticity. As I said, the original buildings, bar one facade, are gone. The Government has tried very hard to substantiate the buildings as authentic 1897 structures. That is clearly not the case. The National Trust and the Royal Historical Society refuse to classify the buildings despite substantial Government pressure to do so. This is because what stands now, of around 1920 vintage, will virtually need to be rebuilt. It will be a matter of literally rebuilding, even clearing a spot, and replicating some former buildings to make the structure safe and a significant draw card to attract numbers of visitors.

We are not arguing over the brewery buildings. It is another matter altogether which a profoundly dishonest Government has used along with issues like the banning of duck shooting and the introduction of daylight saving to distract the public from the real issue of its gross mismanagement of public funds. It is its inept economic management that has sent our State into virtual financial ruin. The Government is broke and unable to finance crucial, even life and death, causes such as hospital care, multifarious issues relating to juvenile crime and the restoration of a decent education system to ensure that our State offers some sort of future to our youth. Indeed, the old Swan Brewery site has had an interesting if not illustrious history of human activity pre-1829 and since the advent of Europeanisation. This is well documented in Suzanne Welborn's *Swan - The History of a Brewery*. On reading this account of the success of what came to be regarded, at least in Western Australia in the early 1900s, as an aristocratic business, the brewery buildings were subjected to extensions, fires, and successive structures replacing former buildings which were rendered obsolete, often because the brewing business had become so successful.

In late 1906, with a new bottling plant in operation, manager James Hardwick "arranged for an extension to the main brewery on land previously taken by the bottling plant". Constantly throughout the book there are illustrations of additions, fires and rebuilding. I repeat that the only part of the original 1897 structure which remains is a piece of the facade which fronts Mounts Bay Road. I have attached a number of illustrations if any member cares to examine them. This facade is detached from the remainder of the building and it too was added to much later than 1897.

In summary, the issues stand alone. It is time the Government got its priorities in order. The area in which the brewery is located is a particularly dangerous stretch of road which has been the site of far too many road accidents already. To increase traffic here is unjustifiable in anyone's terms. The Aboriginal community wants to reclaim that tiny piece of terrain which was undoubtedly a pivotal point of cultural religious significance and activity over countless generations. The Brewery Action Group submitted to the Parliament two very successful petitions lobbying a resistant Western Australian Government to take notice of community attitudes towards the brewery. This group also staged seven well attended rallies.

The wider population clearly opposes any development. The bottom line is that the structures are on an inappropriate development site and no amount of justification can get around that. Even minor development would permit escalation later. We would not be restoring the original brewery buildings; all but a tiny portion of those have been destroyed. We cannot afford the enormous cost to rebuild, and I make the distinction between renovation and actual rebuilding. I suggest that we take up the five unions' offer to salvage the bricks and timber and sell them to interested members of the public. I received a telephone call this morning from Mr Warren Smith of Nedlands who said he was prepared to put in an offer to buy 100 bricks at $2 a brick. This sort of interest in salvage could help boost the coffers during these tough economic times. Most of all, we cannot afford the tremendous human costs in deaths and injuries which are incurred on this dangerous stretch of road. There are many areas in our community vastly more deserving of the people's tax money. I commend the Bill to the House.

Debate adjourned, on motion by Hon John Halden (Parliamentary Secretary).

ROAD TRAFFIC AMENDMENT BILL (No 2)

Committee

Resumed from 17 September. The Deputy Chairman of Committees (Hon Garry Kelly) in the Chair; Hon Graham Edwards (Minister for Police) in charge of the Bill.

Clause 9: Section 64AA inserted -

Progress was reported after the clause had been partly considered.

Hon GEORGE CASH: I move -

Page 6, lines 1 and 2 - To delete proposed new subsection (2) and substitute -

(2)(a) Where a person has committed an offence against this section he may be served with a notice, in the prescribed form informing the person that, if he does not wish to have a complaint of the alleged offence heard and determined by a court, he may pay to the officer specified in the notice, within the time therein specified, the amount of the penalty prescribed for the offence.

(b) A person served with a notice under this section shall be liable to have recorded against them such number of points as are prescribed in the regulations pursuant to section 103 of this Act.

A penalty must be established in the Bill for the 0.05 blood alcohol content offence and that penalty has been prescribed by the Government to be a fine of not less than $200 or more than $500. The amendment would also allow a person who was alleged to have committed an offence against this section to have that alleged offence heard either in a court or have an infringement notice issued. Paragraph (b) has been discussed on other occasions during the passage of this Bill through this Chamber.

Hon GRAHAM EDWARDS: The Government has no difficulty with this amendment.

Amendment put and passed.

Hon GRAHAM EDWARDS: The Government will not proceed with the amendment listed in my name on the Notice Paper.

Clause, as amended, put and passed.

Clause 10: Section 64A amended -

Hon GRAHAM EDWARDS: The Government will not proceed with this clause mainly because of the previous decisions which have been made. I ask members to vote against this clause.

Hon GEORGE CASH: The Opposition will not proceed with the amendment listed in my name on the Notice Paper given that the Minister wants the Committee to vote against this clause.

Clause put and negatived.

Clause 11: Section 66 amended -

Hon GRAHAM EDWARDS: The Government will not proceed with its amendments on the Notice Paper. Again that is the result of the decisions that have been made and in order to make sense of the Bill. The Government will accept the amendment which has been circulated in the name of Hon George Cash.

Hon GEORGE CASH: I move -

Page 7, lines 5 to 10 - To delete all words after the word "person" and insert -

is under the age of 21 years;

As the Minister indicated, discussion has occurred between the Opposition and the Government about this amendment. The amendment is required because of earlier decisions made by the Committee when this Bill was debated some weeks ago. Members who remember the debate on that occasion will understand the need for this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 12 put and passed.

Clause 13: Section 102 amended -

Hon GEORGE CASH: I move -

Page 7, line 18 - To delete "45(5)(b),".

Members will note that the same amendment stands in the name of the Minister for Police on the Notice Paper and is purely a procedural amendment now that other decisions have been made in respect of this Bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 14 put and negatived.

Clause 15: Justices Act consequentially amended -

Hon GEORGE CASH: I move -

Page 8, line 6 - To delete "45(5)(b),".

Amendment put and passed.

Clause, as amended, put and passed.

New clause 6A -

Hon GEORGE CASH: I move -

Page 5, line 6 - To insert the following new clause -

Section 53 amended

6A. Section 53 of the principal Act is amended in subsection (4) by -

(a) inserting after the section designation "(4)" the paragraph designation "(a)";

(b) inserting after the words "place of abode" the words "and where it is relevant to the offence, his age"; and

(c) inserting after the penalties the following -

(b) Where the particular which is refused or falsely given is the person's age and is requested in connection with a suspected offence under section 64AA, the penalty shall be the same as for a conviction of an offence under that section.

Members will be aware of the current wording of section 53 of the Road Traffic Act and the need for certain amendments to again make sense of the Bill. Again, this matter has been addressed in previous debates in this place.

Hon GRAHAM EDWARDS: This amendment is consequential upon an earlier decision that has been made.

New clause put and passed.

New clause 12A -

Hon GEORGE CASH: I move -

Page 7, after line 14 - To insert a new clause as follows -

Section 98 amended

12A. Section 98 of the principal Act is amended by inserting after subsection (1) the following subsection -

(1a) In any prosecution or proceedings for an offence against this Act an averment in any complaint as to the age of the alleged offender shall be deemed to be proved in the absence of proof to the contrary.

Again, this amendment is similar to an amendment on the Notice Paper in the name of the Minister for Police. I have discussed this amendment with the Minister and we agreed that my amendment should take precedence over his amendment. The amendment is consequential upon earlier decisions made by this Committee.

New clause put and passed.

Title put and passed.

Bill reported, with amendments.

Recommittal

On motion by Hon Graham Edwards (Minister for Police), resolved -

That the Bill be recommitted for the further consideration of clause 4.

Committee

The Deputy Chairman of Committees (Hon Garry Kelly) in the Chair; Hon Graham Edwards (Minister for Police) in charge of the Bill.

Clause 4: Section 5 amended -

Hon GRAHAM EDWARDS: Members will recall that in the earlier stages of the Committee discussion the Committee decided to defer discussion on this clause pending a decision about clauses 9 and 10. Consequential upon those decisions, there is no need for this clause to stand in the Bill, and I ask the Committee to defeat the clause.

Clause put and negatived.

Bill again reported, with a further amendment.

ACTS AMENDMENT (EVIDENCE) BILL

Second Reading

Debate resumed from 12 September.

HON PETER FOSS (East Metropolitan) [8.32 pm]: The reason this matter was referred to the Standing Committee on Legislation, as was indicated by Hon Derrick Tomlinson, is that some matters of principle were involved which we felt were fundamental parts of the Bill. Normally Bills are referred to the Standing Committee on Legislation after the second reading debate, at which time the principle has been decided. The type of inquiry carried out by the Standing Committee on Legislation is not really directed to questions of principle. The reason that this Bill was referred to the committee prior to the completion of the second reading debate was because we felt that the areas of the Bill which were likely to be contentious were those of principle.

The Bill deals with the present exemption of a person from compulsion to give evidence against a spouse. The reason for this exemption was dealt with in the Attorney General's speech. Another reason was that a recommendation was made to extend the number of offences from which that exemption was removed. The concern felt by members of this House was that although there was a very good reason for extending the removal of those exemptions, like many things which happen in this world, it was a question of competing good reasons. We could not deny that the offences which it was suggested should have the exemption removed from them were ones where it would be highly justifiable to have a spouse give evidence. However, there was the countervailing problem that it may in some way impinge upon the marriage contract or upon the closeness of the relationship between husband and wife. It was a question of whether the good things which were said to be achieved by changing this law would be achieved in those circumstances where there had already been a breakdown in the marriage. The question was whether the law should be changed in such a manner that it may cause other breakdowns to occur.

When this Bill was referred to the Standing Committee on Legislation we received a remarkable lack of commentary. We did not receive the storm of comment that we expected. Some people did raise the point, and members will see in paragraph 4 of the report of the committee that -

4. Four of the five public submissions expressed reservation at extending the

provisions dealing with competence and compellability. The main concerns would seem to be those of preserving the status and confidence of marriage and not introducing laws which are detrimental to our society.

5. In considering this Bill the Committee took note of those submissions mentioned in (4) above and appreciates the concern that the legislation should not be permitted to destroy the confidence of the marriage relationship.

Perhaps the most important part of the report is the next paragraph -

6. The Committee also recognises that this confidence may be lost by removing the exemption by degrees so that any one amendment in itself seems innocuous, but a series of amendments over the years can, as a whole, be regarded as having a serious detrimental effect.

That is the nub of the question. It is always possible with any amendment to say, "This is only a small amendment; we are making only a small change in the law." If members consider the offences here, they will find they are all perfectly justifiable. It cannot be said that this small list of offences is a great departure from what already exists. However, we reached this stage by departing from the absolute rule which is said to exist. The next time a departure is suggested there will be a wider variety of offences from which we will be leaping off to the next incremental change. I wonder whether, when the next amendment comes forward, as I am sure it will in the next 10 to 15 years, people will try to go back and think, "Overall, have we made a change which impinges too much on the marriage relationship"? I do not have a solution for that, I am afraid.

I agree with the committee's recommendation that in this instance we do not believe that the impact will be such as to interfere sufficiently with the status and confidence of the marriage relationship to offset the beneficial effects to be obtained by passing this legislation. All I can do is put it firmly on the record of the House in the hope that when this legislation is next considered, somebody will read *Hansard* and take cognisance of the concerns of the committee. I can only hope that somebody will then try to look at this thing in an overall fashion to see whether the movement which has occurred is such that the marriage relationship is in some danger. We obviously cannot bind the next Parliament, or even suggest the decisions it should make, but I hope that in making this decision now we will be able to suggest a note of caution to future Parliaments when considering the same legislation and the same suggestions about further alterations, and that they will take a view of the law from the beginning, not just from the last step. I hope they will be careful before making any further changes. I support the Bill before the House.

HON J.M. BERINSON (North Metropolitan - Attorney General) [8.39 pm]: I appreciate the support expressed for the Bill. The last thing I want to do is to delay its passage, but in view of the unusual procedure adopted in considering this legislation, at least one comment ought to be made. I refer in this respect to the reference to the Standing Committee on Legislation of this Bill during rather than following the second reading debate. I had no difficulty with that proposition when it was advanced and I have no difficulty with it now. Certainly on the face of it I would have shared the apparent expectations of Hon Peter Foss that there would be more public comment and input. However, the processing of this Bill seems to show up a weakness in the method of operation of the Legislation Committee. When we first established this committee it was the aim of us all to ensure the more thorough consideration of complex Bills than our ordinary Committee processes usually allow. On the other hand, there was an agreed view that the establishment of the Legislation Committee should not lead to undue delay in the processing of legislation. On the whole that has not been our experience with the Legislation Committee, but in the case of this Bill we have an example that perhaps proves the rule in that the consideration by the committee extended for almost four months.

Hon Derrick Tomlinson: In all fairness perhaps Mr Berinson might contemplate that the report was returned on 11 September and between the presentation of the Bill to the committee and the completion of the report there was a parliamentary recess between the autumn and spring sessions.

Hon J.M. BERINSON: I am aware of that, but if my memory is correct the report was not ready by the time we resumed; it came in a few days after that.

Hon Peter Foss: A smidgin of time.

Hon J.M. BERINSON: It is not a smidgin of time, Mr Foss, because it is not a matter of three days; it is a matter of almost four months. If it were only the question of the recess that provided a reason for this unusually long process within the committee, we could have expected that the report would be ready for presentation as soon as we got back. The fact that it was not ready at that time indicates an undue delay. I am not making a big issue of it and when members look at the *Hansard* they will find that I do not see this delay as in any way typical of the approach of the Legislation Committee. I am trying to say that there should be no occasion when after three and a half months, with or without a recess -

Hon Derrick Tomlinson: The Bill was before the Legislation Committee for three sitting weeks.

Hon J.M. BERINSON: That is irrelevant, with due respect. All I am trying to say is that there should be no occasion where it takes over three and a half months for a Bill to be processed through a committee of this kind. Before this committee was established, and Mr Foss will agree, our formal procedures -

Hon Peter Foss: If we had it back on the first day, the Attorney General would not have said that, but because it was two days later the Attorney General considers there was a four month delay. We could not get it back on the first day because notice must be given.

Hon J.M. BERINSON: Is Mr Foss saying that the report was ready on the first day?

Hon Peter Foss: I do not really know.

Hon J.M. BERINSON: I think it was not because I inquired at the time. I have already said I am not making a big issue of it.

The PRESIDENT: Order! When members have made up their minds will they let me know.

Hon Peter Foss: It was ready.

The PRESIDENT: Order!

Hon J.M. BERINSON: I should leave well enough alone at this point. I therefore repeat my appreciation to members for their support of the Bill.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Garry Kelly) in the Chair; Hon J.M. Berinson (Attorney General) in charge of the Bill.

Clauses 1 to 6 put and passed.

Clause 7: Section 9 repealed and a section substituted -

Hon J.M. BERINSON: I move -

Page 4, line 24 - To delete "the accused" and substitute the following -

a defendant in any criminal proceeding

This amendment is of a purely technical drafting nature and will make the wording of proposed section 9(5) of the Evidence Act consistent with the wording used elsewhere in that section.

Hon DERRICK TOMLINSON: The Opposition notes the technical nature of the amendment. However, it is of more than a technical nature; it is a much better use of language and I commend the improvement.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 8 to 11 put and passed.

Clause 12: Various sections amended or repealed -

Hon J.M. BERINSON: I move -

Page 12, line 12 - To delete "sections 324I and 331" and substitute the following -

section 324I and Chapter XXXII

In this case I think I may safely say that we are dealing with an amendment of a technical nature, although I am not denying that even amendments of a technical nature -

Hon Derrick Tomlinson: Sometimes are beautiful and mellifluous.

Hon J.M. BERINSON: I am not denying that, although I find that hard to apply to this particular amendment. The reason for the amendment is because section 331 of the Act is now the only section left in Chapter XXXII.

Hon J.N. Caldwell: For how long have these amendments been on the Notice Paper - four months or the last few days?

Hon J.M. BERINSON: As best I can tell from my file they were circulated on 27 May. That is an interesting point because in that case the amendments preceded the reference of the Bill to the Legislation Committee. I appreciate Mr Caldwell's bringing that to my attention.

Hon PETER FOSS: It is a terrible shame that we did not have these amendments in the Legislation Committee as they might have assisted in the speedy deliberation of the Bill. I have unfortunately only just received them.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 13 put and passed.

Title put and passed.

Bill reported, with amendments.

HOME BUILDING CONTRACTS BILL

Committee

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

Clauses 1 and 2 put and passed.

Clause 3: Interpretation -

Hon PETER FOSS: I move -

Page 2, lines 18 to 28 - To delete the definition of "cost plus contract" and substitute the following -

"cost plus contract" means a contract between a builder and an owner for the performance by the builder of home building work under which the total amount payable to the builder (exclusive of prime cost items and provisional sums) cannot be determined at the time the contract is entered into.

The problem with the present definition is that a number of items exist which are generally known as prime costs or provisional sums and which are quite general in housing contracts. For example, consultants' fees, insurance and various plant and equipment such as ovens, microwaves and things of that nature may not be absolutely determined at the time the contract is entered into. The usual way that has been dealt with when people enter into contracts of this nature is that they have what is called a prime cost or provisional sum. The amendment I propose allows for that and it is not a novel one. It was taken from the Victorian House Contracts Guarantee Act definition. It has, therefore, been used in other States of Australia and it overcomes the problem which arises with the present broad definition in the Bill. We could very well mean that, in order to protect himself, a builder must insist that a purchaser decide on everything he puts in the house at the very beginning. That does not seem very practical. In any event, I believe some items cannot be determined even if all one's decisions are made at the beginning, such as consultants' fees, insurance and plant hire. The essence of this amendment is to make the definition more workable.

Hon JOHN HALDEN: Hon Peter Foss seems to have a mistaken belief about what is in the Bill. I am not about to suggest to him that I am better than he at interpreting pieces of legislation. However, we need to consider the definition of cost plus. The definition is quite

clear in line 24. What the honourable member is suggesting is in fact a mistaken belief that contracts with provisional sums or prime cost items are cost plus. If we accepted this amendment we would be going outside the general thrust of this Bill which we ultimately hope will become an Act. The definition of cost plus is clear as defined within the Bill and we should not be altering it in the way suggested. I have proposed an amendment which is next on the Supplementary Notice Paper and which I hope will clarify the issue that we are talking about; it excludes prime cost items and provisional sums which is adequate to cover the intent of this Bill. Hon Peter Foss' amendment tends to want to change it in line with his second reading address. I will not go back over that, but his basic thrust was that we should be looking at contractual/common law arrangements regarding home building contracts. The Bill sets out clearly what cost plus is and we should not go beyond that definition. It would be a mistake to accept this amendment.

Hon PETER FOSS: I confess to not understanding a word that the Parliamentary Secretary said. However, I do not find that particularly unusual. The definition does not go any further; in fact, it contains most of the words contained in his definition. It leaves quite a large amount and adds the words he wants to add. I am not sure that anything he said is in any way consistent with either the wording of the Bill or the amendment he is suggesting.

Hon JOHN HALDEN: I hope that we will not get into a cheap political slanging match. If he wants to do that I will join him because I happen to like that sort of politics. If the member does not understand my explanation, I am happy to entertain a question from him. In relation to cost plus, the contracts that we propose under this Bill will have the ability for rises and falls in provisional sums and prime costs. If those matters go up and down, they are catered for in the definition of the Bill. There is no need to add anything to the Bill.

Hon Peter Foss: You are proposing to add it!

Hon JOHN HALDEN: I am trying to clarify it. Hon Peter Foss indicates a mistaken belief of what is in the Bill.

Hon Peter Foss: I am subtracting words, not adding them.

Hon JOHN HALDEN: I know the member is. However, he is confused about prime costs, provisional sums and cost plus. What he says is not what we say and, therefore, what the Bill says. The amendment is surplus; it changes the integrity of the Bill. Prime costs and provisional sums can go up and down. The safeguards are there already and I cannot see the purpose for the amendment.

Hon PETER FOSS: My amendment deletes most of the definition. I am not adding anything to it, as the Parliamentary Secretary said. The words I am adding are being added by Hon John Halden on the next page of the Supplementary Notice Paper. The only thing that I am adding is that which he proposes to add and I am subtracting a large amount of the definition. I shall be interested to hear him explain how the removal of the words I propose to be removed add something to the Bill.

Hon JOHN HALDEN: I object to the amendment because cost plus is defined from line 24 to line 28. If that definition is removed, the basis for the legislation is removed. The amendment does not make sense. Removing that part of the definition would cause considerable difficulty.

Hon GEORGE CASH: When this Bill was first discussed, it was suggested by the Opposition that it be referred to the Standing Committee on Legislation so that matters such as this could be discussed rationally. One of the problems that the Opposition predicted was that, if this matter was dealt with -

The CHAIRMAN: Order! A determination of this Chamber must not be canvassed.

Hon GEORGE CASH: I will not canvass a decision of the Chamber; I confirm that it is likely that this Bill will take a considerable time to pass through the Committee stage because we will expect answers to questions before we vote on it. Hon Peter Foss' explanation for his amendment is very clear. The Parliamentary Secretary, in suggesting that we should not support the amendment, has given me no reason to vote against the proposed amendment. In fact, the more he attempted to answer Hon Peter Foss' comments, the more I was convinced that I should support the amendment.

Hon Tom Stephens: The Parliamentary Secretary has convinced me, I can tell you, Mr Cash.

Hon GEORGE CASH: That would not be difficult because a very superficial explanation of anything would be enough for Hon Tom Stephens. I support the amendment moved by Hon Peter Foss. He has explained it clearly and I am sure that most members understand it.

Hon JOHN HALDEN: It is clear that the decision made by this Chamber a few weeks ago took some members by surprise; they did not like its determination. There is no point in trying to be derogatory towards me. That belittles this Chamber's original decision. Hon Peter Foss has stated his intention in regard to this Bill and we have made a determination.

Hon D.J. Wordsworth: It might make another one.

Hon JOHN HALDEN: It might.

Hon D.J. Wordsworth: You now have three supporters; you had only two a little while ago.

Hon JOHN HALDEN: Will Hon David Wordsworth cross the floor? The amendment proposes removing a very central part of the Bill. It proposes to remove from the definition reference to cost plus.

Hon Peter Foss: It does not remove it. It is the reverse of what you are saying.

Hon JOHN HALDEN: No, it is not. The Government's position on this amendment remains the same.

Division

Amendment put and a division called for.

Bells rung and the Committee divided.

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

Division resulted as follows -

Ayes (13)

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

Noes (14)

Hon J.M. Berinson	Hon Graham Edwards	Hon Garry Kelly
Hon J.M. Brown	Hon John Halden	Hon Mark Nevill
Hon T.G. Butler	Hon Kay Hallahan	Hon Tom Stephens
Hon Cheryl Davenport	Hon Tom Helm	Hon Fred McKenzie
Hon Reg Davies	Hon B.L. Jones	*(Teller)*

Pairs

Hon W.N. Stretch	Hon Bob Thomas
Hon Barry House	Hon Doug Wenn
Hon E.J. Charlton	Hon Sam Piantadosi

Amendment thus negatived.

Hon JOHN HALDEN: I move -

Page 2, line 19 - To include after the word "amount" and before the word "that" the following -

excluding prime cost items and provisional sums

Amendment put and passed.

Hon GEORGE CASH: I move -

Page 3, line 10 - To add after the word "dwelling" the following -

including an existing dwelling and/or strata-titled dwelling

Members will be aware that the legislation relates to an existing dwelling and there has been considerable comment in the building industry that the interpretation of an existing dwelling needs to be widened and that the words "strata titled" be specifically stated in the legislation.

Hon JOHN HALDEN: I have been advised not to accept this amendment and I am not sure why the member has moved it. It is difficult to understand the reason for the amendment because it adds nothing to the definition of "home building work". It is an amendment to paragraph (a) of that definition and the only reason I can ascertain for the amendment is to make it consistent with paragraph (c).

Hon Peter Foss: And paragraph (d).

Hon JOHN HALDEN: I am prepared to accept Hon Peter Foss' addition to my comments. The amendment does not add a great deal to the legislation because a dwelling and a strata titled dwelling are encompassed as being one and the same thing.

Hon Peter Foss: Why is it included in paragraphs (c) and (d)?

Hon JOHN HALDEN: It is covered by virtue of what the Bill states. The Government will oppose the amendment because it does not add anything to or take anything away from the Bill.

Hon PETER FOSS: The Parliamentary Secretary's reaction is extraordinary. If the word "dwelling" includes a strata titled dwelling, which is a possible interpretation, there is no need for those words to be included in paragraphs (c) and (d). Hon George Cash had two ways to proceed in this matter: He could either move the amendment he has moved or he could have deleted the words in his amendment from paragraphs (c) and (d). If we have a piece of legislation like this and those words are included in one paragraph and deleted from other paragraphs it gives rise to the implication that it has been done advisedly. The Latin maxim governing that is "expressio unius est exclusio alterius" and obviously that was in Hon George Cash's mind when he moved his amendment. He is conscious of the fact that the courts are likely to see some significance in the difference between paragraph (a) and paragraphs (c) and (d). He is hoping to avoid any such suggestion by making the paragraphs consistent. The alternative is, if what the Parliamentary Secretary says is correct, to delete those words being inserted in this amendment from paragraphs (c) and (d). I support the amendment.

Hon GEORGE CASH: It appears the Parliamentary Secretary does not intend to respond to the issues raised by Hon Peter Foss and me. In not replying he does not give us an opportunity to judge whether he is opposed to the amendment because he wants to see inconsistency in the legislation or whether he would prefer the words "including a strata-titled dwelling" deleted from paragraphs (c) and (d). I invite him to comment so that we can ascertain his position. He has stated on a number of occasions that he believes the inclusion of these words adds very little to the legislation. I suggest that if the words were deleted it would take away very little. I do not understand his opposition to the amendment.

Hon JOHN HALDEN: I am only too happy to respond to the members' comments. The situation, as I am advised, is that the addition would add little to the Bill. If the member intends to proceed with the amendment he has moved my instruction is to oppose it, but the amendment does not greatly affect the Bill.

Amendment put and passed.

Hon GEORGE CASH: I move -

Page 3, lines 14 to 19 - To delete the lines and substitute the following -

(d) constructing or carrying out any associated work in connection with any work referred to in paragraph (a), (b) or (c);

The reason for my amendment is that it has been argued by members associated with the building industry that the wording presently proposed in the Bill is somewhat ambiguous and that it is necessary to delete the existing words and substitute the words proposed in my amendment. Hon John Halden could probably use the argument that he used in respect of the previous amendment; namely, that because the words appear to be somewhat similar, the amendment would add little to the legislation. However, I am told that for the sake of clarification and to avoid future legal challenges there is a significant difference in the words I am asking the Committee to agree to be substituted.

Hon JOHN HALDEN: My opposition to this matter will be somewhat stronger. If the Leader of the Opposition's amendment were passed, associated works valued over $6 000 to existing dwellings would not be covered by the Bill. That is not the intention of this legislation. It has been made clear in respect of the integrity of the Bill from its inception and in discussions with a range of people in the cottage industry that the Bill will include associated works to existing dwellings. Extensions to various types of dwellings can be as expensive as building the original dwelling, and this Bill must offer protection in respect of associated works to existing dwellings.

Hon PETER FOSS: What the Parliamentary Secretary said seems to be more applicable to the definition of a home building work contract than to home building work. This amendment is to the definition of home building work.

Hon John Halden: I am referring to paragraph (d), "constructing or carrying out any associated work".

Hon PETER FOSS: I understood the Parliamentary Secretary to say that Hon George Cash's amendment would delete things that would be caught by the Bill, but this definition includes things. The next definition is the one that has the exclusions. I cannot see that the Parliamentary Secretary's comments make sense in the context of a definition which includes things.

Hon JOHN HALDEN: I am advised that if we deleted paragraph (d) we would also take out associated work to existing dwellings. That would not be covered by this Bill.

Hon Peter Foss: Paragraph (c) refers to altering, improving or repairing a dwelling.

Hon Derrick Tomlinson: Paragraph (d) refers to an existing dwelling, including a strata titled dwelling.

Hon GEORGE CASH: I invite Hon John Halden to reconsider his comments, because my amendment will not take out associated work to an existing dwelling. That is well covered in paragraphs (a), (b) and (c), and is stated clearly under the definition of home building work. The words that I propose to substitute are said by those in the legal profession and in the building industry to give greater clarity to the area about which we are talking. This is not a trick amendment. The aim is to make this legislation better understood by those who will have to use it in the future, and hopefully there will be fewer arguments if we remove the ambiguity that presently exists in the definition.

Hon TOM STEPHENS: Why does Hon George Cash wish to remove the reference in the Bill to strata titled dwellings?

Hon GEORGE CASH: I am having some difficulty in explaining this to the member. We dealt with that matter earlier, and if the member looks at paragraph (c) under the definition of home building work he will see that it states, "including a strata titled dwelling". It would be uncharitable if I said that the question from Hon Tom Stephens was probably meant to be a trick question that backfired on him.

The CHAIRMAN: I am running this show at the present time, and if people interject it is very difficult for Hansard. We have a difficult Bill with which we want to proceed, and I want to proceed in the best manner. I do not need any further interjections from members when the Parliamentary Secretary is on his feet.

Hon JOHN HALDEN: If paragraph (d) were removed, associated work as defined in the interpretation would not apply to existing dwellings.

Hon George Cash: Yes it would.

Hon JOHN HALDEN: We have a disagreement about whether it would. I suggest it would not. I am happy to entertain an argument, but that is my suggestion.

Hon PETER FOSS: There are two reasons that existing dwellings are covered. Firstly, we have just passed an amendment to paragraph (a) of this clause so that it will include an existing dwelling and/or a strata titled dwelling. Therefore, there is no doubt that paragraph (a) includes existing dwellings and strata titled dwellings, because we put them in there. In fact, the Parliamentary Secretary said a short while ago that we did not need to put them in there because "dwelling" includes a strata titled dwelling. The Parliamentary Secretary must be consistent. Secondly, if one looks at paragraph (c) - one finds that one cannot alter,

improve or repair a dwelling which does not exist - that paragraph obviously relates to work on existing dwellings, and it goes on to include a strata titled dwelling. Once that has been stated, it is unnecessary to say anything more than has been proposed by the amendment moved by Hon George Cash. As paragraphs (a), (b), and (c) pick up everything in subparagraphs (i) and (ii), I cannot see the problem.

Hon JOHN HALDEN: I am quite happy to continue with this. I think it is most important that we should.

Several members interjected.

Hon Max Evans: We are substituting.

Hon Derrick Tomlinson: We are talking about carrying out associated work.

Hon Peter Foss: That is the way the amendment is put.

Hon TOM STEPHENS: Perhaps I could comment on this definition; I may even provide the Leader of the Opposition with some extra mirth.

Hon N.F. Moore: Extra time.

Hon TOM STEPHENS: Not at all. The Parliamentary Secretary has already convinced me, as I have told the House. I am just sorry that he has not been able to convince members opposite. If members opposite had read the definition as it appeared before the Committee meddled with it this evening, they would have had the opportunity of reading a definition which flowed very sensibly by simply talking about the four things which fitted under the category of home building work. The definition would have read, "constructing or reconstructing a dwelling -"

Several members interjected.

Hon TOM STEPHENS: Members opposite have had enough interjections -

The CHAIRMAN: Order! Right from the very beginning of this Committee there have been vibrations in the air which have not been encouraging to me. I will not stand for any more interjections. I shall report to the President the next member who interjects. I make it perfectly clear that I am not looking forward to doing it. I am not saying this as a threat; I am saying this so that we can get on with the debate. If any member wants to answer a question put by the President, he will have no trouble from me.

Hon TOM STEPHENS: As I was telling the Committee, the definition was a very sensible one, and it read -

Point of Order

Hon PETER FOSS: The member is reflecting on an earlier decision of the Committee. We have already amended paragraph (a), and he is now suggesting that we should not have done so.

The CHAIRMAN: I did hear him reflect on it at the beginning, and I intended to draw it to his attention. However, I thought he was using it on this occasion in the same manner as Mr Foss used the definition, so there is no point of order.

Committee Resumed

Hon TOM STEPHENS: The definition indicated that there were four separate categories of home building work. One was the constructing or reconstructing of a dwelling. The second was the placing of a dwelling on land - a different definition from what members opposite are looking at in the first definition, because they are looking at the prospect of moving a dwelling onto a site as opposed to actually constructing a dwelling on a site. The third section of the definition referred to altering, improving or repairing a dwelling, including a strata titled dwelling. For the first time we have had introduced into the definition reference to altering, improving or repairing. Finally we were looking at a definition which included constructing associated work. The definition which the Parliamentary Secretary has tried to defend, and in my view has successfully defended, should be left intact without the additions and alterations being proposed by the Leader of the Opposition. He might be leading members in the wrong direction if he were to persuade them to adopt the course of action he is advocating. We would previously have had in place a definition which made some sense; it had a ring and a flow to it. Instead of that he is introducing words which will change the

flow of the definition, complicate it and make it no longer as useful to this Bill as it would have been if left unassaulted by the Leader of the Opposition. I urge the Committee not to accept the amendment.

Division

Amendment put and a division called for.

Bells rung and the Committee divided.

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

Division resulted as follows -

Ayes (14)		
Hon J.N. Caldwell	Hon P.H. Lockyer	Hon R.G. Pike
Hon George Cash	Hon Murray Montgomery	Hon Derrick Tomlinson
Hon Reg Davies	Hon N.F. Moore	Hon D.J. Wordsworth
Hon Max Evans	Hon Muriel Patterson	Hon Margaret McAleer
Hon Peter Foss	Hon P.G. Pendal	*(Teller)*

Noes (13)		
Hon J.M. Berinson	Hon John Halden	Hon Mark Nevill
Hon J.M. Brown	Hon Kay Hallahan	Hon Tom Stephens
Hon T.G. Butler	Hon Tom Helm	Hon Fred McKenzie
Hon Cheryl Davenport	Hon B.L. Jones	*(Teller)*
Hon Graham Edwards	Hon Garry Kelly	

Pairs	
Hon W.N. Stretch	Hon Bob Thomas
Hon Barry House	Hon Doug Wenn
Hon E.J. Charlton	Hon Sam Piantadosi

Amendment thus passed.

Hon PETER FOSS: I move -

Page 4, after line 6 - To add a new paragraph (c) as follows -

(c) a contract for the performance of home building work where all amounts payable under the contract are only payable if certified to be payable by an independent certifier engaged by the owner.

We must go back to the reason for this legislation. It is a piece of consumer protection legislation for consumers who are not able to look after their own interests. This has come about principally because large numbers of consumers enter into various major contracts for the construction of houses without any form of professional advice. Consumers who buy a piece of land with a house on it usually have some protection, either advice from a settlement agent or a solicitor. People engage solicitors for many other transactions, but for some extraordinary reason, having purchased land upon which they wish to construct a house, they do not seem to take any professional advice. There are exceptions and one of those is where people engage an architect to act on their behalf. The whole concept of having an architect act on one's behalf is inconsistent with the purpose of this Bill. In the course of entering into the contract and carrying out the contract many obligations are laid upon a builder. When someone engages an architect to act on his behalf in respect of a building contract, the architect dictates the terms of the contract. Usually those terms are fairly onerous terms to be met by the builder. Furthermore, the architect is virtually a quasi-arbiter all the way through a contract. Cases indicate that a certifying architect when he is certifying, although he remains at all times the agent of the owner of the land, nonetheless has a duty to act fairly between the parties. The architect plays a quasi-arbiter role. If an obligation is put on the builder to do certain things, when in fact they are being dictated by an architect, the builder runs the possibility of suffering a number of quite severe penalties, some criminal, and he faces the prospect of being unable to recover moneys owing to him merely because of the way in which the architect determines the manner in which the contract is to be carried out.

The suggestion is that such contracts be excluded from the operation of the Bill. This is by no means an unusual provision.

I refer the Committee to the Insurance Agents and Brokers Act of the Commonwealth, which deals with insurance intermediaries, and the Insurance Contracts Act of the Commonwealth, which deals with insurance contracts and which contains a large number of consumer provisions. It is very strong consumer legislation. In many cases it provides that certain notices must be given and certain things must be done by an insurance company, failing which penalties attach to the insurance company. Normally the company is unable to rely upon provisions in the contract, much the same as the provisions we have in the Bill we are discussing; certain things are deemed in favour of the insured. To give members an example of the sorts of notices that must be given: Some relate to special terms of the contract and others affect the renewal of a contract. The Commonwealth Act provides that those notice provisions do not have effect where the insured is represented by a broker. The reason is that it recognises a person who employs a broker to place insurance on his behalf is in a totally different position vis a vis the insurance company from a person who does not employ a broker. If someone has a professional adviser his remedy is quite plainly with his professional adviser. Furthermore, a person would be unlikely to need a remedy, because he has somebody looking after his interests. If a consumer were to have the benefit of both that person looking after his interests and insisting upon a particular form of behaviour by the other party, as well as having the benefit of the consumer protection provisions, he would run the risk of doing considerable injustice to the person who has the burden placed upon him to protect the consumer. We run the risk with this piece of consumer protection legislation of placing those people who have the ability to gain their protection from engaging an architect and having all the work certified and imposing on a builder an unwarranted obligation when there is no mischief that demands that we do this. This whole piece of legislation must be directed at overcoming mischief; that is, the unprotected position of unrepresented consumers. It seems that we should follow the model which has been very ably demonstrated by the Commonwealth Parliament with its Insurance Contracts Act and say that in those circumstances where the amounts payable on the contract are payable only if certified to be payable by an independent certifier engaged by the owner, those contracts are to be included within the exceptions that are stated within the definition of home building work contracts. This is a pivotal definition of the Act. It is a very important one which we should think about because arising out of this definition are all the consequences that flow through the rest of the Bill. I urge the Chamber in this particular instance that we must have reference to the reasoning behind the Bill and that we should not impose that burden when it is unfair to do so and when there is no mischief to be overcome.

Hon JOHN HALDEN: Hon Peter Foss has excelled himself in understating the effects of the proposed amendment. He has talked about looking after the interests of consumers, justice to consumers and the unrepresented position of consumers. However, to do what Hon Peter Foss has suggested here is not to look after the interests of consumers; it is to have it so that consumers are not protected against architect designed and built houses. It is unbelievable that Mr Foss can use those words and then go about doing exactly the opposite. It may be true that architects are professionals, but that is not to suggest that consumers should not be protected from professionals.

Many cases exist where consumers must be protected. This will be another. Further, if Hon Peter Foss' amendment were successful we could find that builders may employ an architect as staff or on contract to supervise the house in perhaps a token way. An example of that is where a builder's licence has been used and the builder has known nothing about the construction of the house. Hon Peter Foss' proposed amendment is particularly dangerous. I see no reason that, in protecting consumers who are having houses built, we should not include all the elements involved in construction of houses, be they builders or architects. They all have the potential to require the consumer to seek resolution of a problem. Hon Peter Foss may be correct in suggesting fewer problems are likely to arise with architect-constructed houses. Nonetheless, problems may still arise and this legislation is designed for that possibility. Despite Hon Peter Foss' view, his remarks do not reflect the intention of this Bill. If Hon Peter Foss were in a courtroom protecting the interests of architects, his would be very good words to use. However, in this Chamber they are not; they are deceptive of the consumer's best interests. This matter concerns one of the crucial

elements of the Bill, as the member has said. I see no logic whatsoever in having architects excluded from the provisions of this Bill. It is about protection of consumers who build or buy houses.

Hon PETER FOSS: I despair a little in that it is clear the Parliamentary Secretary has not read the amendment, because he suggested that a builder might engage an architect. However, that is obviously a poor suggestion, because the amendment specifically states -

> . . . amounts payable under the contract are only payable if certified to be payable by an independent certifier engaged by the owner.

If the Parliamentary Secretary has not read or understood that part of the definition I am not surprised that he has not understood the rest of it. Its aims are quite clear and what he has proposed is not possible.

Hon Tom Stephens: Could a builder not channel a potential owner to an architect in order to avoid the homeowners' protection which would otherwise be available through the Bill?

Hon PETER FOSS: Hon Tom Stephens has suggested an extraordinary proposition. Architects are professional men and women who, when they are engaged on behalf of an owner, act on behalf of that owner. If they do not do that and are in fact secretly engaged by a builder, they are probably committing a very serious criminal offence. To commit a criminal offence as a way of getting around the summary offence provided under this Bill would be an extraordinary action. One could theoretically go out and commit murder in order to avoid a traffic fine. Perhaps what Hon Tom Stephens suggests will happen, but it is nonetheless extraordinary. Of course any form of fraud is possible. Theoretically all the provisions in this Bill could be defeated by fraud. However, if one were caught one would go to gaol for a considerable period.

Hon Tom Stephens: Where would the fraud be?

Hon PETER FOSS: If one secretly engaged and paid an architect to act for an owner whereas in fact he was acting for the builder, I can think of a number of provisions of the Criminal Code he would be breaching; for example, taking a secret commission is one.

Hon Tom Stephens: The commission could be the effect of having sent business elsewhere.

Hon PETER FOSS: What Hon Tom Stephens is saying is fanciful; so fanciful that he does not do his argument a great deal of justice by raising it. I would much prefer to deal with the arguments of the Parliamentary Secretary responsible for this Bill; his arguments are better than Hon Tom Stephens'. I have dealt with one part of the matter; that is the question of the person being engaged by the builder.

The amendment provides that the person be engaged by the owner. There is a misunderstanding on the part of the Parliamentary Secretary about what has been proposed. The amendment does not mean that the consumer would not be protected against unreasonable architects. Provisions already exist relating to a person's dissatisfaction with an architect. If the amendment is not included and a problem arises with the architect, the Bill does not provide any remedy against the architect; it provides remedies only against the builder. What we are saying is that if a person employs an architect who is dictating the terms of the contract and who is looking after the owner's interests, it is unfair for the builder to be required to take responsibility for all the matters being dictated by the architect. I do not believe either of the criticisms made by the Parliamentary Secretary are correct. However, I quite understand that we have a fundamental philosophical difference on this and I do not think we will convince one another of our own point of view. It is quite clear that the Labor Party has strong leanings towards a "nanny" State attitude with an absolutist way of dealing with things, whereas we take a more pluralistic attitude. The events in eastern Europe have indicated which is the better way to go.

The CHAIRMAN: Order! I would like Hon Peter Foss to refer to the Bill.

Hon PETER FOSS: That difference in attitude has been common in society and I do not think the Labor Party will budge from it. It seems that in this instance it is placing an unreasonable burden on the builder. The only way I may be able to convince the Parliamentary Secretary is to say a Labor Government administration in Canberra adopted the same procedure I am suggesting when it brought in the Insurance Contracts Act. If it is good enough for Hon John Halden's Federal Labor colleagues, he may see it as being good enough here.

Hon JOHN HALDEN: In spite of what I consider to be unrelated remarks about the "nanny" State, Hon Peter Foss' amendment proposes two sets of remedies for people who build a house: One set for those people who engage a builder and another set for those who employ an architect. That is two classes of citizens. If Hon Peter Foss wants to get off the topic, the conservatives opposite are very fond of making different classes of citizens. This is another occasion on which they are attempting to do so. Why would he propose that people who build a house with an architect should be deprived of access to the disputes tribunal? If they have a problem and it is an architect designed house, why should they be deprived of the same rights as other people? I suggest the member is wrong.

Hon Peter Foss: We will not agree on that.

Hon JOHN HALDEN: We will not, because constituents of mine have had problems with architect designed houses, although not as often as people who have had houses built by registered builders. The architect and the builder are the same person. The member said that he is concerned with looking after the best interests of consumers. That is not the case. He is not concerned with justice; he is concerned with injustice for consumers. His amendments would leave consumers unrepresented. That is his proposition. His position is totally inconsistent. He has proposed some flowery ideas, but the substance does not resemble anything he said. On that basis we oppose the amendment.

Hon J.N. CALDWELL: Will Hon Peter Foss explain to me whether, if an owner engaged an architect to design a home or a building, that means that, if there is a dispute, he has to employ an independent certified person to make a decision?

Hon PETER FOSS: Firstly I will answer the points raised by Hon John Halden because for a moment he sounded as though he understood the point.

Hon John Halden: You can't help yourself. You always have to stoop to these low levels.

The CHAIRMAN: Order! Hon Peter Foss will resume his seat. I do not think that sort of carry on helps us in our deliberations. As the President often says, members might not like what other members say, but they have a chance to respond. I will give protection to the member making the speech so that we can get through this Bill as quickly as possible.

Hon PETER FOSS: The Parliamentary Secretary referred to situations where the architect and the builder are the same person. He said that people had had problems on those occasions. However, those contracts which involve the architect and the builder being the same person would not be excluded by this amendment. If the Parliamentary Secretary cannot grasp that proposition, he will not be able to grasp the rest of my proposition because it refers to an independent certifier engaged by the owner. If he is the architect and the builder, he is not an independent certifier engaged by the owner; he is the builder.

Hon John Caldwell asked whether an independent certifier is required when an architect prepares plans. If the owner merely purchases plans from an architect who takes no further part in the construction, the contract would be caught by this Bill. However, if he wants them certified, they can be certified by the same architect; they do not have to be certified by another one. An architect who does the plans can also be the independent certifier. However, he must be an independent person engaged by the owner, not the builder. The important thing is that he is not the owner or the builder; he must be an independent person engaged by the owner. If that is the basis of the amendment, we suggest that the person is not left unprotected; he has a stalwart in the independent certifier. That is the reason we say that he does not need the protection of this Bill. However, we go further. We not only say that he does not need it, but because that person dictates the way it proceeds it is unfair to make the builder comply with the Act where he is also being dictated to by a person engaged by the owner to say how it is to be carried out. That is our concern. I think the argument is based on whether the person is sufficiently protected, and is it unfair on the builder to impose an obligation in those circumstances. One could answer that question either way. I know which way I would answer it. However, the points that the Parliamentary Secretary has raised in opposition to the amendment indicate that he does not understand it, because it refers to an independent person representing the owner, not to that person having no representation or where the builder is also the architect.

Hon JOHN HALDEN: I do not think I have wrongly interpreted anything. I know what the member is up to. The member said that the independent certifier would be independent. I

question how he would be independent if he is engaged by the owner. Further, where in his amendments do we have a definition of what is an independent certifier?

Hon Tom Stephens: Good point.

Hon JOHN HALDEN: If the builder disagrees with the independent certifier, whoever that happens to be, the owner still has to go to court. Where is the consumer protection? There is none and that is what this amendment is all about. That is the line the member follows when he puts an argument on behalf of one group of people, the architects. However, one does not have to dig too deep to see what he is up to with the consumers; he is about their going to court.

Hon P.G. Pendal: You do have a vivid imagination.

Hon JOHN HALDEN: It works well with Hon Peter Foss. I am actually beginning to warm to my task here tonight. There was a moment when I thought that Hon Peter Foss would give me a rough time. However, I think we are squaring up. This matter has nothing to do with the smokescreens that he raised in the beginning. He may not like it, but he referred to looking after the interests of consumers, making sure there were no injustices for consumers and making sure they were not left unrepresented. That is exactly what he intends doing. I suggest that the amendment be defeated.

Hon DERRICK TOMLINSON: It is a repugnant technique of debate for a person, having failed to win the argument by all means of rational disputation, to turn to his opponents and say, "You stink."

The CHAIRMAN: Order! I do not want any personalities brought into this debate. I listened to the Parliamentary Secretary and there was no such implication. I ask the member to speak to the amendment before the Chair.

Hon DERRICK TOMLINSON: Mr Chairman, in the light of your direction I will refer to the technique of argument as the argument ad nauseam. The argument ad nauseam is that if a person cannot defeat his opponent on the basis of rational disputation he resorts to ad nauseam. Ad nauseam says that the debate is not about principles, issues or the different interpretation of the proposition, but rather is an attack on the person presenting a proposition which one cannot defeat by rational argument.

Hon Tom Stephens: You mean ad hominem.

Hon DERRICK TOMLINSON: I call it ad nauseam and the member may call it ad hominem. The member is talking about ad hominem as a name calling argument. I am talking about -

The CHAIRMAN: Order! I ask members to consider what I am saying; that is, this is not a second reading debate. The Committee is debating an amendment to clause 3 which has been moved by Hon Peter Foss.

Hon DERRICK TOMLINSON: The proposition contained in proposed new paragraph (c) is that there be an independent certifier. The question was asked: What is an independent certifier? An independent certifier is a person engaged by the owner and who is independent of the contract.

Hon John Halden: What a lot of doublespeak. That is good consumer protection!

Hon DERRICK TOMLINSON: Mr Chairman, shall I continue?

The CHAIRMAN: I ask the Parliamentary Secretary to refrain from making those sorts of comments.

Hon DERRICK TOMLINSON: The first principle of good consumer protection is that one should understand the basis of the argument by which a consumer is protected. A home building contract is a contract between a builder and an owner - the two people engaging in the contract. The proposed amendment refers to the independent certifier engaged by the owner. The independence is independence of the contract, not a person who is a party to the contract - not a person who is the builder, not a person who is the owner - but a person independent of those two people and independent of the contract.

Hon John Halden: It may not be an architect.

Hon DERRICK TOMLINSON: In this instance it may be an architect or it may not be an

architect. It may be any other person engaged by the owner as an independent certifier. To argue that Hon Peter Foss was arguing in favour of an independent certifier because he was simply looking for work for lawyers is not a very rational deduction to be drawn.

Hon PETER FOSS: I agree with the very lucid comments of my colleague, Hon Derrick Tomlinson, who has clearly pointed out the issues concerning this matter. The Parliamentary Secretary has not read the amendment because he said that if there were to be a dispute it would have to go before the court. It is quite the reverse. If the builder does not agree with the independent certifier he does not get paid. Under the Government's legislation the case will be stuck in a tribunal. The Government is trying to cut out the independent certifier procedure and is forcing people into a dispute settlement procedure which is quite the reverse of what I am proposing in my amendment; that is, that the person does not get paid if he does not get certified. It is obvious that the Parliamentary Secretary has not read the amendment. If he had he would understand that it means that if a certifier says the builder is not to be paid, he does not get paid. He does not have to go to court and he has the same amenity under this Act of not having to pay the builder, but the case does not have to go to a tribunal because a person can be engaged by the owner. Hon Derrick Tomlinson explained the situation very well; it is obvious he has read the amendment and understands it.

Hon TOM STEPHENS: I wonder whether Hon Peter Foss has considered the possibility that his amendment has the effect of driving all potential home owners who want to build a house from not consulting a member of the architectural profession. In fact, his amendment, while being of some advantage to the legal fraternity, is certainly not of any advantage to the architectural fraternity.

Hon Peter Foss: That was not my intention.

Hon TOM STEPHENS: It may not be the member's intention, but nonetheless it will be the intent of the legislation if he proceeds with his amendment. Anyone wanting to build a house and wanting the protection of this legislation would, if this amendment is passed, be wise not to obtain the services of an independent architect. If he did, he would not have the protection of the legislation. In that context people wanting to build a home would have to ignore the architectural profession. The member is doing that profession a disservice and, more importantly, he is doing the consumers a disservice if they are left in the situation, once they engage an independent architect, where they are no longer protected by this legislation. In that context I urge the member to desist from proceeding with his amendment.

Hon J.N. CALDWELL: Further to my previous question and to what Hon Derrick Tomlinson said, an independent certifier has nothing to do with a contract between the owner and the builder. If an owner engages an architect to design a home it means he is practically involved in the contract. I wonder how he could possibly be independent. It is the word "independent" which is causing concern. If the amendment were phrased to read an ordinary certifier and not an independent certifier it would overcome some of the anomalies. I am confused - I previously thought that any certifier would be all right as long as he was not an independent certifier. The word "independent" is confusing. Can someone clarify it?

Hon PETER FOSS: There are two parties to a building contract: The builder and the owner. The architect is not a party. He is a third party, and is independent of the contract. The word "independent" means a person who is not one of the parties to the building contract. He is neither the owner nor the builder. The word "independent" is necessary because it must be a person who is neither the owner nor the builder. Hon John Halden gave the example of an architect who is also the builder. However, he could not be an independent certifier because he would actually be a party to the contract. The word "independent" indicates that the person is not a party to the building contract. He is not a stranger to the contract in that he knows nothing about it or has no involvement in it. He is intimately involved because he may have designed the building, or he may be the architect appointed under the contract, and he may be the person who is certifying, but he is not a party to the contract and is, therefore, independent of the parties.

The point made by Hon Tom Stephens had occurred to me. It is interesting that he should raise it, because his colleague drew the opposite conclusion shortly before he did; namely, that I was acting in the interests of architects in moving this amendment. In fact, I was acting in the interests of the people of Western Australia as a whole. In answer to the member, no, I do not believe that will be the result. People will look to see what is the better form of

protection that they have. The result on a Commonwealth basis is that people are increasingly moving towards using brokers; and that is a sensible move. The problem that people have with architects is the cost. Contrary to what has been said by Hon John Halden, if anybody were disadvantaged by this amendment, it would probably be the wealthier people - those people whom members opposite might accuse us of having as our constituents. However, we are not looking so much to represent a particular group of people but to strike a reasonable balance in a piece of consumer legislation. It is reasonable when introducing a piece of consumer legislation to look after the interests of the consumer but to not disregard all other competing interests. We must try to strike a balance when we make any change to the law or impinge on any rights that people have. All we are trying to do here is strike a balance. The reason that there is a difficulty in our arriving at agreement on this is that where one places that balance is to some degree dependent upon one's political orientation. I always put the balance in the centre, whereas the Labor Party puts its balance to the left. It is a matter of our balancing competing interests. Consumer legislation should not be introduced just from the point of view of the consumer. It is possible to introduce some very bad legislation if one looks at it purely by pushing one particular interest. It is intriguing that it has been suggested that what I propose is both in favour of and against architects. If that is what is being suggested, it sounds like it may very well be balanced.

Hon Tom Stephens: We both agree it is in favour of lawyers.

Hon PETER FOSS: I do not agree that it is in favour of lawyers, and I will point out the reason. The member may not believe me because he chooses not to do so. I have pointed out that a person will not even have to go to the tribunal that is to be set up, because the independent certifier whom he has engaged will determine what happens. If the independent certifier decides that they will not pay, then they will not pay, and that will be the end of the matter. It would be desirable for people to have independent certifiers. I do not believe that people will do that, but where they do, we must put the balance in the correct place. We must look not just single-mindedly from the point of view of the consumer but from the point of view of the whole community and in light of whether the consumer does need protection under those circumstances. I say the answer is no. Not only does the consumer not need protection under those circumstances because he is already protected, but more importantly I believe we would be unfair to the Bill. I hope I have not introduced any new argument.

Hon JOHN HALDEN: I do not propose to introduce any new argument either, except to again go through the issues that we have already gone through. For the first time tonight Hon Peter Foss and I may agree. There is a difference in our interpretation, based on our political standpoint. The sort of consumer protection legislation that the member proposes is hit and miss; a bit here and a bit there. Any worthwhile consumer protection legislation must have one important component; namely, it must be universal. If it is hit and miss, then smart people will miss it, and consumers will miss out. For many years we have had legislation in this area which has been hit and miss, and the people who have missed out and suffered have been the consumers. To strike the balance, to use the member's words, is to have universality in this legislation. To return to the definition of independent certifier, Hon Peter Foss started with the proposition that it was an architect. I was then told by another member opposite that it did not have to be an architect; at the end of the day it could be anyone. Whoever is the independent certifier, what we would create out of this amendment if it were to pass would be either a dualistic system, a three tiered system of a four tiered system, and the losers would be the consumers. I suggest to the Committee that it reject the amendment.

Hon GEORGE CASH: I support the amendment moved by Hon Peter Foss. When we discussed this legislation during the second reading stage, the Liberal Party pointed out clearly that it was keen to see consumers protected in a realistic manner. What concerns me about this amendment is that the Government appears to be adopting the view that it must hold the line no matter what the argument put up by Hon Peter Foss. It was clear from the response made by the Parliamentary Secretary to the argument put forward by Hon Peter Foss that the Parliamentary Secretary had a closed mind about the matter. It seems to me that the proposed amendment offers an opportunity or another option for those in the community who wish to go down that track; and that is not unreasonable. The Parliamentary Secretary has said he is not prepared to consider any other options, whether they be good, bad, or otherwise, because he wants a universality of approach to this matter. If we adopt that view, all we are really saying is that the Parliamentary Secretary, in the form of Big

Brother, will decide what is good for us, whether we like it or not, and will not offer to members of the consumer community the opportunity of any freedom of choice. I happen to believe that the independent certifier referred to by Hon Peter Foss is a person who can be relied on to make reasonable judgments.

Hon John Halden: Who is it? You do not even know that.

Hon GEORGE CASH: It is the very person who is nominated as the independent certifier by the parties.

Hon John Halden: No; engaged by the owner, not by the parties.

Hon GEORGE CASH: The Parliamentary Secretary has just confirmed that he has either not read the amendment or he has not understood it.

Several members interjected.

The CHAIRMAN: Order!

Hon GEORGE CASH: I do not want to get into a slanging match, because there is no need for it.

The CHAIRMAN: Neither do I.

Hon GEORGE CASH: It appears to me that the Parliamentary Secretary does not want to be swayed by logical argument; he wants to close his mind to that argument and adopt a purely political stance which will be of no benefit to the community. In supporting the amendment I indicate that the Liberal Party is very keen to see that consumers are protected by realistic and reasonable legislation. I believe this amendment is something that we should pursue in a logical manner and not close our minds off and say that because it was moved by someone other than a Government member it is no good. When Hon Peter Foss moves amendments in this Chamber, they are amendments that he has considered, and the reasons he advances are logical and well thought out reasons which demand the attention of the Government. They should not be cast aside purely for the political advantage which Hon John Halden seems to seek.

Division

Amendment put and a division called for.

Bells rung and the Committee divided.

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

Division resulted as follows -

Ayes (14)

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

Noes (13)

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

Pairs

Hon W.N. Stretch	Hon Bob Thomas
Hon Barry House	Hon Doug Wenn
Hon E.J. Charlton	Hon Sam Piantadosi

Amendment thus passed.

Hon PETER FOSS: I move -

> Page 4, lines 7 to 9 - To delete the definition of "owner" and substitute the following definition -
>
> > "owner" in relation to a contract means the natural person for whom home building work is to be performed under the contract where that person -
> >
> > (a) has not entered into the contract; and
> >
> > (b) has not held himself out as entering into the contract
> >
> > for the purpose of resale or for the purpose of using the completed work in, or in the course of, trade or commerce.

The definition of owner in the Bill is quite extraordinary. The Bill says that "owner" in relation to a contract means the person, including an agency of the Crown, for whom or which home building work is to be performed under the contract. If we accept, as it has been accepted on both sides of the Chamber, that this is a piece of consumer protection - and by "consumer" we mean those people who, because of their position, are not able to look after themselves because they do not have the financial muscle or knowledge to protect themselves - this is a most amazing clause.

I shall deal first with the words "including an agency of the Crown". It is difficult to think of any body which has more muscle than the Crown. How can it be that the Crown needs the protection of this Bill? Why should the Crown, with the full force of the Crown Law Department, the majesty of the Crown and all the immunities and other things that it has as a result of its unlimited resources in the way of taxing powers, be the beneficiary of a piece of consumer legislation?

We seem to be think that builders are all Mansards; companies building hundreds of homes, having hundreds of contracts and millions of dollars' worth of work. We must recognise that many of the builders out there are small businessmen; people who are not making an awful lot of money. At this stage they are struggling businessmen, but at any stage they are probably husband and wife in partnership. They make a reasonable living working long hours, but they are not themselves sophisticated or financial giants. Here is a piece of legislation which will change the balance between the builder and the owner, and we have specifically written into this Bill that the owner includes agencies of the Crown. I cannot think of any company which is so big and so influential that the Crown needs protection from it, but I can think of many builders who definitely need protection from the Crown; whose position vis a vis the Crown is one of considerable disadvantage; who do not have the financial wherewithal to take on the Crown. They do not have the financial wherewithal to challenge the Crown on their contracts; they do not have the knowledge to be able to say to the Crown, "What you are suggesting will put me at a great disadvantage?"

Mr Halden talks about my helping lawyers. This Bill will help lawyers because there will not be one builder in this State who could safely enter into a building contract without having at least sought, in general terms, advice from a lawyer. If Mr Halden thinks there will be some money in this Bill for lawyers by reason of the suggestions I am making, I advise him that this whole Bill is fraught with enormous costs, especially to small builders, because they will not be able to spread the cost over hundreds and hundreds of houses. Sure, the big builders who build hundreds and hundreds of houses a year will be able to get advice from their lawyer, to get a standard contract form, to employ somebody whose sole job it will be to make sure they comply with this legislation, and they will be able to spread the cost across hundreds of houses. What about the small builder who builds one, two, or four houses a year? Mr Halden is saying that that person must comply with this Act, that he faces criminal penalties if he gets it wrong.

Mr Halden also wants to protect the Crown. I cannot think of a less worthy recipient of consumer protection legislation than the Crown. Yet, as the Bill stands we are specifically changing what would be the ordinary understanding of an owner to include agencies of the Crown such as Homeswest and LandCorp - those poor, small, innocent land developers! I understand that between them they own more than 50 per cent of development lots in Western Australia. They control millions and millions of dollars and Mr Halden wants to impose on builders the obligations under this Act to protect the Crown. That seems opportunism gone riot. Somebody in Government thought, "This is a good lark. This will

make things really hard on builders; we will really be able to grind them down into the dust. We will write ourselves into the Act as consumers." This is opportunism and is the most unworthy amendment I have ever seen. This is unworthy even for the large building companies, but particularly unworthy when one considers that the majority of building companies in this State are quite small concerns. Yet they will all have to put up with the burden of this Act; Mr Halden wants to take advantage of them as well. As far as I am concerned this amendment shows up the Bill for what it is: Looking at things from the Government's point of view, not looking at the interests of the community as a whole.

The definition of "owner" must go. It is an unworthy definition and I am proposing in its place a definition of a consumer which was derived in large measure from the Trade Practices Act. That Act is unashamedly a piece of consumer legislation. I am sorry again to be putting up to members a piece of Commonwealth legislation, because I would have preferred that we get things right in our own State, but the proposal I have made to substitute this definition is first of all that the person be a "natural" person. If people have sufficient sophistication to conduct their business through a corporation I do not see that that group of people needs protecting under this Bill. We are not in the position of protecting corporations, we should be protecting consumers. I cannot see how a consumer can be somebody who has the financial ability and sophistication to set up a corporation as a way of acquiring his residence. The reason a person is purchasing a house is important. If a person is purchasing it as a financial speculation I do not believe that we should have a difference placed between the builder and the owner. Frankly, people who are purchasing houses as a financial speculation are quite likely to be more sophisticated and the person with a higher hand in the transaction for the construction of the house than the builder who is a one man operation that I was referring to. If the person will use the property for the purpose of resale or in the course of trade or commerce, why are we protecting him under the terms of this Bill? He is not a consumer; he should not be protected by this piece of consumerism. Furthermore if a person holds himself out as entering into the contract for that purpose the builder should not be required to inquire further as to whether that is or is not the case. If someone holds out that he wants a builder to build a house for resale for the purpose of making money the builder should be able to accept that.

I put four propositions before the Chamber: Firstly, the possibility of protecting the Crown under this Bill is outrageous. Secondly, people who have the financial ability and sophistication to use corporations to conduct their business should not be protected. Thirdly, if people are not buying the property as a residence, but for use in commerce, they should not be protected. Fourthly, if a person holds himself out as doing that a builder should not be required to inquire further. In that way we would get back to having a piece of legislation which is truly protecting consumers and not taking this outrageous move to protect the Crown and ignore the fact that the majority of builders in this State are small business people who should not be put at a disadvantage under these circumstances.

Hon JOHN HALDEN: One can be inspired by the passion of Hon Peter Foss, but we must be very careful and look at the content of legislation. The member suggests we exclude the Crown, corporations, family companies and individuals who are reselling a house on the basis that they are not consumers. They are consumers in the market place and this legislation is to protect people who buy houses, be they individuals, the Crown or corporations. If a builder is abiding by the terms of a contract what would he have to fear? Hon Peter Foss laughs, but he knows that the answer is that the builder has nothing to fear. This is just part of the continuation of this smokescreen that has been developed by the Opposition. This protection is offered to the Crown including an agency such as Homeswest if it has a problem with a builder. It is a cheap, easy and quick way of resolving a problem without having to litigate to resolve the problem. Parties to a contract have access to the tribunal. Why should those four groups not have a consistent and universal approach to seeking a solution in their area? There is no logical reason they be excluded; it is part of the continuation of the honourable member's effort to restrict the use of this Act as much as possible.

Hon PETER FOSS: A most interesting proposition arises from what has just been said. I could possibly agree with the Parliamentary Secretary if we were dealing with a Bill which provided for a standard form of contract. Members may recall that I suggested in the second reading debate that that would be an appropriate way of dealing with this matter. I have no

problems with applying a fair contract to everybody. However, that is not what is being proposed by this Bill. This Bill proposes a series of onerous obligations on one party to a contract. If those obligations - some of them are not related to the performance of the contract, they are related to the technicality of entering into the contract - are not carried out, the total consequence of the failing to carry them out falls on one party only, the builder. All of the obligations are placed on the builder to ensure compliance with the Bill. Many of the things he has to do will require his taking legal advice. Many of the responsibilities placed on him are placed on him not because it is reasonable, but because the parties are not of an equal financial status. He is the one who has to bear the burden in this instance.

For the Parliamentary Secretary to suggest that he has nothing to fear if he carries out his obligations is an interesting point. I can think of many financial obligations that we could impose on him if he did not do certain things. Why do we not have a rule in this place that every Labor member of Parliament who interjects, does not wear a jacket, is out of the Chamber for more than 10 minutes or falls asleep is fined $10 000 and, even better, that that $10 000 be paid to a Liberal member -

The CHAIRMAN: Order! Are you relating this to the amendment?

Hon PETER FOSS: Yes, I am.

The CHAIRMAN: I am having difficulty in following it.

Hon PETER FOSS: I am trying to suggest to the Parliamentary Secretary that he would have nothing to fear in those circumstances because, as long as he did not fall asleep, interject, and wears a jacket, he is all right. However, he would say, "Hang on, that applies only to Labor members; it does not apply to Liberal members of Parliament".

The CHAIRMAN: Order! I am having great difficulty in relating what the member is saying to the question before the Chair. I ask the member to confine his remarks to his amendment.

Hon PETER FOSS: The remark was made that the builder had nothing to fear if he complied with the legislation. I am suggesting by way of an analogy that Labor members would have nothing to fear in the circumstances I suggested if they complied with the rules. I suggest also that that would be totally unfair and Labor members would be the first to say that it is totally unfair. The only reason that we weight things one way is because we have justification for doing so. I sympathise with first time young couples with little money who buy a home. They need to have things weighted a little in their favour to make up for the difference in position between them and the sophisticated builder. We would all be prepared to tolerate pushing the balance one way where there is justification for doing so. I am happy to protect someone, the consumer, who needs our protection. That is what consumerism is all about. It is not about picking one party to a contract and doing everything for his benefit. We should not pick one party to a contract unless that person needs the interference of the law. We do not interfere because we want to. We interfere because there is a need to interfere and because someone needs our protection. We do not interfere with contractual relationships because we need to do so.

Progress

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

ADJOURNMENT OF THE HOUSE - ORDINARY

HON J.M. BERINSON (North Metropolitan - Leader of the House) [10.54 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Sittings of the House

Hon J.M. BERINSON: The first of two matters with which I wish to deal briefly deals with the management of the House. It has been agreed between the parties that the House should suspend for the dinner break tomorrow night between 5.30 and 8.00 pm rather than between 6.00 and 7.30 pm. Members are aware of the reasons for that modification.

Adjournment Debate - Member for Kingsley's Comments on Criminal Law

Hon J.M. BERINSON: The second matter involves a follow-up to a question and answer on which I embarked earlier in the day. Members will recall that attention was drawn to a recent radio interview with Mrs Edwardes, the member for Kingsley, and that I was concerned that various comments that she made about criminal law were either wrong or at least misleading. During question time I dealt with one aspect of Mrs Edwardes' statement and that related to her suggestion that our criminal law still reflected seventeenth century justice. I believe the matters that I raised in response to that clearly indicated the contrary and I do not intend to cover the same ground again. However, at the stage where you, Mr President, suggested fairly enough that the answer was already sufficiently long, I had come to the point of expressing some concern that Mrs Edwardes, in the course of signalling that the Opposition would be moving a motion calling for a review of the penalties -

The PRESIDENT: Order! Audible conversations must cease so that I can hear the Leader of the House.

Hon J.M. BERINSON: - under the Criminal Code, gave an example of wilful murder which she indicated attracted a statutory penalty of 12 years. In fact, as I pointed out earlier today, the punishment for wilful murder is set out in section 282 of the Criminal Code and involves a mandatory punishment of strict security life imprisonment or life imprisonment. Members will know that a sentence of strict security life imprisonment prevents an offender's case from even being considered by the Parole Board for at least 20 years. Even after 20 years there is no assurance at all of release.

I draw the attention of the House to the fact that, at the same time as the mandatory punishment for wilful murder was introduced in 1988, the Government also brought in the punishment of whole of life imprisonment. In effect, the court can sentence an offender for his or her natural life and the offender will never be released under such a sentence. If the court elects to impose the lesser penalty of life imprisonment for wilful murder, the offender still cannot even be considered by the Parole Board until at least 12 years after the date of sentence. There is absolutely no entitlement to be released at that time and, therefore, any suggestion of a statutory penalty of 12 years for wilful murder is simply wrong.

Hon D.J. Wordsworth: They can be let out on weekends.

Hon J.M. BERINSON: They cannot even be considered for parole until after 12 years and in those circumstances any question of resocialisation programs which would involve home release does not arise.

The member for Kingsley went on to say that, under the Criminal Code, assaults are classified as misdemeanours and, according to her, have a far lesser penalty than that for an offence which is classified as a crime. She said that misdemeanours, if they are heard in the Court of Petty Sessions, can receive a maximum sentence of only six months. Unfortunately, this statement is also wrong. To begin with there are several kinds of assault under the Criminal Code and these include common assault, assaults occasioning bodily harm and serious assaults. Common assault is neither a crime nor a misdemeanour, but a simple offence. The punishment for common assault, whether imposed by a Court of Petty Sessions or the Supreme or District Courts, is imprisonment for 18 months - not six months as suggested - or a fine of $6 000. In the case of assaults occasioning bodily harm and serious assaults, the position is that neither is a misdemeanour. Both are crimes the punishment for which, if dealt with by a Court of Petty Sessions, is imprisonment for two years - again not six months as suggested - or a fine of $7 500. If dealt with by a superior court, the penalty for these offences is five years' imprisonment. It should also be noted that the penalty for common assault was increased in 1985 from a fine of $100 to one of $3 000 and the alternative of six months' imprisonment was increased to 18 months' imprisonment.

Hon D.J. Wordsworth: Is that for a maximum fine?

Hon J.M. BERINSON: In all cases and certainly maximum imprisonment. That is the point the member for Kingsley made when she mistakenly referred to six months' imprisonment and said it was time to review that penalty. As far back as 1985, even for cases of common assault, the maximum penalty, which is how all penalties are expressed, which was then six months was increased to 18 months. At the same time, the Government increased the summary penalty for assaults occasioning bodily harm from $500 to $4 000 and the

alternative of six months' to two years' imprisonment. Where that offence is dealt with on indictment, the Government acted to increase the penalty from three years to five years.

In summary, it is clear that the member for Kingsley's publicised concern is misplaced and largely based on a review of the law which is out of date.

Hon George Cash: Perhaps she was referring more to the actual time served.

Hon J.M. BERINSON: I am quite sure she was not referring to the actual time served and that will emerge clearly from a reading of the transcript, which I am happy to make available to any member who would like to read it.

Hon George Cash: In respect of life imprisonment, is it not true that the average time served is in the order of 12 years?

Hon J.M. BERINSON: No.

Hon George Cash: Then what is it?

Hon J.M. BERINSON: We have not had time to establish -

Hon George Cash: I said life imprisonment, and that sentence has been going for a very long time.

Hon J.M. BERINSON: We have not been able to establish an average because we increased it from 10 years to 12 years only recently and no-one has been released under the new circumstances.

Hon George Cash: You have read the statistics, just as I have.

Hon J.M. BERINSON: I am sure the member for Kingsley would be prepared to look at the facts I have presented to the House and acknowledge that she was simply in error. There can be no doubt that the reference to life imprisonment of 12 years referred to actual time served because the member for Kingsley's actual words were "a statutory limit of 12 years". If she is talking about a statutory limit she is not talking about the average time actually served.

Question put and passed.

House adjourned at 11.06 pm

QUESTIONS ON NOTICE

WHITEMAN PARK - MUSEUM OF LAND TRANSPORT PROPOSAL
"Long Term Planning" Advice

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

Further to part (3) of the answer to question on notice 1097 given on 13 November 1990, will the Minister now advise what period of time is considered to be "long term planning"?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

The management of Whiteman Park falls within the portfolio responsibility of the Minister for Planning who advises that the answer to part (3) of question on notice 1097 was that the feasibility of establishing a museum of land transport at Whiteman Park is being examined, and that if such a proposal is to proceed then the Royal Agricultural Society may be involved.

In the context of that answer, the phrase "long term planning" merely reflects that possibility and there can be no commitment as to any particular period of time.

TAFE - LECTURERS
Surveys

794. Hon GEORGE CASH to the Minister for Education:

(1) Has the Minister for Education conducted surveys of lecturers at technical and further education colleges this year?

(2) If yes, how many?

(3) Was a private company employed to undertake the surveys?

(4) What was the total cost of the surveys?

(5) What was the aim of the surveys and will the results be made available publicly?

Hon KAY HALLAHAN replied:

(1) The Department of TAFE, after consultation with unions, conducted an organisational climate survey of administrative and teaching staff.

(2) Survey forms were sent to 3 150 staff.

(3) The Department of TAFE undertook the survey, using a survey instrument designed by Rensis Likert Associates, a private US company. This company is currently scanning and collating the survey results.

(4) A budget of $45 000 was allocated for the survey. A final cost will not be available until processing is completed.

(5) The aim of the survey was to provide data on the needs and requirements of TAFE staff and to develop action plans based on the results. Staff and unions were given an undertaking that results would be made public.

STRATA TITLES ACT - AMENDMENTS

795. Hon GEORGE CASH to the Minister for Education representing the Minister for Lands:

With reference to an announcement on 15 October 1989 by the previous Minister for Lands, Hon Kay Hallahan, to amend the Strata Titles Act 1985, does the Minister still intend to amend this legislation?

Hon KAY HALLAHAN replied:

The Minister for Lands has provided the following reply -

Yes. A strata titles consultative committee was established in February 1991. This is evaluating proposals for reform in a number of areas which were identified in submissions during an earlier consultation process.

HEPBURN HEIGHTS - REZONING
Minor Amendment

843. Hon REG DAVIES to the Minister for Education representing the Minister for Planning:

(1) Will the Minister state precisely the criteria which were used by the relevant body when it determined that Hepburn Heights rezoning be dealt with as a minor amendment?

(2) Has the State Planning Commission or any body carrying out any of its functions determined either formally or informally what criteria it or they will use when determining whether an amendment to the metropolitan regional scheme will be dealt with as a major or minor amendment?

(3) If yes, what are those criteria?

(4) If no, by what means does the SPC or any such authority go about making such determination to ensure it complies with the law?

Hon KAY HALLAHAN replied:

The Minister for Planning has provided the following reply -

(1) I am advised that the factors taken into account by the State Planning Commission when forming its opinion on the substantiality of the Hepburn Heights amendment were contained in a lengthy report and relate to the following general considerations -

(i) present land use and character of the land and its relationship to its setting in the district, subregion and region as a whole;

(ii) the particular purposes for which the land is proposed to be used and their impact on the surroundings;

(iii) the area of land involved and the number of people likely to be directly affected by the proposed change of use;

(iv) the environment and ecology of the land and its surroundings;

(v) other proposals or potential proposals for rezoning in the locality;

(vi) the history of the land within its setting and factors justifying change;

(vii) the future planning and development needs of the metropolitan region as a whole;

(viii) the complexity of the proposal;

(ix) the degree to which the proposal represents a significant change to planning strategy;

(x) transport, servicing accessibility, environmental and other planning implications; and

(xi) a site inspection.

(2)-(4)

As noted in response to question 750, a policy statement is being prepared by the State Planning Commission which will outline the matters taken into account when defining "substantiality" for the purpose of the Act.

GOLDFIELDS CONSOLIDATED GOLD MINES - GOLDFIELDS COMMUNITY FUND
Money Contribution

865. Hon N.F. MOORE to Hon Tom Stephens representing the Minister for Goldfields:

With reference to the answer given on 13 June to question on notice 511 -

(1) How much money was paid into the community fund?

(2) Which companies or organisations contributed to the fund and how much in each case?

(3) On what dates were each of the contributions referred to in (2) paid into the fund?

(4) Who are the trustees of the fund?

(5) If any of the funds have been spent or allocated, will the Minister advise the names of the recipients, the amount involved and the dates of the allocations or expenditures?

(6) Has the trust been wound up?

(7) If so, when?

Hon TOM STEPHENS replied:

The Minister for Goldfields has provided the following reply -

(1) Moneys have been credited to the community fund in accordance with the requirements of the trust deed, together with the interest accrued since dates of lodgment.

(2) Contributing companies are -

North Kalgurli Mines	NKM
Kalgoorlie Lake View	KLV
Homestake Gold of Australia Ltd	HGAL

(3) Contributions were calculated on a quarterly basis as provided by the trust deed and credited on the first day of September and December 1989, March, June, September and December 1990 and March 1991.

(4) Trustees of the fund are -

G.S. Walker of KLV
T.C. Meiklejohn of NKM
J.B. Roberts of HGAL
Hon J.F. Grill, MLA
Hon I.F. Taylor, MLA

(5) None of the funds have at this time been spent or allocated; $1 million has been promised to the Kalgoorlie Arts Centre project.

(6)-(7) No. The trust has not been wound up and the trustees are due to meet shortly to consider the appropriate action to take.

SPENT CONVICTIONS ACT - PROCLAMATION

883. Hon P.G. PENDAL to the Attorney General representing the Minister for Justice:

With reference to the Spent Convictions Act 1988 which passed through Parliament in 1988 -

(1) Is it correct that the Act has not yet been proclaimed?

(2) If not, what are the reasons for this extremely long delay?

Hon J.M. BERINSON replied:

The Minister for Justice has provided the following reply -

(1) Yes.

(2) The Act was passed on the basis that it not be proclaimed until such time as the Law Reform Commission had received submissions, and reported on, exceptions under the Act. That has been completed but there are administrative matters with the police still being resolved in order that the Act can be properly implemented. I am hopeful these will be resolved very shortly.

ROADS - FITZGERALD STREET BUS BRIDGE PROPOSAL
Cost - Alternatives

895. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) What is the cost of the proposed bus bridge linking Fitzgerald Street with the Central Bus Station complex?

(2) Have any alternative links been investigated?

(3) If yes to (2), will the Minister advise which alternatives?

(4) Have any alternative links been costed?

(5) If yes to (4), will the Minister provide details of those costings?

(6) Has the amount of construction time for alternative links been investigated?

(7) If yes, will the Minister provide details?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) $3 million.

(2) Yes.

(3) A total of eight options were identified and investigated by a committee convened by the Department of Planning and Urban Development in mid 1990, comprising senior officers of Transperth, Westrail, Main Roads Department and Perth City Council. Of these eight options, three were found to be worthy of further consideration -

(a) extend the Roe Street tunnel and lower Fremantle line;
(b) construct a bus only bridge from Fitzgerald Street;
(c) construct a subway bus entry from Roe Street.

(4)-(5)

The options were evaluated in terms of capital and operating costs, and user costs and benefits. The option having the least cost and highest user benefits was adopted.

(6)-(7)

The latest time for commencement of design in order to allow sufficient time for design and construction of the various options was calculated in the August 1990 report on the investigation of options. Those times were -

(a) early August 1990;
(b) August 1990;
(c) August 1990.

ROADS - FITZGERALD STREET BUS BRIDGE PROPOSAL
Plan Tabling

896. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

Will the Minister table as a document in this House a copy of the plan that has been drawn up for the proposed bus bridge to be built between Fitzgerald Street, Northbridge and the Central Bus Station?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

The most informative document is a photo montage of the completed bridge and I have arranged for it to be tabled. [See paper No 727.]

ROADS - FITZGERALD STREET BUS BRIDGE PROPOSAL
Construction Time and Date

897. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) What is the estimated construction time for the proposed bus bridge linking Fitzgerald Street to the Central Bus Station complex?

(2) When does the Government intend to commence construction?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Ten months.

(2) The main construction contract is planned to commence in January 1992. Preparatory site works are in progress now.

ROADS - FITZGERALD STREET BUS BRIDGE PROPOSAL
Consultations

898. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) With reference to the proposal to build a bus bridge between Fitzgerald Street, Northbridge and the Central Bus Station, what steps have been taken to consult -

(a) Perth City Council; and

(b) affected residents and business owners?

(2) When was the decision taken to consult these parties?

(3) When were plans drawn up for the proposed bus bridge?

(4) How have these plans been publicised?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1)(a)

Extensive interaction occurred with Perth City Council in 1990 during which time the decision was taken to build the Fitzgerald Street bus bridge. Subsequent to this, and after a deputation from the then Lord Mayor, the Government's decision was confirmed to council by the acting Minister for Transport, Hon Bob Pearce, on 7 January 1991. Council further considered the matter at a full meeting of council on 19 February and although registering its opposition to the plan, authorised council officers to interact with Westrail regarding the design of the bridge, and to negotiate the release of part of a car park lease on Westrail land. These interactions began on 20 February 1991, and included Westrail -

further outlining the proposal;

requesting council to participate in the detailed bridge design with respect to landscaping, aesthetics and other matters;

requesting council to consider designing and constructing associated local road changes.

This initial discussion was followed up in writing on 22 February 1991. Westrail/Perth City Council interaction then continued in the

following manner in relation to the bus bridge design -

nine design review meetings in the offices of the engineering consultants, seven attended by a Perth City Council officer, between March and August 1991;

four meetings at Perth City Council offices by Westrail staff to discuss relevant issues including traffic management;

two design concept meetings by Westrail consultants with Perth City Council officers to discuss aesthetics and landscaping;

clearance by Perth City Council officers of Westrail's study brief for a traffic impact study;

notification to council that Westrail would be submitted a detailed design report addressing issues raised by council officers and offering to make a verbal presentation of the report. The offer was not taken up;

presentation of the detailed design report on 21 August, as had been advised in writing.

In parallel with these meetings, Westrail has conducted negotiations for the adjustment of the area of land leased to council for Wellington Street No 3 car park in the following manner -

In April 1991 Westrail requested Perth City Council's agreement to vary the car park lease.

In June 1991 Westrail received Perth City Council's advice that at its 20 May meeting council resolved to -

(i) Give approval to the controller of vehicle parking and the city valuer to . . . negotiate a variation to the No 3 car park lease . . . etc.

(ii) Give approval to the Lord Mayor and chief executive/town clerk to execute a variation to the lease, etc.

(iii) Advise Westrail that any variation to the lease is dependent on the following clauses from council's 18 February meeting being complied with, viz -

that it be consulted about the location of the bus only bridge, etc;

requires a statement to be prepared on the traffic impact of the proposed bridge, etc;

that it is not prepared to approve the commencement of any works until the impact of the proposed "bus only" bridge on the traffic, proposed developments and existing businesses has been properly assessed and detailed plans submitted and approved by council.

Two meetings were held subsequent to this correspondence, between Westrail and Perth City Council officers, culminating in a formal request from Westrail on 14 August to modify lease boundaries.

On 20 August 1991 Westrail received advice from council that at its 19 August meeting, council now resolved to -

(i) reaffirm its previous offer to purchase car park No 3 to facilitate extensions to the railway tunnels;

(ii) appoint a deputation to meet with the Premier regarding the offer.

Council therefore advised that until the deputation had

discussed the matter with the Premier, the variation to the car park lease would have to be held in abeyance.

(1)(b)-(2)

Perth City Council officers have been included in the planning process. When the report dealing with the specific planning aspects of the proposal was completed in August 1991, it was submitted to the Perth City Council for response prior to discussions. No response was received from the council. It was then decided early in September to contact local property owners and business proprietors directly and this was done by personal meetings where appropriate, and by conducting an information session in Fitzgerald Street, Northbridge, on the evening of 16 September 1991 to which 45 business proprietors and property owners in the vicinity of the new bus bridge were invited.

(3) Plans for the bridge were finalised in outline in August 1991 and detailed design is in progress.

(4) In addition to provision of full information to the Perth City Council and the local business community as in (2) above. Plans of the bridge proposal were on public display at Perth Station from 3 September to 8 September 1991.

STATE DEVELOPMENT - GASCOYNE REGIONAL OFFICE
Permanent Appointment

920. Hon P.H. LOCKYER to Hon Tom Stephens representing the Minister for State Development:

(1) When will a permanent appointment be made to the Office of Regional Development in the Gascoyne?

(2) Who is acting as the officer in charge at present?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1) The positions of regional manager and regional officer, Gascoyne region, were advertised in *The West Australian* on 28 September 1991. The appointments will be made after normal selection processes have been completed.

(2) Mr Michael Beach.

EDUCATION MINISTRY - EDUCATION DISTRICTS, METROPOLITAN AREA
Allocations

926. Hon DERRICK TOMLINSON to the Minister for Education:

What allocation has been made for each education district in the metropolitan area in each of the following financial years -

(a) 1989-90;

(b) 1990-91;

(c) 1991-92?

Hon KAY HALLAHAN replied:

The ministry allocates a range of resources to districts. The member needs to specify the type of allocation for which he is seeking information.

WESTERN AUSTRALIAN DEVELOPMENT CORPORATION - LANDCORP
Winding Down Process

931. Hon P.G. PENDAL to the Attorney General representing the Minister Assisting the Treasurer:

(1) What stage has been reached in the winding down process of activities carried out by -

(a) the Western Australian Development Corporation; and

(a) LandCorp?

(2) What avenues are open for people who wish to make claims for money to these two bodies?

Hon J.M. BERINSON replied:

The Minister Assisting the Treasurer has provided the following reply -

(1) (a) The winding down process of WADC is nearing completion. The few matters that remain outstanding will be detailed in the second reading speech for the repeal Bill which will be tabled during the current session of Parliament.

(b) LandCorp is not being wound up. LandCorp has been physically relocated to Joondalup and will continue to operate under the WADC Act pending the introduction of legislation to the Parliament.

(2) The repealing legislation will make adequate provision for the satisfaction of any legitimate claim against the corporation by any party. As the member would appreciate, the State has a relationship with all of its statutory authorities that ensures that the State will stand behind their obligations and contractual commitments whether or not the authority is in a wind down mode.

POLICE - MOORA VEHICLES
Servicing Direction

932. Hon MARGARET McALEER to the Minister for Police:

(1) Would the Minister confirm that a direction has been given resulting in some police cars deployed in Moora not being serviced in Moora when facilities by authorised car dealerships are readily available?

(2) If the answer to (1) is yes, what is the reason for such a directive?

Hon GRAHAM EDWARDS replied:

(1) Yes. The two general duties vehicles are serviced and maintained by the Police Transport Branch mechanic at Midland while personnel attend departmental business at that centre. Emergency repairs are effected in Moora. The five traffic vehicles are serviced locally.

(2) General duties vehicles are not subject to excessive kilometreage and are serviced at Midland in accordance with effective and efficient management practices. Higher traffic vehicle kilometreage necessitates utilisation of local authorised care dealership facilities.

POLICE - LEAVE REPLACEMENTS

933. Hon MARGARET McALEER to the Minister for Police:

(1) Has a directive been issued that police officers who are absent from duty on holiday, long service leave, or because of sickness are not to be replaced during such absence?

(2) If the answer to (1) is yes, are appropriate levels of policing maintained in rural communities when such absences occur?

Hon GRAHAM EDWARDS replied:

(1) No.

(2) Answered by (1). Staffing levels at most work locations are set at numbers which will allow for the covering of annual, long service or sick leave out of local resources. Where this is not the case each application for a relief officer is dealt with on its individual merits.

WATER AUTHORITY OF WESTERN AUSTRALIA - RURAL WATER STRATEGY PROGRAM
Project Proposals and Costs

937. Hon W.N. STRETCH to the Minister for Police representing the Minister for Water Resources:

With regard to the rural water strategy program, will the Minister -

(a) list for each of the years 1989-90, 1990-91 and 1991-92 so far -

(i) the projects proposed to be carried out and their cost;

(ii) those projects proposed but not carried out;

(iii) the proposed expenditure on Rural Water Strategy projects;

(iv) the actual expenditure on Rural Water Strategy projects;

(b) advise the projects planned for the 1992-93 year; and

(c) the estimated budget for these projects?

The answer was tabled. [See paper No 729.]

HOMESWEST - NEW DEVELOPMENTS
Local Government Building Conditions Compliance

938. Hon MURIEL PATTERSON to the Attorney General representing the Minister for Housing:

(1) When new developments are constructed by Homeswest, do they have to adhere to the local shire or council's development conditions?

(2) If not, why not?

Hon J.M. BERINSON replied:

The Minister for Housing has provided the following response -

(1) No. However, as a matter of policy Homeswest does comply with local authority building conditions.

(2) Homeswest as an agent of the Crown is not bound by Part XV of the Local Government Act.

TRANSPORT - PASSENGER SERVICES
Losses - "Australind", "Prospector", Road Services, Suburban and Interstate Rail

942. Hon D.J. WORDSWORTH to the Minister for Police representing the Minister for Transport:

What losses were incurred by passenger services last year by the -

(a) *Australind*;

(b) *Prospector*;

(c) road services;

(d) suburban rail; and

(e) interstate rail?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(a)	*Australind*	$3.8 million
(b)	*Prospector*	$4.9 million
(c)	Road services	$1.8 million
(d)	Suburban rail	$46.365 million
(e)	Interstate rail	$7.4 million

FUEL - NARROGIN OIL COMPANY AGENTS
Distribution Quantity

943. Hon D.J. WORDSWORTH to the Minister for Police representing the Minister for Transport:

(1) What is the quantity of fuel distributed by oil company agents out of their premises at Narrogin?

(2) How many agents are currently involved?

(3) Are each currently served by rail?

(4) How often each week are these depots served by rail?

(5) Is it intended that Westrail will in future not service the town of Narrogin but will continue to service Katanning?

(6) What extra capital cost would Westrail have to find to increase current facilities at Katanning?

(7) Have oil companies requested the centralisation of distribution out of Katanning rather than providing dual facilities in Katanning and Narrogin?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) The Department of Transport has no information regarding the amount of fuel distributed by oil company agents out of their premises at Narrogin.

(2) There are three agents in Narrogin.

(3) Yes.

(4) Excluding public holidays Westrail offers a Monday to Friday daily service to Narrogin.

(5) Westrail will continue to service the town of Narrogin dependent on clients' needs.

(6) Westrail has no current plans to commit capital.

(7) Questions relating to oil companies' business plans should be addressed to the companies. Westrail must respect business confidentiality when dealing with clients.

RAILWAYS - NORTHERN SUBURBS TRANSIT SYSTEM
Burns Beach Cost

944. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) What is the estimated cost of the northern suburbs rail link to Burns Beach?

(2) How much moneys have so far been expended of the project?

(3) Is it anticipated that trains will run to Burns Beach in December 1992?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1)	Cost of infrastructure	$160 million
	Total cost including railcars	$265 million
(2)	Expenditure to date on infrastructure	$27.12 million
	Expenditure to date on railcars	$32.61 million

(3) No. The train service beyond Joondalup is scheduled for late 1993.

HOMESWEST - PINJAR ROAD LOT 2
Development Plans

945. Hon GEORGE CASH to the Attorney General representing the Minister for Housing:

(1) In view of recent decisions by the City of Wanneroo concerning block sizes on Pinjar Road for Lot 2 Pinjar Road, does Homeswest still intend developing the block for Homeswest housing?

(2) If yes, how many dwellings will Homeswest build on Lot 2?

Hon J.M. BERINSON replied:

The Minister for Housing has provided the following response -

(1) Homeswest intends proceeding with development of the land and it is anticipated one lot in nine will be used for rental housing.

(2) Based on a current yield estimate of 3 700 lots, approximately 400 rental homes could ultimately be provided.

PRISONS - CANNING VALE PRISON
Juvenile Remand Centre Conversion Costs - Documents Tabling

946. Hon P.G. PENDAL to the Minister for Education representing the Minister for Construction:

(1) Will the Minister immediately table all documents relating to the assertion in *The West Australian* of 27 August 1991 by the Minister for Community Services over costs associated with the conversion of the metropolitan security at Canning Vale prison into a juvenile remand centre?

(2) If not, why not?

Hon KAY HALLAHAN replied:

The Minister for Construction has provided the following response -

(1) Yes. I hereby table the Department for Community Services report on costs associated with modifying the existing Metropolitan Security Unit's accommodation at Canning Vale Prison to serve as a juvenile remand centre. This report advises that a saving of less than $700 000 would result if the building was converted for this use. The report also outlines the many functional and operational deficiencies inherent with such a conversion. [See paper No 728.]

The 27 August article notes that the $700 000 figure does not include the cost of building replacement accommodation to house the MSU in the event of its existing accommodation being converted to serve as a juvenile remand centre. The cost of constructing such a replacement has been separately estimated at $850 000 to $1 million. The net result therefore of converting the existing MSU building at Canning Vale Prison into a juvenile remand centre, and then constructing new premises to house the MSU, is an additional cost of $150 000 to $300 000 over the cost of constructing a new purpose designed juvenile remand centre on the proposed Rangeview site and leaving the MSU in its current building at Canning Vale Prison.

(2) Not applicable.

STATE ENERGY COMMISSION OF WESTERN AUSTRALIA - ABORIGINAL COMMUNITIES, KIMBERLEY
Power Stations Maintenance Work

947. Hon N.F. MOORE to the Attorney General representing the Minister for Fuel and Energy:

(1) Does the State Energy Commission provide a maintenance service to Aboriginal community power stations in the Kimberley?

(2) If so -

(a) where do the funds for this service come from; and

(b) does the SEC contract out the work or is it done by SEC workers?

(3) Is it expected that these arrangements will continue in the future?

Hon J.M. BERINSON replied:

The Minister for Fuel and Energy has provided the following reply -

(1) Yes.

(2) (a) Provided by the Aboriginal Affairs Planning Authority.

(b) The work is carried out by SECWA employees.

(3) Yes. The AAPA will decide the level of service to the Aboriginal communities as the service is provided on the basis of fees for service.

WATER AUTHORITY OF WESTERN AUSTRALIA - KIMBERLEY WATER CHARGES

948. Hon N.F. MOORE to the Minister for Police representing the Minister for Water Resources:

(1) On what basis are domestic and commercial water users in the Kimberley charged for water?

(2) Is it proposed to change this system of charging and if so, in what way?

Hon GRAHAM EDWARDS replied:

The Minister for Water Resources has provided the following response -

(1) Domestic and commercial water users, north of the 26th parallel, pay a standard amount for all water consumed.

Domestic				Commercial	
First	150kl	@	32.6c	First 300kl @	56.6c
Next	400kl	@	34.4c	Over 300kl @	106.1c
Next	200kl	@	65.6c		
Next	400kl	@	107.7c		
Next	400kl	@	154.9c		
Next	400kl	@	178.5c		
Over	1950kl	@	207.6c		

In addition, domestic consumers Statewide pay an annual service charge of $113.40 while commercial consumers throughout country areas pay an annual rate based on the rated value assigned to the property, multiplied by a tapered amount in the dollar of the RV on a sliding scale; subject to a minimum of $250.

(2) There is no intention to change the current method of charging.

HOMESWEST - ELLENBROOK DEVELOPMENT PROPOSAL

949. Hon P.G. PENDAL to the Attorney General representing the Minister for Housing:

(1) Is a Homeswest development planned for the area in Upper Swan known as "Ellenbrook"?

(2) If so, what are the details for this proposed development?

(3) Is the development to be in conjunction with any private company or individual?

(4) If yes to (3), what is the name of the company or individual?

(5) What share in the proposed development is this company/individual to have?

(6) If such a development is proposed, has any environmental study been carried out on its impact on the surrounding area?

Hon J.M. BERINSON replied:

The Minister for Housing has provided the following response -

(1) Yes.

(2) The planned development will consist of 15 600 lots being developed over 16 years. There will be a mix of land uses consisting of a range of housing density, local shops, schools and community and business facilities.

The emphasis will be on increasing employment opportunities within the development. Prices will be structured to suit many first home buyers.

(3) Yes.

(4) Sanwa Vines Pty Ltd.

(5) Approximately 50 per cent - the exact share will be determined by valuation of respective land areas in due course.

(6) Yes.

UNDERWATER WORLD - HILLARYS
Purchaser

953. Hon GEORGE CASH to the Attorney General representing the Minister assisting the Treasurer:

(1) Will the Minister advise if Underwater World at Hillarys was purchased by an international company or an Australian company?

(2) Will the Minister name the company?

(3) Did the purchaser have any previous interests in the project?

(4) If so, what interest was held by the company?

Hon J.M. BERINSON replied:

The Minister assisting the Treasurer has provided the following reply -

(1)-(2) Perth Underwater World was purchased by Coral World Australia Pty Ltd, an Australian registered company which is a wholly owned subsidiary of Coral World International Limited.

(3) No.

(4) Not applicable.

TRANSPERTH - "KEEPING PEOPLE ON THE MOVE" ADVERTISEMENT
Cost

954. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

What was the cost of Transperth's "Keeping people on the move" which appeared as a full page advertisement in each of the suburban newspapers on 24 September 1991?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

Total cost on that day was $4 440.20. The advertisements were part of a series to promote special joint travel/entry tickets to the Royal Show. They were not full page advertisements. The supporting editorial material featuring Transperth services was free.

KIMBERLEY REGIONAL PLAN - PLANNING AND URBAN DEVELOPMENT DEPARTMENT REPRESENTATIVE
Male, Mr Kim

955. Hon P.H. LOCKYER to the Minister for Education representing the Minister for Planning:

(1) Who represents the Kimberley in discussions concerning the Kimberley Regional Plan in the Department of Planning and Urban Development?

(2) Did Mr Kim Male represent the Kimberley in a capacity as an associate commissioner?

(3) If so, were his services terminated?

(4) If yes to (3), on what date was advice given to Mr Male that his services were no longer required?

(5) What method was used to advise Mr Male of the termination of his services?

Hon KAY HALLAHAN replied:

(1) If this question refers to departmental officers, responsibility lies with Mr D. Brown, acting director country division, and Mr P. Driscoll, coordinator, country, Perth office. If this question refers to the Department of Planning and Urban Development, Mr Kim Male is the associate commissioner for the Kimberley region.

(2) Yes.

(3) No. He is appointed until 30 June 1992.

(4)-(5) Not applicable.

POLICE - SOUTH EAST METROPOLITAN AREA
Policing Evaluation

958. Hon GEORGE CASH to the Minister for Police:

(1) Is the Police Department currently undertaking an evaluation of policing requirements for the south east metropolitan area?

(2) When is this evaluation expected to be completed?

(3) Will the report be made public?

(4) If not, why not?

Hon GRAHAM EDWARDS replied:

(1) Yes.

(2) 21 December 1991.

(3) No.

(4) The evaluation is part of the Police Department's ongoing review of police services, and the results will reflect in future, middle and long term policing plans. The review team is soliciting information from relevant authorities in the review area and the department will provide feedback when necessary.

POLICE - GOSNELLS POLICE STATION
Opening Times and Manpower

959. Hon GEORGE CASH to the Minister for Police:

(1) Is the Gosnells Police Station in operation 24 hours per day, and if not, why not?

(2) What is the manning level at the station?

(3) Is the manning level adequate to handle the workload at the station?

(4) Are any reviews being undertaken to ascertain if sufficient resources are located at the station?

Hon GRAHAM EDWARDS replied:

(1) (a) No.

(b) Gosnells police provide an office service to the public between 0800 hours and 1600 hours and patrol service 0800 hours to 0600 hours daily. This service is supported by 24 hour patrols from Armadale Station, Traffic Branch and other specialist services. Calls to the station when it is not manned are diverted to Police Communications Branch and information released to tasking vehicles in the area.

(2) Fourteen general duties officers.

(3)-(4)

A recent review of the station workload has resulted in an additional two personnel being allocated to the station from the 15 November academy graduation.

CRIME - ARMADALE POLICE DISTRICT STATISTICS

960. Hon GEORGE CASH to the Minister for Police:

(1) For the year ended 30 August 1991, how many offences were reported to the Armadale police district for the Gosnells area in the following categories -

(a) car theft;

(b) breaking and entry;

(c) assault;

(d) robbery; and

(e) stealing?

(2) For the year ended 30 August 1990, how many offences were reported to the Armadale police district for the Gosnells area in the following categories -

(a) car theft;

(b) breaking and entry;

(c) assault;

(d) robbery; and

(e) stealing?

Hon GRAHAM EDWARDS replied:

(1) (a) 943
(b) 2 425
(c) 255
(d) 19
(e) 2 813.

(2) (a) 834
(b) 1 796
(c) 231
(d) 15
(e) 2 296.

HOME DETENTION - PROGRAM DETAILS

961. Hon GEORGE CASH to the Minister for Corrective Services:

(1) On what date did the home detention program commence?

(2) How many persons on remand were released from court on home detention bail?

(3) How many persons were released from prison on home detention?

(4) How many of those released on home detention bail were facing charges relating to offences of violence?

(5) How many of these have breached the home detention bail program?

(6) With reference to the Minister's reply to question on notice 748, part (4)(b), what criteria are used by a community corrections officer to determine a person's suitability for home detention bail?

(7) With reference to the same reply, how does a community corrections officer determine that a residence is a suitable place for home detention bail?

(8) Has the Minister taken any action to review the screening procedure for home detention bail?

(9) Does the Minister consider that a review of the screening procedure is required as a matter of urgency?

(10) If not, why not?

Hon J.M. BERINSON replied:

(1) 3 April 1991.

(2) 42.

(3) 67.

(4) 15.

(5) 10.

(6) Criteria include -

Previous record of response to community based supervision, if applicable.

Previous response to bail, if applicable.

Personal background factors including reference to alcohol or substance abuse, or other evidence of personality problems.

Availability of suitable accommodation and preparedness of co-residents to accept the intrusive nature of the supervision regime.

Nature of the charges. However, it is seen as the proper prerogative of the courts to decide if this factor should preclude bail.

(7) Factors include -

With whom the detainee will be living; i.e. is it immediate family, peer group associates, boarding, etc? Are these people known to the department?

Do the occupants understand the nature of the monitoring schedule and are they willing to accept it?

Is the accommodation accessible for purposes of home visit patrols? For example, a boarding house locked after certain hours could prevent access to the offender.

Is there a telephone line, or can one be installed to permit electronic monitoring?

(8) The screening procedure has been reviewed in cooperation with the Police Department. Arrangements have now been set in place so that arresting police with reasons to oppose bail can ensure that their objections can be made known to the prosecutor.

(9) No.

(10) The program is still relatively new. The first bail home detainee entered the scheme late in May 1991, and the program needs further time to consolidate. It is noteworthy that the breach rate for home detention bail is mostly the result of the rigorous enforcement of curfew standards. The majority of breaches have related to curfew violations, by unauthorised change of address and not to further charges being laid.

QUESTIONS WITHOUT NOTICE

FIRE BRIGADE - ROCKINGHAM ESTABLISHMENT
Rockingham Public Meeting

582. Hon GEORGE CASH to the Minister for Emergency Services:

(1) Is the Minister aware of the public meeting being held tonight in Rockingham in support of the Kwinana integrated management system recommendation for the establishment of a permanent fire brigade in Rockingham?

(2) Does the Government support the need for a permanent fire station at Rockingham?

(3) If so, when is it likely that such a facility will be established?

Hon GRAHAM EDWARDS replied:

(1)-(3)

I am aware of the meeting, and the message I shall be conveying to the meeting - although I cannot attend - is that the Government will be guided by the advice of the Fire Brigade.

CRIME - CAPEL
Increase Concern - Police Presence Need

583. Hon BARRY HOUSE to the Minister for Police:

(1) Is the Minister aware that -

(a) the incidence of crime in Capel has risen to an alarming extent in recent months? For instance, one business owned by Mr Roy Payne has had seven break-ins since the end of July with many thousands of dollars worth of vehicles, fuel, tools, equipment and so on stolen or destroyed;

(b) the Bunbury police, who supervise Capel from 25 kilometres away, do an excellent job, but do not have the resources to supervise the Capel area adequately, and respond quickly enough to reports of criminal activity;

(c) there have been repeated calls over many years for a permanent police presence in Capel; and that

(d) the affected people in Capel are on the verge of taking the law into their own hands and are currently patrolling their workshops at night with firearms.

(2) Will the Minister investigate this situation as a matter of urgency and respond by providing a permanent police presence in Capel?

Hon GRAHAM EDWARDS replied:

(1)-(2)

Many of these assumptions are simply that - assumptions. I am sorry that the member has asked the question in the way he has. If he wanted to be responsible about this matter he would have raised it privately either with me or with the Commissioner of Police. The fact that he has raised it in the manner he has indicates to me that he is not really responsible -

Several members interjected.

Hon GRAHAM EDWARDS: - about this issue at all.

Several members interjected.

Withdrawal of Remark

The PRESIDENT: Order! The Minister should withdraw the comment that the member is not responsible. He cannot say that about a member.

Hon GRAHAM EDWARDS: I withdraw without hesitation.

Questions without Notice Resumed

Hon GRAHAM EDWARDS: There are members on both sides of the House who have had concerns over the years while I have been the Minister about the way in which the police allocate resources, and they have contacted me personally to check out the situation, or they have contacted the Commissioner of Police. I recommend that course of action to the member rather than the course of action he has taken.

STATE GOVERNMENT INSURANCE COMMISSION - BELL GROUP SHARES
Parliamentary Order - Legal Opinion Tabling

584. Hon GEORGE CASH to the Attorney General:

Is he aware of the order of this House passed on 17 September 1991 which requires him within three sitting days of that order to table in this House certain documents without amendment or omission?

Hon J.M. BERINSON replied:

I am aware of that resolution, just as the Leader of the Opposition will be aware of the very considerable concern expressed by the State Government Insurance Commission about it. As I understand the position, the senior executives of the SGIC have discussed this matter with representatives of both the Liberal and National Parties and have expressed their great concern that should the Legislative Council pursue its original decision, the SGIC could be left with a considerable potential for detriment in the current litigation. I think a report in this morning's newspaper - although certainly not the headline given to it - put the position very clearly. As that article indicated, the problem which exists here is one perceived by the SGIC; it is not a problem or an argument which the Government, let alone I in any personal capacity, is pursuing.

Hon George Cash: The order was directed against you, Mr Berinson.

Hon J.M. BERINSON: Quite so.

Hon Peter Foss: They are leaving it to you.

Hon J.M. BERINSON: Is that so? When we come to a discussion of the motion which I have listed today, I shall be able to put the matter fully into perspective. It is true that the motion does not call on the SGIC to produce the papers; it calls on me to do so. It could just as well call on me to do cartwheels down the Terrace. I could not do that, and I cannot do this. Those papers are not available to me.

Hon George Cash: Rubbish!

Hon J.M. BERINSON: They are not available at my direction either. Let us get the position quite clear. The SGIC is indicating that it believes it irresponsible, and it would be irresponsible on its part, in the face of the advice it has, to make the called for papers available voluntarily. That is the position which the senior executives of the SGIC have put to their responsible Minister, who is not me, and which they have separately put to the Opposition Liberal Party and to the National Party.

Hon Peter Foss: You cannot say what they said to us; I can tell you that.

Hon J.M. BERINSON: The opportunity will be given -

The PRESIDENT: Order! The Attorney General is putting me in a very difficult situation in that he is anticipating debate on another subject altogether. I suggest perhaps that is not a good idea.

Hon J.M. BERINSON: It is no good the Parliament passing motions to have me do what I do not have the power to do. That is the position here. What the Government has done by way of the motion which I have listed and will not expand on is to invite the Parliament's consideration of the motion passed in the last week we sat. Nothing at all hangs on it. From time to time the

Opposition seems to indicate that there will be something detrimental to me in that opinion. Of course that is not the position. As all members know, the criticism levelled at me does not relate to the content of the paper but to the fact that I did not call for that paper at the time in question, which was April 1988.

This is a serious question and I do not think it can be resolved by way of question and answer. It can be resolved by informed and considered debate, and I have listed a motion for that very purpose. There will be two questions to consider: Firstly, the interest of the SGIC as a major State instrumentality in the light of the SGIC's independent legal advice. Secondly, there will be the question of responsible conduct by this House given what I have called in my motion, "the established practice" but what is in fact the invariable practice of all Parliaments in Australia and the Parliament of the United Kingdom to desist from calling for papers subject to legal professional privilege when the persons or body entitled to that privilege indicate their unwillingness to produce. Mr President, that is for another day as I can see you are about to confirm by the look on your face. Having said that, however, I will have put the position as clearly as can be put in advance of the motion. Nothing is to be lost by the Opposition, and nothing is to be gained by the Government or me by the few days that it will take to resolve this issue once and for all. However, in the meantime I hope that the Opposition and the members of the National Party will apply themselves to a responsible examination of the real issues in this case, and if they do that I am very confident that they will end up supporting the proposed motion.

STATE GOVERNMENT INSURANCE COMMISSION - BELL GROUP SHARES
Parliamentary Order - Legal Opinion Tabling

585. Hon GEORGE CASH to the Attorney General:

(1) Is the Attorney General aware that if he fails to produce those documents referred to in the resolution of the House dated 17 September 1991 by the time the House adjourns this evening he will be in contempt of the House?

(2) Is the Attorney General also aware of the possible consequences in respect to a contempt of the House?

Hon J.M. BERINSON replied:

(1) It is logically impossible to be in contempt of an order which is not within my capacity to meet.

Hon P.G. Pendal: You are the leader of the Government.

Hon J.M. BERINSON: So I am; so what?

Hon P.G. Pendal: That makes you accountable.

Hon J.M. BERINSON: Members opposite can pass a motion that I do cartwheels down St George's Terrace and when I do not do it because at the very first attempt I would cripple myself, they can accuse me of being in contempt of the House. They can accuse me of anything they like, but the facts are there and the logic is there and the rationality is there: One cannot be in contempt of an order when it is not within one's capacity to meet the requirements of the order. Mr President, I am not seeking to anticipate future actions either by the State Government Insurance Commission or by the Minister responsible for the SGIC. To comply with the order that has been referred to requires a response from one or the other of those parties or both. It is not within my control or my power; I am unable to direct the SGIC in this or any other matter and in those circumstances -

Hon P.G. Pendal: Your ministerial colleagues are hanging you out to dry.

Hon J.M. BERINSON: - questions of contempt may seem very threatening to the bully boys who might be about -

Hon P.G. Pendal: Who are the bully boys?

Several Government members interjected: You are.

Hon J.M. BERINSON: - but I believe that this House would not contemplate that course in the circumstances I have outlined.

(2) As I have indicated I am not in contempt and cannot be in contempt. Nonetheless, I have heard so often from the Leader of the Opposition as to consequences of contempt that I do have a rough idea of what would be involved. On previous occasions he has given me the choice between suspension, the loss of my seat or castration.

Hon George Cash: No, castration was not mentioned.

Hon P.G. Pendal: But we will take that into account if the Attorney General wants.

Hon J.M. BERINSON: None of those is attractive to me, and I am comforted by the impossibility of the prospect of the House moving in such an absurd way as to impose penalties of any kind.

POLICE - AYTON, SUPERINTENDENT
Minister's Support and Confidence

586. Hon P.G. PENDAL to the Minister for Police:

Does Superintendent Les Ayton have the Minister's full support and confidence?

Hon GRAHAM EDWARDS replied:

That is a silly question.

Hon J.M. Berinson: A very good answer though.

POLICE - AYTON, SUPERINTENDENT
Professional Attacks - Minister's Defence

587. Hon P.G. PENDAL to the Minister for Police:

What steps has the Minister taken to defend the reputation of Mr Ayton, a senior police officer, against the attacks made on his professional capacity by the Minister's colleagues?

Hon GRAHAM EDWARDS replied:

It is interesting to note the number of times since I have been the Minister for Police that I have had to defend the police in this Chamber from members of the Opposition who have called for Royal Commissions into the Police Force and who have constantly attacked the police in this State. I do not have to stand here and protect Mr Ayton; he is more than capable of protecting himself.

Hon P.G. Pendal: Why did your colleagues attack him?

Hon GRAHAM EDWARDS: In a situation where he is in some conflict with members of this Government and vice versa, I am quite happy to let the Royal Commission be the judge of the outcome of that conflict. I am appalled at yet another attack by the Opposition on the Royal Commission which it was so insistent be set up. It is another example of how the Opposition is not prepared to let that Royal Commission pursue its course independent of political interference.

CRIMINAL CODE - AMENDMENTS
Member for Kingsley's Comments

588. Hon SAM PIANTADOSI to the Minister for Corrective Services:

Is the Minister aware of comments on ABC radio by Opposition MLA Mrs Cheryl Edwardes in which she called for harsher maximum sentences for murder and other offences under the Criminal Code?

Hon J.M. BERINSON replied:

I am aware of the statements by Mrs Edwardes. I did not hear them, but I

certainly heard from a number of people who did. The impression which they obviously gathered led me to obtain a transcript of the program for further consideration. By way of preface to my further comments, I am genuinely sorry that Mrs Edwardes put herself in the position of the particular comments which she offered in that program. The fact is that she has proved herself to be both a responsible and constructive contributor to discussions on law enforcement and the various matters reflected in that very troubled area. I can only suggest that her statements on this occasion amounted to something of an aberration, but having been made they should be responded to. Mrs Edwardes prefaced her own comments by saying that the State's Criminal Code still reflects seventeenth century justice. I am sure that members in this House will be aware that more than two-thirds of the Criminal Code of the State has been rewritten since 1983 alone, and that that has been done largely on the basis of Michael Murray's review of the State's Criminal Code and, I am happy to acknowledge, with substantial cross-party support.

The State Government has also been undertaking a comprehensive program to modernise the State's criminal law. This has led to the creation of a range of new offences dealing with such activities as racial harassment and incitement to racial hatred, sexual assault, infanticide, incitement to commit an offence, computer hacking and deliberate spreading of the HIV virus. Almost all of those, if not all, were in areas not even contemplated as recently as the early 1980s when Mr Murray, as he then was, compiled his report. Amendments have also been announced which will provide for new procedures for DNA sampling of criminal suspects; for the taking of video evidence from children and other vulnerable witnesses; for abolishing the rule which required that a murder charge could only be laid where the victim died within a year and a day of the offence; for expanding the role of victims to use force to protect their property; and for compelling spouses to give evidence in certain serious criminal cases. Some of these amendments are before the Parliament right now. Others will be introduced later this week on the basis of the notice of motion which I gave earlier in the sitting.

In signalling that the Opposition would be moving a motion calling for a review of penalties under the Criminal Code, Mrs Edwardes gave the example of wilful murder, which she indicated attracted a statutory penalty of 12 years. In fact, the punishment for wilful murder is set out in section 282 of the Criminal Code to be a mandatory punishment of strict security life imprisonment or life imprisonment.

Hon George Cash: And how long do they actually serve?

Hon J.M. BERINSON: I will come to that. I would expect Hon George Cash to know even better than Mrs Edwardes since he was involved in drafting the legislation.

The PRESIDENT: Order! I am very concerned about what is happening in this question time. In addition to making what I believe are over-lengthy responses to questions asked I do not think the Minister is now answering the question. If I remember rightly, the Minister was asked whether he was aware of the comment somebody made on the radio. I believe the question stopped there. I am not adamant about that, but I take it that the question included the request for the Minister to comment. However, if it did, I certainly did not hear it. Having said that, because we have adopted the principle of confining question time to 30 minutes as a Sessional Order as distinct from a specific Standing Order of the House, it is quite unfair to use the 30 minutes to make what I believe is nothing more than a lengthy ministerial statement. The rules allow that the question be precise and to the point. However, it equally applies that the answer must be direct and to the point. The Minister should take heed of that.

Hon J.M. BERINSON: I accept all of that. However, it goes without saying when a Minister is asked whether he is aware of a certain comment that he is in turn

being asked to comment on it; otherwise we would have many answers which consist simply of a yes or a no.

Hon N.F. Moore: That would be far better than the answers we sometimes receive.

The PRESIDENT: Order! I do not want to get into a debate on this, but I happen to disagree with the Minister.

Hon J.M. BERINSON: All I can say in that respect, and for my own part, not wishing to get into a debate, is that -

Hon George Cash: Are you taking a point of order?

Hon J.M. BERINSON: No. I would expect that if some of our answers to Opposition questions were on that basis we would receive complaints again. However, I am prepared to take your lead, Mr President, and conclude my answer at this point. The issues raised by Mrs Edwardes' statements are sufficiently important that they should be clarified. Rather than take the time of question time to clarify them further, I will take a later opportunity this evening in the adjournment debate.

POLICE - AYTON, SUPERINTENDENT

589. Hon P.G. PENDAL to the Minister for Police:

(1) Does the Minister endorse or reject the remarks by his colleague Hon Bob Pearce in reflecting on the integrity of Superintendent Ayton on 18 September?

(2) Does he agree with Mr Pearce that no-one wanted to take Mr Ayton's suspicions seriously?

Hon GRAHAM EDWARDS replied:

(1)-(2)

I am surprised that the question was asked, Mr President, given the directions you just set. Quite clearly, Hon Phillip Pendal is seeking an opinion in an endeavour to create political mischief. If he asks a mature and proper question, he will receive a mature and proper answer.

Several members interjected.

The PRESIDENT: Order! I will stop questions without notice if members do not come to order.

CRIMINAL CODE - AMENDMENTS
Joint Select Committee on Parole Recommendations

590. Hon DERRICK TOMLINSON to the Minister for Corrective Services:

In the light of the Minister's comments on the public opinions expressed by the member for Kingsley, does the Minister extend the same criticisms to the recommendations contained in the report of the Joint Select Committee on Parole, chaired by Hon John Halden, in which the following was said on page 96 -

Recommendation

There should be a general review of the Criminal Code and in particular:

i) the sentence of "Governor's pleasure";

ii) statutory sentences for crimes of manslaughter, murder and wilful murder;

iii) sentences for white collar crime to allow judges greater discretion in mixing sentences of imprisonment, means-tested fines and community based penalties;

iv) a comparison of penalties for crimes against the person with penalties for crimes against property;

v) decriminalisation of certain minor offences.

Hon J.M. BERINSON replied:

That is a good question and if it had not been rattled off at such a pace I am sure I would have absorbed it in a way which allowed me to respond to it in detail. Because it was not read with Mr Tomlinson's vicar's-type delivery I am forced to respond in a rather more general term. Firstly, the report of that Joint Select Committee on Parole was outstanding. The fact that it represented the unanimous view of members drawn from all parties will serve this State well in its future approach not only to parole but to many other aspects of the law enforcement system. That is my preliminary point. I mean it, and it is an important point because I will be relying on that report for a number of important initiatives and reforms. Having said that, I by no means feel bound - I am quite sure members of the committee would not expect anyone to regard himself as bound - to every single statement that is made in the report.

I pluck out - only because I do not have the capacity to absorb it all - the reference to a review of the penalties applying, I think it was, to murder and wilful murder. Frankly, I can conceive of no realistic move in respect of those penalties unless the Parliament is prepared to move away from mandatory sentences for murder and wilful murder -

Hon John Halden: That was the purpose.

Hon J.M. BERINSON: - to a position where courts would be left with an open discretion about whether a sentence of anything from zero years to life should be imposed. The invitation to consider that discretion is a reasonable invitation. However, it does not have anything to do, with due respect, to the member for Kingsley's comments. I was dealing with them specifically and I was in the course of indicating the errors in them. As to a question about the attitude to murder and wilful murder, my frank view is that there is very little scope realistically to move away from the range of penalties which is now available for those very particular and serious offences.

In other cases, of course, I agree in principle that certain minor offences should be decriminalised. That is what we have been doing for the last five years. I am prepared to answer specific questions on specific aspects of the Parole Committee's report. However, that is not what Hon Sam Piantadosi asked me to do. He, reasonably enough, asked me to comment on the member for Kingsley's comments on radio. They were quite different and had I not wished to accommodate your views, Mr President, I could have gone on in the case of matters such as assault, for example, to indicate in detail why they were different. I will not do that. You, Mr President, indicated clearly enough why I should not.

HOMESWEST - ABORIGINAL HOUSING ALLOCATION
Rivervale Housing

591. Hon DERRICK TOMLINSON to the Attorney General representing the Minister for Housing:

I have given some notice of the question. It is in response to a report in today's *The West Australian* which states that more than $17.5 million will be spent on housing for Aborigines in WA this year and that Homeswest will build 99 houses for Aborigines in urban areas of which 83 will be finished. I ask: Of the 99 houses to be built and 83 to be finished under the allocation of $17.5 million for houses for Aborigines, how many will be completed in the suburb of Rivervale?

Hon J.M. BERINSON replied:

I accept that Mr Tomlinson gave me notice of this question, but I have not received a response to it. I will ask for that to be provided to the member as soon as possible.

FOSTER CARE - ABORIGINAL CHILDREN
Aboriginal Foster Parents - Decision Reversal

592. Hon N.F. MOORE to the Minister for Education representing the Minister for Community Services:

I have given some notice of the question.

(1) Will the Minister reverse the decision to send Olivia and Kerry-Anne Wilson to Aboriginal foster parents?

(2) If not, why not?

Hon KAY HALLAHAN replied:

The Minister for Community Services has provided the following reply.

(1)-(2)

The independent case review board, after hearing evidence from all interested parties, has determined that the long term interests of the children are better met by their placement in a culturally consistent environment. On the basis of practical experience, it is predictable that Aboriginal children in non-Aboriginal placements will encounter an identity crisis with potentially very severe and harmful long term effects.

DUCK SHOOTING - BAN PROPOSAL
Agriculture Protection Board View

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

Some notice of this question has been given to the Minister.

(1) Has the Agriculture Protection Board expressed a view on the proposal to ban duck shooting?

(2) If so, what is its view?

Hon KAY HALLAHAN replied:

I appreciate having been given prior notice of this question. The Minister for the Environment has provided the following reply.

(1) Yes.

(2) Some 12 months ago the Agriculture Protection Board wrote to the Department of Conservation and Land Management expressed concern - that is not correct grammatically.

It should state that some 12 months ago the Agriculture Protection Board in writing to the Department of Conservation and Land Management expressed concern -

Hon P.G. Pendal: You would make a good Minister for Education.

Hon KAY HALLAHAN: - that duck shooting could cause fouling of farm water supplies and damage to newly sown crops should seasonal increases in duck numbers occur as a result of the cessation of recreational duck shooting. However, the concerns of the Agriculture Protection Board can be allayed because of the availability to farmers of damage licences issued by the Department of Conservation and Land Management which allow for the destruction of ducks in the event of damage to farms.