

# Legislative Council

Tuesday, 14 November 1989

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

## BILLS (7) - ASSENT

Message from the Lieutenant Governor and Administrator received and read notifying assent to the following Bills -

1. Financial Institutions Duty Amendment Bill
2. Public Trustee Amendment Bill
3. Change of Names Regulation Amendment Bill
4. Judges' Salaries and Pensions Amendment Bill
5. Transport Co-ordination Amendment Bill
6. Pay-roll Tax Amendment Bill
7. Pay-roll Tax Assessment Amendment Bill

## STATEMENT - BY THE PRESIDENT

*Humphrey, Mr Elton - Legislative Council Temporary Appointment*

THE PRESIDENT : I advise honourable members that Mr Elton Humphrey will be a temporary member of staff of the Legislative Council. Mr Humphrey is from the Senate Table Office and will assist the Legislative Council until the conclusion of the session. I welcome Elton, who is at the back of the Chamber. Honourable members know that our previous Clerk Assistant, Doug Carpenter, has left this House of Parliament to go to the Legislative Assembly, and Elton will help fill the gap until such time as that position is filled.

## PETITIONS - VIDEOS

*X Rated - Ban Maintenance*

Hon George Cash (Leader of the Opposition) presented a petition bearing the signatures of 948 citizens of Western Australia expressing concern that X rated videos may be legalised in Western Australia, and requesting that Parliament maintains the ban on X rated videos as it has a strong obligation to protect women and children.

[See paper No 584.]

Similar petitions were presented by Hon P.G. Pendal (377 persons), Hon N.F. Moore (48 persons), the President, by delivery (54 persons and four persons), and Hon J.M. Berinson (Leader of the House), by delivery (102 persons).

[See papers Nos 581, 584-588.]

## PETITION - HOMOSEXUALITY

*Decriminalisation - Support*

Hon John Halden presented a petition bearing the signatures of 1 043 citizens of Western Australia supporting the decriminalisation of private sexual relations between consenting adult males, and seeking the support of all honourable members of the Legislative Council for appropriate amendments to the Criminal Code.

[See paper No 582.]

A similar petition was presented by the President, by delivery (six persons).

[See paper No 583.]

## PETITIONS - HOMOSEXUALITY

*Decriminalisation - Opposition*

Hon Max Evans presented a petition bearing the signatures of 403 citizens of Western Australia opposing the decriminalisation/legalisation of homosexual behaviour and -

- (1) Regretting that the Labor Party is attempting through a private member's Bill to decriminalise homosexual behaviour for the fifth time in WA since 1973.
- (2) Noting with alarm that homosexual behaviour is directly responsible for more than 88 per cent of AIDS cases in Australia.
- (3) Rejecting the false argument that the way to combat AIDS is to decriminalise homosexual behaviour.

And praying that all members of the House vote against the Criminal Code Amendment (Decriminalization of Homosexuality) Bill 1989.

[See paper No 576.]

Similar petitions were presented by Hon Peter Foss (124 persons), Hon P.G. Pandal (12 persons), Hon George Cash (Leader of the Opposition) (1 309 persons), and Hon W.N. Stretch (69 persons).

[See papers Nos 575, and 577-579.]

### PETITION - LAND

#### *Leda, Western Ridge - Development Opposition*

The following petition bearing the signatures of 275 persons was presented by Hon P.G. Pandal -

We, the undersigned, believing that the land at Leda known as the Western Ridge should be preserved in its natural state, and knowing that the land is owned by the State urge that all necessary steps be taken to prevent this priceless public asset from being developed for residential purposes.

[See paper No 589.]

### STANDING COMMITTEE ON GOVERNMENT AGENCIES - STATUTORY CORPORATIONS (DIRECTORS' LIABILITY) BILL

#### *Report Tabling - Extension of Time*

HON TOM STEPHENS (Mining and Pastoral) [3.43 pm]: I am directed to report that the Standing Committee on Government Agencies requests that the date fixed for the presentation of its report on the Statutory Corporations (Directors' Liability) Bill be extended. I move -

That the date fixed for the presentation of the committee's report on the Bill, the Statutory Corporations (Directors' Liability) Act be extended from 16 November 1989 to 7 December 1989, and that the report do lie upon the Table and be adopted and agreed to.

Question put and passed.

[See paper No 593.]

### MOTION - PETITION, BURSWOOD MANAGEMENT LTD INQUIRY

#### *Samuel, Mr John - Privilege Committee Referral*

Debate resumed from 25 October.

On motion without notice by Hon J.M. Berinson (Leader of the House), resolved -

That Order of the Day No 1 be considered in the Committee of the whole House.

#### *Committee*

The Deputy Chairman (Hon Doug Wenn) in the Chair.

Hon J.M. BERINSON: I move -

To delete the words "and to meet while the House is sitting".

It is an established rule of the Legislative Council that committees do not meet while the Council is sitting; that is a sound rule, from which we should not depart. The first obligation of members is to the affairs of the Chamber, and it should not be necessary for members of a

committee to leave the proceedings of that committee in order to attend the Chamber, nor should it be necessary for the House to adjust its procedures in order to accommodate members who might wish to engage in the matters under discussion in this place, but who are absent on a committee meeting. I acknowledge that we have adopted this procedure at least once previously; that was also on a motion to establish a Privilege Committee. I believe it was undesirable then, and it is a practice that we should not repeat.

I would be the first to acknowledge that matters going to a Privilege Committee are considered of special importance, but even allowing for that it should not be necessary, given our usual procedures, to adopt that part of the motion which I am seeking to delete. The Council does not sit on Mondays or Fridays, and accepting that there are party meetings on all sides on Tuesdays, members are still left with Wednesday and Thursday mornings, which should provide them with ample time for that purpose. Certainly there is nothing in what we have heard to suggest that we should cut across the orderly proceedings either of this Chamber or of the Committee if we were to proceed in that direction by agreeing to procedures of this kind. I do not want to be misunderstood, or be thought to be not making my own position clear on the substantive part of the motion.

With or without this amendment being carried I make it clear that I will be opposing the motion. That, however, is not the subject of my present amendment. I commend the amendment to members as a way of securing the orderly processing of our business in a way which is well established, and in a way which can proceed without inconvenience to members due to the amount of free time outside sitting hours, and without cutting across what I have described as the primary obligation of our members; that is, the proceedings of this Chamber.

Hon N.F. MOORE: I oppose the amendment moved by the Leader of the House. I draw his attention to the fact that the occasion he referred to, in respect of which this had been done previously, was a motion that he himself moved. The motion was to set up the previous Select Committee of Privilege to look into questions of privilege relating to the previous Select Committee into Burswood Management Ltd; the Leader of the House, at his own instigation, following the recommendation of the President, moved the motion for the Select Committee.

Hon J.M. Berinson: I agree with that, and I now acknowledge it was wrong.

Hon N.F. MOORE: At his own instigation, without any reference to me or to anybody else, the Leader of the House put on the end of that motion the same words that are on the end of this motion, "and to meet while the House is sitting". The Chamber agreed to that because of the timing of the motion. It was about the same time into the session, relatively, as is this motion. We heard the Leader of the House a few moments ago give notice that as of next Thursday he wants the Chamber to commence sitting at 11.00 am and to proceed on to Thursday evening. If he thinks that will give us enough time to do all the work we are required to do, he obviously cannot remember those days when he was engaged in much more parliamentary work from a committee perspective than he is now. I suggest that it was quite proper, and it worked quite well last time, for the committee to meet and deliberate while the Parliament was sitting. In fact it was a very logical and sensible use of time. I would argue that we should not agree with the Leader of the House's proposition, for the very same reason he argued - or would have argued if he had had to - when he moved the previous motion.

Hon J.M. Berinson: I am now confessing that I was wrong that time and that we should not continue along that line.

Hon N.F. MOORE: We should chalk that up to the Leader of the House. That is the first time he has admitted that, as I hope everybody here will recognise. However, on that occasion the Leader of the House was right, in my view. It was a sensible and proper use of time management and I suggest we do the same this time. I argue that we should oppose the amendment.

Hon GEORGE CASH: I oppose the amendment moved by the Leader of the House because it is clear that the motion deals with the need for the Select Committee of Privilege to report by Thursday, 23 November 1989; that is, next Thursday week. It seems to me that every time the question of a Select Committee of Privilege into the allegations made in the petition,

which was presented to this Chamber by Hon Norman Moore only a few weeks ago, is raised, the Leader of the House - the Attorney General - runs for cover.

Hon J.M. Berinson: Rubbish!

Hon GEORGE CASH: It is clear he does not want to talk about the matter. He wants to avoid the issue.

Hon J.M. Berinson: I was ready to talk about it two weeks ago.

Hon GEORGE CASH: He will use any tactic at all to support his argument. He has just admitted this afternoon that although he himself moved a motion which contained the very words "and to meet while the House is sitting" some time ago, it no longer suits him to argue in favour of that proposition; it now suits him as a matter of course to reverse his position and argue the other way. I put it to members that the Leader of the House is conning the Chamber in respect of this proposition. It is clear he does not want to address the substantive issues which are raised in the motion before the Chamber. I oppose the motion.

Hon E.J. CHARLTON: If this committee were to be set up it should, as was the case on a previous occasion relating to a Select Committee of Privilege, have the opportunity to meet while the Parliament is sitting, because it has a specific job to do. Prior to this matter being raised the Leader of the House pointed out the need for us to sit over a longer period to cater for the workload, so it would be totally consistent to retain the opportunity for the committee to meet to deliberate on this very specific question while the Parliament is sitting. Certainly we would not support the deletion of that part of the motion.

Amendment put and negatived.

Hon J.M. BERINSON: Mr Deputy Chairman -

Hon George Cash: I bet you now oppose the motion.

Hon J.M. BERINSON: I said I was going to oppose it. Was not the Leader of the Opposition listening?

Hon George Cash: I was listening, and I said you were running to avoid the issue.

The DEPUTY CHAIRMAN (Hon Doug Wenn): Order!

Hon J.M. BERINSON: Hon George Cash must have a remarkably short memory if he cannot recall that five minutes ago I said that irrespective of which way the amendment went, and in order not to be misunderstood, I made it clear I would oppose the motion. I do oppose it, because it raises serious and in my experience unprecedented questions as to the proper place and treatment of petitions to this Chamber.

There is a long established and important right of citizens to petition the Parliament direct. A view has developed, on which Mr Moore relies and which I readily acknowledge, that citizens who wish to present a petition are positively entitled to have that done whether or not the member presenting the petition agrees with its content. That is perfectly acceptable as a general practice, but the petition we are now dealing with is very far from the sort of petition which the general practice is designed to accommodate. In the first place, the number of petitioners amounts to a total of one. More seriously, the petition alleges criminal conduct. Even worse, it refers to four named persons. Worse still, if that were possible, the petition offers not even a hint of evidence to support the allegations, beyond the bald statement by the petitioner that, and I quote, "there is strong evidence to suggest" that such criminal conduct has occurred.

Hon P.G. Pendal: And you have let it sit there for three weeks and have done absolutely nothing. That is dereliction on your part.

Hon J.M. BERINSON: How about Hon Phillip Pendal sitting there for another three minutes and hearing the facts? When I asked Mr Moore whether the petitioner had provided him with any evidence whatsoever to support the allegations, Mr Moore said he had not. He described himself as, and I quote, "simply the messenger", and, in another colourful phrase, as "the post box". On that limited, no responsibility basis Hon Norman Moore has provided the petitioner, under privilege of Parliament, with a public forum to make accusations of criminal conduct against named persons and without a single supporting fact. The precedent which that offers is appalling, and it is beside the point that the actual allegations relate to the

affairs of a parliamentary committee. On Mr Moore's approach, precisely the same procedure would apply if the accusation were murder, theft or bribery.

Irrespective of the usual forms of the Parliament, we have to ask in this case whether it is really the sort of abuse of the system which we should properly accommodate and indeed encourage. Hon Norman Moore had a number of alternatives available to him; he could and should reasonably have asked the petitioner, in view of the extraordinary contents of the petition, for at least some supporting evidence or facts; he could at the very least have required that the petition be reworded to delete the names of the persons who now stand publicly accused before the Parliament on nothing more than a petitioner's bald assertion that there is strong but completely unspecified evidence to support him.

Hon P.G. Pental: Presumably you have checked this because you have the resources; we are still waiting for that.

Hon J.M. BERINSON: How about keeping to the subject, which is an intolerable -

Several members interjected.

The DEPUTY CHAIRMAN (Hon Doug Wenn): Order! Members will hold their tongues.

Hon J.M. BERINSON: I will give Mr Pental and Mr Moore a remedy if they are prepared to wait a few seconds.

Several members interjected.

The DEPUTY CHAIRMAN: Order! I direct that the Leader of the House address the Chair.

Hon J.M. BERINSON: Finally, in the absence of a response to either of those requests, Mr Moore could quite properly have declined to present the petition or, if he did present it, to decline to take it further.

Hon P.G. Pental: You would breathe a sigh of relief; you don't want the truth to come out!

Hon Graham Edwards: Who are you accusing?

Several members interjected.

The DEPUTY CHAIRMAN: Order!

Hon J.M. BERINSON: We are coming to the answer to Mr Pental's little problem. It takes a very simple form. I am somewhat astonished it has not occurred to him previously, and especially that it has not occurred to Hon Norman Moore. If the petitioner does in fact have strong evidence of criminal conduct I do not suggest for a moment, nor does my opposition to this motion suggest, that the issue should not be fully and properly investigated and pursued. The way to do that, however, is not to abuse the privilege of this Chamber but to take the accusations - and especially, Mr Pental, to take the evidence - in the usual way to the police.

Hon P.G. Pental: Does it ever occur to you that people do not trust you?

Several members interjected.

Hon J.M. BERINSON: Is the honourable member saying that he does not trust the police either?

Several members interjected.

Hon P.G. Pental: We don't trust you!

The DEPUTY CHAIRMAN: Order! I point out to members that I will not accept interjections. Members have the opportunity during a Committee debate to speak as many times as they wish.

Hon J.M. BERINSON: I am astonished that Hon George Cash should join with Hon Philip Pental in an attack on the police -

Hon P.G. Pental: On you!

Hon J.M. BERINSON: - because that is precisely what he is doing.

*Point of Order*

Hon GEORGE CASH: I claim to have been misrepresented by the Leader of the House. At

no time did I suggest I do not trust the police. My statement about not trusting someone was related to the Leader of the House.

The DEPUTY CHAIRMAN: I do not accept the point of order; it is a matter for debate.

*Committee Resumed*

Hon J.M. BERINSON: The facts are as follows: Totally baseless accusations have been made against named persons in this Chamber, who were accused of criminal conduct. When I invited Hon Norman Moore to advise us as to whether he had evidence or information to support it, he said that he did not know. I suggest to the Committee in this instance, and I have said so specifically, that I do not suggest for a moment and my opposition to this motion does not suggest for a moment that the issue should not be properly pursued. When I suggested after that that the proper way to pursue an allegation of criminal conduct is to report it in the usual way to the police, Hon George Cash joined in with something like, "Yeah, yeah, yeah." That was in a general way knocking the police, because he cannot trust the police. It has nothing to do with trusting me.

Hon P.G. Pental: It is you!

Hon J.M. BERINSON: I have no need to go to the police. If Hon Phillip Pental has evidence which he is reluctant or unable to give to Mr Moore, the proper authorities should receive that evidence and carry on investigations in the usual way.

Unless the Leader of the Opposition is to suggest that the Parliament should directly become a repository for every accusation by any member of the public against any other member of the public in respect of criminal conduct, he has to accept that what I am putting to him is the proper procedure. If he has evidence of criminal conduct, take it to the authorities who are empowered to pursue it; that is, take it to the police. If the allegations are well founded, prosecutions will follow; if they are not well founded, no prosecution will follow and the individuals concerned would not have their names publicly questioned in the process.

Another issue relates to only one of the four named persons about whom something specific was said. That was Mr R. Smith who Mr Moore said was facing criminal charges directly connected with the same matters that would have to be considered in this case by the Privilege Committee. This raises the issue of a particularly serious matter as it touches on the sub judice rule. As we are well aware, the Parliament has a theoretically unlimited power to discuss any matter at any time. Nonetheless, we decline to discuss issues which involve matters, especially criminal charges, which are pending before the courts. That is to avoid the possibility of detriment to the administration of justice or of prejudice to either the prosecution or the defence. I rely completely at this point on Mr Moore's advice to the Chamber, as I have not checked the committee reports or transcripts to which he refers. On what Mr Moore has said, however, it appears clear that a finding of perjury by the Privilege Committee would carry with it a finding of guilty on the very criminal charge which is not due on Mr Moore's account to be heard in the courts until next February. The Chamber would never consider the discussion of such a matter itself. The same restraint at very least must surely apply to a committee of the House; but that would not be the case if this motion was carried.

In summary, firstly, the form of the petition on which the motion is based is grossly undesirable in that it baldly alleges criminal conduct by named persons without any indication whatsoever of the nature of supporting evidence. Secondly, Mr Moore has indicated that he is unaware that supporting evidence exists, having limited his own role to that of simply a messenger or post box. Thirdly, in the case of at least one of the four named persons any proceedings by the Privilege Committee would directly relate to, and perhaps even duplicate, a forthcoming criminal trial. Fourthly, the defeat of this motion would not inhibit in any way - and it is certainly not intended to inhibit - the full and proper investigation of any evidence which the petitioner does in fact have. The issues are clearly appropriate for report to and investigation by the police. Equally clearly they are inappropriate for consideration by us. This motion should be rejected.

Hon GEORGE CASH: As I predicted only a few moments ago, the Leader of the House rejected the motion.

Hon J.M. Berinson: You did not predict it, Mr Cash, I told you.

Hon GEORGE CASH: We know he is trying to avoid discussing the issue. The Leader of the House has argued that the form of the petition does not suit him.

Hon J.M. Berinson: It should not suit the House.

Hon GEORGE CASH: That is a question for the House to decide, not the Leader of the House.

Hon J.M. Berinson: That is what I advised the House to do.

Hon GEORGE CASH: The Leader of the House indicated that he was not satisfied with the form of the petition. Are we going to operate on the principle that, if the form of the petition does not suit the Leader of the House, that is sufficient argument for knocking it back?

Hon J.M. Berinson: You can do better than that, Mr Cash.

Hon GEORGE CASH: That is a ridiculous proposition and is clearly an abuse of the parliamentary system. Much has been written on whether a member has a right to present or refuse to present petitions. The manner in which petitions can be presented to Parliament has been set down over many years. In England, in 1699, a commoner, as the person was referred to, petitioned the Queen in Parliament on matters about which the person wanted the Queen to be aware. Ever since, members, when called upon by their constituents or by members of the public, have presented petitions if they so wished.

In relation to the form of the petition, the Leader of the House failed to tell the House that Standing Orders and precedents refer to the rights of a petitioner in presenting petitions to members. If the Parliament decided that a petition was frivolously, vexatiously or maliciously submitted to the House, the House could take appropriate action against the petitioner. Members should not decide whether a petition is frivolous, vexatious or malicious; that is a question for the House to decide once the petition is submitted to the House.

The Leader of the House argued that, because the form of a petition did not suit him, it did not suit the House.

Hon J.M. Berinson: It should not have suited Mr Moore.

Hon GEORGE CASH: The Leader of the House again falls into error by attempting to heap blame upon the member of Parliament who presented the petition. It is not up to the member to determine whether a petition is frivolous, vexatious or malicious; it is a question for the House to decide. The member could refuse to present the petition because he formed the view that it may be classified as such.

Hon J.M. Berinson: You do accept that?

Hon GEORGE CASH: However, whether there has been an abuse of the right of the petitioner to petition this House is a decision for the House to take in due course. It is up to the House to decide whether a petition is malicious, vexatious or frivolous. Why does not the Leader of the House argue those points? Why does he want to reject the petition out of hand by attempting to blame the person who presented the petition without coming up with evidence to support his claims about the petition?

Hon J.M. Berinson: The decision to send it to a committee is a serious step and should be done only on a factual basis.

Hon GEORGE CASH: The petition requests the House to form a Select Committee of Privilege to hear the claims of the petitioner. Why is the Leader of the House denying him that opportunity? Has he something to hide?

Hon J.M. Berinson: No.

Hon GEORGE CASH: Is he sure?

Hon J.M. Berinson: Absolutely positive.

Hon GEORGE CASH: Is that so? Why will he not go before the Committee of Privilege and state his case to it?

Hon J.M. Brown: What committee?

Hon GEORGE CASH: Or appear before it to say he has nothing to say.

Hon J.M. Berinson: Are you aware that evidence to a Select Committee, if proved to be untrue, could result in a gaol term of up to 14 years?

Hon GEORGE CASH: Is that the Leader of the House's problem? Is that the reason he does not want this matter to proceed?

Hon Tom Stephens: An absurd argument.

Hon GEORGE CASH: Not so absurd.

Hon J.M. Berinson: You are telling us there is a Criminal Code offence and that is what the police spend their whole careers pursuing. Why don't you let them pursue it?

Hon GEORGE CASH: Of all the members in this Chamber, the Leader of the House knows best of the deep seated reasons for his wanting to ensure that this Select Committee is not established. He knows where it will lead. That is the reason he seeks to avoid allowing anyone to come before that committee to discuss the matter.

Hon Graham Edwards: You are saying it is a political motive!

Hon GEORGE CASH: The Leader of the House also attempted to argue that, because one of the persons named in the petition was the subject of criminal charges yet to heard in court as I understand it, the committee, if established, could breach the rule of sub judice. It is competent for a Select Committee to discuss in private sittings matters that might otherwise be a breach of the sub judice rule. Erskine May's *Parliamentary Practice*, at page 693, under the subheading "Matters subjudice", states -

The statement of the House's practice with regard to matters that are awaiting judgement makes no mention of proceedings in select committees. Nevertheless the principle that such matter should not be prejudiced by public comment holds good in select committees. The bar does not however operate when evidence is being taken in private and, since there is no restriction on the right of the House to legislate, the proceedings of a select committee on a bill need not be affected by it.

I argue that, as long as the Select Committee hears its evidence in private, it would not breach the sub judice rule. The Leader of the House raised the question of sub judice to do no more than attempt to divert attention from the matter before the Chamber.

Hon J.M. Berinson: Will it deliver its findings in private?

Hon GEORGE CASH: The Leader of the House can run away from this matter, but it will come back to haunt him. If he tries to cover up this situation -

Hon J.M. Berinson: What situation, Mr Cash?

Hon GEORGE CASH: - and not allow this petitioner to go before a committee, another person or a number of people will bob up with the same proposition and ask him to form a Select Committee to discuss matters raised in this petition.

It is important that members recognise the seriousness of the allegations. The petition reads -

To: The Honourable the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.

I am a citizen of Western Australia.

There is strong evidence to suggest that Mr A.D. Smith, Mr D.R. Dempster, Mr C.R. Coulson and Mr R.M. Smith, all person who appeared before the Select Committee on Burswood Management Limited or a Select Committee of Privilege deliberately gave false or misleading evidence.

Your petitioner therefore prays that a parliamentary Committee of the Legislative Council be appointed to examine and report on the matter raised in the Petition as a matter of urgency and, as in duty bound will ever pray.

One of the most important ingredients of that petition is the name "Mr A.D. Smith". He is the Auditor General of Western Australia and an officer of this Parliament. The Leader of the House, by refusing to support the motion before the Chamber, is refusing to allow the Auditor General, Mr Smith, to clear his name. That in itself is an absolute disgrace.



Hon Fred McKenzie: It is a matter for the police, not for the Parliament.

Hon GEORGE CASH: If the petition does not stand up to the allegations made, the Parliament itself will decide what to do with the petition. That is an important part of parliamentary procedure. This place will be doing an injustice if it denies the people named in the petition the opportunity to come forward and clear their names.

Hon J.M. Berinson: How considerate of you after allowing them to be named in the first place.

Hon GEORGE CASH: I said before I do not trust the Leader of the House.

The DEPUTY CHAIRMAN (Hon Doug Wenn): Order! The honourable member will direct his remarks to the Chair.

Hon GEORGE CASH: There is an obligation on the Parliament to sort out this matter as soon as possible. There is a cloud above the head of those four people which must be cleaned up.

Hon J.M. Berinson: You are trying to make it darker.

Hon GEORGE CASH: No, I am giving the Leader of the House the opportunity to come clean.

Hon J.M. Berinson: That is an absolute disgrace.

Hon GEORGE CASH: I support the motion.

The DEPUTY CHAIRMAN: I put it to honourable members that they have 10 minutes to speak in the Committee debate. They are not to speak while a member is debating.

Hon P.G. PENDAL: We are dealing with two very important and fundamental matters in this motion. The first is that we are defending the right of citizens - a right the Government seems to dispute - to petition this Parliament. Since Mr Samuel's petition was presented via Hon Norman Moore, the Government has gone out of its way to denigrate Mr Moore and the sole petitioner, Mr Samuel. If we accept that as the correct and proper procedure, we must also accept that members can no longer defend the right of ordinary citizens to petition the Parliament. The Leader of the House is seeking to dispute that right in a fairly weak attempt to detract from the arguments that have been advanced from this side of the Chamber.

The second principle at stake is that a member not only has a right but also an obligation to bring to this Chamber a petition whether or not he agrees with its contents.

Hon T.G. Butler: What a load of rot.

Hon P.G. PENDAL: It is not a lot of rot at all. For example, I have presented petitions in favour of a Bill that is before the House and that will be debated some time today. I have presented petitions on behalf of people who wanted that matter acted upon.

Several members interjected.

The DEPUTY CHAIRMAN: Order! Order!

Hon J.M. Berinson: How many motions have you moved to carry the petition further? I answered your questions, why don't you answer mine?

Hon P.G. PENDAL: I will answer the Leader of the House in a minute. On second thought I will not.

The DEPUTY CHAIRMAN: Order! Order! I do not want to keep repeating myself. Please direct your speeches to me and not to each other.

Hon P.G. PENDAL: Mr Deputy Chairman, members are very much aware that this is no ordinary petition. They are also aware that every day of the week - and it happened a little less than an hour ago - all sorts of petitions are brought to the Parliament and by any yardstick some of them are more important than others. The seriousness of the matter brought forward by Mr Samuel reflects on - as I said before in an earlier debate - three private citizens and a fourth person who occupies one of the most senior positions in the parliamentary structure of this State. It is nonsense to discredit either the message produced by Mr Samuel or the messenger in the person of Hon Norman Moore whose obligation it was to present that petition to the House.

There is no doubt in my mind that the Leader of the House in his capacity as Attorney General of Western Australia has been derelict in his duties as the first law officer on at least two counts in this matter. It is now four weeks since the contents of that petition were tabled. Are we to seriously believe that matters of that level of seriousness have not gone through the Leader of the House's mind in the 26 days since tabling? Are we saying that the first law officer of this State - and I admit the Leader of the House is not to be the policeman - whose task it is to uphold and enforce the law, has not taken any action to refer the petition to the appropriate people for inquiries? Is that what the Leader of the House is saying?

Hon J.M. Berinson: You refer facts and evidence for inquiry, not bald assertions.

Hon P.G. PENDAL: That is precisely where the Government's argument is breaking down; that is precisely what the Chamber is asking a Committee of Privilege to determine. There is no way a member receiving a petition of that kind can determine the accuracy of its contents.

The DEPUTY CHAIRMAN: Could I ask backbenchers who want to have discussions across the Chamber to leave? There are doors all around us.

Hon P.G. PENDAL: As I said, the first point is that Mr Berinson is derelict in his privileged position as first law officer of this State. In the 26 days since the knowledge first became public he has clearly been part of a cover up through his own inactivity. That is more than possible.

Hon J.M. Berinson: What does that mean?

Hon P.G. PENDAL: It means that the Leader of the House has been inactive in the face of that knowledge.

Hon J.M. Berinson: There has been nothing to act on.

Hon P.G. PENDAL: He has decided what he says the police should have decided upon. I suggest that the Leader of the House has come to a conclusion.

Hon J.M. Berinson: What facts are you aware of?

Hon P.G. PENDAL: I am aware of facts as presented in the petition, as is the Leader of the House.

Hon J.M. Berinson: That is not fact; that is a bald assertion.

Hon P.G. PENDAL: What the Leader of the House is saying is that Mr Samuel had no grounds upon which to visit the police as Mr Berinson invited him to do.

Hon J.M. Berinson: I am not saying that at all.

Hon P.G. PENDAL: The Leader of the House has said the petition does not contain any serious allegations. The second point I want to deal with, and I presume the Leader of the House will skip away from this as quickly as he did the first, is in response to a remark that he made by way of interjection to Hon Norman Moore. I put to him - and heaven help me that it should have to be put to the Leader of the House - that it does not matter ultimately where the information comes from, it does not matter about the source; if the information suggests there has been wrongdoing that information ought to be checked. By virtue of his denials the Leader of the House has already judged the issue.

Hon J.M. Berinson: No, I have not.

Hon P.G. PENDAL: The Leader has already said that there is no substance to what Mr Samuel has said.

Hon J.M. Berinson: I said that we have seen no substance.

Hon P.G. PENDAL: Another remark made in the past half hour by Mr Berinson - and I use his words - was that "there needs to be some factual basis". That is precisely why the motion has been framed in the way it has seeking a Privilege Committee with the task of determining whether there is some factual basis to the allegations of Mr John Samuel. The Leader of the Opposition said a few minutes ago that, if a Privilege Committee were to determine there was no factual basis to the allegations, the committee would have a range of options at its disposal to deal with a petitioner who goes down that path. Let us have none of the nonsense we have heard, largely as a result of the interjections of the Leader of the House and some Government backbenchers suggesting, first, that a person standing alone should not petition

the Parliament and, second, that there is something improper or dark in the fact that a member of the Opposition discharged his obligation to bring petitions to the Parliament. If the Leader of the House is not guilty of dereliction of duty, or something worse, then let him join with this motion to ensure that a Privilege Committee is set up.

[The member's time expired]

Hon PETER FOSS: I am a little surprised at the Leader of the House's opposition to this motion. I think it arises from his misapprehension as to the procedure being invoked and the intent behind the motion. I will commence with some motherhood statements as to what petitions are about. Odgers' *Senate Practice* says that it is the privilege of any individual or body of individuals in the community to petition Parliament to obtain redress for grievances or to ask it not to do something that it has contemplated. The use of petitions to obtain particular redress for grievances has dropped off considerably because legislation has been introduced to overcome areas which were previously only subject to petition. In the early days, well before 1699, one of the ways in which people obtained redress for grievances from the Crown was by presenting a petition. There was a quite formalised procedure for how petitions were dealt with. It was necessary for certain matters to be dealt with in that way until procedures such as the Crown Suits Act were introduced. Prior to that, the only way a citizen could obtain redress against the Crown was by way of petition of right in order to obtain the right to sue the Crown, because that right did not exist previously.

The idea of petitions being a process by which one commenced something goes back a long time. It is an initiating process by which one brings one's grievance to the Parliament and asks it to take action with respect to that grievance. As the Leader of the Opposition and Hon Phillip Pandal pointed out, it is possible for the process to be abused, and if the process is abused it is for the House, in its ordinary way of dealing with its own procedures, to punish the person who abuses its process.

The fact that Hon Norman Moore presented the petition without first inquiring as to some of the facts or requiring those facts to be stated in the petition was questioned. If the petition contained too many facts it would be even more objectionable because of the statement and publishing of those facts in the petition.

Hon J.M. Berinson: Do you accept that it was proper to name the four persons who were included?

Hon PETER FOSS: I think it was proper.

Hon J.M. Berinson: But it was not necessary, was it?

Hon PETER FOSS: That is up to the petitioner. The Leader of the House cannot have it both ways; he cannot say that there should be more facts in the petition and then wish to keep out the most basic facts; that is, the people he says have been the subject of the complaint. One has to go sufficiently far to identify what the complaint is. It would be unfortunate if one then went further and gave chapter and verse.

Hon Norman Moore received a petition and presented it to this Parliament. The petitioner is Mr Samuel, not Hon Norman Moore, and the petitioned is this Parliament, not Hon Norman Moore. Hon Norman Moore was quite correct in saying that he was the messenger. At page 209 of Odgers' *Senate Practice* it states -

... the Leader of the Government (Senator Sir Kenneth Anderson) stated that it had never been his understanding that a Senator, when he presents a petition, necessarily presents his own point of view. He considered it was the accepted and traditional view that anybody or any group of people had the right to petition the Parliament and that the parliamentarian in turn, as he represented an area, had an obligation to present the petition to the Parliament.

There may very well have been circumstances under which one could refuse to present that petition, but generally speaking the situation is that a member has an obligation to present a petition, so Hon Norman Moore was acting quite properly in presenting that petition.

The next point to be considered, and this is a very important point, is the suggestion that Hon Norman Moore should have sought evidence. It is rather ironic in this case when one goes back to the Select Committee under consideration because one of the members of that Select Committee, Hon Neil Oliver, was criticised severely for speaking to witnesses who were to

appear before the committee. Hon Norman Moore has behaved quite properly in not seeking to look at the evidence as it is not his job to do so. That job is carried out by this Parliament and it would be improper for him to seek further information.

The Leader of the House suggested that the Privilege Committee would decide whether these people are guilty of perjury. I did not understand that that was what was envisaged should be done; it was envisaged that the petition should be referred to a Privilege Committee which would report back on what it thought should be done. I did not understand that it was to decide all the facts. I understood that it would recommend a course of action to this Chamber. One of the things members should keep in mind is that the evidence said to be perjured was evidence before this Chamber and therefore severe limitations are imposed by the privilege of Parliament upon the use of that evidence in any court of law. If the police, for instance, wished to bring a prosecution it is arguable that they could not use the transcript of evidence of this Parliament to support that prosecution without leave of this Parliament, because what is said in this Parliament is privileged.

We can, of course, direct that that be referred to the police and can permit the evidence before the House to be used in proceedings before a court, but it is up to the House to decide whether to release that evidence. Arguably, it would be contempt of this place for a court to use proceedings of one of our committees without leave of the House. I thought it was understood by the remainder of people in this Chamber that the job of a Privilege Committee is to do the very thing the Leader of the House was urging on Hon Norman Moore; that is, to look at what evidence there is to ascertain whether we should go further. We should ask, "Is this merely a frivolous and vexatious move on the part of Mr Samuel or something requiring us to refer the evidence of the Select Committee to the appropriate authority which, if it thinks fit, can act upon it?" I do not want to pre-empt the committee's decision, but it appears to me that that is the first inquiry, which is a proper one, which should be made. I do not think we should canvass on the floor of the Chamber the question of whether there is evidence. I presume members opposite hoped that Hon Norman Moore would come forward with this evidence. I would have been horrified if he had come forward with affidavits or statements of evidence.

Hon J.M. Berinson: I would have been happy if he had simply said he did have some evidence presented to him.

Hon PETER FOSS: I do not think it would be appropriate or relevant for him to do that.

Hon J.M. Berinson: You think it is appropriate to name these people.

Hon PETER FOSS: I do not think it is relevant. One must start somewhere. This is one of the matters which should be looked at by the Committee of Privilege. Was it an abuse of the rights of the Council that he named those people? We have a petition in this form, and the person who presents a petition vexatiously and frivolously risks facing the wrath of this Chamber. The petition has been presented, it makes serious allegations, it has been properly presented, and it should be examined by the Committee of Privilege to determine whether what has been said deserves any further action by this Chamber. It may well be that the committee finds itself unable to be satisfied that any action should be taken. It may recommend that transcripts of the evidence of the Select Committee be forwarded to the Leader of the House.

[The member's time expired].

Hon E.J. CHARLTON: It is the right of a member of this Chamber to present a petition in this way and to move a motion; further, no member confronted with the circumstances referred to in this motion should take it on himself to deny a member involved that opportunity. That is the view of the National Party. We respect and acknowledge the right of an individual member of this Chamber to respond in the way that Hon Norman Moore has.

This motion is almost unique. This sort of thing happens very seldom, if at all. I remind members of the debate which was reported in *Hansard* on 24, 25 and 26 May 1988, and I refer to the saga of the deliberations of the Select Committee which inquired into the Burswood Casino. Mr Samuel became involved as a consequence of negotiations with Hon Neil Oliver. I do not want to cast aspersions, but we need to take into consideration everything that took place at that time. The debate received wide publicity, and during the course of it terms of reference were decided on and the committee was set up. I moved an amendment to those terms of reference, which was to be paragraph (c), and it was -

circumstances surrounding the unauthorised disclosure of the report from the Corporate Affairs Commissioner relating to Burswood Management Ltd and tabled in the Legislative Council on Wednesday, 18 May 1988.

That was part of the first paragraph of the terms of reference, and anyone interested can look them up. As a consequence a further amendment was moved by Hon Phil Lockyer, but I shall not quote what he had to say or his reasons why my amendment should not be part of the terms of reference. I remind members of comments made in that debate by Hon Philip Lockyer about specific matters and individuals.

It is important to consider the reasons for this motion. Mr Samuel played a vital part in this business. As a consequence, not only did his actions have a bearing on the debate and a large part of the evidence given, but they resulted in the setting up of a Privilege Committee of the Legislative Council.

I refer members to a number of points in the report of the Select Committee of Privilege of June 1988. Point 1.1 says that the Select Committee of Privilege was appointed pursuant to the resolution of the Legislative Council on 16 June 1988, and it comprised Hon Jim Brown, Chairman, and Hon Tom Stephens, Hon Norman Moore and me. I had a vital interest in what came before that committee.

Point 1.2(a) referred to an inquiry into whether material evidence supplied to the Chairman of the Select Committee on Burswood Management Ltd and referred to in the special report of that committee presented on Tuesday, 14 June 1988, disclosed an improper attempt on the part of the person or persons who compiled or supplied that material or evidence to influence or intimidate the committee or any of its members in contravention of the privileges of this House. Point (b) related to whether the information referred to by the Leader of the Opposition in his statement to the House on 15 June 1988 in relation to his telephone service was sufficient to establish a breach of the privileges of this House. Those terms of reference are important when considering this motion.

Point 1.4 states that the committee met on 17, 20, 21, 22, 23 and 24 June. Point 1.5 points out that the committee met with Hon Tom McNeil, Chairman of the Select Committee on Burswood Management Ltd, Hon Neil Oliver, a member of the Select Committee on Burswood Management Ltd, Hon Gordon Masters, Leader of the Opposition, Hon Fred McKenzie and Hon Mark Nevill, both members of the Select Committee on Burswood Management Ltd, Mr Craig Coulson, company secretary of Burswood Management Ltd, Mr Martin Saxon, a journalist, Mr R.M. Smith, a private investigator, and Mr Laurie Marquet, Clerk of the Legislative Council.

Also in point 1.6 of this report the committee requested the following people to appear before it: Mr Shortland, Mr J. Samuel, and Mr W.R.B. Hassell, the member for Cottesloe in the Legislative Assembly. Mr Shortland was able to attend but not at a time suitable to the committee, Mr Samuel could not be contacted and Mr Hassell declined the invitation to appear. Regarding the complaint, I refer to point 2.1 -

On June 14 1988, the Chairman of the Select Committee on Burswood Management Ltd reported to the House on behalf of his Committee that information, had been drawn to his attention which he believed had cast serious doubts on the impartiality of Hon Neil Oliver in the matter to be examined by his Committee.

He went on to express concern that this had serious implications for the Committee's inquiries and the acceptability of its conclusions.

Members should take into account those aspects in this report and the other minority reports by Hon Norman Moore and Hon Tom Stephens because one cannot look at this motion without recalling what took place at that time.

During the last few weeks I received a number of telephone calls from Mr John Samuel. I returned three of his phone calls and spoke to him on two occasions. The first time I told him that I was certainly not opposed to anyone seeking to do what he was wanting to do and did not discuss the point any further. During the second conversation he said he had a great deal of highly explosive information. He said that there was a big fish in this city who would publicly support his allegations and that if this committee of privilege were not set up he would go public with it. He was taking this stance on legal advice from the Eastern States. He went on to say that some of the people to be affected by the information were in the

National Party. I asked him to enlarge on that but he refused and asked that he be given a chance to bring it before a Privilege Committee or he would go public. Having been on the previous Select Committee of Privilege, should I support this motion I would need to disqualify myself from going on another Privilege Committee because Mr Samuel has already spoken to me at some length. I do not doubt that Mr Samuel has some very relevant material, but he is asking too much if he wants this House to form a Privilege Committee when one was in place previously.

In relation to Mr Samuel's not attending that committee, I said that our only excuse was that he could not be contacted. He said, "Well, you could not have tried very hard." Perhaps this was the case, but one would have thought that because it met on such a number of occasions and because he was so central to the evidence being given to the Burswood Select Committee he would certainly not have wanted to miss an opportunity to come before the Select Committee of Privilege. Perhaps, after having read what other people said in the Select Committee of Privilege, he then wished that he had taken advantage of the situation and now wants this Chamber to set up another Privilege Committee to give him the opportunity again. Perhaps he felt that it was not in his interests to come before the Select Committee of Privilege. I think it is going to extremes to expect this Chamber to set up a Privilege Committee to hear the accusations of an individual who had more than ample opportunity to put his point of view previously. I respect his right to choose not to be available and at the same time respect his claim that he was not contacted.

Getting back to Mr Samuel's threat to go public with his evidence, I think we should encourage him to do so. It would be preferable to bring it out in the open rather than his making accusations behind closed doors. The other important issue is that someone with this sort of evidence, supported by a very reliable legal adviser from the Eastern States - I do not know why it had to be from the Eastern States - should use the various channels open to him and make a statutory declaration to the legal authorities. I do not see why we should set up another Privilege Committee. I acknowledge what the Leader of the Opposition and his colleagues have already said. If we were looking at something in isolation then there would be a good reason to view this differently. However, unusual events have taken place which will have a bearing on the decision of this Chamber to set up a Privilege Committee.

I acknowledge Hon Norman Moore's right to move such a motion. I am not critical of him or anyone else. We are about to set an incredible precedent in relation to Select Committees. First, we had a Select Committee before which a person refused to appear; and months later it seems the same individual wishes to appear before a Privilege Committee.

[Questions without notice taken.]

Hon E.J. CHARLTON: The National Party has given this matter a great deal of consideration. The citizen involved in this request has stated that if we in the National Party do not agree with it, he will go public. We will never run away from a fight or a challenge, nor will we deny an individual the right to state what I, or anyone else in the National Party, might have done wrong, but because of the whole saga of events which took place last year we do not believe we can support the setting up of a Privilege Committee to hear these accusations. We do not support this motion, and will wait to see what the people of this State want to do; and if any action needs to be taken, we will act accordingly.

Hon N.F. MOORE: The member who has just resumed his seat may have misunderstood, but he is arguing about something which is different from the matter before the Chamber. Standing Order No 123 says that a petition is not presented or capable of being presented unless the Clerk certifies that it complies in all substantive respects with the requirements of this chapter. Standing Order No 125 says -

The Council will not receive or consider a petition whose subject matter constitutes or discloses a cause of action and the promoter has not exhausted legal remedies otherwise available to him.

Under normal circumstances, one would think that Standing Order No 125 would rule out this petition, because as the Leader of the House argued strongly, the petitioner may not have exhausted other legal opportunities available to him. However, the Clerk, who is required to certify that this petition complies with Standing Order No 125, did so because he believed the petition related to parliamentary privilege. This petition has to do with the question of

parliamentary privilege; it has nothing to do - with all due respect to Mr Charlton - with what Mr Samuel believes happened in respect of Burswood Management Ltd. It has nothing to do with the phone tapping of members' telephones. When one reads the petition closely one finds it is all about people allegedly telling lies to parliamentary committees, and the remedy available to Mr Samuel is totally constrained, in my view, to this Parliament. He has done what he is supposed to do if he wants to seek some remedy to his area of concern. His petition says in part that there is strong evidence to suggest that certain persons deliberately gave false or misleading evidence to Select Committees of this Chamber.

That is what the petition is about - it is about the view of Mr Samuel. After reading the evidence of the Select Committee of Privilege, after sitting in and listening to the evidence to the Select Committee into Burswood Management Ltd, and after deliberating on those two areas, he has come to the conclusion that four people gave misleading or false evidence to those two committees. I ask Mr Charlton: How could Mr Samuel give evidence about this allegation during those committee hearings? It was only after the committees had finished their deliberations and he had read the evidence and the transcripts provided by the Select Committee of Privilege and had sat through and digested the evidence given to the other Select Committee that he was able to conclude that false or misleading evidence had been given to those two committees. He really did not have the opportunity at the time of those two committees meeting to lodge this objection. At that time he could have lodged objections in respect of the terms of reference of the two committees. He could have argued then that Burswood Management Ltd was corrupt, that Mr Dempster was a crook, or whatever; he could have said all those things at that time, but his allegations now, if members read the petition, are things he could have found out only after the hearings of those two committees.

Hon E.J. Charlton: Why didn't he appear before that Privilege Committee?

Hon N.F. MOORE: Hon Eric Charlton read it out to the Chamber. Page 2 of the report of the Select Committee of Privilege says in part -

Mr Shortland was available but not at a time suitable to the Committee; Mr Samuel was not able to be contacted; . . .

That committee met for about seven days, roughly, from the time it first sat to the time it finished. It was a time of very intense deliberation, and a very acrimonious period of my life, I might add. It was a very unhappy time, as Hon Jim Brown will acknowledge.

Hon J.M. Brown: I do not acknowledge anything.

Hon N.F. MOORE: Well, it was unhappy for me. During those seven days - and I do not recall the exact date on which the committee requested the appearance of Mr Samuel - a request was made for certain people to give evidence. In the shortness of time available to the person whose job it was to try to contact those witnesses Mr Samuel was not able to be contacted, and that is what the report says. Because Mr Samuel could not be contacted he cannot be expected to have given evidence. If he wanted to give evidence - and obviously he did not, because otherwise he would have come forward and given it - he would have appeared before the committee.

Hon E.J. Charlton: That is very important.

Hon N.F. MOORE: It is important, but Mr Samuel is saying that after the committee finished its deliberations and after he had read the transcripts - because Hon Tom Stephens wanted them to be made public so that the tapes could be broadcast all over Western Australia, he moved a motion and the committee agreed, against my judgment, that the transcripts of the evidence be made public. So Mr Samuel and anybody else who is vaguely interested in this committee can read every word uttered by that committee. It is public knowledge. If one asks the Deputy Clerk, he will give one a copy. Mr Samuel got hold of that transcript - and I might add that it became available only after the committee reported, so he could not have given evidence about what was said in the committee before it reported, because he did not know what evidence had been given.

After the committee reported, he read the transcript - he had already attended the meetings of the other Select Committee and sat in on those deliberations that were not in camera - and came to the conclusion that false or misleading evidence was given by four witnesses. The accusation of false or misleading evidence at a parliamentary committee is an allegation in

respect of the privileges of this Chamber. It has nothing to do with the Police Force or anybody else; it has to do with us as members of Parliament to resolve matters of privilege affecting us. Mr Samuel quite rightly presented a petition to this Chamber requesting that we do something about the question of privilege affecting our Chamber. That is what he should do; it is just the natural thing to do. The fact that it is very rare makes no difference to the argument.

If we do not deal with this now - if we do not agree to examine this question of privilege - we are letting ourselves down. We are not doing our duty, in my view, as members of this Parliament, if we do not take full cognisance of a legitimate complaint made to the House by a citizen of Western Australia. As I said before, we are obliged to look at and protect the privileges of our House. If people are giving evidence to committees of this Chamber and not telling the truth, we need to know. I put it to you, Mr Deputy Chairman (Hon Doug Wenn), that there are severe doubts about the evidence given by Mr Robert Smith to that committee. I raised that with the Leader of the House last year when I asked him whether, after reading the evidence, it indicated to him that Mr Robert Smith may have breached a section - I think it is section 57 - of the Criminal Code. The Leader of the House responded by saying, "It would appear that he may have done that; however, I suggest you take it up with the police", or something to that effect. I did not believe it was my duty to take it up with the police. It is a question of a breach of privilege, not of the Criminal Code, in my view, although the Criminal Code does apply.

If Mr Robert Smith had been involved in phone tapping - if I can surmise that he is found guilty of the charge which he now faces and on which he will appear in court - then the deliberations of the Committee of Privilege were incomplete. I want to explain to members that Mr Smith told us he was not involved in phone tapping; that his company had no capacity to tap phones. He was asked to be a witness before that committee because evidence was given to the committee that in fact he did do that. When he said he did not, under oath, the committee could go no further in its deliberations in respect of the phone tapping because it had exhausted all the evidence and information available to it. If Mr Smith is guilty of the offence with which he is charged, and if he perjured himself before the Committee of Privilege, the committee should ask the next question: If he did tap somebody's telephone, who engaged him to do it, or did he do it at his own behest? We must remember why that committee was set up in the first place. It was to find out whether a member of a Select Committee was being intimidated or unduly influenced by a person in the public. If it turns out that a member of Parliament who was a member of that committee had his telephone tapped by an employee of one of the persons being investigated by that committee, I suggest there is a very serious problem in our community.

However, I am surmising, and I say to members that if we do not agree to this committee we will have no way of finding out whether we have been lied to. Mr Samuel can go to the police and the Press and talk about anything he likes - about the whole question of Burswood Management Ltd, the cost overruns, and all the things associated with that. He can talk about it in public all he likes, but the question of whether people told lies to this committee, as Hon Peter Foss pointed out, is not the business of the police but our business. It is for us to find out, and to know, and to take the necessary action if there is any proof.

Hon E.J. Charlton: Do you think the charge against Mr Smith that is currently before the courts should be completed before this committee takes any evidence?

Hon N.F. MOORE: It is a different charge. The charge before the courts is that he tapped telephones; the charge being alleged by this petition is that he lied to Parliament.

Hon J.M. Berinson: What was the lie about? Wasn't it about the tapping of telephones? Isn't that the alleged lie?

Hon N.F. MOORE: I do not know; he may have another stack of information about what Mr Smith did or did not say.

Hon P.G. Pendal: In this case, the Privilege Committee could properly find out.

Hon N.F. MOORE: Quite right.

When Mr Samuel came to see me, he did not come with a stack of evidence. He came to me as I was a member of the Select Committee; he said, "You know about this; you sat on the committee. I have some allegations to make. I have talked to other members of Parliament



on both sides of the House. I want to do something about this; it has been suggested to me that I should go to Parliament because it is a question of privilege." I said that I thought he was right, but I also said that there was no point in my taking up the issue on his behalf unless he knew what was actually said to the two committees. I said, "If you do not know that, how can you make such an allegation?" He told me that he had sat in on every hearing not in camera on the Burswood matter. He said that he had read in depth the transcripts of the evidence given to the committee of which I was a member. He showed me where he had marked all these things.

I had satisfied myself that at least the man had a very thorough knowledge of what had been said to the two committees. I did not proceed any further to ask questions about substantive, hard evidence of his allegations because, as has been pointed out, it was not my business. I have very serious doubts in my mind about the findings of both the committees; however, I am not making any allegations because I do not know. However we now have an opportunity for this Chamber to do what it is supposed to do; that is, to protect its privileges and find out the truth or otherwise of these very serious allegations.

I acknowledge Mr Charlton's point of view that Mr Samuel probably did not go about currying favour with the National Party in a way I would have in Mr Samuel's position. It is extraordinary to ring up the National Party and say, "I am about to pour a bucket on the National Party, and I want you to help me do it." I cannot understand the man's motivation; I think he is extremely motivated and is anxious to have something done about what he considers to be a serious breach of privilege and maybe about corruption in Western Australia.

Mr Charlton should reconsider his position particularly in view of the fact that Mr Samuel had no opportunity during the hearings of the two committees to present the petition which relates to his concern about lies having being told to the two committees.

Hon E.J. Charlton: Do you acknowledge that if you had been in Mr Samuel's position and being central to what was going on, a roadblock would have needed to be put up to stop you going to the Privilege Committee?

Hon N.F. MOORE: That is not the argument. Mr Samuel may or may not have wanted to give evidence to the two committees. That is his business. I do not know why he did not give evidence but that is not the issue under discussion. The issue is that Mr Samuel believes, after considering all the evidence, that a breach of privilege has occurred. He does not state it in that way but he has said lies were told to both committees. He has obviously been advised by legal people that that reflected a breach of privilege. That is what the motion is about. Mr Charlton should reconsider because we are obliged, in my view, to do something about a petition such as this.

Imagine, Mr Deputy Chairman (Hon Doug Wenn), that you are a person in the community taking an interest in a subject; you attend Select Committees and listen to evidence; you form the view that somebody is telling lies. What do you do? The average person would probably do nothing.

Hon E.J. Charlton: I would want to put my point.

Hon N.F. MOORE: I am talking about the average person; he is usually nervous.

Hon E.J. Charlton: Mr Samuel is not a nervous person?

Hon N.F. MOORE: I am talking about the average person; Mr Samuel is not nervous. He says that something should be done; he is outraged. He has done something that has not happened in my 12 years here; he has petitioned the House stating that people may have told lies when giving evidence to two committees of this Chamber. We have an obligation to do something about this matter. Anybody who is prepared to take that sort of line and to suffer the odium that will befall him if there is no truth in what he says has to have something going for him.

I have already pointed out that in respect of at least one of those persons mentioned in the petition, Mr Robert Smith, it is not only Mr Samuel who believes he has done something wrong but also the Federal police. If members were to take the trouble to read the Select Committee report and refer to the minority report which I made they will note that I stated that Mr Coulson should be found to have breached the privilege of the Chamber. I have

some doubts about where he stands in the matter as well, so I have concerns about two people but I have no hard evidence. The other two people gave evidence to the committee of which I was not a member; I do not know what they said to that committee.

Hon Tom Stephens: Do you have any doubts about Mr Oliver's evidence?

Hon N.F. MOORE: No, I do not have any doubt at all. It is a pity Hon Tom Stephens has raised that now, when he could have debated it at the time the report was tabled in the House. Does Hon Tom Stephens remember those days when the report was tabled? I sought leave to make a statement on the report and the Government side said no. I then moved that the matter be made an Order of the Day for the next sitting and there it languished. We have not had a chance to debate the report of that Select Committee. As members know a majority report, a minority report and an addendum to the majority report were made. It was an extraordinary state of affairs.

A point was raised by Hon Joe Berinson in a heavy way about why I brought the petition to the House in the first place; he felt that I should not have done so. Hon Joe Berinson suggested I should have told Mr Samuel to change the wording of the petition; I should have counselled the petitioner about the words he used. What am I supposed to have told him to put in or take out?

Hon J.M. Berinson: The names of the persons, for a start; they were not necessary for the general case.

Hon N.F. MOORE: Had Mr Samuel said that witnesses before the committees had given false or misleading evidence, that would have suggested that every witness before the committees gave false or misleading evidence. It does not specify which one; it says everybody is guilty by association. He specifically said those four people, which does not allege that the other 20 or 50 who gave evidence were telling lies. He is saying that as far as he is concerned they are telling the truth.

Hon J.M. Berinson: You are counting that as a virtue?

Hon N.F. MOORE: As far as there can be any virtue, yes. Hon Joe Berinson then suggested I should have told Mr Samuel to go to the police. When I asked the Leader of the House, as Attorney General and the first law officer in Western Australia, whether some evidence that was given by Mr Robert Smith may have been a breach of privilege under section 57 of the Criminal Code, he said he would not do anything about it. I was told to take it to the police. I would have thought that the Attorney General would have done something about it; maybe Mr Samuel thought the same. Perhaps also Mr Samuel has no regard for the police; I do not know. Maybe he does not want to go to the police.

Hon J.M. Berinson: Just like Mr Cash, you say?

Hon N.F. MOORE: Mr Cash did not say that.

Hon George Cash: You must be going senile over there.

The DEPUTY CHAIRMAN: Order!

Hon N.F. MOORE: I do not know why Mr Samuel did not go to the police. That is not the place to take this complaint. It may be appropriate for him to take complaints to the police about Burswood management, Dallas Dempster, or anything to do with the management of that outfit and all the issues raised before the committee.

*Sitting suspended from 6.00 to 7.30 pm*

Hon N.F. MOORE: Mr Samuel may wish to discuss many matters relating to Burswood Management with the police. He may also wish to discuss the way the casino was established and other issues. However, the question before this Committee which is contained in the petition is one of the privileges of Parliament and the alleged breach of those privileges. I contend that this Committee should resolve the matter. Mr Foss pointed out that it may not be possible for the police to take action on this matter because the evidence given was privileged. I argue very strongly that this Committee has to make a judgment about this issue and it should set up a Select Committee of Privilege to inquire into the matters raised by Mr Samuel.

I draw the Committee's attention to a similar situation in some respects that occurred in the

Legislative Assembly last year. The then member for Mt Lawley made comments about Government members being involved in a conspiracy relating to the tapping of telephones. Very quickly after the statement was made, a motion was moved by the Leader of the Legislative Assembly, Mr Pearce, to set up a Select Committee of Privilege to investigate the allegations made by the then member for Mt Lawley. The Legislative Assembly, in a couple of hours, made a decision to set up that committee to investigate the claims made by that member.

The Government cannot have it both ways. In this case, a citizen of Western Australia has presented a petition to Parliament in which he alleges that certain breaches of privilege have occurred in respect of a committee of this Chamber. I ask the Government to treat that petition in the same way as it treated the former member for Mt Lawley's allegations and agree to set up a Privilege Committee. It is interesting, when reading the debates of that time, that the same names arose in relation to telephone tapping as arise in this debate tonight. Reference was made to Mr Dempster, Mr Robert Smith and Mr Craig Coulson as being the people who should give evidence before that Privilege Committee. I have been told that, when the committee met, it did not call evidence from anybody except from Mr Cash, the then member for Mt Lawley. It then censured him for making his allegations and that was the finish of the matter. However, no evidence was taken from the people whom Mr Cash sought to call before that committee.

In conclusion, this is a matter of privilege. It is for the Committee to decide whether somebody has told lies before two Select Committees of this Chamber. It is our problem and we have to do something about it. Mr Charlton argued that, if we passed this motion, we would set a precedent. I argue that, if we do not pass it, we will set a serious precedent. We would ignore the request of a person who is exercising his rights as a citizen to have investigated certain people who may have lied to a Select Committee. That would be a serious precedent to set in my view and would discourage anybody else from making a similar request of this place. We have an obligation to do something about our privileges. I therefore ask the Committee to support this motion.

Hon W.N. STRETCH: My colleague, Hon Norman Moore, has made the very point which concerned me; that is, the creation of a precedent. Very important principles have been raised in this debate. However, I think the creation of a precedent is one of the most vital. The right of an ordinary citizen of this country to appeal to his or her Parliament is a vital democratic right which has been hard fought for over centuries. It would be a step back for the Westminster system of Parliament if we turned our backs on the right of a person to do that.

It is unfortunate that personalities involved in the previous Select Committee have been raised this time. If I were in Hon Eric Charlton's shoes and I were faced with the threats made over the telephone that he was faced with, I would have reacted in the same way and been tempted to tell the person to get on his bike. However, it goes further than that. It goes back to the fundamental right that, despite what a person said in the past, he has the right of appeal to his Parliament. That is the nub of the question. It is a question of upholding an individual's right and this Parliament cannot turn its back on the issue.

Another very important right that has been impinged upon is the right of a committee to demand the truth on all occasions from citizens who are called before the Parliament or before any of its committees. Along with the other freedom of the right of a person to appeal, that is what this debate is all about. We have to leave personalities and the reliability or otherwise of Mr Samuel out of the debate and return to basic principles. In fairness to the appellant and to the citizens of Western Australia, we are bound to pass this motion. We are bound also to support an individual's right to appeal to the Parliament so that the names of those mentioned in the petition can be cleared if the allegations are false. Hon Peter Foss has raised all the other arguments as to why this should happen, and I will not repeat them. I appeal to the Chamber to pass this motion; it is a very important motion which goes to the basis of our Westminster parliamentary system. If a precedent is created and we turn our backs on the right of any individual to appeal to this Parliament, we shall do the whole system and the people of Western Australia a great disservice, in that we shall not be doing the job we were elected to do.

Question put and a division called for.

Bells rung and the Committee divided.

The DEPUTY CHAIRMAN (Hon Doug Wenn): Before the tellers tell, I cast my vote with the Noes.

Division resulted as follows -

---

Ayes (13)

Hon George Cash  
Hon Reg Davies  
Hon Max Evans  
Hon Peter Foss

Hon Barry House  
Hon N.F. Moor  
Hon Muriel Patterson  
Hon P.G. Pandal

Hon R.G. Pike  
Hon W.N. Stretch  
Hon Derrick Tomlinson  
Hon D.J. Wordsworth

Hon Margaret McAleer  
(Teller)

Noes (20)

Hon J.M. Berinson  
Hon J.M. Brown  
Hon T.G. Butler  
Hon J.N. Caldwell  
Hon E.J. Charlton  
Hon Cheryl Davenport  
Hon Graham Edwards

Hon John Halden  
Hon Kay Hallahan  
Hon Tom Helm  
Hon B.L. Jones  
Hon Garry Kelly  
Hon P.H. Lockyer  
Hon M.S. Montgomery

Hon Mark Nevill  
Hon Sam Piantadosi  
Hon Tom Stephens  
Hon Bob Thomas  
Hon Doug Wenn  
Hon Fred McKenzie  
(Teller)

Question thus negatived.

*Report*

Resolution reported and the report adopted.

**CRIMINAL CODE AMENDMENT (DECRIMINALIZATION OF  
HOMOSEXUALITY) BILL**

*Second Reading*

Debate resumed from 2 November.

HON PETER FOSS (East Metropolitan) [7.46 pm]: I have already placed on the Notice Paper a number of amendments to this Bill and, before considering the policy of it, I would like to clarify a few misunderstandings which have arisen, with regard both to my intentions on this Bill and the policy of it. First of all, members on this side of the House have what is termed a free vote on this matter. The Liberal Party has, as part of its basic and fundamental concept, the idea that each member has a right to exercise his conscience in any vote before the House. In fact, a division has just been taken in this Chamber in which a member of the Liberal Party voted as he thought fit. It is an important part of the Liberal philosophy that members on this side of the House have the right to exercise their conscience.

Hon J.M. Brown: As on daylight saving?

Hon PETER FOSS: That does not mean that in every case each member will decide for himself which way to vote. Obviously, it is a matter of practicality and getting things done, and members do cooperate and submerge their own ideas for those decided upon by the party. However, it is fundamental and important that in matters of conscience members of the Liberal Party have this right.

In addition to that right in every vote in this House, the party also has issues on which a free vote is given; that is, where the party does not have a policy line and the matter is not decided upon in the party room, each member is entitled to make up his own mind with respect to that vote. These two concepts are important for the following reasons. The conscience vote is important because a member may consider the interests of his constituents are so important that he needs to put those interests ahead of combining with the remainder of the party; or, for some other good reason, he may feel by his own oath to this Parliament and the people he represents in Western Australia, that he should vote in a certain way. The Liberal Party considers that a free vote is a matter of conscience by virtue of its very nature and because of that there should be a free vote. This causes problems. I am aware that members opposite do not have a free vote; irrespective of their private views they will vote in the manner decided by their party. This causes concern to members of the Liberal Party

because it sometimes seems that as long as the Labor Party ignores conscience and deals on the basis of caucus decisions it only takes some members of the Liberal Party exercising their right and their consciences to enable a matter to be passed which, if there were a free vote throughout the Chamber, might not otherwise pass.

It is unfortunate, because when there is a party line to follow it is a lot easier to assuage one's conscience by saying, "It is the party line and I am following it." It is much harder for a party to give its members a free vote. However, the question is: What is the more important principle? In the Liberal Party the important principle is that there are issues on which there should be a free vote and that a member should have the right to exercise his vote according to his conscience. I am disappointed about this vote because I believe that, in principle, we will be free on this side and bound on the other side of the House. This is an issue the people of Western Australia are entitled to have the conscience of every member bear upon. This is an issue in which each member should look into his own conscience and think about the basic principles that should be applied to legislation of this nature.

I know it is much easier to decide on such legislation out of prejudice. Letters I have received indicate clearly prejudice both for and against this proposition; they indicate also that many people are not concerned with determining what are the issues, with knowing my amendments, or with seeing what is the intention of those amendments. The first misapprehension I would correct is one which has been reported regularly in the newspapers; that if I vote in favour of this Bill I will be crossing the floor. In terms of the Liberal Party's basis, it will not be a matter of crossing the floor. There is no party line on this matter, although I admit the majority of party members have views differing from mine. The fact is that there is no party line and there has not been a party vote on this matter. I will be voting in accordance with the free vote given to members of this party.

The second statement I have seen is that my amendments provide for the decriminalisation of sodomy. Firstly, one of the problems I have had with this, and this is understandable, is that most people do not know what is the law in Western Australia, anyway. Secondly, if they do know what the law is in Western Australia, they do not know what are the amendments proposed by Hon John Halden. Thirdly, even if they do know that, they do not know what are my proposed amendments. Fourthly, even if they do know my proposed amendments they do not understand them.

I will state what is proposed and what is the law at the moment. It is unfortunate that this Bill was named the Criminal Code Amendment (Decriminalization of Homosexuality) Bill because that name creates a misapprehension as to what the law is and what the amendment seeks to do. Firstly, homosexuality is not criminal; there are a number of acts which are made criminal by the Criminal Code. For the purposes of this Bill the two most important ones are sodomy and what is known as gross indecency. Sodomy has to involve a male person and the penetration of either another male person or a female person. Gross indecency is any other form of sexual act between males.

The effect of the amendment proposed by Hon John Halden is that sodomy will not be criminal if between male adults in private. Secondly, gross indecency in private will also not be criminal. Most of the people who have expressed concern about the amendments have done so in the following terms: First, they see considerable merit in having the law as it stands because they see it as an expression of disapproval on the part of Parliament. They see that disapproval as having an important effect on the behaviour of the people of Western Australia, in particular people inclined towards homosexual behaviour. They also see it as having an effect upon teaching in schools, and on other public conduct of homosexuals.

One matter that has become heavily pressed since some of my amendments became generally known is that people see it as having a beneficial effect on the prevention of the spread of AIDS. Some of the forms of conduct which people have complained about and which they feel would be encouraged by decriminalising sodomy are as follows: They believe we will have gay mardi gras in Western Australia; public displays of affection; and that schools will teach that it is a good idea to be homosexual. First, it can be seen that there is no prohibition on homosexual behaviour between women at the moment, none! Homosexuality and homosexual acts between women are completely legal at the moment. There is not the slightest sign of any criminal penalty or any other form of disapproval expressed by Parliament of female homosexual acts and if people wish to teach that in

schools or to say, for instance, lesbianism is perfectly natural behaviour and to be highly encouraged, there is nothing in the Criminal Code to prevent that. If that does not happen it will be because of the attitude of our society.

One of the most interesting attitudes I have encountered in speaking to people - and I have spoken mainly with people who are against the amendments - is that although many believe that the law should remain as it is, I have found only one person who believed that people should be prosecuted for sodomy in private, and one person who wrote to me - he had also written to Bob Hawke - saying he believed the penalty for homosexual behaviour should be capital punishment. Generally speaking, people do not believe sodomy in private should be prosecuted, yet there would have been a time when community attitudes were very much against sodomy. A person caught sodomising on a ship might have been thrown overboard.

Community attitudes do change, irrespective of Acts. Community attitudes have changed. It is not always wrong for community attitudes to change. I am not for one moment suggesting that these two forms of behaviour are in any way equivalent, but it is important that people understand how community attitudes change and the problems which arise from failure to change with them. Not so long ago left handedness was frowned upon. In fact the word "sinister" means left handed, and it used to be thought there was something evil about being left handed.

Hon Graham Edwards: I wish you had not mentioned that while I was writing.

Hon PETER FOSS: This attitude continued while I was at school. Left handers were told to write with their right hands. If found writing with their left hands they were punished. Nowadays left handers are not forced to write with their right hands because it has been found that severe psychological problems can be caused as the result of making left handers write with their right hands.

I am not suggesting those two things are in any way similar. What I am saying is that attitudes change. A change in attitude is not necessarily wrong. I am not suggesting for one moment that I adopt any of the parts of the Labor Party's platform. I am totally against the Labor Party's platform, which I believe does encourage homosexual behaviour. I believe it is inappropriate, by reason of the nature of homosexuality, for it to be classed as a criminal offence. I do not believe society is being served in any positive way by continuing to treat homosexuality as a criminal offence, especially when it is generally accepted by the community, even by those opposed to it, that people are not prosecuted for homosexuality or for acts of sodomy in private. I am concerned about the public concern - and it is a concern that I share - that changing the law may indicate a change of attitude in this Parliament.

I have sought to put on the Notice Paper a preamble. A preamble is a very important part of an Act, and I have been urging the use of preambles on this Parliament because preambles state better than any other way the policy of an Act. I realise the public perception is not necessarily the same as the perception of a judge or a court. A preamble is probably better understood by judges than by the ordinary people of Western Australia, but I hope the people of Western Australia appreciate that the Parliament, by passing this Bill, is not expressing approval of homosexual behaviour. I would like to read what I see as the policy of this Bill after it has been amended by the amendments I shall move. The preamble reads -

WHEREAS, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law;

AND WHEREAS, the Parliament disapproves of sexual relations between persons of the same sex;

AND WHEREAS, the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

AND WHEREAS, the Parliament does not by its action in removing any criminal penalty for sexual acts in private between persons of the same sex wish to create a change in community attitude to homosexual behaviour;

AND WHEREAS, in particular the Parliament disapproves of persons with care supervision or authority over young persons urging them to adopt homosexuality as a lifestyle and disapproves of instrumentalities of the State so doing;

That last paragraph details one of the very great concerns people have about this Bill. They

are concerned about what will happen to teaching in schools. At the moment people are kidding themselves if they think they have any great protection. In fact with the amendments I propose the protection will be far greater than it is at the moment. People are concerned that the moneys of the State may be expended in encouraging homosexual behaviour. After the amendments I intend to move there will be far better protection than there is at the moment in the law.

The preamble sets out the philosophy that I believe should be adopted in regard to this area of the law. It sets out the fact that it is inappropriate any longer for the Criminal Code to govern these Acts, and secondly it sets out the disapproval of Parliament in a number of different areas. I wish to go further than that, because two areas need to be dealt with, and for that reason I have proposed a new part II to this Bill dealing with what has been termed proselytising; that is, the attempt to convert a person from one form of belief to another form of belief.

It is important that we understand the idea of what is normal. Homosexuality is not normal in our society. There have been societies in which it has been considered normal. In the ancient Greek society homosexuality became normal. It is not normal in our society. I do not want it to become normal in our society, and it is an appropriate area of the law that we should have some influence on what is normal in our society. If people presently live in a society where homosexuality is not regarded as normal, they have a right to say that that is the way their society will remain. That does not necessarily mean that the people who are engaged in abnormal behaviour should be prosecuted.

I propose two new sections, one which says it shall be contrary to public policy to encourage or promote homosexual behaviour, and the promotion of homosexual behaviour shall not be -

The PRESIDENT: Order! I remind the honourable member that he is speaking to the second reading stage of this Bill. He is currently speaking as though the House were in Committee. The time to explain proposed amendments is during the Committee stage. I suggest that the member refrain from detailing each of the various amendments he proposes until such time as the House goes into Committee. What he can do at the second reading stage is talk about the principles of the Bill as it was introduced, and broadly about the effect of any proposed amendments that he may be moving. He will certainly be out of order dealing with the various clauses in the manner he is doing now.

Hon PETER FOSS: The concerns expressed to me are with regard to the fact that people see the alternative to criminality as being approval. I would like members to consider the following: Society expresses its attitude to behaviour in four different ways - approval, neutrality, disapproval and disapproval with criminal consequences. At present sodomy and gross indecency are treated by society with disapproval and criminal consequences. The most common complaint I have heard from people is that the way in which sodomy is regarded will go from disapproval with criminal consequences to neutrality or even approval. That is not necessarily the case. It is quite possible for attitudes about behaviour to move from disapproval with criminal consequences to disapproval, and not even to reach either neutrality or approval. I believe it is the appropriate policy of this Bill for sodomy and gross indecency in private to move from a state of disapproval with criminal consequences to a state of disapproval. There are ample precedents; for instance, the law relating to torts or civil wrongs is an example of disapproved conduct. If one breaks a contract, one is liable to civil penalties. If one accidentally drives through somebody's front fence or knocks somebody over, civil consequences arise from that conduct. Some areas of behaviour are plainly disapproved by society and by the law; for example, fornication and adultery. Legal consequences apply to contracts for immoral purposes. Many examples exist where the law is able to deal with matters by way of disapproval without necessarily imposing a criminal penalty. One will even find that the Criminal Code itself refers to what it calls "unlawful carnal knowledge". Members might wonder what "unlawful carnal knowledge" is, but it is fornication or adultery. Those things just happen to be referred to in the Criminal Code as unlawful carnal knowledge. It does not mean that the Criminal Code imposes penalties for unlawful carnal knowledge, but the law certainly does disapprove of that behaviour. For example, one cannot have a public purpose charitable trust for behaviour which is disapproved of by the law because that is contrary to public policy. One cannot have the expenditure of public money on things which are contrary to public purposes. The terms

public policy and public purpose are well known to the courts, as are their consequences. For many years society has understood that adultery is not approved of and yet it is not suggested it should be made criminal.

It is important we try to put this in perspective. In terms of the appropriate moral response, I am encouraged by the fact that the Anglican Synod of Western Australia has supported this move, as has the Roman Catholic Archbishop of Perth and the Uniting Churches. They have supported this move knowing that in their churches' doctrines this is regarded as morally reprehensible. Those churches do not consider that by saying homosexuality should be decriminalised they are approving of it. On the one hand they have said they believe homosexuality should be decriminalised but they have all made it clear they still regard each of these items of conduct as being reprehensible and immoral. People have quoted Leviticus to me. As Hon Reg Davies pointed out there are some amazingly interesting other things in Leviticus such as drinking blood and the way in which one looks after one's cows. To select only that part of the Bible to support the contention that sodomy is criminal is a little strange. It is interesting that sodomy is not mentioned in the Old Testament in the Ten Commandments. It is to be found in Leviticus which, as we all know, is composed of the writings of Jewish prophets. However it is not to be found in that part of the Old Testament which has the authority of being the word of God; it was not seen fit to include the prohibition of sodomy in the Ten Commandments. More importantly in the New Testament a far more sympathetic and caring attitude to other people is expressed where only two laws were put forward by Christ. One person wrote to me saying that these people are hardly monochrome pressure groups. One could hardly call the Roman Catholic Archbishop of Perth, the Anglican Synod and the Uniting Churches monochrome pressure groups; they represent a fairly conservative and middle of the road attitude in society.

I believe it is important we do not have laws that are inconsistent with the attitude of society. It is important our laws recognise that people have concerns. I think it is important we address one concern, which is the question of teaching homosexuality as an alternative in schools. I believe it is important a prohibition be placed on the encouragement of the teaching of homosexuality as an alternative lifestyle in the schools. That is a reasonable objection and I sympathise with it entirely. At the moment I do not believe the law stops that. We should be more concerned about many other things which are being promoted on television. Every day on the television people see murder, rape, theft, mugging and all forms of dishonest behaviour presented as standard, acceptable behaviour. One may think it is not being presented in that fashion, but in fact it is because television regularly gives children the attitude that that sort of behaviour is normal. It is not necessarily behaviour that one approves of, but it is something which is happening all the time. Under those circumstances I believe those children must feel that violence is acceptable and normal. Even on the news we see violence; even when the news is not dealing with violence it tends to deal with conflict. Why is this issue getting so much coverage in the Press? Because it is seen as conflict, and that is news. Personally I find that abhorrent in the same way as I find the encouragement of homosexuality abhorrent. We cannot go around saying that one of those behaviours will be dealt with by criminal penalties while the other behaviours will be dealt with by some other method. If we are to fight these things, it is a matter of fighting them with our own attitudes and the way in which we bring up our own children and the way in which our children are taught. What is done in the schools is very important because there is a potential there for children to be taught things we do not believe are correct. Therefore it is important that in this legislation it should be unlawful to teach homosexuality by way of encouragement or promotion in the schools. I do not believe that protection is in the legislation at the moment. The other behaviour which is very worrying is that which leads to AIDS.

It is quite clear that male homosexuals are by far the greatest cause of the spread of AIDS in Australia, but it does not necessarily follow that criminalisation or decriminalisation will affect that. It has been pointed out that New South Wales has the highest per capita incidence of AIDS, but South Australia, where sodomy was decriminalised before anywhere else, has the lowest incidence of AIDS. It is not a matter of the community's attitude towards homosexuals, but it is the attitude of the homosexuals themselves that will affect the incidence of AIDS. Those who are practising promiscuous male sex are a danger to the community and there should be some measures to prevent that. However, it can also be said



that people who are permissive heterosexuals are spreading disease through society as well, for venereal disease has been common in Australia for many years, with some children being born with congenital syphilis. We do not go around and say criminalise heterosexual acts.

We should concentrate our attention on the abhorrent behaviour. I believe that bathhouses involve abhorrent behaviour. I intend to move an amendment which will move towards discouraging this behaviour. Many sections in the Criminal Code deal with an intention to reduce that sort of behaviour with heterosexuals. For instance, there are places where homosexuals resort to meeting homosexuals and this is not a matter of prostitution because those involved are not prostitutes; these places are bathhouses where homosexuals go and engage in promiscuous sex. If they were engaging in heterosexual sex the Criminal Code would impose a severe penalty on the owner of those premises, but that does not apply with homosexual sex at the moment. It is my premise that this area of the law should be amended so that such places will be brought within the Act and the proprietor of such places face severe penalties.

This change will extend to boys what previously applied only to girls. There are sections of the Act which deal with the taking of children away from parents for defilement - which is a quaint term - and if the child is under the age of 18 and is encouraged to, using the terms of the Act, "carnally know them", those sections render that person liable to a penalty. However, if the child is a boy, this does not apply. If a person entices a boy away from his parents for the purposes of homosexual acts, it is not regarded as defilement within the Criminal Code. I believe it should be. There are other sections of the Act which deal with encouraging people to remain in a state of prostitution and enticing people into prostitution; that is, generally providing promiscuous sex and facilitating it. That provision is directed to women and girls. I propose that that should be extended to men and boys.

The important part to be dealt with in all of this is what are members seeking to achieve? What are we seeking to achieve by making sodomy and gross indecency in private an illegal act? Very few people would answer that question by saying that they want these people prosecuted. Most people are saying that the disapproval of Parliament will stop it from happening. The argument is ill-placed. The problem is that we have a law that is becoming discredited because it is a law that people must go out of their way not to enforce; this leads to selective enforcement and blackmail, which is an evil in our society.

I have had many queries about my proposal for the age of consent for males to be 21. I suppose that that is a favourable indication in that I have been attacked by one lobby group on one side and the other lobby group on the other side. I have chosen the age of 21 as the age of consent for males for a particular reason. It is said that homosexuality is learnt and is not a genetic behaviour. I accept that as the appropriate scientific knowledge, although one always has a problem because scientific knowledge changes from time to time - however, we shall assume that it is accepted. Some people do not develop predilections for one sex rather than the other; that is, the people who are quite dangerous in the spread of AIDS in our society, because bisexuals have the ability to respond to both males and females. It is a choice they have to make at one stage because most people I have spoken to who are homosexuals say that they do not wish to be homosexuals as they find it is a sad situation to find themselves in. Given a choice of being either homosexual or heterosexual, they would choose to be heterosexual. Some people in our community choose to become heterosexual or homosexual at a later stage of their lives. Situations occur where people have chosen to be heterosexual and have married and found later that they cannot respond heterosexually. Bisexuals who are married have caused considerable problems and would probably have been better off had they never married in the first instance. Regarding the 21 year age limit, we must recognise the fact that what happens in our lives is very much in response to what happens between the ages of 14 and 25. We might have predilections already set, but the way we respond to them is very much influenced by what happens during that time between the ages of 14 and 25. For that reason I propose the age of consent should be 21. It could be argued that I should have set the age at 25, but the problem is that people tend to marry in their early to mid 20s and what I am trying to do is to give people the opportunity to respond - if they have the ability both heterosexually and homosexually - to give them the opportunity to respond heterosexually in later life. I do not want to encourage the formation of heterosexual marriages in which those people later find they are unable to respond heterosexually and end up in the tragic situation of being in a marriage and bisexual.

Perhaps that is lacking a little in logic and perhaps the age of consent should be 25, but I believe the logic exists; it is more acceptable to the people to set the age at 21. I make no apology for having made a compromise between the two problems of having to protect the needs of those who respond homosexually, and the probable tragedy of people getting married and being caught in the situation of being essentially homosexual and unable to respond with their families. It is for that reason I chose that age limit.

People have told me that I have not been very consistent. I have said before in this House that consistency is the refuge of small minds. If one believes something is right one should do it. The fact that it is not consistent with something else does not mean it is not a good idea. When the High Court decided not to follow its previous decisions it said that it was better to be ultimately right than consistently wrong. I have received considerable support for that age limit from those people I have spoken to who are against the decriminalisation of sodomy. I believe it is the correct age limit and I will move an amendment accordingly.

I ask every member to ask himself why he thinks sodomy should remain a criminal offence. Members should examine their motives for agreeing to that and then read the amendments I have placed on the Notice Paper to ascertain to what extent I have answered the questions and doubts they have in their minds.

[Leave granted for the member's time to be extended.]

Hon PETER FOSS: Members will then realise that it will be extremely difficult to explain to society why sodomy should remain a criminal offence. I know because I have spent many hours sitting at my desk trying to explain to people what my amendments are about and what they seek to achieve.

I am pleased to advise members that I have attended meetings and have spoken to people who were initially concerned, but after reading my amendments have found that they have satisfied their concerns. Of course, I have not satisfied some people's concerns. However, I have met many people's concerns although at times it has taken up to an hour to explain my amendments. It will be extremely difficult to get my views across to the million people in the community. However, I hope we will not respond by way of prejudices. Too often people have been judging us on prejudices. I have received letters based on prejudices and accusing me of promoting the very thing my amendments prevent; that is, they give some protection to society, which it does not have now, in this State. People are accusing me of doing certain things because they do not know. I do not blame them for not knowing. It is not easy to understand and it is not easy to know what the law is and what my amendments will do. I do not expect everyone to agree with me, but I would like people to read my amendments to ascertain to what extent their objections are being met. In many cases most of their objections have been met.

I have one concern; that is, what is the appropriate action to be taken by a member in a region which has several members? One of the difficulties we have now that we have five members, in some cases seven members, in each region is working out the proper way to respond to the wishes of the majority of the electorate. Could it be said that the three Labor members in my region have responded on behalf of the majority of electors and the Liberal members have responded on behalf of the minority of electors? It is a difficult question to which I do not have an answer. However, I believe that my amendments are correct and do meet the objections of most of the people I have spoken to. They meet the views of people in society whom I regard as the appropriate people to decide what should be the correct moral behaviour - I mentioned the three major churches in Western Australia.

Ultimately, I have to make up my mind, keeping in mind the objections and concerns of my constituents, and try to give some lead to what I see as solving a difficult problem in our society. We cannot ignore this problem and we cannot take up a resolute position and not try to work out why we do so. I am sure every member is doing that. It is difficult for members to make up their minds on any such issue. It is so much easier for a member of the public to hold a point of view than it is for a member of Parliament because eventually a member of Parliament has to vote on it. It makes a tremendous difference to the way one views a problem if one has to vote on it. I am sure every member in this House is conscious of that problem. My amendments do serve the purpose of meeting the concerns of my constituents regarding the decriminalisation of sodomy and, therefore, I commend the Bill to the House.

**HON DERRICK TOMLINSON** (East Metropolitan) [8.37 pm]: This Bill proposes many amendments to the Criminal Code. I wish to focus the attention of the House on what I see to be the three principle proposals of the Bill.

The first, and the best known, is that the Bill proposes, by the repeal of section 181 and the insertion of an alternative section 181, to decriminalise sodomy and to replace acts against the order of nature with the single term bestiality.

The second proposal contained in the Bill by the repeal of section 184 is to decriminalise indecent acts by males in public and in private and procurement of men to indecent acts in public or private. In other words, it proposes to decriminalise indecent behaviour and procurement to indecent behaviour.

The third element of the Bill is that it recognises that seduction, inducement to indecent acts, inducement to sexual intercourse, gross indecency and sexual assault can be practised against man and boy as well as against woman and girl. Hon John Halden referred to this as rendering the language of the legislation non-sexist. In principle it does. At various stages in the Act it uses gender terms to distinguish between boys and girls where appropriate. It does not proceed as far as gender equity because it does distinguish between the age of consent for girls at 16 and the age of consent for boys at 18. Hence, a 16 or 17 year old girl might be seduced and induced to indecency, but not a 16 or 17 year old boy. One must pause and wonder why the distinction is made. Is it because the popular perceptions of public values do not accept such behaviour? It is peculiar, and perhaps it is hypocritical, that we condone such behaviour against girls, but the Bill recognises that public values do not condone such behaviour against boys.

I will correct a misapprehension brought to my attention in submissions I have received about this Bill: It does not decriminalise paedophilia, which is still regarded as a crime. Section 183 is repealed, but its provisions are quite adequately dealt with by clause 10 of the Bill. Those are the three focal points of the Bill. Hon Peter Foss recommends that when we discuss this Bill we should consider the principles of law which govern this matter.

I reaffirm that there are some misconceptions about the Bill which need to be dismissed. The first of those was dismissed by Hon Peter Foss; that is, it is not about homosexuality per se in spite of the short title, Criminal Code Amendment (Decriminalization of Homosexuality) Bill. The Bill is not about homosexuality but about certain sexual acts. Quite simply, homosexuality is love between persons of the same sex. I have no problem with that concept. It is not a concept - and neither is love between persons of the same sex - necessarily approved of throughout our society. In fact, it is strongly disapproved of by some members of our society. Even so, it is not unlawful. There are no legal sanctions against homosexuality. Perhaps the only exception appears in military law under which homosexuals can be dishonourably discharged from the military forces.

This Bill is not about homosexuality, although there might be social discrimination against homosexuals and that discrimination might be in the form, in one extreme, of what is described as "poofster bashing", or that social discrimination might be in employment or in various forms of social ostracism. There are no legal sanctions against homosexuality and there is no attempt to address such legal sanctions in this Bill. The legal sanctions are against sodomy and gross indecency.

The second misconception I dismiss is that this Bill is about AIDS. It is not. From the submissions I have received, it appears that this misconception arises from a misinterpretation of the national HIV/AIDS strategy, the policy information paper which in paragraph 5.2.4 discusses AIDS testing or HIV antibody testing, individual choice, and personal advantages and disadvantages. Misunderstanding of the intent of this discussion paper has expressed itself in terms of this Bill being a measure to contain the spread of AIDS. That is a misunderstanding of the passage which states -

Further, in some States where homosexual activity or prostitution is a criminal offence, discrimination or other harassment may arise from a positive result because of the likelihood of assumptions about an individual's behaviour. While governments can take action to change the law, thereby removing one disadvantage, an assessment of the personal benefit versus the personal cost is a matter for informed individual choice (or, if the individual is not legally competent, by his or her guardian).

There is no recommendation there that the States of Western Australia and Queensland should decriminalise sodomy. There is a consideration of the possibility that if sodomy is decriminalised that might reduce the harassment of individuals who are shown to be HIV positive.

The statement in the paper is that this is a matter of individual choice; the individual consideration of the advantages and disadvantages is what will decide whether people present themselves for HIV testing. Some will hide behind a willing suspension of disbelief, that it will not happen to them as their justification for not presenting themselves for testing even though they indulge in what is called "dangerous behaviour". Some will willingly and maliciously continue to have unprotected sex even though they know they are running the risk of infecting others. However, in terms of containment of AIDS, this attempt to encourage people to come forward for HIV testing is too late.

I refer members to the September 1989 data from the National Health and Medical Research Council's special unit in AIDS epidemiology. In September 1989 there were 1 451 known cases of category A AIDS nationally. Of those, 762 or 52.5 per cent had died. The remainder of that 1 451 are dying and will be dead within two years. When one looks at the various categories by which the disease is transmitted one finds that a total of 1 280 or 88.2 per cent of known cases the transmission was by homosexual or bisexual intercourse. There were a further 56 transmissions by blood transfusion, or 3.9 per cent. There were 15 haemophiliacs and 23 heterosexual transmissions, or 1.6 per cent, and 18, or 1.2 per cent, intravenous drug users who contracted the virus. In September 1989, without doubt, the largest proportion of identified AIDS sufferers contracted the disease as a result of homosexual or bisexual intercourse. That proportion will diminish over the next five to 15 years. The proportion of intravenous drug users who progress to category A AIDS and die of AIDS or AIDS related diseases, and the proportion of heterosexual people who contract AIDS and die as result of AIDS or AIDS related diseases, will increase. This will not be because fewer homosexuals will die, not because fewer homosexuals will contract the disease, but because a smaller proportion of the total in the second and third wave of AIDS will be those who are now the highest proportion. The number of heterosexual men and women afflicted with the disease as a result of heterosexual intercourse will increase at an exponential rate. No matter what we do now, it is too late, because those who have already died of this disease contracted it between eight and 10 years ago. Those who will die in the next eight to 10 years have contracted in the past eight or 10 years. The spread of AIDS to the heterosexual community is already in place. Let us dismiss the argument that by decriminalising homosexuality or sodomy we will contain the spread of AIDS. It is too late, mate!

I refer to the primary focus of the Bill, and the principal focus of public interest: The question of decriminalising sodomy. That is the question this Parliament is being asked to decide. It is now a crime, but it is not prosecuted. During question time Hon John Halden was unable to answer how many prosecutions there had been in recent history. In his second reading speech he said, "About a half dozen public indecency cases are prosecuted each year, but it is many years since a conviction has been secured under the private bedroom offences in sections 181 and 184." It is many years since there has been a prosecution for sodomy under the Criminal Code in this State.

Hon John Halden: Is that the question? I was not aware that that was the question.

Hon DERRICK TOMLINSON: The question we now have to address is whether a law which is not enforced should remain on the Statute book. Is it a debasement of the law to retain the offence on the Statute book and not prosecute it? Is it a corruption of the law not to prosecute for this offence? The law empowers the police, the courts and the judiciary to act, but because a person or a body is empowered or authorised by an Act of Parliament to act in certain ways does not mean that they are compelled to act. We all have the power to kill, we all have the power to maim, and we all have the power to hurt, but restraint of that power is our essential humanity. Let us take a simple example of a person stopped by a traffic patrolman for exceeding the speed limit. Let us suppose this person is travelling at 74 kilometres an hour in a 60 kilometres an hour zone. Let us suppose that this person, by the grace of the traffic officer, is let off with a caution instead of a \$75 fine.

Hon John Halden: It has never happened to me.

Hon DERRICK TOMLINSON: I am sorry that it has not happened to Hon John Halden, but I am grateful that it has happened to me. Should we say that because the traffic officer has tempered the law with justice, because he had considered the circumstances in which the law was broken, he is debasing the law? That is not a corruption of the law. The law is tempered with justice, and it is ennobled as a result. If the traffic branch decided not to maintain rigid surveillance of the 90 kilometre per hour limit on freeways, is that a corruption of the Road Traffic Act? No, because commonsense is being allowed to prevail and the law is tempered with commonsense.

Hon John Halden: Does that happen in Queensland?

Hon DERRICK TOMLINSON: I was not in Queensland when the 90 kilometre per hour limit was imposed. I do not really know what the honourable member's question is. Let us look at the case of a woman who, in post natal depression, commits infanticide. In its wisdom, the court does not equate infanticide in those circumstances with murder and does not impose the penalty provided for murder. In fact the court tempers the law with justice. Is that a corruption of the law?

In each of these cases, even though the power to act is authorised, it is not compulsory. It is never compulsory that the law be rigidly enforced. The power and the authority are granted because they reflect the prevailing values of society. An act may be repugnant to prevailing values, but in this case of sodomy the law is rarely prosecuted. The law is a confirmation of the values of our society. It is, if one likes, a security blanket for our society. I use that term with all the displeasure one might like to impose upon it, but it is a security blanket; because society maintains those values, society authorises those laws so that at any time, if the circumstances justify it, such a law might be prosecuted. The proposition is that the law should not intrude into the bedroom - and we respect privacy and the aphorism that a man's, and a woman's, home is his, or her, castle - but the law does intrude into our bedrooms. The law does not sanction sexual assault by a man against his wife. In fact the law prohibits it and that law is prosecuted. The law does not sanction incest even though the incest might be in the privacy of the bedroom. The law prosecutes such behaviour in a private bedroom. The law prohibits and the law is enforced. We could take it to ridiculous extremes.

Hon T.G. Butler: Well you are already going along those lines.

Hon DERRICK TOMLINSON: We could recognise that the law even determines what the size of one's bedroom shall be. The proposition is that the law should not be a moral policeman. In all laws the prevailing values of society are fundamental. The authority of a law is vested and grounded in those prevailing values. Citizens governed by laws accept them as good laws and acknowledge their authority because they are compatible with the values of society. Matters of sexual behaviour are regulated by moral values. Whether the origin of those moral values lies in ancient taboos regarding reproduction or personal hygiene or whether those values are vested in religious precepts, they are moral values which prevail in society. Those moral values and mores of behaviour determine what is acceptable social behaviour; hence incest and rape are repugnant to moral values. There are legal sanctions against them. However because there are moral values and social mores, it does not necessarily follow that the law must impose legal sanctions against behaviour which transgresses moral values or social mores. Hon Peter Foss referred to the example of adultery. There are no legal sanctions against that; there are moral and social sanctions against it. Hon Peter Foss asked the House to consider what it is seeking to achieve by leaving laws relating to sodomy and gross indecency in place. The answer lies in the very term he used - "gross indecency". Sodomy is regarded as repugnant to the prevailing moral views of our society. We are a pluralist society which has plural views. Not every individual in a pluralist society adheres to or conforms with the prevailing moral values, but those values determine what is normal behaviour in our society. The prevailing values are reflected in the laws of our society. In this society our mores and morals are grounded in the Judaic Christian ethic, which rejects sodomy. That ethic, with its moral values and social mores, says that sodomy is repugnant and the law must reflect those values. It is improper for this Parliament to enact legislation which runs counter to those prevailing values. Therefore, I recommend that members reject this Bill.

HON BARRY HOUSE (South West) [9.06 pm]: I indicate my strong opposition to this Bill. The decriminalisation of homosexuality will mean the legalisation of homosexuality.

That is a clever play on words which I reject completely. I totally reject moves to legalise homosexuality in this State for several reasons. Firstly, it is completely inappropriate considering the current debate surrounding the AIDS issue. There is overwhelming evidence that male homosexuality is the dominant cause of the spread of AIDS in our society. I reject this legislation for that reason. Everyone in the world has a legitimate fear of AIDS, and I cannot agree that we should introduce legislation to make the principal cause of the spread of that disease legal. Secondly, I have always believed strongly in the traditional heterosexual family unit. Judging by the flood of mail through my office many people have a strong opinion about this legislation. They feel under threat and their letters far outweigh the letters and representations I have received from people supporting the legislation. As a representative of those people and the organisations representing them, I have a duty to oppose this legislation and I am very pleased to oblige. In my opinion two consenting male homosexuals do not constitute a family. I cannot support this legislation for that reason. The group which most deserves support in our society is the traditional heterosexual family unit. The traditional heterosexual family unit has made a huge contribution to the development of this nation, and this is just one further threat to its existence. It is a moral threat, and it is combined with the economic threat to its existence imposed upon it by Federal and State Labor Governments through rising interest rates and the increase in rates and charges we see every day in this place.

The PRESIDENT: Audible conversations are out of order and I ask honourable members to cease. This debate has gone along with a marked degree of decorum and I would like to see it continue that way.

Hon BARRY HOUSE: Another reason I cannot support the legislation is that the ALP platform will ensure that the legality of homosexuality is not merely accepted but is promoted throughout the school system. This legislation will also clearly show the differences between the Liberal Party and the Labor Party. Opposition members are free to exercise a vote of conscience on this issue and I will be very interested to see whether any members of the Labor side vote along those lines. I bet they do not because the last person who did that was expelled from the party.

Several members interjected.

The PRESIDENT: Order! Order!

Hon BARRY HOUSE: I believe that many people on that side of the House feel just as uneasy with the legislation as I do.

Hon John Halden: Name them.

Hon BARRY HOUSE: Hon Peter Foss has already identified that this system is inequitable where one side of the House has a free vote and the other side does not. I cannot find any justification for the decriminalisation of homosexuality in this climate, just as I could not contemplate the legalisation of incest, for example, which may occur in privacy between two consenting adults, as has already been explained. It is a parallel situation and for those reasons I oppose the Bill.

HON W.N. STRETCH (South West) [9.13 pm]: I think this Bill has been in Parliament three times in my experience. I hope it will be defeated for the third time. It is reprehensible that the only honesty in this legislation has been from this side of the House. We were faced with a piece of legislation introduced, I gather, by the extreme left of the Labor Party. A lot of its own people do not go along with the Bill. We know it; they know it.

Hon John Halden: Just get on with what you are doing. You were wrong twice in a row so if you keep going we will see how stupid you make yourself.

Hon W.N. STRETCH: The member cannot even answer questions about his own Bill. The facts which have been presented with this Bill make no sense at all. The only facts are the amendments moved conscientiously by Hon Peter Foss. I respect his right to make those amendments but they still do not make the Bill acceptable to me. I object most to the duplicity with which this legislation was introduced. We do not know the numerical strength of the homosexual community or of the people pushing for this legislation. Legislation in a Parliament, as members should know, is all about balancing the rights of people. There are always minorities and there are always majorities; there are always people who are oppressed and there are always people who need legislative relief. However, it saddens me that this

Bill is brought in as a red herring at a time when the Labor Government is under extreme pressure from its own supporters, from members of the public and the Opposition. What do we get? We get smokescreen after smokescreen and the most dishonest piece of legislation I have seen here. In the *Daily News* tonight, under the headline "No Promotion: Dowding", it stated -

The State Government was not promoting homosexual behaviour, Premier Peter Dowding insisted today.

He said any instruction on homosexuality in schools would not be an incentive to adopt that lifestyle.

Hon T.G. Butler: Your analysis of that statement is going to be well worth waiting for.

Hon W.N. STRETCH: I hope so. Hon Tom Butler probably knows the Labor platform as well as anybody as he is, I think, still president of the outfit.

Hon Tom Butler: I'll make a contribution.

Hon W.N. STRETCH: I hope he can make a contribution and explain exactly what it means. On page 26 of the platform, as he knows, it says -

Ensure that in sex education programmes, homosexuality is presented as a capacity fundamental in some human beings, the expression of which is basic and natural.

The second half of that statement we could not disagree with. As Hon Peter Foss and Hon Derrick Tomlinson have rightly pointed out, homosexual tendency is genetically present in some people, so I accept it as a capacity fundamental in some human beings. But why include the first half of the paragraph, which says, "Ensure that in sex education programmes, homosexuality is presented . . .". Where does one have sex education programs? Not in schools I suppose. The Premier said that there will not be an incentive to have this taught in schools. School programs do not necessarily include programs for instructing students on other variant forms of behaviour. I see no reason to fill the school curricula with these sorts of subjects. We are under enough pressure now to get our children through the education system with a basic grounding in skills to fit them for later life. I do not believe it is honest for the Premier to come out with statements like that knowing damned well that his own platform will ultimately force this education upon our children.

Hon John Halden: That's wrong, but we will go into it later.

Hon B.L. Jones: That's rubbish.

Hon W.N. STRETCH: It is rubbish, is it? I hope the member would be proud to get up and teach it in her school.

I see no justification for bringing this sort of evidence to school children. When does one teach it? At what ages? How is one going to promote it? It is absurd and it is dishonest. That is my greatest objection. When the Labor Party brings in bad legislation it is not up to us to amend it, but the Government knows very well that the Opposition takes its legislative responsibilities very seriously and our members have put a huge amount of work into trying to improve this Bill. I do not know why we bothered. The Bill should have been thrown out at the first reading and the Government should be bringing it back later. If the Government agrees with Hon Peter Foss' amendments, it should take the Bill away, make the improvements and bring it back in an acceptable form.

Hon Kay Hallahan: What's the problem with the process now?

Hon John Halden: It is tradition. That is how it has worked for the past 100 years.

Hon W.N. STRETCH: The problem with the process is that, like so much of the legislation that comes to this House, it is badly drafted and in this case is a representation of the Fabian left of the Labor Party and I do not think this House should have a bar of it.

HON D.J. WORDSWORTH (Agricultural) [9.19 pm]: I am not sure whether this is the fourth or fifth attempt to legalise homosexuality since I have been in Parliament, but fortunately it has failed on every occasion.

Hon Fred McKenzie: It didn't fail here. Grace Vaughan's Bill went through this House in 1978.

Hon D.J. WORDSWORTH: It has failed to go through Parliament. I have certainly always voted against the Bill and I will do so again this time. The debate has been a very interesting one. I have to admit the influx of new members has given it quite a high profile. The legalistic wording of Mr Foss and others has been very hard for me to follow.

Hon Tom Stephens: That is an unfair description.

Hon D.J. WORDSWORTH: I speak for myself and for many of the general public. All of the letters I have received have indicated that this matter is a simple one. I am of like mind because I believe that homosexuality is a filthy habit. It is not only degrading but also directly responsible for the spreading of disease including the worse scourge of all, AIDS. I wonder whether the public understand what homosexuality is. For many it is just a matter of a man finding it more convenient to live with another man because he enjoys his company more. Maybe the conversation is more invigorating or he argues less with a man than he would with a woman. Maybe people believe that their lives are more fun together. However, homosexuality is a little more than that. Nobody can argue with two men living together in that manner. In fact, many of the people who have indicated their feelings about homosexuality and who have written to us would probably prefer that, when their sons reached the age of 18 or 19 and went to university, they lived with a few of their mates instead of with a female or in mixed digs.

I think we have to consider more what homosexuality is and its connection with sodomy. I believe that many of the pamphlets on homosexuality and on AIDS endeavour to play down what homosexuality is. I believe that we should look for a definition of homosexuality. We all received a letter from the National Civic Council which I believe presented a concise and well documented case. Its submission states -

#### HOMOSEXUAL ACTS

In a survey in a recent research project conducted jointly by The AIDS Council of NSW and the School of Behavioural Sciences at Macquarie University, it was found that 95% of homosexuals had had anal intercourse without condoms (81% with condoms), 100% had practised Oral-genital sex, and 86% had oral-anal contact.

Perhaps that gives us some sort of definition of what homosexuality is. The document refers to the British Medical Journal and states -

Anal intercourse (whether by consent or not) is a vicious act and always damaging to the recipient. Mouth-penile and mouth-anal activity is also a cause of the spread of disease.

Mouth-anal contact is the reason for the high incidence of diseases caused by bowel pathogens in male homosexuals. Trauma of the bowel (which all recipient homosexuals suffer) encourages the entry of micro-organisms and thus leads to primary syphilitic lesions.

That is a quote from the Sexual Behaviour and Sexually Transmitted Diseases in Male Homosexuals British Medical Journal of Venereal Diseases page 168.

Hon T.G. Butler: Are you going to stitch this all together later on?

Hon W.N. Stretch: You are disgusting.

Hon D.J. WORDSWORTH: The same document goes through the sexual repertoire and it gives a percentage of those who have engaged in each practice. It refers to a percentage who have engaged in each practice in sex with men and states that 100 per cent have been involved in kissing, 100 per cent in oral-genital sex, 100 per cent in masturbation by self, 100 per cent in sensuous touching, 98 per cent in mutual masturbation, 95 per cent in anal intercourse without condoms, 95 per cent in fantasy with pornography, 86 per cent in oral-anal contact, 81 per cent in anal intercourse with condoms, 80 per cent in fingering the rectum, 79 per cent in anal intercourse without coming, 53 per cent in sex aids, 51 per cent in cock rings, whatever that means.

Hon Doug Wenn: Please don't tell us. .

The PRESIDENT: Order! I remind members that I will not continue to call order. Somebody mentioned earlier that he wanted a member named. I remind members that only one person in this Chamber names people and it is pretty important that I do not do that. As I



have said dozens of times, I suggest that members do not have to like what other members say in this place; however, they do have to let them say it.

Hon D.J. WORDSWORTH: The list states also that 36 per cent have been involved in SM-bondage without blood, 35 per cent in fisting the rectum, 29 per cent in watersports, 12 per cent in SM-bondage with blood and eight per cent in scat, that is, sex with faeces.

This is not a couple of nice old men living in a house, is it? That is what we are led to believe. Are we going to tell our children that this is normal?

Hon Kay Hallahan: You might.

Hon D.J. WORDSWORTH: There is no fear of that, I assure the Minister.

I will explain at a later stage why I and so many people are concerned about the Labor Party's attitude to the whole subject. This matter is a health matter. I am concerned about the spread of AIDS as are so many of the general public. A pamphlet entitled "Homosexuality and AIDS" was prepared by Andrew Lansdown. He has collected a lot of useful information and set it out very well. He supports that by saying that we should show great compassion to those suffering from this disease. It has been pointed out by a previous speaker in the debate how many will die of this disease, and that figure is quite frightening. One realises we should show as much compassion as we can for those people. Nevertheless, in this case one should not pussyfoot around the issues but should consider them in a sensible manner. The introduction in the pamphlet states -

Homosexuals (that is, men who engage in homosexual sex) are responsible for the introduction of AIDS into Australia. Medical experts acknowledge this. In October 1984, for example, *The Medical Journal of Australia* reported (p.558) that the first fourteen cases of AIDS in Australia were diagnosed in homosexual men. The fifteenth case was of a man who received a transfusion of blood donated by an infected homosexual. The donor had read and ignored signs in the blood bank warning promiscuous homosexuals not to give blood.

It states under the heading "Transmission of AIDS" -

Homosexuals, through their unnatural and unhygienic behaviour, are primarily responsible for the transmission of AIDS within Australia. Early in 1987, Professor David Penington, then head of the AIDS Task Force, released figures (*The Australian*, 14/5/87, p.3) stating that 17,500 people have contracted AIDS (categories A, B and C) in Australia. Of these, only 20 contracted it through heterosexual activity.

The same has happened in America. The pamphlet continues -

There is probably no case of AIDS within Australia (or the Western World) that cannot be traced back to primary or secondary homosexual contact. Intravenous drug users get AIDS because they share needles with homosexuals or prostitute themselves to homosexuals to pay for their habit.

The evidence presented in this State and elsewhere that ties AIDS with homosexuals cannot be argued against or denied in any way. The argument is put that homosexuals can have safe sex - I am not sure whether "safe" is the right word or whether it should be "safer" - by using condoms. Of course, the condom was developed as a birth control device and, although it has been fairly satisfactory in preventing pregnancy and some venereal diseases, it certainly is not very safe in the rough and tumble of anal sex. At best it could be described as safer sex.

It would appear from the articles in gay magazines and the like that homosexuals prefer not to use a condom and that safer sex, as advocated by various organisations, is not having the desired effect because homosexuals consider it a sign of weakness to use a condom. They think it is far more fun to do it without a condom and to hell with the consequences. That is not an excuse at all, and we should not agree to the legalisation of sodomy, whether it be by consenting adults in private or otherwise, because it is still spreading the disease of AIDS.

One member quoted from the Old Testament and suggested it was old fashioned to regard sodomy in the same class as eating pork, poultry and shellfish, and such attitudes could be discarded in today's enlightened world. I do not believe that; in fact, I think the Attorney

probably still does not eat those foods, and with good reason because they were the first to go bad in those days. However, I am surprised that the Attorney is prepared to vote for the legalisation of sodomy.

Hon John Halden: Not after this speech!

Hon D.J. WORDSWORTH: It is possible that AIDS is not the first disease from which homosexuals have suffered. In the days when the Old Testament was developed people who indulged in homosexual acts suffered from various diseases and inflicted them upon other people. As has been mentioned by other speakers, the Christian belief is based upon the family - a man and woman marrying and confining their sexual activity to each other, and bringing up their children in a decent society with the same beliefs. That is a fairly common belief, not only among Christians, but also among most other religions. Most Australians are concerned that if sodomy is accepted between consenting adults, it will lead to the breakdown of the family unit, that unnatural sexual acts will be accepted as the norm, and diseases such as AIDS will spread even more than they have today. Many women must be worried about their partners bringing AIDS and other diseases to the marital bed. Above all, they do not want their children to be taught in schools that homosexuality is normal. Mr Dowding spoke on the radio during the weekend and it appeared from his comments that he considers children experimenting with sex as quite normal, and that homosexual activity would fall into that category. Indeed, the State platform of the Australian Labor Party sets out the principle of the party on that subject. I understand that paragraph B21 on page 26 of the 1989 platform commits the Labor Government to ensuring that in sex education programs homosexuality is presented as a capacity fundamental in some human beings, the expression of which is basic and natural. I guess the Labor Party tried hard to put that into words that are acceptable, but even in that form I think most people would find the proposition most unacceptable. Without question, this is one of the great fears that the public have.

The amendment placed on the Notice Paper that a referendum should be held on the subject should be seriously considered. The people should make a decision on this matter. I question whether the way we are voting in this Parliament is a true representation of the manner in which people voted at the election. We saw a major change in the membership of the upper House at the last election, and while Mr Foss and others can argue - perhaps very correctly - that the Liberal Party allows its members to vote freely on every subject, one wonders whether that truly reflects the views of the people who elected them. I remind Mr Foss in particular that 93.63 per cent of the people who put him in this Parliament did not vote for him but for the Liberal Party; that was on a ticket vote. I believe we will see not only in this House but in the other place that the Liberal Party will probably vote not 93 per cent for this legislation but 93 per cent against, yet by one person utilising his free vote the whole situation can be changed. That is a very good reason why we should take this matter to a popular vote of the public, and let them have their say.

Hon T.G. Butler: That is a new angle on the free vote, is it not?

Hon D.J. WORDSWORTH: Yes.

Hon P.G. Pandal: Don't you blokes ever talk about it!

Hon T.G. Butler: If that is the basis for it, do not ever talk about it again either.

Hon D.J. WORDSWORTH: This would be a very good occasion on which to exercise a referendum. I will not go through Mr Foss' proposed amendments, other than to say he relies heavily on the preamble to the Bill, because that is the part which goes into what the Parliament approves or disapproves of. However, if we pass this Bill, the preamble will disappear. The preamble has nothing to do with the legislation; it is just a few words which Mr Foss may like to put in front of it.

Hon John Halden: Wrong, wrong and still wrong.

Hon Tom Stephens: It stands alone as a Statute.

Hon D.J. WORDSWORTH: It is an amendment to the Bill, and when the Bill is rewritten, it will contain the changes that we write into it. It will not contain Mr Foss' proposed preamble. If he wished to retain that preamble, he should have amended the preamble of the Criminal Code. With those words I believe I have made it quite clear how I will vote, and how I believe the majority of my electors wish me to vote.

**HON MARGARET McALEER** (Agricultural) [9.43 pm]: Hon David Wordsworth was not sure whether this was the fourth or fifth proposed Bill which he has contemplated, but I know in my case it is the fourth. I voted in favour of the first two Bills, and on the last occasion I did not, but I have never denied, and I have always upheld, that I believe sexual acts between consenting males in private should be decriminalised. On the last occasion this legislation was before the House I received many genuine, as well as orchestrated, representations, which expressed a great deal of fear - which has been expressed again this time - principally in respect of children, not simply that they would be taught in sexual education or other classes in such a manner that they would not see the seriousness of homosexual acts, but also that there might be a freedom among their teachers or in their environment which could corrupt them. A secondary matter which has come out of the representations I have received is the spread of AIDS. The third was that by leaving the law as it is, where it is not enforced, it stands - as Hon Derrick Tomlinson said - as a symbol of society's disapproval, and perhaps also, in a psychological way, as a deterrent.

On the last occasion I gave weight, as I do now, to the fears expressed by those people, but I have come to the conclusion that the amendments proposed by Hon Peter Foss do their very best to address those fears, which I believe are often based on a misunderstanding of the present situation. I am prepared to support the second reading of this Bill in order that the proposed amendments may be put in place. There may be a certain power of deterrence in this section of the Criminal Code as it stands. We do not know how many people would engage in homosexual activity if the Criminal Code did not exist in its present form. We do know that some people have chosen to live in other States because they do not wish to be branded as criminals in this State, so in that sense we can say it has a certain deterrent effect.

The spread of AIDS is not related directly to homosexual activity. Homosexual activity should be decriminalised because it is not injurious in itself to anybody, when it is done in private between two consenting adults. Incest and rape are offences under the Criminal Code because these acts are harmful to other persons, and it is necessary to protect the victims of these crimes. However, one cannot say that there are necessarily victims from homosexual acts. The spread of AIDS in the community is a consequence of promiscuous sexual habits, which is another thing altogether. The rather horrifying list of sexual practices read out by Hon David Wordsworth is not confined to homosexuals; people would be very surprised to find out how many heterosexual couples behave in this manner. There are many diseases which are spread because of the promiscuity of heterosexual people. That is another question, which has nothing to do with this Bill. If AIDS is a primary concern, we should use other means of addressing the problem, such as the screening and testing of those people at risk. People must be responsible to a large extent, and they must grow in responsibility if they want public health to be properly policed.

I will not go on because all these matters have been canvassed in the debate. I merely indicate I will support the second reading of this Bill.

**HON JOHN HALDEN** (South Metropolitan) [9.50 pm]: Having listened to the debate which has occurred in this House both today and last Thursday week, it astounds me that members of this House, and many of the people who have rung and written to me and other members of Parliament, have put forward not only, as Hon Peter Foss has said, issues which are prejudiced, but also issues which are, if I can turn around the words of Hon Bill Stretch, red herrings. Many red herrings have been thrown into this debate, and in replying to some of them I hope people will think about some of the things they have said because I do not believe that in this day and age they can believe all of them. They may believe some of them - their natural prejudice many have built up over the years or their learning may have led them to that conclusion - but in the far more enlightened and open society in which we live I find it very difficult to believe that everything said by some members in this House on this subject can possibly be believed.

The debate in the community outside this Parliament has been far more informed than the one we have heard in this place. There is a degree of maturity out there and I must say to those people from a variety of gay groups who have come to me with their respective opinions about this Bill that their maturity and their preparedness to accept some very significant compromises suggested by Hon Peter Foss must be recognised by the community - they must not go unnoticed. We are very fortunate to have a gay community which is very responsible. If I can take up some of those fallacious arguments, we do not see

gay mardi gras, or gay people acting irresponsibly on the steps of Parliament House or in the public gallery. They are people concerned about an issue that affects them and their way of life and has affected people like them for centuries. It seems that not only has the gay community been responsible in this debate, but also a range of people have come out, one after the other, to support the decriminalisation of homosexuality, or sodomy - one can call it what one likes; the net effect as I see it is the same. We have seen the medical opinions presented, we have seen the church groups issue statements. The Anglican Church in Western Australia, the Roman Catholic Archbishop, and the Uniting Church - mainstream conservative churches in this State - have come out and supported this Bill. Some members opposite may take a cheap political line and criticise my drafting of the Bill, but that is like water off a duck's back to me. Those people believe in the same concepts as I do. I suggest that a very fundamental concept is one of social justice for all Western Australians and all people, particularly in the privacy of their own homes.

Hon P.G. Pental: Why don't you test that and give your own people a free vote if you believe that? You haven't got the guts.

Hon JOHN HALDEN: I will not go into issues of free votes.

Hon P.G. Pental: I know you won't.

Hon JOHN HALDEN: Mr Pental knows the rules on our side of the House. He knows how they work. It would be grossly unfair of me to go into how the situation works on his side of the House.

Hon P.G. Pental: No it wouldn't.

Hon JOHN HALDEN: We know the rules of the game on this side of the House and on the other side. Mr Pental has made the point a hundred times. We have a Caucus vote and his side has a conscience vote.

Hon P.G. Pental: Just so you know.

The PRESIDENT: Order!

Hon JOHN HALDEN: I do know.

Hon Barry House: It isn't a level playing field, is it?

Hon P.G. Pental: Of course it isn't.

Hon JOHN HALDEN: I refer now to the AIDS issue. I said in my second reading speech that my fundamental reason for wanting to decriminalise homosexuality was not to centre on a debate about AIDS but rather to centre on a debate about civil liberties - about the antiquated laws that exist in this State, in this country and internationally, and how those laws have been abused to the detriment of people who have been accused either of practising homosexuality or of being practising homosexuals. With your permission, Mr President, I will read a quote which I think displays very clearly the issue about AIDS and homosexuality -

I recently received a letter from a group of Western Australian doctors and other health professionals. What they wrote about squarely confronted me, for the first time, with a particular problem faced by those working both to contain the spread of AIDS and to treat people infected with the virus.

That problem is, in a sense, of our own making; its cause is the present state of the criminal law in some parts of Australia, as it relates to homosexual acts.

Before the advent of AIDS the state of those laws had no particular relevance to medicine and public health, except in the area of venereal diseases. Now these laws have become of high significance not only to health workers but to the whole community if they at all impede the fight against AIDS.

The quote is from the former Governor General, Sir Ninian Stephen. I do not think Sir Ninian was an outrageous left-wing radical as I have been called, nor a member of the Fabian left-wing socialist Labor party, which does not exist but I do not think he is a member of it anyway. However, I think Sir Ninian reflects mainstream considered opinion in this country; that is, we have a problem in a health and civil liberties area and we must address it in a reasonable and considered fashion.

Very few people, even among the homosexual community, believe that to be gay is to be totally good. The fact is that to be a homosexual is to be subjected to discrimination, rejection, vilification and psychological trauma and to be branded ultimately a criminal in this society. However, the community has changed its mind about these matters. There has been a fundamental shift in what this community, which we represent, thinks about this issue. It has told us in clear, concise and precise terms what it expects of us and what it wants us to do. Numerous indications of its expressions have been made in relation to this matter. They are not the expressions of radicals or minorities but the expressions of the mainstream fabrics of our society and they are clearly saying we have a responsibility and a duty to change the law. That rests squarely with all of us. The community has realised that relationships between individuals and the criminal law need a transformation. It has taken a hundred years for that transformation in this State to build up the head of steam that it now has. Society is now making clear definitions and describing clear responsibilities in regard to a victimless crime, and that is why opinion polls that have been taken - polls that are reputable, taken not by the gay community or the left-wing Fabian society, whoever that happens to include, but by reputable pollsters - tell us that in this State 75 per cent of the population want the issue and the practice of homosexuality between consenting male adults in private decriminalised.

The offence in question describes only a number of sexual acts practised by a significant minority of men and women and generally regarded as deviant from normal sexual behaviour. Traditionally this offence has been used to persecute homosexual men. In introducing the Bill I referred to some of the ways this was done. I referred to the blackmailer's charter that has been abused so effectively in the past. It is funny that in the phone calls I have had from people since the introduction of the Bill it has been suggested that the blackmailer's charter in Western Australia is alive; it is not healthy; but it is used because these people are homosexual. As I said in the Press, it is not that people are simply persecuted; in this country people are also prosecuted. They face the risk of being prosecuted at any second or any minute of the day. It would not surprise me to find at this moment - not that I know officially or unofficially - that there may be somebody at risk of prosecution. Many of us have said that we do not believe that the law should be used to prosecute, but it can be. It has been used in Queensland and may well continue to be, and could be used in this State.

The last two weeks have been very interesting for me and I am sure for Hon Peter Foss. I drafted the amendments which were presented to the House with the assistance of other people; Mr Foss then drafted a series of amendments. I admit that when I first saw those amendments I thought that my left wing tendencies were about to take an enormous step to the right, but they did not because the comments made in this House from time to time about my political beliefs are not true. I regarded Mr Foss's amendments as a chance that had to be taken; a chance to decriminalise homosexuality/sodomy; an enormous step in the social history of this State, and an opportunity to move this State's social laws for a considerable minority of its citizens into the twentieth century.

I do not agree with the age of consent being 21 years. The age of consent should be 18 years. I do not, however, necessarily believe that there is anything magical about the age of 18. I am sure we could all say that the age at which one reaches a degree of maturity is questionable in relation to an individual. The age of consent is not the matter before us in this Parliament. The matter under debate is the decriminalisation of homosexuality or sodomy. It is an issue on which Hon Peter Foss and I have found commonality. On that basis, I accept the age of consent being 21 years. On that basis, the gay community at a meeting less than a week ago accepted in one of the most significant decisions I have ever seen by a group of people with vested interests in a Bill before Parliament, that the age of consent for males involved in a homosexual relationship should be 21. I stress the responsibility shown by this group of people and its preparedness to act responsibly.

Other matters in Hon Peter Foss's amendments have caused me and others some concern. Clauses 18 and 19 are problematical. We have raised matters and discussed them with Mr Foss, who is the typical lawyer. He has an opinion and if a person wants another opinion he has to go away and buy it, but Hon Peter Foss sticks to his opinion. On that basis I would run out of both money and time. We have discussed fully some of the areas of difficulty that may eventuate; opinion has been sought from QCs and other people. Basically, the belief is

that the amendments put forward by Hon Peter Foss will in no way deteriorate the situation with which the homosexual community lives. Of course, decriminalisation of the act will benefit the homosexual lifestyle. One of the new features of the left is its ultimate pragmatism, because I believe that politics is about the achievable; we attempt small steps and we achieve them; we achieve the best we can at any one moment; and this is the closest thing we have to the wishes of the society we represent.

I refer now to the issues raised in debate which I call red herrings and furrphies and even maliciousness. The ability to promote homosexuality in schools has been touted around by members opposite and by an array of organisations in spite of the fact that I, the Government, and today the Premier have said that will not be the case.

Hon P.G. Pental: It is in your policy.

Hon JOHN HALDEN: Forty-seven things in the Federal Opposition's policy at the moment deal with privatisation. I will bet that 47 of them are not enforced. Hon Phillip Pental knows what policies are about.

Hon P.G. Pental: Your silence confirms it.

Hon JOHN HALDEN: Politics is the art of the achievable; it is not the art of the policy maker. That is the end of the debate regarding that rubbish.

Returning to the issue of promoting homosexuality in schools, clearly the Government has the opportunity to do that at this moment. It is not illegal to be involved in a lesbian relationship. There is no reason that the Government or the State School Teachers Union, if it decided, could not teach lesbianism.

Hon E.J. Charlton: They could not agree on it at the moment.

Hon JOHN HALDEN: That is probably true; I would not argue with that.

That does not happen, for obvious reasons. We, as politicians, do not allow that to happen because the community would reject it. The vast number of people on whom we depend for our existence would not tolerate that sort of Governmental or teacher action. We all know that these issues raised by these people, including the Leader of the Opposition, are furrphies.

The issue first raised in this debate after the Premier announced the Bill would be introduced related to a committee established in the other House, and how we could not possibly consider the decriminalisation of homosexuality because it had to be considered by the Select Committee. The fact that the White Paper that the Select Committee is considering clearly states that homosexuality should be decriminalised is not considered by those people pushing that argument. It is not just a White Paper; we also have an array of highly qualified medical and legal people in this country who say that homosexuality should be decriminalised. An enormous number of those people advocate the course of action being taken today.

Another argument put forward is that the decriminalisation of homosexuality will increase its prevalence. It is the same argument as making it compulsory. That argument, although it is flippantly funny, is equally ridiculous. It is not the case, nor is there any evidence on the basis of experience or surveys conducted in this country and elsewhere, that the decriminalisation of homosexuality in any way increases the number of people involved in homosexual acts. Most people, probably with the exception of that well quoted social authority and libertarian group of people, the National Civic Council, accept that homosexuality is a predisposition that is developed very early on in one's life. It will not be fostered by a piece of legislation that I or any other person may bring to this House. All those issues are furrphies introduced by the Leader of the Opposition.

I would like to read a letter to the House in response to the Leader of the Opposition who read a letter from an organisation claiming to represent people who are suffering from AIDS. That organisation advocated the rejection of this Bill. The letter is addressed to me and is dated 6 November. It states -

I am writing as the Chairperson of "People Living With AIDS, Western Australia" Inc., to express our concern that during the Hon. G. Cash's speech on the 2nd November, 1989 on the Criminal Code Amendment (Decriminalization of Homosexuality) Bill 1989, he stated "... there are groups within the community who now suffer from the HIV who are frightfully concerned about what could develop should the amendments before the House be carried".

I, and the Board of PLWA (W.A.) know of no such claims being made by any such groups, nor does the Western Australian AIDS Council, with which the PLWA (W.A.) Board is in close association.

PLWA (W.A.) is the only publicly constituted organization in Western Australia which represents Western Australian people infected with and affected by the Acquired Immune Deficiency Syndrome. The Hon Mr Cash quoted a letter from "Positive Living W.A." which purportedly represents 'people living with the AIDS virus'. PLWA (W.A.) and the W.A.A.C. are unaware of the existence of this organization, and likewise are unaware of any organization other than PLWA (W.A.) which represents people infected with and/or affected by AIDS.

I can only surmise that the afore-mentioned letter is the work of a dangerously mischievous individual. It is unfortunate that Mr Cash has chosen to give credence to a claim which he failed to investigate and confirm the legitimacy of. PLWA (W.A.) is alarmed by the confusion that the Hon Mr Cash's claim will create amongst the people of Western Australia.

Hon P.G. Pental: What a lot of rubbish.

Hon JOHN HALDEN: Is the member calling me a liar?

Hon P.G. Pental: I am calling your evidence a lot of rubbish.

Hon JOHN HALDEN: Is the member calling him a liar?

Hon George Cash: No, we are calling you a dope.

The PRESIDENT: Order!

Hon JOHN HALDEN: It is wonderful to be associated with that comment by the Deputy Leader of the Opposition. It is the best contribution he has made to this debate. If that is the best he can do, I think he had better sit there and listen to what this responsible group of people said. The letter continues -

PLWA (W.A.) vigorously repudiates the claims made in the afore-mentioned letter quoted by Mr Cash. I, and the Board of PLWA (W.A.) strongly support the Gay Law Reform Group of Western Australia, and the Private Members Bill presented to the Legislative Council by Mr John Halden, MLC.

PLWA (W.A.) believes that the decriminalization of homosexuality will, in many ways, assist in the control of the spread of AIDS. For example, it will allow people who practise homosexually, and wish to disclose this fact when presenting for medical attention, to do so without fear of legal prosecution. Health workers will benefit greatly from such information.

PLWA (W.A.), the only organization representing people with AIDS in Western Australia, urges you to support the passage of this Bill.

I remind members that the Leader of the Opposition said that that is rubbish.

Hon P.G. Pental: Kim Beazley supports the stand we take and opposes your stand.

Hon JOHN HALDEN: Is that not nice for Mr Beazley. He is entitled to do that.

Hon P.G. Pental: Now he has retired, he can show a little independence.

Hon JOHN HALDEN: He is entitled to his opinion like the member is.

The PRESIDENT: Order!

Hon JOHN HALDEN: It is a sobering thought for me that this is the fifth time that the Labor Party has presented such a Bill to the House. I guess we are beginning to see a light at the end of the tunnel because this Bill might get through the House this time and I have had the privilege of presenting it. I praise the efforts of Hon Robert Hetherington, who had a much more difficult time in trying to secure the passage of similar legislation through this House. It would be unfair of me not to commend his enormous efforts and hard work while he was a backbencher of this party.

I do not want to misquote Hon Derrick Tomlinson, but did I hear him correctly? I think he intimated that my Bill was about decriminalising sodomy, indecent behaviour and sexual assault. Is that what the member said?

Hon Derrick Tomlinson: Yes.

Hon JOHN HALDEN: In that case I will not correct what I thought was a misinterpretation on my part. I am not about decriminalising indecent behaviour in public or sexual assault. The record of this Government and people such as me who have supported the reasonable and strong stand that this Government has taken in regard to sexual assault speaks for itself. However, Mr Tomlinson put a very interesting line which is not accepted by many of his superior and longer term Liberal peers throughout this country. He advocated that we should allow a law to sit in the Statutes even though it could not be properly enforced. He said that the police had a role to play in tempering law with justice. The Fitzgerald inquiry in Queensland stated that that is not an appropriate course of action. It said that one of the greatest mistakes one can make is to allow people to tamper with and temper the law. The law is there and can be enforced from time to time.

Hon D.J. Wordsworth: Your party has changed its view on prostitution.

Hon JOHN HALDEN: The Fitzgerald inquiry stated very clearly that homosexuality, for the very reasons that the honourable member suggested, should be decriminalised because it allows for corruption and selective use of the law. If the member wants to make the law an ass, that is how he would do it. I am sure Hon Derrick Tomlinson did not mean to suggest that the law is an ass. However, what he suggested is not an appropriate course of action for a legislator in this State or in Queensland.

I quote from Nick Greiner's second reading speech for a similar Bill introduced in New South Wales -

The concept of keeping laws that are both unenforceable and unenforced on the statute books simply because it makes some parts of society feel better about the realities of a situation is as unacceptable in areas of personal behaviour as in other areas of the law.

There can be no question about that quote from a high ranking member of the Liberal Party who has achieved great status in the Liberal Party in recent times, and I think members opposite should seriously consider those comments by Nick Greiner. Members opposite have talked continually about a conscience vote. I am happy to discuss conscience and Caucus votes for ever and a day, but the issue is whether members opposite will be Liberals as Menzies would have wanted them to be, with regard to individual freedom and equality before the law. The Federal Liberal Party platform at the moment gives those issues high priority. Are members opposite prepared to throw the commitments of their colleagues and peers out the window in connection with this and other Bills?

Hon Phillip Pental spoke about Caucus and conscience votes, but when it came to the issue of defining liberalism, individual rights before the law, individual equality, freedom and justice, he battled. He does not want to stick his neck out because he knows I am right and he knows what the Liberal Party policy is.

Hon P.G. Pental: I agree with you -

Hon JOHN HALDEN: I will make the speech; Hon Phillip Pental had his chance and he can now sit and listen to me. The issue of liberalism and liberal values is an important one and it should not be lost on members opposite. Most people in this House would claim to be Millsian liberals; they believe the law should be relevant, there should not be victimless crime, and that the law should protect people from being harmed by others. It is important to consider whether one can take a standpoint on one's conscience on that issue.

Hon P.G. Pental: You can't.

Hon JOHN HALDEN: I am the person Hon Phillip Pental called the mug who presented this Bill to the House. My conscience is as clear -

Hon P.G. Pental: I know three members on that side who do not have the same clear conscience.

Hon Graham Edwards: Rubbish!

The PRESIDENT: Order!

Hon JOHN HALDEN: Hon Peter Foss drew a very reasonable analogy when he said there



were four stratas of the law and the community's attitude to it: Approval, neutrality, disapproval, and disapproval with criminal sanctions. He proposed to change the law in this connection from disapproval with criminal sanctions to disapproval. I would prefer that it changed from disapproval with criminal sanctions to neutrality. I accept that the community would probably prefer something between those two views, but for the sake of the passage of this Bill and the very important step that two members opposite have indicated they will take, I am happy to accept Hon Peter Foss' amendments.

Hon P.G. Pandal: I thought you were going to recant.

Hon JOHN HALDEN: I did not hear that.

Hon P.G. Pandal: Don't worry, you would not have understood - it is too big for you. I will draw it in big pictures.

Hon JOHN HALDEN: I would love to see it drawn in big pictures! I will not be upset tonight by interjections and cheap comments from members opposite, but I cannot allow the statements made by Hon Bill Stretch and Hon David Wordsworth to pass without comment.

Hon P.G. Pandal: You are a pompous little twit.

Hon JOHN HALDEN: I have waited two hours for this moment and, although I do not pray very often, I prayed that someone would raise the points referred to by those members. Hon Bill Stretch said there was no dishonesty from members on this side of the House.

Hon P.G. Pandal: He was right.

Hon JOHN HALDEN: He said there was duplicity on our part.

Hon P.G. Pandal: That is right.

Hon Fred McKenzie: You are digging the hole deeper.

Hon P.G. Pandal: You are the other one we are talking about.

Hon JOHN HALDEN: Hon Bill Stretch said we were trailing red herrings across the path and putting up smokescreens, and that this was the most dishonest legislation to be presented in this House.

Hon Mark Nevill: The smokescreens were to cook the red herrings.

Hon JOHN HALDEN: Hon Bill Stretch concluded by saying it was absurd, dishonest and bad legislation. I am not a solicitor, and I am happy to cop that last remark. He also said that he did not know why the Opposition had bothered amending the Bill. He referred to red herrings, smokescreens and dishonesty.

Hon T.G. Butler: And the curtains will fade.

Hon JOHN HALDEN: That criticism was made of me and members on this side of the House. Hon David Wordsworth suggested that a referendum should be held. I wonder where that idea came from. I wonder why Hon Bill Stretch and Hon David Wordsworth from the back bench concocted those speeches to which we listened for hour after hour. Why was it necessary for members to put up with that drivel? On 8 November the Curtin divisional council of the Liberal Party wrote to Hon Bill Stretch as the Secretary of the Parliamentary Liberal Party.

Hon Reg Davies: It has sent you a copy also?

Hon JOHN HALDEN: Yes, I have only just received it and I was very pleased to do so.

Several members interjected.

The PRESIDENT: Order! I ask honourable members to cease their conversations across the Chamber and to allow Hon John Halden to continue his remarks while they are silent.

Hon JOHN HALDEN: It is not my intention to treat this letter with great gusto because in my opinion it is despicable. It is without principle, but it should not detract from the events taking place in this House today. It should do nothing more than cast a light upon those members opposite who have cheapened this debate. That does not refer to all members opposite, but certainly to some. Many people have talked about concern for a minority group, but the letter I propose to read shows very little concern in that regard and is an example of blatant politicism. It is addressed to Hon Bill Stretch and signed by Peter Blaxell, President of the Curtin division of the Liberal Party. It reads -

Dear Sir

### Decriminalisation of Homosexuality Bill

A meeting of the Curtin Divisional Council last night discussed the above subject and in particular the way in which the high feelings currently held by many members of the Party can be defused. It was resolved that I should write to you as Secretary to the Shadow Cabinet to suggest consideration of a further amendment to the Bill to provide for the issue to be put to a referendum.

Although this runs a risk of there being further distractions from the Save our State Campaign the great majority of people are likely to accept the outcome of such a move. It may also be possible for a referendum to accommodate Mr Foss' amendments.

The letter indicates clearly a high level of discontent within the Liberal Party about this matter. I understand that; it has caused discontent also within our party. We allow free discussion, despite what Hon Phil Pandal might suggest from time to time, but I suggest that the reason this debate has run long and hard, and has gone over the issues and taken up red herrings, is not that we are all necessarily concerned with the issue of the decriminalisation of homosexuality but that those in power within the Liberal Party are concerned that this may be attracting the attention of the public away from the Save Our State campaign.

Hon Fred McKenzie: Who organised that campaign?

Hon JOHN HALDEN: Bevan Lawrence. These purely political, pragmatic purposes have not assisted this debate. It is probably evident to most people that I was pleased to raise these matters because I am sick of the vilification that Hon Bill Stretch often pours all over me about how reasonable and wonderful he is. I do not believe that helps the course of the debate, and there are many members opposite who have put forward reasonable and considered arguments, even if they do not agree, and I believe they have done that with the best of intentions. The comments of Hon Bill Stretch and Hon David Wordsworth are, in my opinion, not worthy of the comments made in this House, but that is their doing. I seek leave of the House to table this document.

Leave granted.

[See paper No 592.]

Hon JOHN HALDEN: This is not a matter about which I want to grandstand. I am quite happy to take any abuse that members opposite want to throw at me. I have copped most of it during the last 10 days, and whatever members opposite can throw at me is nothing in comparison with what people have been saying about me and sending to me. I say in conclusion - and I do not wish to make a cheap political point - that the issue before us is about social justice for a minority of people, who for no understandable reason in my mind, nor in the mind of the majority of Western Australians, are discriminated against in the eyes of the law. There is no reason for that, and one must take a very Christian and reasonable approach. These people are entitled to equality before the law. This is the very premise on which this Parliament and the Parliaments of the Westminster system throughout the world are based. I commend the Bill to the House.

Question put and a division taken with the following result -

#### Ayes (18)

Hon J.M. Berinson	Hon Peter Foss	Hon Garry Kelly	Hon Bob Thomas
Hon J.M. Brown	Hon John Halden	Hon Margaret McAleer	Hon Doug Wenn
Hon T.G. Butler	Hon Kay Hallahan	Hon Mark Nevill	Hon Fred McKenzie
Hon Cheryl Davenport	Hon Tom Helm	Hon Sam Piantadosi	(Teller)
Hon Graham Edwards	Hon B.L. Jones	Hon Tom Stephens	

#### Noes (15)

Hon J.N. Caldwell	Hon Max Evans	Hon N.F. Moore	Hon Derrick Tomlinson
Hon George Cash	Hon Barry House	Hon Muriel Patterson	Hon D.J. Wordsworth
Hon E.J. Charlton	Hon P.H. Lockyer	Hon P.G. Pandal	Hon W.N. Stretch
Hon Reg Davies	Hon M.S. Montgomery	Hon R.G. Pike	(Teller)

Question thus passed.

Bill read a second time.

*As to Committee*

By leave, on motion without notice by Hon Peter Foss, resolved -

That it be an instruction to the Committee of the Whole House on the Criminal Code Amendment (Decriminalization of Homosexuality) Bill 1989 that it have power -

(a) to divide the Bill into two or more parts; and

(b) to insert a preamble.

*Committee*

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

Clause 1: Short title -

Hon JOHN HALDEN: I move -

Page 1, line 3 - To delete "Criminal Code Amendment" and substitute the following -

Law Reform

The reason for this quite minor amendment is that, with the amendments proposed by Hon Peter Foss, we are not just amending the Criminal Code but actually creating a Bill, and on that basis the title we have in terms of amendment to the Criminal Code is obviously not accurate in description; therefore it must be changed.

*Point of Order*

Hon P.G. PENDAL: Is the member seeking to delete the words that I claimed during the second reading stage of the Bill meant that the Bill was improperly before the Parliament? I remind members that when I asked then for the Deputy President (Hon Garry Kelly) to make that ruling he ruled against me, yet now we are seeking to alter the short title for the very reason I told the Chamber at the second reading stage that the Bill was illegally before the Parliament.

Mr Chairman, people - including the mover of this amendment - cannot eat their cake and have it too. I suggest these are grounds for ruling the Bill out of order. I repeat to you the arguments I put during the second reading debate, which touch on the very words that we are now being asked to fiddle with, and that is turning the parliamentary system here into a farce. I made the point on that occasion that the Bill was mistitled and was seeking to decriminalise homosexuality. That is patently an absurd notion because we cannot decriminalise homosexuality any more than we can criminalise it. The argument I was mounting at that time was that we were talking about homosexual acts, and I had a ruling delivered from the Chair to the effect that what I was saying was right. I put it to you, Mr Chairman, that it is not competent for you to even accept that that is properly before the Committee, given the ruling that was given in this place last Thursday week. I suggest it is not too late at this stage for you to retire and take some time over the matter, because I can tell you there are people who will be prepared to challenge the validity of what has been going on here, and to mount a campaign that says the Bill has passed illegally. I know there are people on the other side of the House who know, too, that there is validity in what I am saying. I say to you, Mr Chairman, that the Committee is not competent to be dealing with clause 1 and the suggested amendment for the very reason that my objection was ruled out of order last Thursday week. I ask you to rule accordingly.

*Chairman's Ruling*

The CHAIRMAN: Hon P.G. Pendal has asked me to rule on his point of order and accordingly therefore I want to reaffirm what was said by the Deputy President; that is, we are discussing a Bill for an Act to amend the Criminal Code. That is the first thing. The second thing is that what we are discussing is the short title, and the citation is optional. It is permissive and not mandatory and I think members should understand that. Therefore the amendment that is before me is in order and the question that should be before the Committee is that the words to be deleted be deleted.

*Dissent from Chairman's Ruling*

Hon P.G. PENDAL: Mr Chairman, you have given that ruling. I move -

That the Committee dissent from the Chairman's ruling.

Hon John Halden: Is this another filibuster?

Hon P.G. PENDAL: I will tell the member what it is - it is the exercise of a member's prerogative to ensure that a Bill is properly before the Parliament. I can tell him that I know there are people on his side of the Chamber who believe what I am saying. In moving to dissent from your ruling, Mr Chairman - and I do not do that lightly - the fact is that the Deputy President, notwithstanding what you have said -

The CHAIRMAN: Order! You have moved to dissent from my ruling.

Hon P.G. Pendal: Correct.

The CHAIRMAN: Therefore it is now obligatory on me to report to the House that you have moved to dissent, and the House will decide.

Hon John Halden: This really is a scurrilous little filibuster, isn't it?

Hon N.F. Moore: What is your hurry?

Hon John Halden: I am easy. It is just an obvious tactic, isn't it?

Hon P.G. Pendal: It is an illegality, that is what it is. We are supposed to be upholding the law, not breaking it.

[The President resumed the Chair.]

The CHAIRMAN: Mr President, in accordance with Standing Order No 309 I have to report that Hon P.G. Pendal moved to dissent from my ruling that the amendment moved to the short title is valid. I have indicated that the citation is optional and therefore the amendment, in my view, is permissive and not mandatory.

*President's Ruling*

The PRESIDENT: Order! I have no hesitation in ruling that the amendment is in order and I support the Chairman of Committees' ruling.

*Committee Resumed*

Amendment put and passed.

Hon PETER FOSS: I move -

Page 1, line 4 - To delete "Homosexuality" and substitute the word "Sodomy".

Hon GEORGE CASH: What compelling reason can be advanced to have members support the amendment?

Hon PETER FOSS: Homosexuality is not criminal. A lot of misunderstanding in regard to this Bill has arisen out of its name. It indicates to people that a state is criminal which in fact is not criminal. I am concerned that people have been misled by that title to believe that something other than what is being decriminalised is being decriminalised. As the principal act which is being decriminalised is sodomy, it seems to be a much more appropriate title to have chosen.

Hon TOM STEPHENS: Why has Hon Peter Foss not chosen to utilise the formula of words that appear at the back of the Notice Paper which will constitute the title when the Bill is finally printed as an Act, and to use instead the words "to make certain acts unlawful", given the fact that this piece of legislation is not simply dealing with sodomy.

Hon PETER FOSS: This is the short title; what is on the back of the Notice Paper is the long title. If we put all this into the short title it will be a very long short title.

Hon JOHN HALDEN: I accept the amendment but I do not agree that the words "decriminalisation of homosexuality" are so deceptive in nature. Most people understand what is meant by the term and it is fairly clear in terms of the debate and the law. I go along with the statement that it is specific. The series of amendments by Hon Peter Foss have been specific, and in line with that I am prepared to accept the amendment.

Hon TOM STEPHENS: I have counted the words that would be included in the Act if my suggestion were taken up by Hon Peter Foss. It would be replacing one word "sodomy" with three words "certain sexual acts". I would have thought that the short title, while it is two words longer, would nonetheless more accurately reflect what the Bill does rather than reducing the title to a particular aspect of the legislation and not accurately reflecting the wider scope of the Bill. In that context, would Hon Peter Foss be attracted to extending the short title by just two words?

Hon PETER FOSS: Not particularly. A short title is a modern invention to take account of the fact people do not like reading an entire long title. A long title is a fairly broad description of what an Act is all about. We would not like to have to talk about people by describing them; we give them a name. The name does not necessarily tell everything about what is in the Act. The name is intended to be merely a good handle to put on a piece of legislation. For instance, we call the Stamp Act, the Stamp Act; if we really wanted to give it an accurate description we might have to come to a very long short title. In the same way we give anybody a name, we give an Act a name.

*Progress*

Pursuant to sessional orders, progress reported and leave given to sit again.

**FISHERIES AMENDMENT BILL (No 2)**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon Graham Edwards (Minister for Racing and Gaming), read a first time.

*Second Reading*

HON GRAHAM EDWARDS (North Metropolitan - Minister for Racing and Gaming) [10.58 pm]: I move -

That the Bill be now read a second time.

This Bill proposes to amend the Fisheries Act to provide the Director of Fisheries with power to control foreign ownership and investment in the processing sector of the fishing industry, particularly within the rock lobster processing sector. The Government agreed in principle with the intent of a private member's Bill introduced earlier this year on the subject. As set out in the second reading speech of that Bill, the amendment was required because of concern about foreign ownership in the fishing industry. The Government is also concerned about the potential growth in foreign ownership and its effect on the rock lobster industry.

In June 1988 my colleague, Hon Julian Grill, as Minister for Fisheries, gave strong support to the industry and expressed the view that control must remain in Australia if Western Australia is to obtain maximum benefit. Since that first statement by Mr Grill, the Government has consistently reinforced the view that foreign investment in the rock lobster industry needed to be controlled. The Minister for Fisheries publicly stated that he agreed in principle with a National Party proposal to restrict foreign ownership of fishing industry processing plants. He also stated that he wished to obtain further advice before offering full support.

Having obtained advice, the Minister decided that an expanded version of the National Party Bill should be introduced through a new Government Bill. The major addition has been to set a mechanism whereby the Minister for Fisheries can issue policy guidelines from time to time to assist the director and for the information of the industry. This has been provided in the Bill and has been constructed in such a manner as to preserve the integrity of the director's licensing function and to counter any possible argument that the director is acting under the dictation of the Minister and is not genuinely exercising discretion as required by the Act. There is, of course, the avenue of appeal to the Minister from a director's decision.

The provisions contained in this Bill follow those matters addressed in the Minister for Fisheries' statement to the Legislative Assembly on 6 September. The opportunity has also been taken to tidy up some parts of the existing legislation and to review the penalties for offences in relation to processing establishments.

It is not clear from reading the existing provisions of the Act just what decisions and orders

of the director are required to be published in the *Government Gazette*. In practical terms only those decisions which granted a permit or licence have been published. Decisions not to grant a permit or licence have not been published on the basis that the only person likely to be affected was the applicant. The phrase "deemed to be as of right" is used in several sections. This is a misuse of the word "deemed" and the meaning is better conveyed by simply stating that the grant, renewal, etc of the permit or licence "shall not be as of right".

Some discretionary provisions relating to processing licences have been clarified. The structure of the whole of part IIIB has been improved by removing to more appropriate places matters other than those which are concerned with the renewal or extension of licences. In brief, the grant of licences and the suspension and cancellation of licences and fees are dealt with in more appropriate sections. The requirement for the Minister to approve the extension of a licence has been deleted. That requirement is contrary to the broad policy of part IIIB that the director should be the licensing authority and the Minister should be the appellate authority.

In relation to the transfer of a processor's licence, the director is now required to consider whether it would be in the better interests of the fishing industry to transfer a licence. Previously there has been no such requirement. The same situation applies with respect to the removal of a processor's licence. The director could block the renewal or extension of a licence only on the grounds of concerns about the construction, equipment, operation or hygiene of a processing establishment, or as to the manner in which the provisions of the Act had been complied with.

The Act is at present confusing in relation to who should exercise the power of suspension or cancellation. Under some provisions the director has reported the matter to the Minister, who could suspend or cancel, but in other provisions the power has been exercised by the director without reference to the Minister. As stated earlier, the broad policy of part IIIB is that the director should be the licensing authority and the Minister the appellate authority. The director is therefore given the initial power to suspend or cancel. As with other decisions there is a right of appeal to the Minister.

The provisions relating to appeals have been completely rewritten to give effect to the proposed procedures. When the director grants an application, a notice is published in the *Government Gazette*. Although the applicant may not be aggrieved, other people may be and appeals may be lodged within 14 days of publication of the notice. If, on the other hand, the director declines an application, the applicant may be aggrieved and he may appeal. However, no other processing licensee will have knowledge of the appeal. Accordingly, the appeal is considered in the absence of any input from other licensees who may consider themselves interested parties in relation to the final decision-making process. A provision therefore has been included which requires that a copy of the statement of appeal be forwarded to the Western Australian Fishing Industry Council - WAFIC - to allow input from WAFIC or individuals who have a legitimate interest in the final decision. A copy of the statement may also be sent to other interested parties.

Penalties were last amended in 1979, and the opportunity therefore has been taken to increase the penalty for operating a processing establishment without a licence. The current penalty is a minimum of \$2 000 and a maximum of \$10 000 with a daily penalty ranging from \$250 to \$500. The proposed penalties are \$3 000 and \$15 000 and a daily penalty from \$400 to \$750. No specific penalty is provided for the construction or establishment of a processing establishment without the necessary permit and the general penalty of \$750 applies. This figure is clearly too low and a penalty of \$7 500 has been included.

This Bill contains important and necessary amendments to ensure as far as possible that the processing sector of the fishing industry remains in Australian ownership and control which will enable Western Australia to obtain maximum benefit from the industry. I commend the Bill to the House.

Debate adjourned, on motion by Hon P.H. Lockyer.

#### ADJOURNMENT OF THE HOUSE - ORDINARY

HON J.M. BERINSON (North Metropolitan - Leader of the House) [11.04 pm]: I move -

That the House do now adjourn.

*Adjournment Debate - Legislative Council*  
*Electoral Boundaries, Rigged - Federal Attorney General's Claims*

HON R.G. PIKE (North Metropolitan) [11.05 pm]: The House should not adjourn until I deal with the following facts very quickly. An article in the *Daily News* dated Monday, 13 November states -

Federal Attorney General Lionel Bowen today described WA's Upper House as an example of rigged electoral boundaries which, he said, could be a major cause of corruption.

The article continued -

Mr Bowen criticised Australia's reluctance to pass a referendum for one-vote-one-value, . . .

The first matter that comes to mind is that it is typical of the Federal Labor Party, having gone to a referendum of the Australian people and being overwhelmingly rebuffed, continuing to shove down the throats of everybody who will listen that the Australian people were wrong and giving us by that statement clear notice that it will continue and endeavour again to impose its will on the Australian people.

The second matter that comes to mind is that I have heard Lionel Bowen referred to as Labor's mythomaniac and that he always speaks without recourse to the facts. In this instance, I am told that when he comes across the word "fact" he inevitably reaches for his dictionary.

Hon George Cash: I have heard him referred to as "Lying Bowen".

HON R.G. PIKE: The real facts of the matter are that, in the last State election, the Australian Labor Party, on a two-party preferred basis, received 48 per cent of the vote and the Liberal Party-National Party coalition received 52 per cent of the vote. In the Legislative Assembly, the distorted result from 48 per cent of the vote was that Labor has 31 seats representing in precise figures 54.39 per cent of the seats, and the Liberal and the National Parties with only 26 seats received 45.61 per cent of the seats.

We must now direct our attention therefore to what happened in this House which now speaks truly for the people of Western Australia. The Liberal-National Parties which received 52 per cent of the vote have 53 per cent of the seats - that is, 18 - and the Labor Party, with 16 seats, received 48 per cent of the vote on a two-party preferred basis, has 47 per cent of the seats. That Minister speaks without recourse to the facts.

Members should bear in mind that the Australian Labor Party machine is always at the mercy of block union votes. If we look at the administration of that party and the manipulation of numbers - let us consider the situation in New South Wales without considering Western Australia - we see the real power and distorted representation within the internal workings of that party.

Leading psephologists have said that historically the members of the Labor Party, before turning on the coalition, turn on each other. In that regard Mr Hawke is now attacking Mr Keating for his statements about Mr Elliott and is divorcing himself from what Mr Keating said. It is interesting that members of the Labor Party are now, because of their dismal performance, attacking each other.

I have said sufficient on the matter. However, I ask the House to put aside once and for all this vacuous allegation that we hear all the time about the necessity for one-vote-one-value propositions. In this instance it has come from Mr Bowen who has told the Labor Party in this State and the whole of Australia that somehow or other the result was distorted. It is interesting to note that 52 per cent of the vote resulted in 53 per cent of the seats in this House, but 52 per cent of the vote resulted in only 46 per cent of the seats in another place. Those figures cannot be denied.

HON GARRY KELLY (South Metropolitan) [11.10 pm]: I cannot let those remarks pass without making some comment. Quite often members opposite stretch the long bow but on this occasion Hon Bob Pike has snapped it. He claims that the Labor Party received 48 per cent of the two-party preferred votes and gained 52 per cent of seats. That is a function of single member constituencies and also a function of the fact that the Liberal Party

won many of its seats by large majorities, but could not get itself organised enough to target marginal seats. Lionel Bowen took Queensland and Western Australia to task because of their electoral systems. The Labor Government does not claim that the electoral system in this State is perfect or even of its own design. If we are to name the architect of the present system, that title should go to the National Party. It is the National Party's system which the Government took on board.

Hon N.F. Moore: You supported them.

Hon GARRY KELLY: The Government took it on board because at the time members opposite would not agree to our preferred model of one-vote-one-value. If members opposite had taken that on board - it is just beginning to dawn on them - the Liberal Party might have won the last election. This Government is committed to one-vote-one-value and it will be introduced.

Hon N.F. Moore: When?

Hon GARRY KELLY: The Government will set the timetable and not the Opposition. It will be interesting to see whether the Liberal Party has learnt from its mistakes in the 1989 election.

Hon N.F. Moore: If you thought we would win you would not introduce one-vote-one-value.

Hon GARRY KELLY: If the Liberal Party had supported one-vote-one-value when the electoral reform Bill was introduced in this House, the result of the last election might well have been different. However, its members had their heads in the sand and considered - as they still do - that one-vote-one-value was a conspiracy to entrench the Labor Party in office.

Hon George Cash: Do you support one-vote-one-value?

Hon GARRY KELLY: Yes.

Hon George Cash: Why did you take the clause out of the Bill?

Hon GARRY KELLY: The Opposition ran away from this issue. Hon George Cash knows the situation.

Hon P.G. Pandal: What did Arthur Tonkin say about this? He said you were a phoney and he resigned from the Parliament.

Hon GARRY KELLY: The Opposition had no intention of supporting it. The Labor Party policy on electoral reform is for one-vote-one-value, but any step along the way towards that end is progress, and progress has been made. The ultimate aim remains at one-vote-one-value. Hon Bob Pike amazes me when he throws those figures around, knowing that even with one-vote-one-value, depending on how the votes fall, majorities are locked into various seats. The way an election is fought and campaigned determines to a large extent the result of that election. Proportional representation for the Lower House is another debate. It is not a principle to which I adhere, but if the Liberal Party wanted to raise that question, it would be an interesting debate for another occasion.

*Adjournment Debate - Owens, Mr Trevor - Death - Condolences*

HON GRAHAM EDWARDS (North Metropolitan - Minister for Racing and Gaming) [11.15 pm]: I note the sad passing of an employee of this Parliament, who was a friend to all who serve in it. I refer, of course, to Mr Trevor Owens who died during the weekend as the result of a heart attack. Trevor had been a long term servant of Parliament, and became known to all during his time in the dining room, and more lately at the southern entrance. He was a gentleman in every sense of the word; he was able to serve others without being in any way subservient. He was a man of great stature and he will be missed by many friends from both sides of the House who came to know and respect him over the years. I hosted a luncheon for Trevor and his sisters last year. They had great love for him, and I convey my sympathy and condolences to them.

HON DOUG WENN (South West) [11.16 pm]: I add my deepest sympathy to the family of Trevor. He was always very helpful; when I first came to this place he went out of his way to assist and always did so with a smile on his face. He took an interest in my wife's



floral work and only last week we discussed different types of flowers with him. We were in the process of obtaining certain types in which he was interested, and we heard of the tragedy when we arrived on Monday. My wife and I extend our deepest sympathy to his family.

**HON GEORGE CASH** (North Metropolitan - Leader of the Opposition) [11.17 pm]: On behalf of members of the Opposition, I join the Minister for Racing and Gaming in the comments he has made in respect of the recent passing of Trevor Owens. It is true that Trevor always maintained a very friendly disposition towards members of Parliament. He always had a welcoming smile and a pleasant word as members entered the building through the southern entrance, and I acknowledge the Minister's comment that he will be sadly missed by all.

**HON J.N. CALDWELL** (Agricultural) [11.18 pm]: On behalf of the National Party I register our deepest sympathy to those whom Trevor has left behind. He was always one of the first to recognise new members and to greet them by name. Those who did not know him well are the poorer for it. No matter whether he was working in the dining room or at one of the entrances, he was a vital part of this institution. I remember that at the Christmas function last year he danced more than anybody else during the boat trip. I guess he is dancing up there now, and I wish him well wherever he may be.

Question put and passed.

*House adjourned at 11.19 pm*

---

## QUESTIONS ON NOTICE

## STATE GOVERNMENT INSURANCE COMMISSION - BELL SHARES

*Bond Corporation, Indemnity - Extension, Premier's Discussions*

579. Hon R.G. PIKE to the Leader of the House representing the Premier:

Has the Premier, at any time, discussed with Mr Bond the extension of the SGIC indemnity, as reported on page 36 of the *Sunday Times* dated 24 September 1989?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

The member will be aware that this matter is the subject of litigation and as such it is not considered appropriate to publicly discuss the matter.

## PETROCHEMICAL PROJECT - BOND CORPORATION

*Government Invitation - Parliamentary and Public Statements*

586. Hon GEORGE CASH to the Leader of the House representing the Premier:

I refer to the Attorney's answer to question 416 on 6 September 1989, and ask if the Attorney will provide me with the parliamentary statements and public statements issued by the Premier and Deputy Premier which will indicate whether it was Bond Corporation which invited the Government to participate in the petrochemical project or whether it was the Government which invited Bond Corporation to participate in the project?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

I am advised that numerous statements on this matter have been made, including one as recent as 31 August this year on "The 7.30 Report". I do not intend to add to this statement as the matter is the subject of litigation between Bond Corporation and the Government.

## PARLIAMENT - PROROGATION

*Premier's Yearly Intention*

702. Hon GEORGE CASH to the Attorney General:

- (1) Is the Attorney aware that in an answer to a question in the Legislative Assembly the Premier has advised of his intention "to prorogue the Parliament every year"?
- (2) Did the Attorney, when moving for the establishment of the Select Committees into de facto relationships and parole, have knowledge of the Premier's intention to prorogue the House this year and therefore terminate the work of all Legislative Council Select Committees?
- (3) Will the Attorney recommend to the Government that the four currently established Select Committees be reconstituted as Honorary Royal Commissions when the Parliament is prorogued?
- (4) If not, why not?

Hon J.M. BERINSON replied:

- (1) Yes. The Premier's reply to question 1123 in the Legislative Assembly reflected current constitutional requirements.
- (2) The Premier's reply did not indicate that the House would necessarily be prorogued this year. See the Premier's reply to question 1408 in the Legislative Assembly.
- (3)-(4) Not applicable.

**HERBICIDE SPRAYING - BRIDGETOWN PROPERTY**

*Lea, Mr and Mrs - McKellar, Mr R, Report Release*

723. Hon BARRY HOUSE to the Leader of the House representing the Treasurer:

- (1) With reference to question 421 of 1989, will the Treasurer release the report by Mr R. McKellar relating to spraying of herbicide adjacent to the property of Mr and Mrs C. Lea of Bridgetown?
- (2) If not, why not?
- (3) Was the content of this report referred to the Agriculture Protection Board and then subsequently to the State Government Insurance Commission?
- (4) If yes, what action has been taken by the SGIC?
- (5) Has a copy of the report, prepared by George Harrison - assessors for the SGIC - been made available to Mr and Mrs Lea?
- (6) If not, why not?
- (7) What course of action has been taken to satisfy the Lea's claim for compensation?
- (8) As no legal action has yet been taken, why has information on this matter been withheld from both the Lea family and members of Parliament acting on their behalf?

Hon J.M. BERINSON replied:

The Treasurer has provided the following reply -

- (1) A copy of the report by Mr R. McKellar will not be released to Mr and Mrs Lea.
- (2) McKellar's report was commissioned by the Minister for Agriculture and subsequently provided to the State Government Insurance Commission in conjunction with other documentation to assist in the assessment of the Lea's claim. It is not the practice to provide claimants with copies of claim documentation.
- (3) Yes.
- (4) On receipt of this claim, which included McKellar's report as already mentioned and documentation of the inquiry held by the Parliamentary Commissioner for Administrative Investigations, the Insurance Commission carried out further investigation through a private insurance loss assessor for the consideration of its legal advisers. That legal advice is that there is no evidence to link the Agriculture Protection Board with the damage to the Lea's crops. Mr and Mrs Lea have been formally advised by the State Government Insurance Commission that liability on behalf of the Agriculture Protection Board is denied and the reasons for that denial.
- (5) A copy of the report provided by insurance assessor, George Harrison, has not been made available to Mr and Mrs Lea.
- (6) The report was obtained for the consideration of the Insurance Commission's legal advisers and is subject to legal privilege. It is not the practice to release such reports to claimants.
- (7) Mr and Mrs Lea's allegations against the Agriculture Protection Board have been thoroughly investigated and legal opinion obtained does not support the payment of the Lea's claim for compensation.
- (8) The fact that no legal action has yet been taken by the Leas has no relevance to the release of the assessor's report. The outcome of this complex claim has been under constant deliberation and Mr and Mrs Lea were formally advised in writing on 17 October 1989 that liability is denied.

**BUILDING MANAGEMENT AUTHORITY - GILMOUR, MR C.S.***Health and Safety Representative - Workplace Presentation*

737. Hon M.S. MONTGOMERY to the Minister for Local Government representing the Minister for Works and Services:

- (1) Is the Minister aware that a salaried Public Service officer from the Building Management Authority, Mr C.S. Gilmour, is entering workplaces in Western Australia and presenting himself as a health and safety representative of the AWU?
- (2) If the Minister has approved or authorised this arrangement, will the Minister provide documentation of the circumstances and terms of reference of the appointment?
- (3) Have similar arrangements been made in respect of a Mr T. Brady of the BMA Public Service staff and what is the precise nature of this appointment?
- (4) Are the salary and overhead costs, including travel and accommodation, of these officers being charged to the trade union(s) which they purport to represent?
- (5) If the Government is bearing this cost, who has authorised it and on what authority?

Hon KAY HALLAHAN replied:

The Minister for Works and Services has provided the following reply -

- (1) Mr C.S. Gilmour is on 12 months secondment from the Building Management Authority to the Australian Workers Union to assist in the implementation of the Occupational Health, Safety and Welfare Act.
- (2) Mr Gilmour is normally employed as a safety adviser. This secondment is a Government contribution to the implementation of the Occupational Health, Safety and Welfare Act.
- (3) No similar arrangements have been made with respect to Mr T. Brady. Mr Brady is employed by the BMA as an electrician and is therefore not a member of the Public Service staff. In his capacity as the Electrical Trade Union's representative he has been granted leave with pay to attend to all union matters concerning occupational health and safety.
- (4) Mr Gilmour's salary is being paid by the BMA. No other costs have been borne by the BMA.
- (5) The Building Management Authority.

**TAXES AND CHARGES - INFLATION LEVEL***Government Commitment - Carnarvon Growers' Water Charges Increase*

747. Hon P.H. LOCKYER to the Leader of the House representing the Premier:

- (1) Does the Premier still stand by his statement that taxes and charges will not rise above the inflation level?
- (2) If so, why then have irrigation water charges risen by 20 per cent to Carnarvon growers?
- (3) Will the Premier take immediate steps to reduce these charges to keep within his promise that charges will not rise above the inflation rate?
- (4) If not, why not?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

- (1) The Government has met its clearly stated commitment to hold the major tax and charges which impact on families to at or below the inflation rate.

- (2) The previous water charges for Carnarvon irrigation recovered only 63 per cent of 1988-89 operating costs and resulted in an operating loss in the order of \$322 500.

With the approved tariff increase of around 20 per cent combined with a real reduction in operating costs, we anticipate this loss being reduced to \$250 000 in 1989-90, increasing recovery of operating costs to 72 per cent. As water charges represent only 2.6 per cent of gross avenue to farmers, the rate of increase will have a marginal effect on their profits.

(3)-(4)

The Premier's commitment related to tariff increases to the residential sector. Tariff increases to the non-residential sector were, in general, of a similar percentage. Greater percentage increases were experienced in those cases - such as the Carnarvon irrigation district - where the authority endeavours to recover a more sensible proportion of the true costs of providing the services.

#### ABORIGINAL AFFAIRS - CABLE BEACH, BROOME

##### *Exclusion Zone - Report Recommendations*

748. Hon P.H. LOCKYER to the Minister for Local Government representing the Minister for Aboriginal Affairs:

- (1) Has the Minister read the report which recommends an exclusion zone 70 km long and two km wide and includes Cable Beach in Broome?
- (2) Have the Museum Sites Department staff spoken to all tribal Aborigines in Broome who have tribal ties to the area?
- (3) Will the report and recommendations be accepted by the Government in their entirety?

Hon KAY HALLAHAN replied:

The Minister for Aboriginal Affairs has provided the following reply -

- (1) Yes.

(2)-(3)

"A Management Report for the Lurujarri Heritage Trail, Broome, Western Australia" is a preliminary management study carried out at the request of the principal Aboriginal custodian for the Lurujarri area. The report documents both archaeological and ethnographic sites. The ethnographic sites were recorded with the principal custodian. The report does not state or assume that this person is the only Aboriginal with traditional ties to this country, but recognises that he is the senior lawman with the most extensive knowledge of the Aboriginal sites. The report recommends that further consultation be carried out prior to the development of a management plan for the area. This is currently taking place.

#### CONSERVATION AND LAND MANAGEMENT DEPARTMENT - AERIAL FIREFIGHTING

##### *Ex-military Aircraft - Purchase*

751. Hon P.H. LOCKYER to the Minister for Racing and Gaming representing the Minister for Conservation and Land Management:

- (1) Did the Conservation and Land Management Department purchase an ex-military aircraft for use in aerial firefighting?
- (2) If so, what was the cost?
- (3) When was the aircraft purchased?
- (4) Where is the aircraft presently?
- (5) Is it registered in Australia?

- (6) If not, why not?
- (7) What are the future plans for the aircraft?

Hon GRAHAM EDWARDS replied:

The Minister for Conservation and Land Management has provided the following reply -

(1) No.

(2)-(7)

Not applicable:

#### HOUSING - HOMESWEST

##### *Exmouth Office - Closure*

752. Hon P.H. LOCKYER to the Leader of the House representing the Minister for Housing:

- (1) Why has Homeswest closed its Exmouth office?
- (2) Will consideration be given to reopening the office so that Homeswest tenants in Exmouth can receive personal attention?
- (3) If no, why not?

Hon J.M. BERINSON replied:

The Minister for Housing has provided the following reply -

(1) The Exmouth Office can no longer be economically justified.

(2) No.

(3) The same level of service will be provided from the Camarvon office with an officer carrying out periodical visits. It should be noted that the maintenance function has always operated from Camarvon. A 008 telephone line has been provided so that Exmouth tenants can register maintenance complaints.

#### JURY TRIALS - SUPREME AND DISTRICT COURTS

##### *Acquittals - Statistics*

753. Hon R.G. PIKE to the Leader of the House representing the Minister for Justice:

- (1) How many acquittals have there been in jury trials in both the Supreme and District Courts in the last two years to 30 June 1989?
- (2) How many acquitted were Legal Aid funded?
- (3) What was the average time in days that jury trials lasted?
- (4) In how many of these cases would an order for costs have been justified, if permitted?

Hon J.M. BERINSON replied:

The Minister for Justice has provided the following reply -

As this question is the same as Legislative Assembly question on notice 916 of 19 September 1989, I refer the member to the answer to that question for the information he seeks.

#### WATER RESOURCES - REFERABLE DAMS

##### *Manjimup Area - Breach Statistics*

757. Hon BOB THOMAS to the Minister for Racing and Gaming representing the Minister for Water Resources:

Further to the reply to question 628 of 1989 -

- (1) Since 1986 how many referable dams in the Manjimup area have been breached or suffered some incident which might render them unsafe?
- (2) How many non-referable dams failed completely during the 1988 winter?

Hon GRAHAM EDWARDS replied:

The Minister for Water Resources has provided the following reply -

- (1) The Water Authority is not aware of any referable dams which have been breached in the Manjimup area since 1986. However, seven referable dams have suffered some form of incident which would have affected their safety.
- (2) During the 1988 winter, four non-referable dams breached in the Middlesex area near Manjimup, together with one on Eastbrook and another at Quinninup.

**DRAINAGE DISTRICT - PRESTON**  
*Abolition - Justification Criteria*

758. Hon M.S. MONTGOMERY to the Minister for Racing and Gaming representing the Minister for Water Resources:

Further to question 699 of 1989 -

- (1) What were the criteria used for justifying the abolition of the Preston drainage district in 1984?
- (2) Why did these criteria not also apply to the six other drainage districts?
- (3) When will the drainage ratepayers in the six remaining drainage districts be afforded the same treatment as those in the Preston drainage district five years ago?

Hon GRAHAM EDWARDS replied:

The Minister for Water Resources has provided the following reply -

- (1) The criteria for the abolition of the district was that no other districts were created under the Land Drainage Act 1925 for the prime purpose of flood mitigation of an urban area.
- (2) The six other drainage districts were created under the Land Drainage Act 1925, essentially to provide drainage systems that were designed to remove the excess water from agricultural land and thereby increase the productivity and the prosperity of farming communities within the districts.
- (3) See (1) and (2).

**QUESTIONS WITHOUT NOTICE**

**COMPANIES CODE - GOVERNMENT PRINTER**  
*Public Sales Withdrawal - Further Inquiry*

409. Hon GEORGE CASH to the Attorney General:

On Thursday, 2 November 1989, I asked the Attorney General question 396 in respect of the Companies Code's being withdrawn from sale by the Government Printer. In part, the Attorney General answered, "I am happy to inquire as to the background of that action, if that is in fact the position rather than the printer's simply running out of stock, which would be more readily understandable. I will follow that up."

- (1) Has the Attorney followed that up?
- (2) If so, what is his answer?

Hon J.M. BERINSON replied:

I did follow it up but the answer I received did not appear to match with the information that Hon George Cash had provided, and I sent it back for further report. In general what was put to me was that there is virtually no demand for the code as such because practitioners were all going to the annotated

versions printed by CCH - or by one of those firms. I was given an indication at that time that copies were indeed available. That was so inconsistent with what Hon George Cash had said that I asked for further advice. Unfortunately that has not come to me and I have not thought to chase it up; I will now.

#### PRISONERS - SENTENCES

##### *Judiciary Consideration - Attorney General's Advice*

410. Hon GEORGE CASH to the Attorney General:

On Thursday, 26 October 1989, I asked the Attorney General whether he had written to any members of the judiciary inviting them to have regard for the number of persons presently serving sentences in Western Australia when considering sentences. The Attorney General answered, in part, that he was prepared to check out the matter; that it was simply a part of the whole enforcement system; that he was prepared to check the information for me if I would like him to. I said I would. What advice has the Attorney General received in respect of that matter?

Hon J.M. BERINSON replied:

I certainly checked on that one because Hon George Cash gave me to believe he had in fact copies of the correspondence.

Hon George Cash: I said I could not get it; that is why you checked.

Hon J.M. BERINSON: A search of my files has failed to reveal correspondence of that nature. I am happy to be reminded if a copy can be obtained and to comment on it.

#### LAND ADMINISTRATION DEPARTMENT - ANNUAL REPORT

##### *Shortcomings - Auditor General's Statement*

411. Hon BARRY HOUSE to the Minister for Lands:

I refer to the annual report of the Department of Land Administration tabled in Parliament on 2 November. The report states that the Auditor General found inadequacies in the department's procedures and practices to ensure proper control of property. The Department of Land Administration also had not provided sufficient financial information relating to losses through theft or default.

- (1) Why has the Auditor General qualified the report in this manner?
- (2) What steps has the Minister taken to investigate the reasons for the Auditor General's comments?

Hon KAY HALLAHAN replied:

(1)-(2)

I guess the Auditor General made those comments because he found shortcomings and felt it incumbent upon him to make that conditional statement. I am advised that the shortcomings will be rectified and there will be no recurrence or cause for a conditional report of that nature in future.

#### TEACHERS CREDIT SOCIETY - COLLAPSE

##### *Inquiry - Departmental Report*

412. Hon GEORGE CASH to the Attorney General:

I refer the Attorney to questions 282 and 283 of 28 September in which I sought advice on the current status of the Crown Law Department or Corporate Affairs Department investigation into offences which may have been committed with regard to the collapse of the Teachers Credit Society. The Attorney answered in part, "That is a question going to a timetable. I think it follows from everything else I have said that I would not know what that timetable is, but it is a reasonable matter on which a departmental report might be sought and I will do that at the earliest opportunity." Given that the question is now two weeks old, can the Attorney General advise on the report that he now has to hand?



Hon J.M. BERINSON replied:

The Leader of the Opposition is uncharacteristically kind in saying the question is two weeks old; it is actually nearly two months old.

Hon George Cash: I withdraw that and substitute "two months".

Hon J.M. BERINSON: I am not demanding a withdrawal. I am not claiming to have been misrepresented. Not only that, I am also indebted to the Leader of the Opposition for having given some notice of this question by way of a column in *The West Australian* this morning. Having been reminded of the circumstances, the Leader of the Opposition can be assured I took the first opportunity this morning to attempt to check on the situation. I regret I have not come back earlier, and even now I have to provide an answer subject to correction for the reason I will explain. My understanding is that in fact investigations had already been completed at the time that Mr Cash asked his question on 26 September. The reason I have to add an E&OE is that one officer whose advice is required to make that information definite has not been contactable today. I believe I am as close to certain as can be that what I am saying is correct; namely, the investigations had been completed already by 26 September; there was no timetable for further investigation of that matter. If overnight I am informed of anything to the contrary, I will advise the House tomorrow.

**LAND RESUMPTION - PASTORAL LEASE, ONSLOW AREA**  
*Salt Evaporation Plant - Lands Administration Department Discussions*

413. Hon P.H. LOCKYER to the Minister for Lands:

- (1) Can the Minister inform the House whether any discussions have taken place within her department with a view to resuming land within a pastoral lease close to Onslow held by Mr Jim Cullen for the purpose of operating a salt evaporation plant?
- (2) If so, has the Minister instigated an inquiry by her department to ascertain whether the resumption of land will take place?

Hon KAY HALLAHAN replied:

(1)-(2)

In the interest of providing accurate information, I would prefer to take the question on notice.

**SENIORS' CARD - COMPUTER DATABASE**  
*State Energy Commission - Accessibility*

414. Hon REG DAVIES to the Minister for The Aged:

- (1) Is the Seniors' Card computer database accessible to SECWA?
- (2) How many other instrumentalities, departments or organisations have access to the Seniors' Card information?

Hon KAY HALLAHAN replied:

(1)-(2)

The Seniors' Card database is not available to SECWA or to any other agency. The information contained on the register is not available to anybody.

**PRISONS - GREENOUGH REGIONAL**  
*Drunken Prisoners' Escape - Circumstances Report*

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

On Tuesday, 31 October 1989 I sought advice on the circumstances surrounding the recent escape of six drunken prisoners from the Greenough Regional Prison. I accept that the Minister was not able at that time to advise whether they were drunk but he did advise that he believed that, to the extent that it was possible to responsibly provide the House with a report on the

circumstances of that break-out, he would do so. Would he be good enough to give the House that report?

Hon J.M. BERINSON replied:

The report on that break-out has been completed and the circumstances of the escape have been clearly established. I am sure that the House will understand if I do not go into the details relating directly to the security arrangements at the prison. However, the report includes a number of recommendations to increase security with a view to limiting similar occurrences in the future. These include the locking of certain grill gates which were formerly left open. That is the simplest of the measures and has been already implemented. The other measures go to increasing the security of the prison perimeter fences. This will involve additions to and a change of the configuration of the razor ribbon wire on both the outer and inner fences. That will necessarily take some time.

Importantly, an additional seven prison officers will be posted to Greenough next month. Approval for this increase was given some months ago but implementation has had to wait on the completion of the current training course for new officers.

As has been indicated previously, some home brew was found in the prison following the escape. It is assumed that this contributed to the problem. However, the extent of intoxication of any of the escapees is not known. Prison staff are constantly vigilant for illegal brew and searches are carried out constantly. Unfortunately, given the accessibility to fruit and vegetables in the prisoners' diets, illegal brew is almost impossible to eliminate entirely. However, every effort is made to minimise the problem absolutely. The considerable emphasis which is given to that will be maintained to the full.

#### POVERTY - CHILDREN

##### *Prime Minister's Statement - Ministerial Support*

416. Hon GEORGE CASH to the Minister for The Family:

- (1) Does the Minister support the Prime Minister's statement that no child in Australia will be living in poverty by 1990 and, if not, why not?
- (2) Given that statement, will the Labor Government's policy on capital gains taxes have economic effect on the benefits available to children and, if so, in what way?

Hon KAY HALLAHAN replied:

- (1) Certainly, I support the Prime Minister's statement that no child in Australia will live in poverty.

Hon P.G. Pandal: The blind leading the blind.

Hon KAY HALLAHAN: I commend the Federal Government on its initiative which has markedly increased the wellbeing of children and of families. To the member and to those who scoffed I say that councils of social services which are the critical and analytical non-Government sector and which make announcements on Government policies are very complimentary about the Federal Government's increases in benefits to families.

- (2) I will take the second part of the Leader of the Opposition's question on notice and get back to him.

#### ROADS - NORTHERN PERIMETER HIGHWAY, NORANDA AREA

##### *Relocation Advice - Public Meeting Availability*

417. Hon GEORGE CASH to the Minister for Budget Management representing the Minister for Planning:

I have given some notice of the question. On Thursday, 2 November 1989 I requested information on the Northern Perimeter Highway's relocation north in the Noranda area. The subsequent reply indicated that the Minister for

Planning and the Minister for Transport had sought additional technical advice from their respective departments on the feasibility of relocating sections of the Northern Perimeter Highway's alignment further north from residential developments. I ask -

- (1) Will this advice be available to the public meeting on the Northern Perimeter Highway to be held on Wednesday, 15 November 1989 at the Les Hansman Community Centre, Morley.
- (2) If not, what is the purpose of holding the meeting if this technical advice is not available?

Hon J.M. BERINSON replied:

(1)-(2)

The Minister for Planning has advised that the reply is yes.

The PRESIDENT: Order! I remind members that audible conversation is out of order. I suggest that members have their conversations elsewhere.

**ENVIRONMENTAL PROTECTION AUTHORITY - NORTHERN PERIMETER  
HIGHWAY, NORANDA AREA**

*Main Roads Department - Noise Impact Submissions*

418. Hon GEORGE CASH to the Minister for Local Government representing the Minister for Environment:

I have given notice of the question.

- (1) Has the Environmental Protection Authority considered submissions from the Main Roads Department and relevant local authorities or design consultants on the design of the Northern Perimeter Highway and the Crimea Street link road in relation to the likely noise impact on residents of the Noranda area and, if so, what was the Environmental Protection Authority's response to those submissions?
- (2) Will the Minister table a copy of the Environmental Protection Authority's responses and, if not, why not?

Hon KAY HALLAHAN replied:

I thank the Leader of the Opposition for giving me some notice of this question. I have been provided with the following response -

- (1) The Environmental Protection Authority has received submissions from the Main Roads Department on the Northern Perimeter Highway and from BSD Consultants on the Crimea Street link.
- (2) The Environmental Protection Authority's response to the Main Roads Department on 22 March 1989 states that noise amelioration measures should be established as early as possible and that, when a more detailed report is received at the design stage, specific advice will be given.
- (3) The Environmental Protection Authority is considering a submission made by BSD Consultants in September 1989 on the Crimea Street link. The submission addresses noise in some detail. Environmental Protection Authority officers have been working closely with the local authorities during the design of this project. A response to the submission is being prepared. The Environmental Protection Authority's final responses to both submissions will be made available for public information.

I seek leave to table a document relating to this matter.

Leave granted.

[See paper No 590.]

## LAND - HEPBURN HEIGHTS

*Development Plans*

419. Hon REG DAVIES to the Minister for Lands:

- (1) Is the Minister aware of any plan to develop the area known as Hepburn Heights which is adjacent to Padbury and the Mitchell Freeway?
- (2) Will she inform the House whether there is any plan to develop this area along the same lines as the Mirrabooka housing development?

Hon KAY HALLAHAN replied:

This question should have been addressed to the Minister for Planning. I ask the member to place his question on notice for a reply from the Minister.

## NOLLE PROSEQUIS - ATTORNEY GENERAL

*Statistics*

420. Hon GEORGE CASH to the Attorney General:

On Tuesday, 24 October and on Tuesday, 31 October I sought advice from the Minister on a number of nolle prosequis and on various charges that had been withdrawn over the period in which the Attorney General had occupied that position. Has he received advice on that question, given his earlier comments that he would seek a report?

Hon J.M. BERINSON replied:

I have a comprehensive reply on this matter, which I indicate in advance is rather lengthy. On 17 October 1989 Hon George Cash asked two questions. Question 611 asked -

- (1) How many nolle prosequis have been entered by him, officers of the Crown Law Department or the Solicitor General since the Government was elected to office in 1983?
- (2) Will the Attorney set out the number of nolle prosequis entered for each of the respective years from 1983 to 1989 and provide brief details of each case?
- (3) If not, why not?

My answer was -

(1)-(3)

The information is not readily available. Statistics of this type are not maintained. It would require commitment of considerable resources to extract and collate the data. In view of the present commitments of the Crown Prosecutors Office, I am not prepared to direct that scarce resources be expended on the research involved.

The further question 619 was asked by Hon George Cash as follows -

- (1) How many criminal charges have been dropped, abandoned, or not proceeded with in each year since the Government was elected in 1983?
- (2) Will the Attorney distinguish the particular charges involved and provide brief details of the reasons why these charges were not proceeded with?
- (3) If not, why not?

My answer to question 619 was for all practical purposes identical to my answer to question 611.

Subsequently, figures compiled by the Bureau of Statistics were published and they raised questions in Mr Cash's mind, and, I must say, my own as well. I undertook to check the position and advise the House of the outcome. I have now received a report from the Under Secretary for Law in the following terms -

It is unfortunate that in answering these questions, reference was not made to the published statistical data prepared by the Australian Bureau of Statistics. I am sure part of the reason for this was that it has never been possible to verify the statistics prepared by the ABS. They are compiled on a financial year basis and relate to the number of charges rather than the number of indictments. The Crown Prosecutor is able to extract a limited range of statistics from his registers, but his counting rules are quite different because he refers to the number of indictments, as distinct from the number of charges contained in such indictments. When counting the number of nolle prosequis he does not count instances where more than one count is referred to in the nolle. In addition, he has regularly prepared statistics on a calendar year basis as distinct from a financial year used by the ABS.

The latest statistics I have received from the Australian Bureau of Statistics show that in the year 1987/88 a total of 5722 charges were dealt with, and of this number nolles were entered in relation to 46 charges. That represents a rate of 0.8 per cent. By contrast, the Crown Prosecutor indicated that in 1987 a total of 1829 indictments were filed of which 30 were nolles. This represents a rate of 1.46 per cent.

Because the counting rules adopted by the Australian Bureau of Statistics are quite different and relate to different periods from those prepared by the Crown Prosecutor, it is simply not possible to make a valid comparison. It is also not possible to comment on the accuracy of the Australian Bureau of Statistics without repeating the exercise for a complete year using exactly the same counting rules. As pointed out previously, the Australian Bureau of Statistics extracts its data from the Crown Prosecutor's files using one of its staff who spends many weeks each year compiling the information required.

In discussing this matter with the Crown Prosecutor, he has expressed some reservations about the way in which offences are classified using the Australian National Classification of Offences. He says that in the past there have been examples where statistics have been published for offences which do not exist in Western Australia. For instance, the ABS statistics show that in 1987/88 there were three indictments for theft or illegal use of a bicycle and six flora and fauna indictments. The Crown Prosecutor questions the accuracy of such data. It is for this reason, and the fact that there is little compatibility between the way in which we have compiled statistics and the way in which the Australian Bureau of Statistics have prepared theirs, that we have not been in the habit of quoting ABS data. In any event, we are not in a position to verify it.

In relation to the figures already supplied, the Crown Prosecutor points out that the figures do not reveal the cases where an accused is committed for trial or indicted on a number of counts, only some of which eventually proceed to trial. They may, however, include cases where prosecutions against co-accused have proceeded.

One of the dangers of using ABS statistics is that it may encourage a conclusion that the number of nolles indicates that many persons escaped punishment. In many of those cases, where a number of counts are listed against one accused, the Crown may elect not to proceed with a trial on one or more counts if the accused pleads guilty on the majority of counts. This is done when the Crown Prosecutor is satisfied that even if convicted of the disputed counts, the court is likely to impose a concurrent sentence. In addition, there are circumstances where an accused who is committed for trial on several distinct and separate matters has already received an adequate sentence before all indictments are dealt with. In those circumstances the remaining charges are sometimes dropped.

In very few cases can it be rightly said that an offender escapes punishment by way of a nolle prosequi. The major exception being in instances where the Crown does not have a prima facie case to go to the jury.

While it is unfortunate that the existence of ABS statistics was not brought to your attention, I am sure the Crown Prosecutor would have had great difficulty in expressing any view as to their accuracy. They do, however, indicate that the number of charges nollied is quite insignificant when compared with the total charges referred to in the table. However, this is not unexpected when it is appreciated that a number of charges are often included in one indictment and therefore comparing the number of nollies against the number of indictments, will produce a higher rate than the ABS figures.

In addition to those comments by the Under Secretary for Law, I have been provided with a set of figures compiled by the Crown Prosecutor. For the reasons set out by the Under Secretary for Law, the figures are incomplete, and also not comparable with those of the ABS. Details are as follows and have also been obtained through and with the comment of the Under Secretary for Law.

**Crown Prosecutor's figures on Nolle Prosequi**

The only information that can be readily ascertained by the Crown Prosecutor is the number of cases in which there was no prosecution on indictment of a person committed for trial. That information is as follows for the period requested.

<u>Year</u>	<u>No. of Indictments</u>	<u>Nolle</u>	<u>Percentage</u>
1983	1027	13	1.26
1984	1197	25	2.08
1985	1341	24	1.79
1986	1603	29	1.80
1987	1829	30	1.64
1988	1665	31	1.86
1989	1263 (to 30 Sept)	20	1.58

There are many other nollies entered as the above figures do not reveal the cases where an accused is committed for trial or indicted on a number of counts only some of which eventually proceed to trial.

I am advised by the Crown Prosecutor that statistics are not kept of any of the other information sought in the question.

It would be necessary for every file to be examined to provide the balance of the information sought in the question. The Crown Prosecutor does not have the staff necessary to undertake such a task, which would involve weeks of work.

I add the following comments in summary form -

- (1) Even if the ABS figures were accepted as accurate, they would not answer Mr Cash's question which goes to all dropped charges and is not restricted to charges on indictment.
- (2) Neither the ABS nor Crown Prosecutor figures - both of which are necessarily incomplete - provide any breakdown of charges withdrawn on the initiative of the Attorney General, Solicitor General, other Crown Law officers, or police.
- (3) Neither set of figures provides a breakdown of reasons. This, as indicated by the Under Secretary for Law, could require many weeks of work.

- (4) As Mr Cash's concern appears to be directed at the possibility of some improper, politically motivated action by me as Attorney General, I advise as follows -

- (a) As indicated in my second reading speech on the Director of Public Prosecutions Bill, I have effectively delegated all decisions on *nolle prosequi* in the last two or three years to the Solicitor General.
- (b) To the best of my recollection, I have never made a decision on a *nolle prosequi* which was contrary to the advice of professional officers.
- (c) In the case of J.J. O'Connor, which has even recently been quoted in this context, no recommendation was made by the professional officers, but an indication was given of the competing and very unusual considerations involved in that case. That is the one and only occasion on which I have been faced with such circumstances and my decision was immediately made public by way of ministerial statement to the Parliament.

Finally, I regret that available Australian Bureau of Statistics figures, whether incomplete, inaccurate or not, were not provided in my original replies, with appropriate qualification, if necessary. They should have been provided, and I have asked the Under Secretary for Law to deal with any similar exceptional situation on that basis.

#### HOMOSEXUALITY - CRIMINAL CODE

##### *Charges - Statistics*

421. Hon W.N. STRETCH to Hon John Halden:

As the member in charge of the Criminal Code Amendment (Decriminalization of Homosexuality) Bill, can he advise how many persons Criminal Code for committing homosexual acts during the last three years, and how many of those charges involved people committing such acts in the privacy of their own home?

Hon JOHN HALDEN replied:

I am not in a position to advise the member.

#### HOMOSEXUALITY - CRIMINAL CODE

##### *Charges - Statistics*

422. Hon W.N. STRETCH to Hon John Halden:

Is the member in a position to be able to advise the House of these figures at the earliest opportunity, because they are very relevant to the debate on his Bill?

Hon JOHN HALDEN replied:

I am only too happy to speak to my colleague, the Minister for Police and Emergency Services, in respect of this matter. Does the member want the statistics for the State, the Commonwealth, or for somewhere else?

#### HOUSING - DEFENCE SERVICE HOME LOAN SCHEME

##### *Westpac Bank Transfer - State Charges*

423. Hon REG DAVIES to the Minister for Budget Management:

When the defence service home loan scheme was transferred to the Westpac Bank, scheme members were assured that repayments would not be altered as the bank would be subsidised by the Federal Government.

- (1) Is the Minister aware that the Westpac Bank is adding on State charges in the form of financial institutions duty?
- (2) As members of the defence service home loan scheme were not informed of the intention to charge this tax, is the Western Australian Government planning to follow the lead of the South Australian Government and waive these State charges on returned servicemen's home loans?

Hon J.M. BERINSON replied:

(1)-(2)

I am not aware of the background referred to by the member. At the moment there are no further amendments to the Financial Institutions Duty Act under consideration.

**JUSTICES OF THE PEACE - APPOINTMENTS**

*Members of Parliament Nominations - Non-Government Nominations*

424. Hon J.M. BERINSON:

With the forbearance of the Chair and the House I should like to provide an answer which I undertook to obtain to Mr Pendal's question without notice 394 relating to the number of justices of the peace appointed, and the breakdown between those appointed on the nomination of Government and non-Government members. The figures I have are for 1987, 1988 and 1989. In 1987 there were 20 metropolitan and 55 country appointments; a total of 75. In 1988 there were 57 metropolitan and 109 country appointments; a total of 166. In 1989, up to 10 November, there were 22 metropolitan and 45 country appointments; a total of 67. Over the three year period to which I am referring, the metropolitan appointments were 99, and the country appointments were 209; an overall total of 308.

A breakdown of 1987 figures would require manual examination of individual files, and the staff time involved could not be justified in view of the more ready availability of other comparable material. I refer to details of appointments between 1 January 1988 and 10 November 1989 which have been extracted from computer records and are attached. These indicate a total of 233 appointments of which 97 were nominated by magistrates and 112 by members of Parliament. The latter number were nominated as follows: Labor members 57; Opposition members 55 - Liberal 44, National 11. In addition, 15 members were appointed and special circumstances as indicated on the attachment applied to the remaining 9 positions. I seek leave to table the attachment.

Leave granted.

[See paper No 591.]

---