Legislative Council

Thursday, 11 November 1993

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

STATEMENT - BY THE PRESIDENT

Remembrance Day

THE PRESIDENT: As it the seventy-fifth anniversary of the signing of the armistice in 1918 I suggest that honourable members may wish to join me in a few moments' silence for Remembrance Day.

Thank you, honourable members.

PETITION - CITY OF PERTH, PROPOSED DISSOLUTION

The following petition bearing the signatures of eight persons was presented by Hon A.J.G. MacTiernan -

> To: The Honourable The President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled:
>
> The Petition of the undersigned Councillors of the City of Perth respectfully showeth concern that the City of Perth Restructuring Bill has precluded the Perth City Council from taking legal advice in relation to the proposed dissolution and restructuring of the City of Perth and the Perth City Council.
>
> Your Petitioners most humbly pray that the Legislative Council, in Parliament assembled should investigate whether the proposed dissolution of the City of Perth contravenes the Constitution Act WA (1889) or any other act or statute.
>
> And your Petitioners, as in duty bound, will ever pray.

[See paper No 800.]

MOTION - URGENCY

Lightfoot, Hon Ross, Comments

THE PRESIDENT (Hon Clive Griffiths): I have received the following letter -

> Hon C.E. Griffiths, MLC
> The President
> Legislative Council
> Parliament House WA 6000
>
> Dear Mr President
>
> URGENCY MOTION
>
> I write to give notice at today's sitting it is my intention to move under Standing Order 72:
>
> > That the House at its rising adjourn until 9.00am, 25 December 1993 for the purpose for discussing comments made by the Hon Ross Lightfoot, MLC made this morning on the ABC "AM" program, in response to his letter to The Editor of The Australian published on November 10th and a similar letter published in The Chronicle, and the failure of Senior Ministers in the Court Government to reject and disassociate themselves from these comments.
>
> Yours sincerely
>
> Tom Stephens, MLC
> Member for Mining & Pastoral Region
>
> 11 November 1993

The member will require the support of four members in order to move the motion.

[At least four members rose in their places.]

HON TOM STEPHENS (Mining and Pastoral) [2.37 pm]: I move -

That the House at its rising adjourn until 9.00 am on 25 December 1993.

In moving this urgency motion it is worthwhile pointing out to the House that I have not rushed to my feet to move urgency motions in any great number. I have reserved the right to rise on an urgency motion for myself on matters I consider to be of extreme importance.

The PRESIDENT: Order! The member wandering in front of the member on his feet knows that that is out of order. Crawling on your hands and knees does not make it right. If you go in front of the member you are out of order. That does not apply to the Leader of the Opposition, who is physically unable to crawl out the other side of the seat.

Hon TOM STEPHENS: The prelude to the comments on the ABC this morning appear to be a letter addressed to the Editor of the *News Chronicle* on 10 November 1993, which was published above the name of Hon Ross Lightfoot, North Metropolitan, MLC. The article headed "Beware knaves of history" states -

> Thousands of years of history and two centuries of recorded history are being rewritten, dramatically and inaccurately.
>
> There is a propensity by well-meaning journalists and academics to distort facts in the mistaken belief that by raising the perception of white Australians of Aborigines that the wider public will embrace these people with less suspicion and antipathy.
>
> That may be so, but pollution of the facts for short-term expediencies is immoral.
>
> Mr Yunupingu, like the former prime minister, Mr Hawke, speaks of Aboriginal people as "civilised" or "Aboriginal civilisation". This is not only distorted but about as wrong as you could possibly get. Aborigines were never civilised. Even in their primitive state today, they are only the bottom colour of the civilisation spectrum.

Hon Derrick Tomlinson: Do you have any spare copies of that letter?

Hon TOM STEPHENS: I do not, but I seek leave of the House to have the remainder of that letter incorporated in *Hansard*.

[The material in appendix A was incorporated by leave of the House.]

[See page 6818.]

Hon TOM STEPHENS: The extract from the letter that I have quoted is the nub of the matter. That letter was sent not only to the Editor of the *News Chronicle* but also to the Editor of *The Australian*, and was published in *The Australian* of 10 November 1993. Although it appears in *The Australian* slightly abridged, nonetheless it includes that offending paragraph - a paragraph which I find deeply offensive and disturbing. I had hoped that those comments would be retracted quickly by the member and that his Government colleagues, both frontbench and backbench, would quickly dissociate themselves from them. I am alarmed to discover that despite a question being addressed to the Premier in the other place, and despite questions being asked of the Leader of the House yesterday about the same matter, this morning on the national "AM" program on ABC radio, Hon Ross Lightfoot said during an interview with an ABC reporter -

> I don't resile from my statement of fact that when white settlers came here the Aborigines were un-civilised. It's a fact ... it may not be something that is popular to say these days, but in the context of finding out the truth and trying to settle the problems that seem to be burgeoning rather than diminishing in respect to white Australians and Aboriginal Australians, the truth is very important and I think people need to understand where the Aboriginals come from, how much advancement they have made in practically all facets of Australian society today

> and we can go from there, but until you understand the truth behind the Aboriginal people, I don't think you're going to find a solution to it.

The ABC reporter asked -

> Mr Lightfoot do you still standby your remark though, even in their primitive state today Aborigines are only the "bottom colour of the civilised spectrum"?

Mr Lightfoot responded -

> Yes. Yes I still standby that . . .

The ABC reporter asked -

> Can you understand though why that Mr Bridge terms that morally repugnant?

Mr Lightfoot laughed in response to that question, and said -

> Look I can understand that he's a politician and he has to find something wrong with me.

It is true that since those comments were made by Hon Ross Lightfoot, some of his colleagues have used words that provide a mild rebuke. Last night on "The 7.30 Report", Colin Barnett stated that, "I would regard those views as regrettable." That is the strongest rebuke that he can bring himself to make. The Minister for Aboriginal Affairs, Kevin Minson, stated on the Gerry Gannon program that, "Well I certainly stoutly defend Ross' right to have a personal view". I might add that that letter was signed not by Ross Lightfoot as an ordinary citizen but by "Ross Lightfoot, North metropolitan MLC".

Hon Barry House: Does that lessen his right to a view?

Hon TOM STEPHENS: No, but that view then connects him to this Chamber, to his party and to this Government, and, in that context, his comments have to be viewed in a more serious light.

Hon E.J. Charlton: I heard the comments from Kevin Minson on radio this morning, and he said a lot of other things besides that.

Hon TOM STEPHENS: I would be happy to have those comments incorporated in *Hansard*, or, if members opposite want to extend my time, I can read them.

Hon N.F. Moore: You have got all the time you need.

Hon TOM STEPHENS: Is the Minister assuring me of that?

The PRESIDENT: Order! I will tell you what you have got. You have got the right to ask for it to be incorporated in *Hansard*. You have got the right to address the question before the Chair. You have not got the right to enter into a discussion with these people around the Chamber. If you want to ask for some advice on the procedure that you are allowed to adopt, I am not a bad source of advice. I have expressed over the years that I think it is fundamentally wrong for members - and you know this, although I am less wont to say it these days - to incorporate things in *Hansard*. *Hansard* is supposed to be a record of the spoken word in this place, and if members pop in here with four or five volumes of the *Encyclopaedia Britannica* and ask for leave to have that incorporated in *Hansard*, then that defeats the whole purpose. However, while I am sitting here, I will defend your right to ask for it to be incorporated in *Hansard*, and if you get leave, then I withdraw. I think it is bad business, but proper business if you get leave.

Hon George Cash: You will understand that incorporation in *Hansard* does not allow us to hear what you want said. We would prefer you to read it out.

Hon TOM STEPHENS: I understand that difficulty, but because of the comments made by the Minister for Transport, and in view of the comments made by the President, I want to try to be fair to the Minister for Aboriginal Affairs, and I seek leave of the House to have incorporated in *Hansard* not several volumes of the encyclopedia but six pages of the transcript of the ABC "AM" program and the Gerry Gannon program.

[Leave denied.]

Hon TOM STEPHENS: I am happy to read it out if the Leader of the House will give me an assurance that my time will be extended.

Hon George Cash: I give no assurance.

Hon TOM STEPHENS: Therefore, I will not read it out.

Several members interjected.

The PRESIDENT: Order! Honourable member, ignore them. Tell me.

Hon TOM STEPHENS: I will, Mr President. I will not be diverted any further. This is not a laughing matter. It is a serious matter. Mr President, you know that no issue in political life is considered by me to be more important for this community than coming to terms with its race relations, particularly relations with the Aboriginal community. That issue led me into politics and was the origin of my political involvement. In that context, you will understand why I consider this to be an urgent matter.

An article appears in *The West Australian* on 11 November under the heading "Court rebukes MP for letter", in which the Premier, Richard Court is reported as criticising his Liberal colleague, Ross Lightfoot, for claims that Aborigines were uncivilised. The article states -

> And Aboriginal activist Robert Bropho challenged Mr Lightfoot to publicly debate his comments with local Aborigines . . .
>
> Mr Minson said Mr Lightfoot's comments were unhelpful and would impede reconciliation between Aborigines and non-Aborigines . . .
>
> Opposition Aboriginal affairs spokesman Ernie Bridge said Mr Lightfoot should apologise to Aborigines for his slur on their race and urged Mr Court to discipline him.
>
> Mr Bridge said the comments were morally repugnant, denigrated all Aboriginal people and should be condemned by the community.
>
> But Mr Lightfoot refused to apologise outside the House.
>
> He said Aborigines were uncivilised in their native state and would probably agree with him.
>
> Mr Court told the Legislative Assembly that if Mr Lightfoot had used that language, he did not condone it and would raise the matter with him.
>
> Mr Minson said he had not seen the published comments but did not support them.
>
> It is the second time Mr Lightfoot has been slated by Mr Court - last week Mr Court said Mr Lightfoot's call for Police Commissioner Brian Bull to resign was inappropriate.

These comments are not made in isolation. They come in the context of the maiden speech in this House by the member soon after the Parliament assembled. No interjections were made during his speech, although many members found his comments grossly offensive. His speech fitted into this new pattern we see emerging in the ideology, philosophy and viewpoint of this member. He said in that speech -

> As a civilised nation I do not know whether we could accept Aboriginal culture in its totality. It needs to be adjusted.

The speech was long and it is worth reading because it is the most extraordinary speech on history, and fits into the pattern of speeches made in this place that are more typical of the last century and the early part of this century, than of the current Parliament. The Webster dictionary definition of civilisation refers to a society with complex kinship systems, sophisticated in arts and culture, and complex in organisation. I understand from the member's maiden speech that he has had some experience of Aboriginal culture, and living and working with Aboriginal people. It would appear that he has learned nothing from that experience.

I have also had that experience and opportunity. One of the great moving experiences of my life was to be closely associated with Aboriginal communities living in the top end of this State. I lived closely with many of those families and was accepted by those Aboriginal communities. I enjoyed it and I am proud of my experience, despite the regular interjections of a member opposite about the time I spent with those people. I was very moved by the experience of meeting a community that has a complex kinship system; a civilisation by any lexical definition. The kinship system of the Aboriginal community of Australia is the most complex kinship system known to man. All the moieties and subsections, the skin system and groupings are reflected in various words from different Aboriginal languages, such as jagara, nagara, and ngalyeries, and jalyaries, janamas and nanagus that relate to the kinship relationships for the Mirriwung people and Gidja people. There are others for the Gudgerong, the Guguja and the Walmajari. These are all from different complex language groups.

Hon George Cash: I hope you will provide the spelling of those words to Hansard later.

Hon TOM STEPHENS: If Hon Ross Lightfoot is so knowledgable about Aboriginal issues, perhaps he can assist Hansard, but if he cannot I certainly can. Those moieties are very complex and the relationships between those Aboriginal people are extraordinary. People have pointed out in their anthropoligical treatises that Aboriginal people have worked out a science of genetics that has given them a taboo system that prevents inappropriate intermarriage and the consequences of such intermarriage. The 40 000 years of Aboriginal history in our continent - known to this point - has brought a wealth of experience, and a fantastic system has emerged in the interrelationships between Aboriginal people.

When I stepped off the plane in Kununurra on my arrival in Western Australia, I was met by an Aboriginal woman who was to be my employer. She came to me and said I would be a jubada, a jugara or jackamarra. I had no idea what she was talking about. I discovered she had a beautiful group of daughters, and she had given me a kinship skin relationship with her family that left me no opportunity of a connection with those beautiful daughters. I had been made their brother.

Hon B.K. Donaldson: She did not trust you.

Hon TOM STEPHENS: She trusted me as their brother. Along with other members of the family to whom she has connected me, I buried that Aboriginal woman in Kununurra earlier this year. That family has provided me with an enormously rich experience of Aboriginal civilisation, culture and society. That Mirriwung language is the richest and most beautiful language I have come across; it is a rich and complex language, subtle and precise. It contains words that are so different from the harsh English language we all speak. It is more beautiful even than the language of Shakespeare, and there are many other Aboriginal languages which are equally beautiful. Linguists have said that the Aboriginal languages of the Kimberley are rich and subtle, and closer to Latin and Greek in structure than to the English language. They are richer and more precise, and have all the hallmarks of a complex society and civilisation.

The artistic tradition of the Aboriginal people of this country is extraordinarily rich. My house has all around its walls beautiful paintings - some traditional and some modern - which are gifts and purchases from the Aboriginal community. These Aboriginal paintings are all instructive and denote a rich and deep Aboriginal culture and society. When speaking of the technology of the Aboriginal people, one need look no further than the boomerang. That magnificent piece of technology was invented and utilised for 40 000 years by the Aborigines in this country. Consider the spear thrower: Have members ever had the experience of holding and using a spear thrower and understanding the multiple purposes of that one piece of technology? Consider the science that went into its design so that it was available for moving weapons so rapidly through the air that Aborigines could shoot kangaroos with it. I have no other implement I could use - not even a gun - that could shoot a kangaroo, and yet the Aboriginal people have managed to use the technology of that spear thrower to do that and many other things. It is an extraordinary design. It can be used for carrying things and to assist in the making of

fires. Some can be used for carrying water, although Hon Ross Lightfoot has said in other places that the Aboriginal people were not even capable of carrying water in a receptacle. Nothing could be further from the truth. Aboriginal people had many receptacles at the time of contact, presumably before and certainly since, in which to carry water from place to place. The comments I make are true of the technology of Aboriginal people.

Hon Ross Lightfoot is proving himself to be some sort of absolutist in his belief that society is either civilised or primitive. He says we are civilised, yet we gave up the death penalty only 10 years ago. We are the civilised lot! We have civil wars taking place around western civilisation in Bosnia and Northern Ireland - yet we are the civilised world. Goodness, we have the magnificent civilisation of North America with the quality of life which is evident across television screens. The member contrasts that with the primitive Aboriginal people, as he characterises them. How gross and offensive! Nothing could cry out more for an apology and rejection by his colleagues than the member's comments.

Societies are multifaceted in their nature. Some things are simple in construct within our society. Only a decade ago if a person killed someone, he or she was hanged. That is a simple, basic and primitive response within western civilisation. We have the complex structures of this civilised Chamber. In contrast, Aboriginal people have communities of kinship which involve obligations for almost the entire community, and that caring and nurturing has been part of their lifestyle for many generations. The responsibilities and obligations are on everyone to every creature. After I was made a jubada I realised that I had responsibilities for the brolga, and other people in the language group had responsibility for various elements in the environment such as trees and animal life. That is not a very uncivilised way of doing business. Men and women within Aboriginal communities have obligations to the environment and its species.

We should resile from the member's comments; they call out for our rejection. The member must apologise, as he has offended people across the entire nation, both Aboriginal and other people. His ideology would not matter so much if it were in isolation. However, it is evident that his ideology is being constructed into a policy of his Government. Next week this Parliament apparently will debate the Aboriginal land Mabo legislation introduced by the Court Government. The genesis of that legislation is revealed in the member's letter to the *The Australian* and the *News Chronicle*.

It is time the member apologised. It is time he explained that he has finally agreed to take the admonition of his Premier and will not persist with his "unhelpful" comments, using the words of the Minister for Aboriginal Affairs - if that is the best that can be done by way of criticism, this Government has much to learn about tackling such serious comments from its front and backbenches.

The Premier of this State is in Canberra with advisers, Mr Chris Humphrey and Mr Elsey of his department, trying to convince the Federal Liberal Party that his legislation - based on the ideology of Mr Lightfoot's comments - should be agreed to. I am glad that Hon Ross Lightfoot has demonstrated the roots and the genesis of that legislation, as it helps to gain an understanding of how such legislation could have sprung from the Liberals' party room. I understand that the member said somewhere today that his views were shared by many of his Liberal Party colleagues. That is extraordinary! I hope members opposite will take the time, if the member does not apologise, to dissociate themselves from their colleague.

I will now sit down to provide an opportunity for Hon Ross Lightfoot to withdraw his comments and apologise. If he does not do so, I hope he is dealt with by his colleagues. They should dissociate themselves one by one from his offensive, despicable and untrue comments. I call on Mr Lightfoot to speak.

HON P.R. LIGHTFOOT (North Metropolitan) [3.06 pm]: I certainly do not rise because the member called me to do so. I rise merely to defend that section of the letter to the Press that I wrote some weeks ago. In doing so I read the section which allegedly or ostensibly offended the moral standards of Hon Tom Stephens; I will go into those

moral standards in a moment. Before analysing my comments, they were -

> Mr Yunupingu, like the former prime minister, Mr Hawke, speaks of Aboriginal people as "civilised" or "Aboriginal civilisation". This is not only distorted, but about as wrong as you could possible get. Aborigines were never civilised.

Members should note the past tense. Not evolving to civilisation is not the fault of the Aboriginal people. They adapted to the land here for a period which was much longer than was incorrectly stated by Hon Tom Stephens. The acceptable minimum is 60 000 years, but some evidence suggests they have been here for over 100 000 years and some suggests even 200 000 years. If that is the case - I accept the scientific prima facie evidence unless it is rebutted by further advanced evidence - that is a story of an unbelievable human epic, of adventure and migration. That fact must be brought out with Aboriginal people. No matter how members twist and torment the words, they cannot possibly come up with a literal interpretation that Aboriginal people in Australia, at the time of settlement in particular, were civilised; they were the opposite.

Let me take some literal interpretations of "civilised". It is rather regrettable that the nefarious comments made by Hon Tom Stephens will further divide white and black Australians; that was never the intention of my letter, which has been amplified and blown up out of all proportion by some members opposite. It sickens me when people like Hon Tom Stephens moralise over their attitudes to Aboriginal people. I cannot tell the House how nauseous that sort of subterfuge and chilling untruth is to me. I cannot express strongly enough my revulsion of someone who is prepared to use Aboriginal people and wield them like a club against other Australians to divide us further. I find it repulsive. I must say with some regret, Mr President, that I find Hon Tom Stephens equally as repulsive as his comments. In the *Collins English Dictionary* - I am forced to defend this situation - "civilisation" is notated as -

1. a human society that has highly developed material and spiritual resources and a complex cultural, political and legal organisation; an advanced state in social development;

2. the peoples or nations collectively who have achieved such a state . . .

Hon Tom Stephens used the words "the Aboriginal nation". There was never a nation of Aboriginal people in Australia. That is not to denigrate Aboriginal people; it is a matter of plain historical fact. There was never a nation of Aboriginal people in Australia. Their number probably never exceeded 300 000 at their peak. In fact, in Tasmania the number was probably about 3 000 when settlement was first made in 1788 in what became the colony of New South Wales. Regrettably one of the great tragedies of human migration is that it was not long - if my memory serves me right, it was in 1876 - before the last Tasmanian Aborigine, who bore no ethnic relationship to the mainland Aborigines, Truganini, died. She was the last member of the group who became known as the Tasmanoid Aborigines. I find that quite sad.

An Opposition member: Wrong.

Hon P.R. LIGHTFOOT: Someone echoed "wrong". Today about 2 000 people are registered as Tasmanian Aborigines. When we talk about Truganini we must qualify that by saying that she was the last full blood Aborigine who died in Tasmania in 1876. I find that sad in the extreme.

They were retrogressive people. It was not as if they were a flourishing tribal group. Aborigines in Australia were never tribal. They were in fact large family groups, sometimes extended family groups. To form into a civilisation, people had first to form into a tribe, then into a larger society with some form of political structure. On the mainland there were 300 000 people, or thereabouts; it was impossible to tell but the nearest guess would be that there were about 300 000 Murrayans and Carpentarians on the Australian mainland. The Murrayans were the oldest group and the Carpentarians were the more aggressive and contemporary people who arrived in Australia. In itself, that information is highly sought after as a solution to ascertaining where these people came from, whether they were related to the Dravidians of southern India and whether

they island hopped during the times when the ice caps were frozen and the archipelagoes formed land bridges through Indonesia and the Malay Peninsula to India. Were those people who came to Australia from a family group in New Guinea? Did they come from the east as did the Melanesians and Polynesians who populated the islands of the Pacific and perhaps even the east coast of Australia? The problem with the Mabo decision today is not over Aboriginal people but over Melanesians on the Cape York Peninsula and the Murray Islands inhabitants, the Mer people, who have no relationship to the Australian Aborigines.

There was no structure here; no political structure and no economic structure. The inhabitants were hunters and gatherers. In the true sense they were the most primitive people on earth when measured against the technology of other people. They were more primitive than the Dravidians of southern India, more primitive than the Bushmen and the Hottentots of South Africa; more primitive than the Ainu of Japan; more primitive than the Inuits of Canada; more primitive than the Red Indians. That is what made them unique. To think that after these tens of thousands of years, these unique people survived in this country is something that I find quite mind-boggling and that interests me with something approaching a preoccupation.

Having lived with Aborigines for most of my life, I have an unqualified affection for quite a number of them. Hon Tom Stephens and the discredited Leader of the Opposition in the other place have said that I have denigrated and brought into disrepute my party and myself as a result of comments that I made that are of historical fact; however, it cannot be refuted or rebutted.

In addition, in defining the word "civilisation" the *Collins English Dictionary* says -

> . . . the total culture and way of life of a particular people, nation, region, or period . . . the process of . . . moral refinement . . . cities or populated areas, as contrasted with sparsely inhabited areas, deserts . . .

That is the key to it. I will go to the *Shorter Oxford English Dictionary*, which defines "civilisation" as -

> The assimilation of the Common Law to the Civil Law.

Aborigines had neither a common law nor a civil law. There was no written law, no numerals, no written words. The Aboriginal people did not have time to do that to survive. They had to survive every day by hunting and gathering. They did not have time to evolve the sort of structure which would have allowed an extension and extrapolation of that structure into a political process that could have been defined then as a civilisation. The *Shorter Oxford English Dictionary* defines the word "civilise" as being -

> To bring out of a state of barbarism, to instruct in the arts of life; to enlighten and refine . . . to make proper in a civil community; to become civilised or elevated . . .

I am not saying that that is necessarily bad. We all have different standards within our society. I look at people opposite and sometimes think their standards should be lifted. I say that sincerely and particularly to someone like Hon Tom Stephens, whom I cannot believe can speak with such a forked tongue.

Hon Graham Edwards: Are you a returned serviceman?

Hon P.R. LIGHTFOOT: I am in the Returned and Services League.

Hon Graham Edwards: Why are you wearing that badge?

Hon P.R. LIGHTFOOT: Because I am in the RSL.

Hon Graham Edwards: Are you a returned serviceman? Why are you wearing that badge, particularly on a day like today?

Hon P.R. LIGHTFOOT: That is about as insulting as one can get.

Hon George Cash: Still bitter and twisted.

Hon P.R. LIGHTFOOT: In answer to the question of Hon Graham Edwards about whether I am a returned serviceman, I served for three years in the Army in the national service, some of which was part time. Because I was a national serviceman I am eligible to join the Returned and Services League. It is only proper that, having served my country - I do not recall there being any reason for my going overseas; if there was, as a 17 or 18 year old, I would have gone - I take that slight as totally unnecessary and say to members that I wear this badge today with pride because today is the armistice of the Great War, the war to end all wars.

I have the utmost respect for the Returned and Services League. I am a bone fide member of that league. We often talk about standards. Hon Graham Edwards exemplifies what I have said about the lack of standards and propriety often exhibited on that side of the House. It is no wonder he will be rolled as leader in the Christmas break.

Hon Graham Edwards: I told you that the next person to get this job is George Cash.

Hon P.R. LIGHTFOOT: What I said in *The Australian*, which had wider distribution, about Aboriginal "civilisation" was not only distorted but as wrong as it could get. I talked in the past tense. I did not talk about Aboriginal people today. Those members who selectively quoted from and who did not read my maiden speech in this House will understand I have met many Aboriginal people in all walks of life. I have met Capital John Saunders, a commissioned officer in the Army, who was a full blood Aborigine. I have met the Governor of South Australia who was Aboriginal. I have met and hold as very dear friends Aboriginal people in the Leonora and Kalgoorlie areas. I particularly allude to Matron Sadie Canning, who was taken away from her full blood primitive mother.

Hon Sam Piantadosi interjected.

Hon P.R. LIGHTFOOT: Very civilised; more civilised than Hon Sam Piantadosi. Did someone say that she is not?

Hon Bob Thomas: No-one said that.

Hon P.R. LIGHTFOOT: This is typical of the subterfuge and innuendo from the other side. When I say an Aboriginal person is more civilised than a member in this place, someone interjects and says she is not. This is the problem we have on this side of the House. Members opposite speak with forked tongues. They do not mean what they say. They are about political point scoring. They are using the Aboriginal people for political purposes. I find it disgusting that members opposite interject and use Aboriginal people like a club against me.

Hon Sam Piantadosi: You are a disgrace.

Hon Tom Stephens: Has the Premier spoken to you yet?

Hon P.R. LIGHTFOOT: If Hon Tom Stephens took his hands out of his pocket I am sure he would not be quite so excited.

Hon John Halden: Very clever.

Hon Tom Stephens: Has the Premier spoken to you Mr Lightfoot?

The PRESIDENT: Order! If the honourable member interjects again I will take some action. I will not tolerate today anything like the unruly behaviour that occurred at times during yesterday's sitting. The only way I will be able to do that is, unfortunately, to resort to applying the standing orders. Standing Order No 116 was drawn to my attention yesterday, for which I am very grateful. We will have a couple of shots during the afternoon of putting it into effect. It contains five sections, so members have plenty of scope for contravening it. In the meantime I suggest Hon Ross Lightfoot address his comments to the Chair.

Hon P.R. LIGHTFOOT: Thank you, Sir. I can say without any fear of any bone fide contradiction that having been with Aboriginal people most of my life - not just thrust up against them suddenly like Hon Tom Stephens was, coming out of something that was completely and diametrically opposed to that type of environment - having grown up

with them, started school with them, worked with them, gone on mustering camps with them, and been involved in all facets of their life, I have respect for them beyond that which Hon Tom Stephens has suddenly inherited in his adult age. Members opposite have never seen native Aborigines in the Warburton Ranges - the Warakurna, Ngadadjarar, Wunkajah or Pitjantjatjarra people, the Cunyu or Ngaanyatjarras. Person for person on the other side I would prefer many Aborigines to the subterfuge, the misleading and the untruths that come from members opposite. These people do not lie to me. I would rather them pound for pound, person for person, than the motley collection of rabble over there who so often waste the time of this House.

The PRESIDENT: Order! The member must be a little more temperate in his descriptions of members of this Chamber. He cannot use that sort of terminology.

Hon P.R. LIGHTFOOT: Yes, Mr President.

I am not escaping from anything I said. This is what was perceived to be the problem with my letter. Firstly, I do not believe that history should be rewritten, that history is served when one can rewrite history today and that somehow because of technology memory is better today than what it was 200 years ago. One cannot escape the facts, and I do not resile from them: Aboriginal people in Australia at the time of settlement were not civilised. Aboriginal people in their native state today, and I think particularly of Pitjantjatjarras at the Warburton Ranges and Jamison, Warakurna and Wingellina, are on the bottom of the colour spectrum in their primitive states. The press release from Hon Ernie Bridge conveniently forgot to leave that in. He said that I said, "Only the bottom colour of the civilisation spectrum." I said, "Even in their primitive state today they are only the bottom colour of the civilisation spectrum." I imply there that we need to lift them up. I do not imply they are uncivilised - even in their native state today. I am saying they are civilised. Can members opposite not get that into their heads? They should not read Ernie Bridge's press release, but the facts. These are the facts. What I am saying is historically correct. I do not resile from the fact. I have many Aboriginal people as friends.

Hon John Halden: That is utter claptrap.

Hon P.R. LIGHTFOOT: I far prefer them to the heir apparent who has just interjected.

HON GEORGE CASH (North Metropolitan - Leader of the House) [3.28 pm]: I want to make a contribution to the motion moved by Hon Tom Stephens.

Hon Tom Stephens: I hope you will dissociate yourself from your colleague's comments.

Hon GEORGE CASH: If the member gives me a few minutes he will learn. We have seen this afternoon an interpretation of statements, one from Hon Tom Stephens on the one hand, who decided he wanted to interpret a statement in a particular way. In fact, he indicated the statement was intended to be offensive to the Aboriginal community. On the other hand, we have had the author of the statement stand in the Parliament and say clearly that no offence was intended and that he was making a statement on his perceptions of the Aboriginal communities in Western Australia and Australia, both past and present. Whether one is prepared to support either member and whether one believes there was some malice or offence intended in the statement is a matter of personal view. In the motion before the House Hon Tom Stephens invites us to consider certain comments made on the "AM" radio program this morning. I did not hear "AM", so I will not be commenting on the alleged statements.

Hon Tom Stephens: I quoted them. Mr Lightfoot laughed and would not withdraw or apologise for his comments.

Hon GEORGE CASH: I did not hear "AM" so I will not make any comment on that part of the motion.

However, in respect of Mr Stephens' statement in the motion that there was a failure of senior Ministers in the Court Government to reject and dissociate themselves from these comments, I state that that is untrue. Hon Tom Stephens showed his statement to be

untrue by the very words he uttered. He referred to three Ministers in particular who had made some statement about Mr Lightfoot's comments.

Hon Tom Stephens: One said that he was going to speak to him.

Hon GEORGE CASH: Does Hon Tom Stephens want to say it again, or will I say it? I will tell the House what I believe three senior Ministers have already said about this statement. The first relates to the comments of the Premier yesterday afternoon in question time in the Legislative Assembly.

The PRESIDENT: Order! One hour having elapsed since the time set down for the sitting of the House, leave of the House is now required if the debate is to continue.

Hon GEORGE CASH: We are actually going to start work for the day.

Several members interjected.

The PRESIDENT: Order!

Hon George Cash: Next Tuesday I will have priority.

The PRESIDENT: Order! I was not speaking without some seriousness earlier when I said I will not tolerate that type of behaviour. I remind members that temper occasionally gets the better of them. The long sessions we have had are causing some members to not be able to contain themselves. The fact of the matter is that there is a set of rules which belongs to this Chamber and which I am asked to uphold on behalf of members. I also get tired and irritable when we have long sittings. I am not professing that I am any more capable of dealing with the matter than are members; however, I have the responsibility of maintaining order and decorum in this place.

I have said this before, and I will say it again: If members are not happy with the way I maintain order and decorum in this place there is a very good solution which is provided in the standing orders. I advise members that if they want to take that course simply because they do not want the standing orders applied, either selectively, occasionally or when it is another member breaching them rather than themselves, they will not hurt my feelings. There are a lot of things I could say if I were sitting in the vacant chair on the floor of the House which I am not able to say from this position, and I would get a lot of pleasure from doing that.

Hon Graham Edwards: We like you where you are, Mr President.

The PRESIDENT: If members do, let us all be tolerant of the fact that each member is a frail human being and sometimes a member says things which he would not say if he had a second shot.

I do not want to be a dictator or to yell and sound like a schoolmaster, but work has to be done and progress has to be made. I cannot understand some members of the Opposition because I am their best ally, if they only knew it. It is my job to see that they are entitled to say what they want to say, and I will do that. However, they make it hard for me when they want me to uphold the rules selectively. That is not to say that I am suggesting that members on the Government side of the House are without their own need for coming to order when I call order. I repeatedly say there is not a different set of rules for each side of the House.

I wish I were King Solomon and were more wise than I am, but I rely on the cooperation of each member to carry out the function I was elected to do. I ask members again that when they want to move motions and take points of order it is quite proper for them to do that, but if they do it maliciously they will fall foul of me. If they do it to frustrate the operations of this place they will also fall foul of me.

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

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Membership - Assembly's Resolution

Message received from the Assembly notifying that it had agreed to the following resolution -

That Mrs Henderson (member for Thornlie) be discharged from the Joint Standing Committee on Delegated Legislation and Mr Cunningham (member for Marangaroo) be appointed in her place.

INDUSTRIAL RELATIONS AMENDMENT BILL

Committee

Resumed from 9 November. The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for Health) in charge of the Bill.

Progress was reported after clause 5 had been agreed to.

Clause 6: Section 23 amended -

Hon A.J.G. MacTIERNAN: I move -

Page 12, lines 9 and 10 - To delete the words "harsh, oppressive or".

Section 23 of the Industrial Relations Act gives the Industrial Relations Commission power to reinstate or re-employ an employee where the employee has been unfairly dismissed. The Opposition objects to the word "unfair" being expanded in clause 6 to "harsh, oppressive or unfair". We have discussed this issue during debate on this troika of Bills. It is important that we get this right. It certainly is a question of statutory interpretation. Regard can be had to the history of enactments in determining a particular phrase within legislation. There are many cases which make that very clear. It is said in the New South Wales' case of Bridge v Mattis that -

> When we see in Acts *in pari materia* by the very same legislature words added to those used in a prior enactment, it would be setting at nought the clear intention of the legislature to give the later enactment the construction judicially placed on the earlier enactment.

This case has been followed by a number of High Court cases. The courts will certainly look at the interpretation that has been given to "unfair". It will take into account that, in putting through these amendments, the Legislature has taken upon itself to replace the word "unfair" with "harsh, oppressive or unfair". The understanding of the word "unfair" has been developed in quite a sophisticated way by the court. The introduction of these words "harsh" and "oppressive" will restrict the definition and make it a far more difficult test for the worker to satisfy.

Is it the Minister's intention to depart from the existing interpretation and the test that has been used by the courts in determining whether a dismissal has been unfair by the introduction of the words "harsh" and "oppressive"?

Hon JOHN HALDEN: I understand that "harsh" and "oppressive" have greater and different meanings than "unfair". It is possible that something could be harsh but not necessarily unfair. I wonder what would then happen with the interpretation. It could be oppressive and not necessarily unfair but more harsh and not necessarily unfair.

Hon PETER FOSS: I think the member's colleague is suggesting the reverse of that.

Hon John Halden: Either way.

Hon PETER FOSS: Hon Alannah MacTiernan's concern is that if "harsh" and "oppressive" do not add to the word "unfair", adding those words in this context may decrease the meaning of the word "unfair".

Hon A.J.G. MacTiernan: It is making it a more difficult test. The word "unfair" will, to some extent, be coloured by -

Hon PETER FOSS: I see; I think I can satisfy both concerns at the same time. It is not intended in any way to change the meaning of the word "unfair" or detract from it. It is intended to broaden the level of remedy available to the complainant. In other words, "unfair" as previously interpreted by the courts, "harsh" as elsewhere interpreted and "oppressive" singularly would be a ground for complaint. It not intended to colour the word "unfair". It is intended to pick up terms used more in consumer type legislation

when talking about contractual matters. It is another important reason for our believing it should be in here. As I said, the Government's intention is to broaden the level of remedy but also, as we have already put those words "harsh" and "oppressive" and "unfair" into the Workplace Agreements Bill, we wish to make it quite clear that it is not any less a remedy than that which is available under the Industrial Relations Act. The Government would not want anyone to believe that because the other words were not included there was a lesser remedy than is available under the Workplace Agreements Act. The intention is to leave "unfair" as is and add two words, "oppressive" and "harsh". As Hon John Halden said, it is intended to pick up those cases where it may be harsh but not necessarily unfair, and oppressive but not necessarily unfair. I must confess that the latter is hard to imagine, but I can imagine where it would be harsh without being unfair.

[Continued below.]

Sitting suspended from 3.45 to 4.00 pm

PARLIAMENT HOUSE - VISITORS

McRae, Roberta, Speaker of the Legislative Assembly, ACT

THE PRESIDENT: I draw to the attention of members the presence in the President's Gallery of Hon Roberta McRae, OAM, Speaker of the Legislative Assembly of the Australian Capital Territory. I welcome her to our Parliament.

Members: Hear, hear!

[Applause.]

INDUSTRIAL RELATIONS AMENDMENT BILL

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Cheryl Davenport) in the Chair; Hon Peter Foss (Minister for Health) in charge of the Bill.

Clause 6: Section 23 amended -

Consideration continued.]

Hon A.J.G. MacTIERNAN: We are very pleased to hear the Minister say that he sees the inclusion of the words "harsh and oppressive" as being expansive rather than contractive. I wonder if there is some way in which we can put this beyond doubt. Perhaps we could say "on a referral of a claim for dismissal" and itemise them separately. We want to be absolutely sure that this will not be used in a way which will contract the definition.

Hon PETER FOSS: I do not think that it is necessary. On the face of it, there are three different words indicating three different concepts. If one were to give either of those words other than their ordinary meaning, it could only be done on a rule of statutory interpretation because one thought that there was some doubt about their ordinary meaning. Once one got into doubt about their ordinary meaning, I am sure that one would refer to the proceedings of Parliament. However, one does not need to go that far. The ordinary meaning would be that in any particular instance one would argue that it was either harsh or oppressive or unfair. If any one of those were established, one would be successful. It would only be if somebody tried to argue that the words should be read either together or individually and bore a meaning other than their ordinary meaning that one would be able to get to the point that the member has raised. Once one reached that stage - I do not think it is likely - one would refer to the parliamentary debates. As we all agree that they tend to be cumulative, I cannot see any problem.

Hon JOHN HALDEN: Would the Minister clarify whether the three words used as they are provide a limiting provision that restricts the commission from making an order for unfair dismissal, other than what there is now?

Hon PETER FOSS: I made that perfectly clear at the beginning. We said that it is expanding the power of the commission. One cannot just argue "unfair"; one can argue

independently "harsh" and independently "oppressive". There may be areas of overlap, but it is intended that, to the degree that there are areas of overlap, it expands the jurisdiction of the commission.

Amendment, by leave, withdrawn.

Clause put and passed.

Clause 7: Section 23A inserted -

Hon A.J.G. MacTIERNAN: New section 23A basically endeavours to set out the types of orders that the commission can make when dealing with a claim for unfair dismissal. Under the existing enactment there is no such specific detailing of the commission's powers in that regard. Over the past few years, a number of cases have created some uncertainty in the area of unfair dismissal - or, as we have it now, harsh, oppressive or unfair dismissal.

Hon Peter Foss: I don't think it created uncertainty. It resolved things and put certainty into the way in which people had been doing it.

Hon A.J.G. MacTIERNAN: We believe that there has been uncertainty not merely in the cases to which the Minister referred but also in a couple of other areas. As well, there is the view that the cases which the Minister says have been decided would, if one were able to devise a mechanism to take them to the High Court, be overturned as bad law. That has to be explored.

Perhaps the matter should go before the court even on the existing judgment. It is not clear that the case should be interpreted in the way that it has been to date.

We do not object to the concept of a section which specifies the commissioner's powers in this regard. Indeed, we see some benefit in doing so in order that some of the problems that we will identify - clearly, from the Minister's comments, he had some in mind - will be addressed. We believe that there are some major shortcomings in the provision, and we seek to address them by way of amendment. I have circulated a list of four amendments. In light of our discussion on the previous clause, I believe that we can quite comfortably delete the first two of those proposed amendments dealing with the addition of the words "harsh and oppressive" and, in the second instance, "harshly and oppressively". We are now satisfied that those words are expansive and not contracting.

I move -

> Page 13, after line 4 - To insert the following -
>
> > (1A) The sum to which the claimant is entitled under subsection (1)(a) may include payments in respect to the period between the date of dismissal of the complainant and the date of his or her reinstatement.

At present, the commission is given power to, inter alia, order payment to the claimant of any money to which the claimant is entitled. Then subsection (1)(c) provides power to make any ancillary or incidental order that the commission thinks necessary for giving effect to any order made under the subsection. It is not clear under that provision that there is an entitlement for the payment of that period between the unfair dismissal and the reinstatement. That issue has arisen from time to time. Traditionally - not always - it has been the case that the commission has been prepared to make such orders. Obviously, we are now acting in a slightly altered environment because new section 23A will seek to codify to some extent the range of powers which the commission has in relation to an unfair dismissal. We seek to put the commission's capacity to order a payment for that period beyond doubt by the insertion of that subsection.

Hon PETER FOSS: The Government should be applauded for the amendments that are being made here. Whether or not the Opposition thinks it can find a mechanism to appeal to the High Court, the fact remains that the decisions of the Industrial Appeal Court have been made. I think that it is correct in the legislation as it stands. The result has been that it has been made quite clear that the sort of jurisdiction that is contained in subclause (3) of proposed section 23A does not presently exist in the Industrial Relations

Commission. I would have hoped to receive a warmer response to this than we have got, other than the Opposition saying that it does not oppose it. I would have hoped that the Opposition would have agreed to this as an amendment of significant benefit to workers of Western Australia because it gives them a right that they previously did not have.

Section 29 provides for two forking jurisdictions. One is for contractual entitlements, which is very straightforward. It says that a summary procedure can be used by workers in the industrial commission to recover any moneys due to them under the terms of their contract. That is a contractual entitlement, not just an award entitlement. The other one is the novel, in law, right of bringing an application because of unfair dismissal. An unfair dismissal is by definition a lawful dismissal; although lawful, it has some character to render it unfair. The employer is doing something he is entitled to do; he is exercising the right he is entitled to, but this jurisdiction comes in to prevent him. It is inequitable because it is unfair. It is that jurisdiction which has been treated by the commission as giving some alternative from that stated in the Act.

The Act says that at present one has a right to apply for reinstatement; that is, one is put back in the position one would have had, had the lawful right not been exercised. That does not give a right to payment, because the contractual situation has finished. If a person is not reinstated, that is it. That person has no contractual rights, therefore he cannot claim for moneys due.

The Government has included in this Bill a new statutory right. Proposed new section 23A(3) states that if an employer fails to comply with an order for reinstatement the commission may revoke that order and make an order for the payment of compensation for loss or injury caused by the dismissal. I am not saying what that loss or injury is, but I believe it would be quite contrary to the whole scheme if we were to provide a quasi contractual right to be paid from the time of dismissal, as provided in the Opposition's amendment, to the date of reinstatement. There will be two alternative remedies; previously there was the one - to be reinstated or not. The Opposition is now asking to have a payment made in that period.

If the Opposition believes that the law is that employees are entitled to it, we do not need the amendment. If the Opposition believes the law entitles employees to it, the Government does not intend by this amendment to give them that new right. If an order for reinstatement is made, and if the reinstatement does not go ahead for the reason set out in subsection (3), there is another statutory entitlement to compensation. That is what is being provided. It would be inconsistent to create a quasi contractual right to payment between the time of dismissal and the time of reinstatement. The Government does not accept the amendment.

Hon A.J.G. MacTIERNAN: Most of the Minister's address was directed towards the Opposition's next amendment. We quite specifically said we could see the benefit in codifying the rights of the powers of the commission in this regard. We were not just saying we did not oppose it; we are very much in favour of having very clear jurisdiction in this area. If we can put to one side the other argument, this amendment seeks to put beyond doubt the issue of the capacity of the commission to order the payment of compensation. The Minister will note that the amendment says "the sum to which the claimant is entitled to under subsection 1(a) may include payments in the period to the date of dismissal". It is not setting out a mandatory payment. It is putting beyond doubt the fact that the commission should have power to do that. This is an area where traditionally the commission has made such payments, but it is not absolutely certain it has the power and from time to time questions have been raised about it. We do not see that this amendment will provide anyone with any new right; it will simply enable the commission to put it beyond doubt that it is proper for the commission to take into account payment for that period. If this section is truly designed to provide a comprehensive guide to the rights of a dismissed worker -

Hon Peter Foss: It is not intended to do that. It is intended to confer a new right.

Hon A.J.G. MacTIERNAN: That is the next proposed subsection. We think it is possible, having created proposed section 23A, and this is where we get into the reason

for the Pepler decision. The current Act has no specific provisions in relation to compensation for unfair dismissal. The opportunity arises out of the fact that dismissal is part of the employee-employer relationship, and that is how the commission has jurisdiction. The jurisdiction generally that has been traditionally used - that is, the rights to those traditional contractual benefits and compensation - has been implied out of a general jurisdiction to deal with matters relating to employer-employee relationships. That is not quite the issue. The Opposition is saying that this clause attempts in some way to provide full compensation where reinstatement has not occurred. Since we have this new section let us make sure there is another area, not arising out of the Pepler decision but of separate concerns, that is put beyond doubt. We have received a number of representations on this from people who are involved in advocacy in the Industrial Relations Commission who believe it would be useful to ensure that is codified. Good legislation communicates effectively. With this new industrial relations package we will have lots of people seeking to work through the legislative framework themselves, so it is even more important that these sorts of things be spelt out.

Hon PETER FOSS: Hon Alannah MacTiernan has made her position clear. The Government's position is also clear. It is not our intention to carry out her intention.

Division

Amendment put and a division called for.

Bells rung and the Committee divided.

The DEPUTY CHAIRMAN (Hon Cheryl Davenport): Before the tellers tell, I cast my vote with the Ayes.

Division resulted as follows -

Ayes (13)

Hon T.G. Butler	Hon John Halden	Hon Bob Thomas
Hon Kim Chance	Hon A.J.G. MacTiernan	Hon Doug Wenn
Hon J.A. Cowdell	Hon Sam Piantadosi	Hon Tom Helm *(Teller)*
Hon Cheryl Davenport	Hon J.A. Scott	
Hon N.D. Griffiths	Hon Tom Stephens	

Noes (15)

Hon George Cash	Hon Barry House	Hon R.G. Pike
Hon M.J. Criddle	Hon P.R. Lightfoot	Hon B.M. Scott
Hon B.K. Donaldson	Hon P.H. Lockyer	Hon W.N. Stretch
Hon Max Evans	Hon N.F. Moore	Hon Derrick Tomlinson
Hon Peter Foss	Hon M.D. Nixon	Hon Muriel Patterson *(Teller)*

Pairs

Hon Mark Nevill	Hon Murray Montgomery
Hon Graham Edwards	Hon E.J. Charlton

Amendment thus negatived.

Hon A.J.G. MacTIERNAN: I move -

> Page 13, lines 7 to 12 - To delete all words after "(3)" and substitute the following -
>
> > If the Commission finds that an employee or former employee has established that his or her dismissal was unfair, and further finds that it would be inappropriate to issue an order under subsection (1)(b), the Commission may make an order for the payment of compensation to the employee or former employee for loss or injury caused by this dismissal.

From discussions the Minister is aware that until the Pepler decision - Robe River Iron Associates and the Drafting Supervisory and Technical Employees Association case in 1987 - it was generally understood that the Industrial Relations Commission had power

to award compensation to an employee where he was unfairly dismissed and the commission believed it would be unwise to order the reinstatement of the employee. In those circumstances the commission frequently awarded compensation. As I said in the discussion of the last amendment, awarding such compensation arose out of an understanding that the whole process of unfair dismissal was based on the employee-employer relationship. The relevant section of the Industrial Relations Act had no provision stating that it was acceptable to do so and was within its jurisdiction.

That very narrow decision in the Pepler case is generally understood to mean that as the commission's jurisdiction is limited to disputes between employees and employers it cannot order compensation in the absence of an order for reinstatement. Without reinstatement there was no employee-employer relationship and hence no jurisdiction. This was a very narrow decision, and it was very disappointing that such a pedantic view was adopted by the court. It has certainly led to many more claims for reinstatement than are reasonable, because compensation can be claimed only if reinstatement is ordered. In some circumstances reinstatement is not the appropriate remedy, notwithstanding the fact that a dismissal has been an unfair imposition upon the employee's rights. However, it is certainly the case, and often argued strongly by employees, that due to the irretrievable breakdown of the relationship it would be contrary to the interests of both parties to try to re-establish that relationship.

We have now the absurd situation where employees unfairly dismissed, not necessarily through their own fault, are not able to be reinstated because of this irretrievable breakdown in the relationship, and there is probably an even greater incentive for the employer to argue an irretrievable breakdown because that will provide him with a way of avoiding paying compensation for the unfair act of dismissing the employee. We understand from the Minister's comments that this subsection we seek to amend seeks to redress that jurisdictional problem identified as a result of the Pepler case.

There is a very curious position here. This clause provides that where an order is made for the reinstatement, essentially the employer may go back and ask for an order to be revoked or, alternatively, it provides that if an employer decides not to act on the reinstatement order, the employee can go back to the commission, and the commission can then grant an order for compensation for the loss or injury incurred as a result of the dismissal. That is flawed in a number of ways. It seems to give an employer the right to elect whether to comply with the order, and the order of reinstatement does not seem to be enforceable.

Secondly, and probably far more importantly, it makes it necessary to go through a two stage process to resolve the issues of reinstatement and compensation. There is no general right given now for the court at first instance to look at the case and say, "This bloke has been unfairly dismissed. There has been an irretrievable breakdown in the relationship. We will order compensation." If the court were minded to apply compensation, having made an order in the first instance for reinstatement, under this scheme it would be necessary for the employer either to fail to reinstate the person or to take positive action to come back to the court, or for the employee to come back to the court and seek an order to revoke that reinstatement and to then make an application for compensation. That is a pointless exercise. It certainly does not allow the commission in the first instance to find that there was irretrievable breakdown in the relationship and no order for reinstatement, hence compensation. If in the first instance the commission did find that, a litigant would find himself in exactly the situation in which he finds himself now, with no right of compensation. This provision simply states that where a reinstatement order is not complied with, the commission may, upon further application - presumably by either party - revoke that order. That is a double, totally unnecessary, process. It is certainly one that would be costly to both employers and employees. We understand that even the Chamber of Commerce and Industry has doubts about whether this is an appropriate way to resolve Pepler, if one wants to resolve it. This clause provides a limited resolution to Pepler, once there has been a reinstatement order and that reinstatement order has been revoked, but it provides no remedy at all where a reinstatement order has not been granted in the first instance. It would be simpler to

proceed along the lines set out in our amendment. How will the Minister's scheme be more advantageous than the simple scheme that we propose?

Hon PETER FOSS: The word used by Hon Alannah MacTiernan to indicate the difference between the approach that we are taking and the approach that she is taking is that it will "resolve" Pepler. I do not think Pepler needs to be resolved. Not only did Pepler enunciate correctly the situation under section 29 of the Act, but also I believe section 29 stated correctly what should be the case. We are forgetting that we are dealing with a situation where a person has an agreement, a contract, and may very well have an award, which provides for the termination of that person's employment. For a start, when an employee chooses to leave that employment, he can just give notice in accordance with that contract or award, and leave. The employer cannot take action against that employee because he leaves unfairly, and I do not think anyone would suggest that the employer should be able to take that action. It has always been understood that a person cannot be compelled to be employed against his will - and quite rightly - and that an employer, having dismissed a person in accordance with the lawful requirements of the contract, cannot be compelled to re-employ him. If an employee, under his contract, can exercise his right to terminate his employment, why should it not be the same for the employer?

I remember a case involving section 29 in which my former senior partner, Robert Ainslie, QC, was involved. He found the whole concept of section 29 incomprehensible, and he would turn in his grave to know that we were putting forward the concept that an agreement could be terminated lawfully and that a person could then come back and say that notwithstanding that the agreement was terminated lawfully, he wanted to come back. I am not saying that I take the same attitude as my former senior partner -

Hon T.G. Butler: Did you say that a person who left of his own free will could come back and demand reinstatement?

Hon PETER FOSS: I did not say that. I am not suggesting that there is not a reason for this, because in many cases there is a difference in the positions of employer and employee, and this is predicated upon the fact that an employee can come back on the basis that the employer is using his power whimsically or unfairly. However, the unfair dismissal provision was predicated on the premise that the person was entitled to get his job back. The problem is that whenever one takes a step to one side, another step always follows on after. I can remember that the case for maternity leave was argued on the basis that women are different from men; therefore, they should have maternity leave. It was then argued that because women have maternity leave, men should have paternity leave. Therefore, they first argued the difference and then argued the similarity. Often when we resolve one ambiguity, we create a new one, so each time we move along -

Hon Tom Helm: So don't move then.

Hon PETER FOSS: Hon Tom Helm has made a good point. I must say that I do not really believe in subclause (3) as it stands. It is not something about which I feel so strongly that I do not agree with its going in now, but I would not have made the decision to put in subclause (3). I think Pepler and the Coles-Myer case were right.

The problem is that if we believe the relationship has not broken down entirely and we send the person back, or reinstate the employment, but the employer then decides to thwart that by breaking down that relationship, we should provide some balance by giving that employee compensation, otherwise there will be no inducement for the employer to comply with the order.

The clause provides also for ancillary orders in proposed section 23A(1)(c). The easiest way to get a self enforcing-type provision is to say, "Yes, the commission can order that a person's job be reinstated" - and that is a new statutory right, a novel one, as I said before, and I think arguably an unusual one, given the relationship between the parties - "and if an employer then tries to subvert that intent, the employee has the capacity to go back to the commission and ask for compensation." I think that is reasonable. I do not have a problem with the arguments of members opposite but, as with anything, one

should look at the historical basis. If people fail to go back to the initial understandings - the fundamental underlying principles - and look at the relationships and how they have been disturbed in a statutory fashion, they are likely to end up with that conclusion. I do not deny the argument or say it is wrong, but it is an extension that is not justified. The Government does not believe it should amend the Bill to allow this. By all means I accept that the case has been made, but the Government believes it is taking the law a significant step further.

Members opposite say it was generally accepted that the commission could make such an order; it may have been generally accepted by the commission, but it was certainly not generally accepted by all lawyers, especially those acting for employers. It may have been accepted by union lawyers but it was not accepted by me, nor by lawyers who went back to the original contractual basis of employment. It needed cases such as Pepler and Coles-Myer to take us back to the first principles. For the first time we are stepping beyond those first principles.

We, as a coalition Government, are the first people in this State to put this right into statutory form. It is novel, and we believe it does not exist currently. We are encouraged by the fact that on a number of occasions statements have been made by the Industrial Appeals Court which support this. We are giving Western Australian workers something they have not had previously. The Opposition is trying to take it a further step using its logic, which I understand but do not accept.

Hon A.J.G. MacTIERNAN: The Minister is saying that when an employee has been dismissed and deprived of his livelihood for reasons that are harsh, oppressive or unfair -

Hon Peter Foss: But lawful.

Hon A.J.G. MacTIERNAN: But lawful because under this proposed amendment it is lawful to dismiss someone in circumstances which are harsh, oppressive and unfair.

Hon Peter Foss: Yes.

Hon A.J.G. MacTIERNAN: Where it is not appropriate for that person to be reinstated, he has no right to any compensation for the harsh, oppressive or unfair treatment. It is certainly true that legislation and interpretation evolves over time, and it may well be that when provisions such as unfair dismissal were first introduced in the industrial relations scheme, they were so confined. However, law generally evolves over time by argument being put to the courts. For a considerable time the courts have been prepared to say it is an appropriate use of their jurisdiction to provide for compensation where reinstatement is not appropriate. In the Pepler case essentially the interpretation of that Statute was changed, and rights that workers previously enjoyed were no longer available.

It is not correct to say that the Government is introducing a novel right in the proposed amendment to subsection (3) of the Act. It was enjoyed for many years until 1987, by virtue of the interpretation used by the courts of the jurisdiction under the Industrial Relations Act. Instead of going backwards, we should be moving forward from that time in 1987, and making it clear that the interpretation is right.

The Minister is correct in saying we have reached an ideological impasse. However, the Minister is saying that an employer can act harshly, oppressively and unfairly and the employee will have no remedy where the courts deem that there is no possibility of reinstatement. In practical matters that encourages an employer to whip up an atmosphere of breakdown that is irretrievable and to not only in the first instance act harshly, oppressively or unfairly, but to take that conduct further and in the case before the commission set out circumstances - gilding the lily - in order to deprive the victim of the employer's conduct of any remedy whatsoever. The amendment will not simply apply to those workers who cannot be reinstated because of a genuine breakdown in the relationship, but also will create a situation in which the legislation will encourage a breakdown in relationship.

It is perhaps part of the whole industrial relations flavour of this package of Bills. What is masquerading under the name of industrial relations is exactly the opposite. We shall encourage employers who have behaved badly to escalate the degree of wrongdoing

towards those people, and to attempt to make a case that there is no way they could re-employee them. That is not a very productive way to proceed and it would be completely remedied by inserting the amendment proposed. That would not become a novel right, any more than the very limited rights recommended under the Government's proposed subsection are novel. They had been in existence for a considerable time and were lost by virtue of an interpretation by the courts. It is very harsh. For the Minister to say that the Act intended this in the first place, without taking into account the evolution and changes in the standards that have developed over time, is to ignore the realities of the legislative process.

A certain inconsistency has developed as a result of the Government's proposed amendment to subsection (3). Although it says it is not appropriate generally to grant compensation, the Government is now providing circumstances in which it is okay to grant compensation should the employer be ordered to reinstate the employee and elect not to do so. It does not make any sense. If it is an appropriate remedy for a person who has lost his job because of the harsh, oppressive or unfair conduct of the employer, it is a remedy, regardless of whether the employer adds to the crime by refusing to comply with an order for reinstatement.

We are likely to find as a practical matter that the courts will be very tempted to order reinstatement, being mindful of the limit they have on their capacity to award compensation, thus requiring the second process to be entered into; that is, for either party to seek an application to revoke the order. In those circumstances compensation can be granted. That is a pointless process which will be costly both for employers and employees. It does not seem to serve any practical purpose. There is no logical reason to distinguish between the situation of employees who are dismissed unfairly and not reinstated, and those who are unfairly dismissed and theoretically reinstated but not properly reinstated. The appropriateness of an award in those two classes is the same, yet we have the silly separation which will encourage a duplication in the legal process. The court will be approached on two separate occasions in order to achieve a compensation payment.

This will not enhance or encourage employers to think realistically and constructively about repairing the relationship between employers and employees after an unfair dismissal; the provision contains a discouragement for that. It will encourage the commission, even in circumstances where it is not appropriate, to make such an order so that the victim of unfair dismissal will have some remedy eventually.

Hon PETER FOSS: I am interested to hear Hon Alannah MacTiernan talk about a right enjoyed for many years which the court has decided does not exist; perhaps we can discuss that when we refer to the Mabo legislation. However, I am disappointed that the Opposition has not welcomed the significant contribution to workers' welfare made by this new provision, which confers a legal right where previously there was none. I understand the member's argument, but the Government's position has been made clear. I oppose the amendment.

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 (13)

Hon T.G. Butler	Hon John Halden	Hon Bob Thomas
Hon Kim Chance	Hon A.J.G. MacTiernan	Hon Doug Wenn
Hon J.A. Cowdell	Hon Sam Piantadosi	Hon Tom Helm *(Teller)*
Hon Cheryl Davenport	Hon J.A. Scott	
Hon N.D. Griffiths	Hon Tom Stephens	

Noes (16)

Hon George Cash	Hon Barry House	Hon B.M. Scott
Hon M.J. Criddle	Hon P.R. Lightfoot	Hon W.N. Stretch
Hon Reg Davies	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon M.D. Nixon	
Hon Peter Foss	Hon R.G. Pike	

Pairs

Hon Graham Edwards	Hon Murray Montgomery
Hon Mark Nevill	Hon E.J. Charlton

Amendment thus negatived.

Hon J.A. SCOTT: Proposed subsection (4) causes concern regarding the recompense to be paid, as it must not exceed six months' remuneration of the claimant. A vast difference will arise in the amount of time people may have been employed in a position. If somebody has been employed over a period of numerous workplace agreements the average wage will not reflect the time of employment at the time of dismissal. This would not be fair upon somebody in the job for a long time compared with the payment made to somebody who had held the job for only six months. A person coming to the end of his or her working life, for whom it would be difficult to obtain another position, would be in a most unfair situation. How does the Minister regard the fairness of that situation?

Hon PETER FOSS: The debate we have had so far indicates why this is fair. We are introducing a new right. This is striking at the basic rule of contract to provide statutory recompense, and in setting that recompense a limit is to be set. This seems to be a reasonable amount. If a person is dismissed in breach of contract, it would be a senior person who receives as much as six months' remuneration. In industrial terms, that is a large amount of damages. People with certain contracts may receive more than that, but generally speaking that amount would be significant for a case of unlawful dismissal. It is not unfair.

Hon J.A. SCOTT: I also mention the fact that if a person had the figure determined by an average remuneration over, say, three workplace agreements over 15 years, the level of recompense would be less than for somebody who had been on the job for six months. The newer employee would benefit and the long serving employee would be disadvantaged.

Hon PETER FOSS: Firstly, it has nothing to do with workplace agreements. This relates to the Industrial Relations Act and it deals with people who are under awards or under no structure at all. It would not apply to people who were under workplace agreements. They have their own provisions.

Hon A.J.G. MacTIERNAN: This provision has been a feature of a number of industrial relations Bills which has come before this place. Irrespective of one's loss -

Hon Peter Foss: One does not have loss.

Hon A.J.G. MacTIERNAN: There is loss as a result of the harsh, oppressive or unfair dismissal.

Hon Peter Foss: Not if it is lawful.

Hon A.J.G. MacTIERNAN: That is not to say it is not harsh, unfair or oppressive. Loss is generated out of that.

Hon Peter Foss: You do not get money for everything unfair that happens in this world.

Hon A.J.G. MacTIERNAN: One should be compensated for loss of unemployment.

Hon Peter Foss: Not if it's lawful.

Hon A.J.G. MacTIERNAN: I suppose it gets down to whether it is lawful or unlawful. If it is conduct which can attract a penalty by way of an order for compensation it does

not particularly matter whether it is characterised as lawful or unlawful. We are referring to conduct which causes a party to suffer loss. The whole area of tort is based on the notion, not of breach of contract, but that certain losses caused by one party to another must be compensible. Now we have another class of loss which results from harsh, oppressive or unfair dismissal of employment. I guess the reason we have special industrial relations legislation is that we understand the importance and the primacy of work in the lives of people within western civilisation, as opposed to other forms of civilisation where their workplaces are less rigorously demarcated.

Given that we have decided that loss is to be compensated, the question is: what is the degree of compensation? In most areas of loss we will basically look at the degree of damage the party has suffered. Until recently, for example, if one had a motor vehicle accident or suffered an injury at work caused by another party one had the right to be restored to the previous situation as far as possible and to be compensated fully for the losses one suffered. This provision and a number of other provisions we have found throughout this troika of legislation seek to allow some compensation, but not full compensation. If someone has suffered to a far greater extent at the hands of a cavalier employer who has dismissed him in a harsh, oppressive or unfair manner the Government will limit his liability. It is not a simple matter for an employee to establish he has been dismissed in a harsh, oppressive or unfair manner. We will not be opening the floodgates, unless of course the employer class is much worse than we think in behaving in a cavalier manner towards its workers.

Many claims have been made in this Chamber by the Minister about the integrity and the commitment of employers to their employees. It is not simply a question of being easily able to establish that one has been improperly dismissed. We do not believe any logical coherent argument has been put as to why a loss sustained in that way should not be fully compensated or why there should be an arbitrary cut off of six months. One cannot argue that the economic consequences would be too great for employers. Would the Minister care to provide some explanation as to why a loss experienced by a worker unfairly, harshly or oppressively dismissed is not to be fully compensated?

Hon PETER FOSS: I do not agree that it is hard to prove unfair dismissal. In fact I am constantly amazed at how easy it is to persuade the commission. If anything, I think it goes overboard the other way. I am very surprised to hear a lawyer say one should compensate people for the full amount of their loss where there is no right in law apart from what is created here. All sorts of unfair things happen. It might be unfair that the member did not get elected to Government. One does not say the people must pay her damages. Knowing the way members opposite use government they would be very badly off as a result. The mere fact that one regards something as unfair does not mean there is a legal right. The Government is creating a legal right to give someone money, even though that person has no legal right. There is no tort, there is no contract or right in law, but this Government will create it.

However, we will not make it open ended. The member knows what cases are like where people who have been unlawfully dismissed make incredible claims that they would have been able to work for the next 50 years and, therefore, are entitled to millions of dollars. We do not want that; we are creating a new right contrary to the usual things in our law. An employer may teach someone his job, pass on a lot of knowledge and pay for a training period when he is not worth all that much, but just at the moment the employer is about to realise some value from the employee, someone head hunts him and he goes to that other person. That happens all the time in the Health Department, but we do not go around and say that is unfair. We are doing it the other way around by providing that when an employer dismisses someone unfairly he must pay the employee some money. It is unreasonable for the Opposition to try to turn that into some sort of right to every darn thing one can think of and provide in legislation that one can claim what one might have earned forever and a day.

The Opposition spokespeople are taking examples to an extraordinary extent. I accept that Hon Alannah MacTiernan is making her point on behalf of her party. I must admit that, taken superficially, she sounds awfully convincing; but to hear a lawyer making

those sorts of statements is a problem that all lawyers have when we get into this whimsical background of Parliament, where we have to argue cases that we would never find all that logical to argue in the courts.

Hon Kim Chance: You admit it then, Minister?

Hon PETER FOSS: I admit that we actually have to argue some strange things. But the one that is being argued by a lawyer sounds somewhat improbable. Coming from Hon Tom Helm it would sound okay.

Hon TOM HELM: I was not going to join this debate. Hon Peter Foss keeps saying that he was a principal legal adviser to Robe River Iron Associates.

Hon Peter Foss: You keep saying it, and you are right. It is correct.

Hon TOM HELM: The Minister would also have to agree that Robe River has, within its contract, a provision that if an employee has not completed two years employment with the company, that person must pay back the amount of money it cost Robe River to bring that employee to the site as well as other penalties.

Hon Peter Foss: That is a contract.

Hon E.J. Charlton: That is not in this legislation.

Hon Peter Foss: You have missed the point.

Hon TOM HELM: I know. Hon Eric Charlton should pay attention to this because both he and Hon Peter Foss are a bit silly. Even semi-government authorities can impose penalties. Under the Colleges Act, the college councils impose a penalty upon people who are in breach of a contract who are unfairly dismissed in their employment. In other words, the colleges are not completing their part of the agreement. Does that not fly in the face of what the Minister is trying to suggest?

Hon Peter Foss: No.

Hon TOM HELM: Hon Peter Foss is suggesting that no employer can impose a penalty upon employees who are treated harshly, unfairly or oppressively because there is no right in law to do that. There are examples of bosses in semi-government organisations who do impose penalties. Given that examples exist, this legislation should include a duty for the employer to compensate people who have been seen to be unfairly, harshly, or however treated.

Hon T.G. BUTLER: I have listened fairly extensively to the debate of Hon Alannah MacTiernan and the Minister and have become increasingly amazed at the logic that the Minister applies to this argument. His analogies are, to say the least, bewildering. He tries to compare an unfair, harsh, unjust or whatever dismissal with a situation where a worker leaves an employer without notice. The Minister said that we do not hear the employer screaming about unfairness, harshness or about being unjust. Of course we do not. What has the employer lost? He has lost a worker. What does he do? He picks up another one.

Hon Peter Foss: What if he has to train the employees?

Hon T.G. BUTLER: Plenty of people are trained, irrespective of the industry to which the Minister might like to point. People are trained and are available to work.

Hon B.K. Donaldson: What about undertakers? Are they on the street?

Hon T.G. BUTLER: What about Prime Ministers? What about Kings and Queens?

Hon B.K. Donaldson: We are talking about undertakers.

Hon T.G. BUTLER: Let us go for it. Let us all be stupid.

Several members interjected.

The CHAIRMAN: Order!

Hon T.G. BUTLER: Quite clearly there is no type of suffering that is similar to that of people who have lost their position through a harsh or unjust dismissal. Jobs are not as readily available as are workers.

Hon Peter Foss: You just said they were.

Hon T.G. BUTLER: There are more people out of work than there are jobs available. What happens? A person suffers the loss of his job. He suffers increasing penalties. Under this clause he does not have the opportunity to go before the tribunal and argue for fair and just compensation. There is a limited amount that he can get. I doubt very much - this is one of the problems I have with this Government introducing this type of legislation - that there is one person opposite who knows what it is like to lose a job.

Hon E.J. Charlton: There are not many people on your side who have ever employed anyone or ever worked for anyone.

Hon T.G. BUTLER: Hon Eric Charlton ought to know; he has sacked 704 people at the Midland Workshops. Let the Minister not tell me what he knows! He would know more about being harsh and unjust than anybody else in this Chamber, and he cannot answer properly the questions that are put to him.

Several members interjected.

The CHAIRMAN: Order! A while ago the member on his feet said something about all members being stupid. I did not think it was necessary to say it then. Let us return to a bit of sanity.

Hon T.G. BUTLER: I do not believe one Government member has suffered the same sort of penalties as a person who has lost his employment through no fault of his own.

Hon John Halden: If you do not have the numbers, you do not win.

Hon T.G. BUTLER: That is true. The problem I have with this type of legislation being introduced by the Government is that it is being presented by a group of people who, even if they were to leave this House tomorrow, would have business interests behind them to support them. That is not the position of a blue collar worker who loses his job. That person's future depends upon his ability to obtain employment. If that is not available, the penalties he suffers are great, and much greater than his being paid six months' remuneration. The Government has no conception at all of what workers go through. Members opposite should be a little more considerate.

Hon Derrick Tomlinson: Don't be so arrogant.

Hon PETER FOSS: Hon Tom Helm's question is related to the unlawful dismissal or the contractual rights. In the matters raised by Hon Alannah MacTiernan and Hon Tom Butler it would be quite possible for people to be given recompense for unlawful dismissal. That is an action brought in contract. It is not intended to impose any limitation on what a person can recover for unlawful dismissal and contractual rights. The instances being given are all to do with contractual rights. Here we are talking about where a person has no contractual rights. The instance given by Hon Tom Helm involved a contractual right.

Hon Tom Helm: I see; the workplace agreement provision does not cover that.

Hon PETER FOSS: We are not dealing with that.

Hon Tom Helm: A workplace agreement would not be a contractual arrangement.

Hon PETER FOSS: It could be. The example given by Hon Tom Butler covers the things that apply where there has been a breach of contractual rights; a person has resigned; and there are some consequences of resigning, being dismissed, or whatever. They are in other parts of section 29 of the principal Act, the contractual rights part.

Getting back to the comments of Hon Tom Butler, having been an employer and in a position of training people at a considerable cost over some time - take solicitors, for instance - I have found that most of the time it is difficult to get solicitors and it is certainly difficult to get good, well trained solicitors. For example, my old firm and many of the large firms are well known for providing good training.

Hon T.G. Butler: That is the area you live in.

Hon PETER FOSS: It also applies to other people. The member should talk to other employers.

Hon T.G. Butler: You live in an area well above what this Bill is dealing with.

Hon PETER FOSS: We are not talking about only unskilled workers.

Hon T.G. Butler: We are talking about painters; why don't we talk about brain surgeons?

Hon PETER FOSS: No, I am talking about ordinary people with skills, and even people without skills. Sometimes people who begin working for an employer are not as valuable as the employer because they have not learnt the job. During their training there is a period during which the employer does not get as much value out of them as he will later on. All I am saying is that an alternative exists. That really is not what we are debating here; we are talking about the other side.

It can be extremely costly for an employer to lose employees who have been trained, whether they have been trained in a particular skill or merely to do a particular job. Nobody would suggest that under those circumstances if the worker whimsically decided to work for somebody else, or set up in his own employment, any remedy should be available. Strictly speaking in law, the situation about which we are talking is no different, but we are creating a right. We are creating it out of nothing, in a particular form, and with a six months' entitlement. It is a generous entitlement, greater than many contractual entitlements. As I said before, I am disappointed at the niggardly attitude of the Opposition to writing into the Statute for the first time this right which does not currently exist for Western Australian workers. Opposition members should stand and say thank heavens. In 10 years they did not do it. Now the Government has introduced this right and has given an entitlement to recover where there is no logic in law for the recovery and no contractual or tortious right. Notwithstanding that, the Opposition should recognise that the Government will give that right because of the situation. That move should be applauded. The niggardly attitude taken by members opposite is unfortunate.

Hon A.J.G. MacTIERNAN: If we used the Minister's logic no development would occur in the law; we would be confined to what is existing law; and we never would have had a Donohue v Stevenson. The Minister has said that no existing law in this area provides compensation, therefore how can one claim as a lawyer to be arguing that there should be full compensation. However, from time to time courts have found new areas in which they determine, and more Legislatures now that the Legislatures are tending to make law more often -

Hon Peter Foss: But they haven't determined it here; we are doing that.

Hon A.J.G. MacTIERNAN: No, I will get to that point. However, we certainly have had a process over time where previously the courts have determined, and now more often under Statute we determine, that certain sorts of conduct will be compensible. I am not arguing that this falls within contract or that it necessarily falls within tort. Going back to the first principles of compensation where we determine whether a breach of contract has occurred or whether there has been a tort, in both instances we are prepared to provide full compensation. I do not see any reason when applying those principles of compensation that we should in this instance say that we will provide only a limited range of compensation. The Minister has responded to that by saying that a range of things happen in this life which are not fair and for which people do not get compensated.

I return to the issue which Hon Tom Butler and Hon Tom Helm were seeking to set out for the Minister's benefit, which is the significance of work within the life of the average worker; the absolute economic dependence on it, and the dependence on it for many aspects of one's self-esteem and social life. It is not something that the Opposition believes should be encouraged to be dealt with lightly. This is the type of loss, as is breach of contract and the traditional forms of tort, that should be fully compensible. It does not mean that the employer will be stuck with people who are duds who will not add to the profitability of the organisation. The Opposition merely says that steps should be followed, but where the employer decides to get rid of a person in an unfair, harsh or oppressive way, that person should have the right to compensation. I see no reason that form of compensation should not be the same form of compensation, and to the same

extent, that is enshrined in our legal system for contract and tort. I say that owing to the significance and importance of work and the importance of a livelihood within the community. Other forms of unfair conduct may exist which we believe would not impact anywhere near as negatively on the future of the victim. In those cases it may be arguable that we would not seek to compensate those. This is an important area and must be fully compensated.

The Minister says that the Opposition is being ungrateful and that we are not embracing this concept enthusiastically. However, up until 1987 when the 1979 version of the legislation was prepared - before Pepler - it was understood -

Hon Peter Foss: The Adstey case indicated similar ideas.

Hon A.J.G. MacTIERNAN: How was that resolved?

Hon Peter Foss: It didn't have to be resolved in the end, but still the appeal court indicated sufficiently.

Hon A.J.G. MacTIERNAN: What year was that?

Hon Max Evans: She doesn't know!

Hon A.J.G. MacTIERNAN: No, I do not know. I am not purporting to know everything. I do not have an adviser sitting beside me. That is absurd. The adviser has just whispered in the Minister's ear -

Hon Peter Foss: He didn't whisper in my ear.

Hon A.J.G. MacTIERNAN: - and that is quite acceptable, but members cannot expect that we, who have not had -

Hon Peter Foss: It came out of my own head.

Hon A.J.G. MacTIERNAN: I certainly do not know every case.

The CHAIRMAN: If the Minister wants, he will have the opportunity to respond. The member should address the Chair and the motion before the Chamber.

Hon A.J.G. MacTIERNAN: The commission up until 1987 was routinely making decisions to grant compensation and for compensation. Right up until 1987 a general perception by workers -

Hon Peter Foss: The case was in 1983.

Hon A.J.G. MacTIERNAN: I would like to know how many people got compensation awarded in the commission between 1983 and 1987. I think the Minister will find that people were getting compensation, because the Pepler case would never have occurred unless the commission had been granting compensation up until that point. Notwithstanding the conversation that may have gone on in the salubrious climes of the partnership retreat at Mallesons Stephen Jaques and elsewhere, out there at the coalface people were being compensated for being unfairly dismissed. That changed in 1987. Although the Minister wants us to be grateful for the little portion that the Government is giving people, the Opposition wants, because it thinks it is fair and proper in the circumstances, the situation at it was in practice before 1987 to be restored. We acknowledge that that must become a statutory right. The basis of this argument is whether we should partially or fully compensate a person for the loss he incurs. Certainly, there will be times when employers will be unfairly advantaged by people leaving work. However, when one considers the balance of power between the employer and the employee, the balance weighs heavily in favour of the employer. The employer has the economic muscle and management prerogative available to him which the worker does not have. The employer's right should be curtailed so that he is not entitled to unfairly, harshly or oppressively dismiss people without compensating them. I would like to move -

The CHAIRMAN: The question is that the whole clause stand as printed. If the member wishes to delete part of the clause she will have to put her amendment in writing. I take this opportunity to point out to the Committee that amendments should be available in

writing at the beginning of the debate. The Committee has been debating subclause (4) for about an hour and at the last minute the member wants to move an amendment. The amendments need to be moved up front.

Hon A.J.G. MacTIERNAN: I move -

Page 13 - To delete lines 13 to 18.

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 (13)

Hon T.G. Butler	Hon John Halden	Hon Bob Thomas
Hon Kim Chance	Hon A.J.G. MacTiernan	Hon Doug Wenn
Hon J.A. Cowdell	Hon Sam Piantadosi	Hon Tom Helm *(Teller)*
Hon Cheryl Davenport	Hon J.A. Scott	
Hon N.D. Griffiths	Hon Tom Stephens	

Noes (16)

Hon George Cash	Hon Barry House	Hon B.M. Scott
Hon M.J. Criddle	Hon P.R. Lightfoot	Hon W.N. Stretch
Hon Reg Davies	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon M.D. Nixon	
Hon Peter Foss	Hon R.G. Pike	

Pairs

Hon Graham Edwards	Hon Murray Montgomery
Hon Mark Nevill	Hon E.J. Charlton

Amendment thus negatived.

Hon JOHN HALDEN: We have come to the end of the Opposition's amendments to clause 7, and the Opposition, having tried to improve upon the scanty but acknowledged improvement in this area of the law, is disappointed that the Government would not accept its amendments which would have provided far greater protection for workers than the protection provided to them in this Bill. The Opposition will not oppose this clause; it will begrudgingly support it for the reasons the Minister outlined. It is an improvement and the Opposition's support for the clause should not be taken as any more than that. It is a marginal gain. The Government had the opportunity to improve it further, but rejected the Opposition's kind and considered offers.

Clause put and passed.

Clause 8: Section 24 amended -

Hon A.J.G. MacTIERNAN: The Opposition opposes this clause on two grounds. Firstly, it amends section 24 of the Industrial Relations Act which gives the Industrial Relations Commission jurisdiction to determine what constitutes "industrial matter". Any finding of the commission is final subject to an appeal to the full bench of the commission under section 49 or to the Industrial Appeals Court under section 90. Proposed section 7C takes the province to adjudicate on disputes between employees and employers regulated by workplace agreements out of the jurisdiction of the Industrial Relations Commission unless a provision is written into the workplace agreement that the commission has some jurisdiction.

The second consequence of making section 24 subject to proposed section 7C is that proceedings in the Industrial Relations Commission may be stopped by a party seeking a prerogative writ in the Supreme Court. We have argued already elsewhere in this debate

why it is folly to remove the jurisdiction to hear disputes between employees and employers under a workplace agreement from the Industrial Relations Commission. We believe that there are many issues that will not be anticipated by employers or employees in drawing up their workplace agreements. For example, how can one anticipate in drawing up a workplace agreement that one might have a problem with a supervisor two years hence? How can such a comprehensive agreement be drawn to cover that eventuality? The whole purpose of having a commission with broad jurisdiction in the area to settle disputes is because not everything can be anticipated. We will have a situation where many workers will not have any remedy at all in such disputes other than to terminate their employment.

It needs to be noted again that while a workplace agreement is required to have an arbitration provision in it, that arbitration provision is very narrowly defined and it applies only to the need to have a facility whereby the disagreements on the interpretation of the agreement can be determined. There is no legal requirement whatsoever for a workplace agreement to have in it any provision for resolving disputes. We will find there will be a whole class of workers who will have no protection whatsoever. At the other end of the range we will have better advised workers who are more organised, more skilled and who will resort or insist upon extremely fulsome documents. Because there will be no general right to the Industrial Relations Commission, there is the possibility that in an attempt to anticipate and cover all these eventualities very fulsome documents will be set up. Again, that is not really a very efficient way of dealing with these matters. Therefore, we oppose it because, as we have said time and again, even if we move to a system of workplace agreements, there is no reason to preclude the commission from adjudicating on disputes that arise under those agreements. It is obvious that the Government's real game plan is to ensure that the Industrial Relations Commission withers on the vine and so too, eventually, the entire award system.

The second part of our objection is that, by making section 24 subject to proposed section 7C, employers will be able to take a jurisdictional point when matters are being heard by the Industrial Relations Commission.

Progress

Progress reported and leave given to sit again, pursuant to Standing Order No 61(c).

ADJOURNMENT OF THE HOUSE - ORDINARY

HON GEORGE CASH (North Metropolitan - Leader of the House) [5.56 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Burt, Richard, Condolences

HON P.H. LOCKYER (Mining and Pastoral) [5.56 pm]: I do not want the House to adjourn before I record the passing last Sunday of a very distinguished former member of Parliament, the late Mr Dick Burt, who represented the seat of Murchison between 1959 and 1971. I know that you, Mr President, were at the church service today.

Mr Burt served in this Parliament with enormous distinction an area the size of India back in the days when parliamentarians did not get free air fares or a car supplied and there were no sealed roads. Yet, he never had less than 60 per cent of the vote in his electorate. He was revered by people of all political persuasions. I did not have the privilege of sitting in the Parliament with him, but I had the privilege of being brought up in the Murchison area. He was probably the first member of Parliament that I ever saw and I know the enormous respect that all people in his electorate had for him. The bishop who conducted the service today said there were 22 schools in Mr Burt's electorate and never once in the 12 years that he serviced that electorate did he miss a school wind-up night or miss the opportunity to present prizes to the students and to give his little talk to the school as we all do from time to time.

He never worried about people's political persuasions and was well known throughout

the mining industry, particularly in places like Mt Magnet, Cue and Meekatharra as a person who would listen to everybody's problems and try to do something about them. He had an affliction. He had suffered from poliomyelitis at the age of three and one of his legs was considerably shorter than the other. He walked with an iron brace on his shoe and became extremely well known throughout the areas he visited because of his stance and his walk. However, never once was he anything other than an absolute gentleman.

I took the opportunity today to ring Hon Norm Baxter, who served in this House with him and who knew him well. He reiterated that Dick Burt never entered into the more nasty side of politics and always had time for the newer members of Parliament and took time to try to placate people who needed his assistance. It did not matter where he was.

He was a champion swimmer in his youth and a man with wide experience in the mining industry, having operated mines around Cue and Mt Magnet. He set an example to all members of Parliament. You, Mr President, must have served with him for a short time and I was pleased you were there today. I am sorry that, from time to time, we lose distinguished former members of Parliament because having been away from the Parliament for a long time, in this case for almost 25 years, people do not recognise their passing. I wanted it recorded today. I told his widow, Pauline, today that I would raise the matter in Parliament. I want members to recognise that Dick Burt served Parliament well and was a damn good bloke.

HON P.R. LIGHTFOOT (North Metropolitan) [6.00 pm]: I also extend my condolences to the family of Mr Richard Burt. I met him in the goldfields in the 1960s when his office was located Kalgoorlie. He was a tall, imposing man, as many members will remember him. He came from a fine family, one of the pioneer families of Western Australia - and I think I am correct in saying that Septimus Burt was his illustrious antecedent. He bore that name. The family opened up land in the Gascoyne in the later part of the last century when it was wild and woolly country. On occasions, I am told, when Hon Phil Lockyer is at the Gascoyne Junction Hotel it is still wild and woolly country. Mr Burt had three sons, one of whom was tragically killed in a plane crash in 1968. He was the first cousin of the recently retired Chief Justice, Sir Francis Burt. I extend my condolences and sympathy to his family, and reiterate that he was a very fine man who will be sadly missed.

HON GRAHAM EDWARDS (North Metropolitan - Leader of the Opposition) [6.01 pm]: On behalf of the Opposition, I endorse the remarks of Hon Phil Lockyer and Hon Ross Lightfoot. I extend my sincere condolences and those of the Opposition to the family of Mr Richard Burt.

Adjournment Debate - Seventy-fifth Anniversary of the Great War.

I would also like to compliment you, Mr President, for ensuring that this House noted the seventy-fifth anniversary of the Great War. You did this House a service by requesting that we spend some time in silence, giving our thoughts to the Australians who served in that war and who did not come home. It is also significant that today we saw the homecoming of the unknown soldier who will lie in state in the Australian National War Memorial in Canberra, thereby symbolising all the veterans who served the country and were not lucky enough to return home.

It is significant also that today in Albany a service was held for the veterans of the Great War, because Albany was probably the last part of Australia that they saw when they left this country. To put the occasion into perspective, of the more than 440 000 young Australians who served in that war, almost 70 per cent were casualties - many of them were wounded and repatriated to Australia. That signifies how horrific that war was. For me, today was a significant day for Australia, and I thank you, Mr President, for giving this House the opportunity to show its respect.

Adjournment Debate - Burt, Richard, Condolences

THE PRESIDENT: As usual, when condolence comments are made, I add my remarks to those of other members. Also, I take the opportunity to make sure that a copy of

Hansard containing the condolence comments by members is conveyed to the family of the person about whom we are speaking.

I indicate to Hon Phil Lockyer that I served for six years with Richard Burt. I agree with all the comments made by Hon Phil Lockyer regarding the sort of person Richard Burt was. He served in this Parliament for 12 years, and I served for half of that time with him. He was one of the first members who approached any new member of Parliament. He had the nickname of "the quiet achiever". He was a big man but he was a very quiet and gentle person. He never resorted to attacking his opponents' character and he never resorted to considering any measure that was before the House other than on the merits of the measure being discussed. As already explained, he travelled over an electorate that was gigantic in the days when roads were unsealed and transport was difficult. He had a bad leg that made moving about difficult for him. He was one of the few members - and we have had a few in this Parliament - about whom I cannot recall any member from any party saying a bad word.

Adjournment Debate - Forest Management Proposals, Reopening Submissions Concern

HON J.A. SCOTT (South Metropolitan) [6.08 pm]: I draw to the attention of the House a matter on which I believe the public of Western Australia has been misled by the Government. The Minister for the Environment stated in a media release on 25 October 1993 that he was inviting Western Australians to help finalise the State's forest management plans. That media release states -

> Mr Minson said today a draft strategy was prepared by the Department of Conservation and Land Management in 1991 and released in February 1992 . . . At the same time, CALM submitted a comprehensive series of forest management proposals to the Environmental Protection Authority for assessment.

A public review was carried out between February and June 1992 which was supposed to satisfy the statutory requirements under both the Conservation and Land Management Act and the Environmental Protection Act. However, in February 1992 CALM failed to give public notification in the *Government Gazette* of proposed amendments to the forest management plans. CALM is required to do this under section 57(2)(a) of its Act. It seems nobody noticed until October 1993 - coincidentally, just before a court hearing challenging CALM's public review on the grounds that CALM withheld relevant factual and scientific information from both the public and the EPA.

On 5 August 1993 the Minister released a press statement that "uncertainty in the timber industry resulting from 18 months of indecision has finally been dispelled". The Minister announced the new forest management plans and the conditions were formalised under the Environmental Protection Act. Then, as I stated at the beginning of my speech, on 25 October 1993 the Minister invited further public submissions, saying there was an anomaly between the Conservation and Land Management Act and the Environmental Protection Act and that "the forest management proposals would only become statutory documents when final plans were produced as required under the CALM Act".

This is two months after he had announced the forest management plans. He has now allowed a further two months for comment and he said on 27 November that, "It is important that this two months' comment period is as constructive as possible so that all views are taken into account in finalising management plans." I thought they were already finalised. The truth is that any submissions now made cannot be taken into account because the forest management plan conditions have already been set under the Environmental Protection Act, and that Act overrides the CALM Act. This means the reopening of submission is a farce. Public submissions cannot be taken into account under the current review. The Minister has established a legal impossibility. The only way that this could be done is by starting all over again. This begs the question: Why is the Minister reopening submissions? It is due to the failure of CALM to comply with section 57(2)(a) of the CALM Act, and he is trying to get it off the hook. The Minister is pretending that all is well with the current forest management plan, but that is not the case as the Minister is attempting to do something which he cannot do by law.

Does this mean that the Minister intends to scrutinise the current public submission and potentially amend the conditions which have been set under the Environmental Protection Act? Is the Minister aware that this is a legal impossibility? How can we feel comfortable about the future of our forests and our environment when the Minister does not know what he is doing? The public must know that the submission they put in will have absolutely no effect on the forest management plan.

Adjournment Debate - "Remote Electorates", Comments Correction

HON KIM CHANCE (Agricultural) [6.12 pm]: Towards the end of yesterday's sitting I made two statements which I would like to correct.

Hon George Cash: We will do it on Tuesday with a privilege motion!

Hon KIM CHANCE: One statement was incorrect and the other could have been misinterpreted. During the course of that debate I said, inter alia, that looking at the Government benches I could not see any representatives of the remote areas of the State who actually lived in their electorates.

The PRESIDENT: Order! I have already drawn Hon Alannah MacTiernan's attention to the point today that it is rude to walk in front of any member when he or she is speaking, particularly the member one sits next to.

Hon KIM CHANCE: In fact, Hon Phil Lockyer was in the House at the time and he has assured me that he lives in his electorate. I regret causing distress to the member for that incorrect statement. During the same speech I used the subjective term "remote" in describing members' electorates. However, it was my intention that the term meant Mining and Pastoral Regions and not the South West and Agricultural Regions. I regret if other members interpreted it in a different way.

Hon George Cash: As punishment you will not speak all next week!

Question put and passed.

House adjourned at 6.14 pm

APPENDIX A

As a result, views that pre-European settlements of Australia were idyllic, peaceful and civilised are replacing the truth.

Mr Yunupingu's brother, Galarrwuy, for instance, speaks of Aborigines as being "superior" to white Australians. An Adelaide professor has detailed an outrageous hypothesis that Aboriginal languages (he did not designate which of the many groupings or 600-odd dialects he was referring to) was richer and more complex in structure than English.

An Aborigine recently asserted that one of his ethnic group invented "a kind of helicopter". Yet another Aborigine asserted to me that he had knowledge of an Aboriginal map of Australia prior to 1788.

It's true that Aboriginal people need to have pride in themselves, but not based on the false premise that they were civilised, inventive, linguistically superior, or were familiar with cartography and lived in peaceful coexistence with their fellow family groupings and their environment.

Aborigines were, and to some degree today, are still both palaeolithic and neolithic. Indeed these unique people may be even older, in anthropological terms.

By any measurable standards some of their practices were abhorrent. As the most primitive race on earth in their pure form, they submerged their advance to civilisation by maintaining practices in their animist religion and rigidly controlled daily lives, that not only impeded their evolution, but had a dramatic effect on their population, probably never exceeding 300 000 at any period, over the whole of the continent.

These people are unique - having survived several ice ages, devastating droughts, epidemical disease, several invasions over the era, and yet without even the wheel or a receptacle in which to carry water, in the driest of continents, they remain. Their arrival and survival in Australia is a dramatic epic in human endeavour.

There are ample facts to imbue our Aborigines with pride and self-esteem - they do not deed the yoke of false esoteric doctrine - nor should history be rewritten by knaves with such fraudulent tarradiddle.

Like massive land claims, it will not, in the end, erase the differences between Aboriginal Australians and others, but only prolong and exacerbate a burgeoning division.

History is better served with the truth.

QUESTIONS ON NOTICE

MINISTERIAL PORTFOLIOS - TAXES, CHARGES, LICENCES, FEES, LEVIES, FINES OR RATES, INCREASES

434. Hon TOM STEPHENS to the Minister for Transport:

(1) For all of the Minister's portfolios, what Government taxes, charges, licences, fees, levies, fines or rates have been increased since 6 February 1993?

(2) By what dollar amount and percentage has each tax, charge, licence, fee, levy, fine or rate been increased?

(3) When was the most recent previous increase in each tax, charge, fee, levy, licence, fine or rate?

(4) What was the amount and percentage of the most recent previous increase for each tax, charge, fee, levy, licence, fine or rate?

Hon E.J. CHARLTON replied:

(1) Department of Transport - Country taxi fees effective 1 July 1993
Department of Marine and Harbours - fee increases effective 1 July 1993
Transperth - fare increases effective 4 July 1993
Port Authorities -
Bunbury - 23 July 1993
Fremantle - 23 July 1993

(2) Department of Transport - refer attachment (1).
Department of Marine and Harbours* - refer attachment (2).
Transperth - refer attachment (3).
Port Authorities -
Bunbury - refer attachment (4).
Fremantle - refer attachment (5).

(3) Department of Transport - 1 July 1992
Department of Marine and Harbours - 1 July 1992
Transperth - 1 July 1992
Port Authorities -
Bunbury - 1 July 1991
Fremantle - 10 July 1992

(4) Department of Transport - refer attachment (1).
Department of Marine and Harbours* - For fees and charges for 1992-93 refer attachment (7).
For comparison with 1991-92 fees and charges refer attachment (6).
Transperth - refer attachment (3).
Port Authorities -
Bunbury - refer attachment (4).
Fremantle - refer attachment (5).

* Due to the large number of fees involved and a change in fee structure, it is impractical to tabulate the information requested.

MINISTERIAL OFFICES - MINISTER FOR EDUCATION
Staff Names, Motor Vehicles; Parliamentary Secretary, Staff

930. Hon TOM STEPHENS to the Minister for Education:

(1) What are the names of each staff person working in his ministerial office as at 20 October 1993?

(2) How many and which of these have a Government motor vehicle allocated for their use?

(3) Which of these officers are allocated to work with Mr Fred Tubby MLA, Parliamentary Secretary?

(4) What additional office staff does the Parliamentary Secretary have available to him?

Hon N.F. MOORE replied:

(1) Mr Robert van Dieren
Mr Peter Browne
Mr Jim Thom
Mr Ross Storey
Mr Hallam Pereira
Ms Michelle Miller
Mr Brad Viney
Ms Stephanie Boyd
Mr Marc Dale
Mr Sean Connaughton
Ms Carol Thompson
Ms Sue Schwass
Ms Sue Moss
Ms Julie Holmes
Ms Nikki Tozer
Mr Leigh Radis
Ms Natalie La Touche

(2) Mr Peter Browne
Mr Jim Thom
Mr Ross Storey
Mr Hallam Pereira

(3)-(4)
I refer the member to the answer given to question 1139 in the Legislative Assembly.

MINISTERIAL OFFICES - MINISTER FOR TRANSPORT
Budget Allocation for Office Operations

949. Hon TOM STEPHENS to the Minister for Transport:

(1) What is the Budget allocation for the operation of the Minister's office for 1993-94?

(2) Could the Minister provide a break down of this Budget?

(3) What has been the actual expenditure up to 30 September 1993 in the -

(a) relocated area; and

(b) ministerial office area?

Hon E.J. CHARLTON replied:

(1) The contingencies budget allocation excluding salaries for the Ministerial office is $254 000.

(2) Breakdown -

	$
Other staffing costs	56 000
Communications	65 000
Services and contracts	35 000
Consumables	78 000
Maintenance of plant and equipment	10 000
Purchase of plant and equipment	10 000

(3) The member's question is unclear. If the member can be more specific I will provide him with a response.

RAILWAYS - PERTH-NORTHAM PASSENGER SERVICE COMMITTEE, TRIPS

1049. Hon JOHN HALDEN to the Minister for Transport:

(1) Where has the committee investigating a passenger train service between Perth and Northam travelled interstate and overseas since it was formed?

(2) On what dates were these trips?

(3) What was the total cost of each trip, including accommodation, fares and expenses?

Hon E.J. CHARLTON replied:

(1)-(3)

Nil.

CONCRETE BATCHING PLANT, NEERABUP - ACCESS ROAD, MAIN ROADS DEPARTMENT APPROVAL

1050. Hon JOHN HALDEN to the Minister for Transport:

(1) Is there a requirement for the operators or owners of the proposed concrete batching plant off Quinns Road, Neerabup to gain Main Roads Department approvals of any form for the construction of an access road to the plant site?

(2) If so, has an application been made by General Bulldozing Co Pty Ltd or any other entity for such approval?

(3) What conditions or approval requirements must be met by the operators of the concrete batching plant or other parties in order to construct and use such an access road?

Hon E.J. CHARLTON replied:

(1)-(3)

This road is under the control of the Wanneroo City Council and any application for construction and/or access should be directed to council. The Main Roads Department may have an advisory role if traffic safety issues were likely to occur but this would be through the council.

ROAD TRAINS - POLICE CONCERNS

1144. Hon N.D. GRIFFITHS to the Minister for Transport:

(1) With respect to the answer given to question on notice No 584 provided on 21 October 1993 what concerns were raised by the police and which concerns were addressed?

(2) With respect to the concerns addressed specifically, how were they addressed?

(3) What discussion took place between Main Roads officers and officers from the police, when did the discussions take place, who was involved in the discussions?

Hon E.J. CHARLTON replied:

(1)-(3)

I am advised by the Main Roads Department that the Police Department has recently indicated that it does not have any objection to road trains entering the metropolitan area provided safety issues are properly addressed. The Police Department and the Main Roads Department have cooperated in the recent test runs of road trains in the metropolitan area and the Main Roads Department's proposal for future trials has been put forward on the basis that all relevant road safety issues will be properly managed.

PRINT CELLS, IN-HOUSE PRINTING SERVICES - GOVERNMENT DEPARTMENTS AND AGENCIES

1201. Hon TOM STEPHENS to the Minister for Transport:

(1) Which departments and agencies within his portfolio areas operate print cells for in-house printing services?

(2) How many print cells are operated by each department or agency within his portfolio area?

(3) What number of staff are deployed for the operation of each of these print cells?

(4) At what public service levels are each of these officers employed?

(5) What was the actual expenditure on each print cell during 1992-93?

(6) What is their Budget allocation for 1993-94?

(7) What equipment is allocated to each of these print cells?

Hon E.J. CHARLTON replied:

The information sought would require considerable research and I am not prepared to allocate resources for this purpose. If the member has a specific question about print cells for in-house printing services, I will be pleased to respond; however, I refer the member to supplementary information provided in response to his question asked during Legislative Council Estimates Committee hearings.

WA REGIONAL GUIDE - PRINTER; COST

1230. Hon N.D. GRIFFITHS to the Minister for Education representing the Minister for Commerce and Trade:

(1) Who printed the document "WA Regional Guide, September 1993"?

(2) What was the cost?

(3) Why was glossy non-environmentally friendly material used in the document?

(4) If State Print was not used, why was it not used?

(5) If it was not used, was it asked to tender?

(6) If it was asked to tender, what price did it tender?

(7) What price was tendered by the printer?

Hon N.F. MOORE replied:

The Minister for Commerce and Trade has provided the following reply -

(1) Advance Press printed the WA Regional Guide.

(2) $9 532.

(3) A quality document was required for wide distribution throughout regional Western Australia. The stock used was the minimum grade to produce the necessary finish.

(4) State Print's was not the lowest tender.

(5) Yes.

(6) Quotes were based on an initial publication of 40 pages. Quotes were sought from three firms, including State Print. The State Print tender was $6 054.

(7) $5 985. Advance Press was selected to undertake the work. During the preparation of the final copy additional pages, typesetting and artwork was required, taking the final publication to 72 pages.

FREEDOM OF INFORMATION ACT - GOVERNMENT DEPARTMENTS OR AGENCIES, OFFICER RESPONSIBLE FOR COORDINATING APPLICATIONS

1245. Hon TOM STEPHENS to the Minister for Education representing the Minister for Commerce and Trade:

Would the Minister indicate who the designated officer is for each department or agency within the Minister's portfolio who has responsibility of coordinator in regards to applications under the Freedom of Information Act?

Hon N.F. MOORE replied:

The Minister for Commerce and Trade has provided the following reply -

Great Southern Development Authority	Bert Pardini Finance and Administration Officer
Gascoyne Development Commission	Kieran Kinsella Interim Director
Goldfields-Esperance Development Authority	Sue Laughton-Smith Finance and Administration Officer
Department of Commerce and Trade	Linda Box A/Executive Services Assistant
Wheatbelt Development Commission	David Singe Interim Director
Geraldton Mid-West Development Authority	Jane Ryan A/Personal Assistant
South West Development Authority	Francine Hendon A/Information Officer
Pilbara Development Commission	Jan Culver A/Executive Officer
Kimberley Development Commission	Jeff Gooding Interim Director
Minister's Office	Denise Craig Executive Assistant
Small Business Development Corporation	George Etrelezis Manager Policy and Administration
Peel Development Commission	Greg Williams Finance and Administration Officer

QUESTIONS WITHOUT NOTICE

BRADSHAW, DR WAYNE - LOCATION, POLICE INQUIRY

700. Hon A.J.G. MacTIERNAN to the Leader of the House representing the Minister for Police:

(1) Have the police interviewed the occupants of 7 Council Road, Mundaring, the address given by Dr Wayne Bradshaw to the Medical Board as his mailing address, to determine if they know the whereabouts of Dr Bradshaw?

(2) If not, why not?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

(1)-(2)

The Commissioner of Police informs me that the matter referred to is the subject of an ongoing police investigation and as such it is inappropriate for me to provide the information requested.

SMITH, WAYDE - BRADSHAW, DR WAYNE, LOAN GUARANTEE

701. Hon A.J.G. MacTIERNAN to the Leader of the House representing the Premier:

(1) Have the individual assets of Mr Wayde Smith or his jointly held assets with Ms Diana Borserio been used to guarantee a loan to Dr Wayne Bradshaw or any of Dr Bradshaw's companies?

(2) If so, when were such guarantees put in place and for how much were the loans?

Hon GEORGE CASH replied:

The Premier is travelling interstate. If the member will place the question on notice I will be able to seek advice from the Premier and respond as soon as possible.

SMITH, WAYDE - PREMIER'S MEDIA STATEMENT, ADHERENCE

702. Hon A.J.G. MacTIERNAN to the Leader of the House representing the Premier:

Does the Premier stand by every word in his media statement issued on 28 October 1993 dealing with the financial affairs of the member for Wanneroo?

Hon GEORGE CASH replied:

The Premier is travelling interstate. If the member will place the question on notice I will be able to seek advice from the Premier and respond as soon as possible.

WESTRAIL - BEILBY AND ASSOCIATES, REDEPLOYMENT CONTRACT

703. Hon T.G. BUTLER to the Minister for Transport:

I refer to Westrail's contract with the recruitment agency Beilby and Associates to take over the responsibility of redeploying 38 redundant Westrail white collar staff.

(1) What is the total cost to Government of the contract?

(2) Does this include the substantial extra office space acquired by Beilby and Associates to accommodate the Westrail personnel?

(3) What will happen to those employees who are not redeployed in the three months of the contract?

(4) Will the program be extended and, if so, how many Westrail workers can be expected to go through the program?

Hon E.J. CHARLTON replied:

(1) $124 000.

(2) There were no additional costs for accommodation charged to Westrail.

(3) Employees not redeployed during the three month outplacement program may -

(a) elect to accept voluntary severance; or

(b) remain with Westrail.

(4) No decision has been made to extend the program.

LOCAL GOVERNMENT - SHARK BAY SHIRE COUNCIL, USELESS LOOP AND PASTORAL WARDS REPRESENTATION, MINISTER'S ACTION

704. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Local Government:

I refer to the Minister for Local Government's record of acting contrary to the wishes of local government and local democracy.

(1) Why did the Minister ignore the wishes of the Carnarvon Shire Council and dictate that two new councillors had to come from the Useless Loop and Pastoral wards?

(2) When will the Minister apologise to the electors of the Shire of Carnarvon for taking this undemocratic action which has reinstated the previous electoral gerrymander within the shire?

Hon E.J. CHARLTON replied:

The Minister for Local Government has provided the following reply -

The reference to the Useless Loop and Pastoral wards is presumed to relate to the Shire of Shark Bay, not the Shire of Carnarvon.

(1) The Shire of Shark Bay earlier this year sought the Minister's comment on its proposal to increase representation in the Denham ward from five to seven councillors. Unlike the previous Government, which rode roughshod over many councils and dictated the level of ward representation, this Government has enjoyed a cooperative approach with local government to such issues. The Minister's response was to indicate this Government's views which are supported by the Western Australian Municipal Association and recognise that factors other than population should be taken into account in determining ward representation. Accordingly, the Minister suggested the council consider increasing the representation in the Pastoral and Useless Loop wards by one councillor each. By letter to the Minister dated 2 November 1993 the shire clerk has advised that the council has accepted the Minister's proposal.

(2) No apology is needed given that the council has agreed with the Minister's proposal.

FERTILISER - TONNAGE RAILED OUTSIDE STANDARD GAUGE AND MIDLAND LINES

705. Hon JOHN HALDEN to the Minister for Transport:

How many tonnes of fertiliser were carried in that part of the State outside the standard gauge and the Midland lines?

Hon E.J. CHARLTON replied:

I assume the member is referring to fertiliser tonnage hauled by rail over a given period, and my answer is on that basis. For the 1992-93 season, fertiliser was railed to points other than on the Geraldton line or the standard gauge railway as follows: Consigned to farmers, 45 000 tonnes; consigned to CSBP depots, 30 000 tonnes; total, 75 000 tonnes.