Legislative Council

Wednesday, 23 September 1992

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

ACTS AMENDMENT (EVIDENCE OF CHILDREN AND OTHERS) BILL 1991

Assent

Message from the Lieutenant Governor and Administrator received and read notifying assent to the Bill.

MINISTERIAL STATEMENT - BY THE MINISTER FOR CORRECTIVE SERVICES

Imprisonment Rate, Unacceptably High - Reduction Measures

HON J.M. BERINSON (North Metropolitan - Minister for Corrective Services) [2.32 pm] - by leave: The rate of imprisonment in the State is a serious issue which the Government has addressed actively since its coming into office in 1983. It has always been recognised that imprisonment may serve a number of legitimate purposes, including the punishment of offenders and protection of the community. In the case of some offences, it is clear that imprisonment is the only possible penalty. In many other cases, however, imprisonment is not necessary, not useful, and even counterproductive. This is so particularly when dealing with less serious offenders who do not pose a threat to public safety.

In recent years, there has been welcome agreement on both sides of the Parliament that the benefits of imprisonment are limited and that the rate of imprisonment in this State is too high. Unfortunately, and despite past measures to reduce the rate of imprisonment, it remains unacceptably high. The August 1991 Report of the Joint Select Committee on Parole included this comment -

> The continual increase of prison capacity is no longer universally considered to be the means of reversing the trend in an increasing crime rate. There is now little argument against the view that this simplistic approach to the problem can be no more than a short term management tool at tremendous cost to the taxpayer.
>
> . . . the overall imprisonment rate in Western Australia is unacceptably high compared with the rest of Australia . . .

In my ministerial statement to Parliament on 27 October 1987, I referred to the need for an explicit decision about the place of imprisonment within our penal policy. This issue was addressed in part by the 1988 amendment to the Criminal Code, which provided that imprisonment must be the punishment of last resort. My 1987 statement also referred to the need for alternative approaches which are appropriate to particular offences, and outlined a range of legislative and administrative changes which were directed to reducing the rate of imprisonment. These and a number of other measures have now been introduced.

Measures Taken to Reduce the Rate of Imprisonment: The many initiatives by the Government in pursuit of a sustainable reduction in the rate of imprisonment include the following -

Bail:

> Enabling a home detention condition to be imposed as a condition of bail; and
>
> streamlining the process when bail has been approved by the court.

Sentencing Provisions:

> Statutory recognition of the principle that imprisonment must be the sentence of last resort;
>
> limits on the sentencing powers of justices of the peace; and
>
> the abolition of drunkenness as an offence and the progressive establishment of sobering up shelters.

Fines:

An increase in the maximum penalty which may be imposed by way of fine under the Criminal Code, initially from $50 000 to $250 000, and now unlimited as to amount;

a requirement that the court provide a written statement of reasons why a defendant should not be granted an extension of time to pay a fine;

a provision to enable the diversion from imprisonment to a community based work and development order of offenders who default on payment of fines; and

an increase from $20 to $25 per day in the default rate for non-payment of fines.

Diversion from Imprisonment of Certain Offenders: These include -

Offenders convicted of drug offences, through participation in a diversion program ordered by the court;

offenders within six months of their expected release date, through their participation in a program of community based work; and

offenders subject to prison sentences of less than 12 months, through their participation in a program of home detention.

Parole:

Limiting parole periods to a minimum of six months and a maximum of two years;

making most parole release automatic, but subject to a court veto and to Parole Board consideration in very serious cases; and

encouraging good behaviour on parole by allowing one half "clean street time" against head sentences.

Special Programs: These include the following -

The treatment of sex offenders in prison and on community based supervision;

driver training for prisoners and offenders subject to community supervision; and

literacy tuition for prisoners.

Administrative Procedures:

New programs and services to address the needs of victims of crime, in particular victim offender mediation;

to set standards which link the intensity of community supervision to the severity of the offender's offence;

to facilitate the participation of Aboriginal offenders in community based orders, by the appointment of Aboriginal staff to regional community corrections offices and the establishment of an Aboriginal unit in the metropolitan area; and

to expand the provision of presentencing advice to the courts and to re-focus these reports on matters which can assist the court in the appropriate disposition of the case.

How effective have these initiatives been? I refer first to the outcome of individual measures and then to their total impact on the rate of imprisonment. In its review of parole in August 1991, the Joint Select Committee on Parole, chaired by Hon John Halden, MLC, found that the current system of parole continues to receive widespread support and is an important part of an offender's resocialisation. The committee concluded that the system of parole "ensures that prisoners remain in custody only as long as is strictly necessary".

Although parole may be effective, the position in respect of work and development orders for fine defaulters is mixed. In a review tabled in September 1991 - paper No 726 - I indicated that the program had diverted more than 6 000 fine defaulters from prison during the first two years of its operation, and that most of these had completed their orders successfully.

Figures show that large numbers of prisoners are still being received into prison for fine default only. However, although the total number is still high, the departmental report for 1991-92 indicates that it is almost 1 000 less than the total for the previous year. More positively, the same 1991 review found that the work release order scheme had been highly

successful. In particular, the objective of providing for the conditional release of long term prisoners to a structured employment and resocialisation program had been achieved with minimal risk to the community. A total of 251 prisoners, who in the absence of the program would have remained in prison, were released to the program during the two year review period.

Legislative changes regarding sentencing would appear to be having a positive effect, although that is hard to measure. Statistics show that - excluding prisoners received for fine default - the number of offenders actually sentenced to 12 months' or less imprisonment is gradually and fairly steadily declining. Similarly, following the abolition of drunkenness as an offence, the number of offenders detained in police lockups has also decreased.

The prison based and community based treatment programs for sex offenders have been refined and extended, and are operating effectively. In its recently completed first two years' of operation, the community based program had contact with over 140 sex offenders. Of the 69 who successfully completed the program, only five went on to commit further offences, none of them sexual. However, a longer term follow up is necessary to assess the program's real effect.

Unfortunately, the impact of the home detention bail program has been mixed. In part its potential to divert significant numbers from custody on remand was undermined by the absconding of a high profile home detainee from the program. The relatively low successful completion rate of accused persons on home detention bail contrasts with a high success rate - about 90 per cent - for sentenced prisoners released to home detention. However, because the latter program has been so rigorous, many prisoners have been reluctant to participate.

To give one final example, the appointment of Aboriginal community corrections officers in the Kimberley, Eastern Goldfields, Pilbara, Murchison and Great Southern has been received positively by the courts, and appears to have resulted in a larger number of Aboriginal offenders being placed on community based orders. Again, however, the number of Aboriginals being imprisoned in these regions has not decreased enough. Across the State, the statistics indicate that Aboriginal prisoners made up 41 per cent of all prisoners received during 1991-92, compared with 45 per cent during the previous year. In actual prisoner numbers this represents a decrease in receivals of some 696 compared with last year. At the same time the number of non-Aboriginal receivals decreased by 298.

In summary, the overall picture in respect of the impact of these various measures on the rate of imprisonment is that they need reinforcing. Their effectiveness has been mixed and their overall impact on numbers must be supported by renewed effort. This requires the operation and effectiveness of existing programs to be improved where possible, and also the consideration of other measures to achieve a sustained decrease in the State's imprisonment rate.

Is a reduction in the rate of imprisonment in Western Australia achievable? Are there historical or cultural reasons that a high rate of imprisonment is inevitable? It might be thought, given our historical rate and the continuing difficulty in reducing it, that we are faced with an intractable problem or a "natural" rate -

Hon Derrick Tomlinson: I would have said "unnatural".

Hon J.M. BERINSON: - which can be expected to continue at about 110 to 120 prisoners per 100 000 of the State's population. Fortunately, experience elsewhere suggests otherwise. In Europe, notably in Austria, Germany and Finland, prisoner numbers have been reduced very significantly in recent years without any increase in the crime rate. Closer to home, Queensland, a State which is similar to Western Australia in its demography and geography, has reduced its actual prisoner numbers in the past three years - although not to the extent that some reports suggest - and, in particular, has achieved a more than proportionate decrease in its Aboriginal prisoner population.

A question may also reasonably be asked regarding whether we are addressing this issue in the right way. Based in part on discussions and the demonstration of successful strategies in Europe, I am confident that the measures which have been implemented in the past have, in general, been "on the right track". On the other hand, there is more that can, and must, be done if we are to achieve adequate results.

It should be recognised that Western Australia is not the only Australian jurisdiction which is having to work hard to come to grips with the problem. Some of the other States, most notably New South Wales, have recorded sharp increases in their rates of imprisonment while ours has stabilised or dropped. In New South Wales the prison population grew by no less than 26 per cent in two years; that is, from 4 750 in December 1989 to 6 000 at the end of 1991.

Despite a significant decline in the late 1980s, some indications are evident that the imprisonment rate in England may again be increasing. Nonetheless, the position of the British Government continues to be that imprisonment is of very limited value; that it has failed as a crime prevention strategy; and that it should be restricted through the provision of guidance to sentencers, the establishment of appropriate community based alternatives and a fairer system of fines.

I now proceed to outline further measures which the Government will be implementing to pursue the goal of a sustained reduction in this State's rate of imprisonment. These fall into six broad categories as follows -

Expanded programs to divert Aboriginal offenders from custody;

limitations on the power of the courts to impose sentences of six months or less;

the introduction of alternative means to enforce the payment of fines;

the introduction of a system of means related "unit fines";

a system of suspension of driver's licence while fines imposed on traffic related charges remain unpaid; and

the introduction of mobile work camps.

The Government is particularly concerned and committed to reduce the rate of Aboriginal imprisonment. In Western Australia, Aboriginal offenders continue to be overrepresented in prisons by more than 10 times their proportion of the general population. By contrast, participation by Aboriginal offenders in community based punitive alternatives is very much lower than by non-Aboriginals. In the words of Sir Ronald Wilson at the "Prison, the Last Option" conference held in Perth last year, "It is hard to argue against the proposition that - this - is rough justice". Although the overrepresentation of Aboriginal people in our prisons can be linked to their disadvantaged position in society, the very fact of their imprisonment contributes further to the social disruption in Aboriginal communities. This is a vicious cycle which must be broken.

Mr Marshall Smith, an Aboriginal community corrections officer from Roebourne, commented in his 1988 paper "Aboriginal Imprisonment in Western Australia" as follows -

> It is clear that there is no one solution to the problem of Aboriginal imprisonment. We cannot expect one programme or innovation to work for all offenders, but even a small reduction in the overall rate of receivals and recidivism will have a significant effect on the number of offenders we find in prison in years to come.

The State Government agrees with the report of the Royal Commission into Aboriginal Deaths in Custody that the empowerment of Aboriginal people is fundamental to the achievement of the objective of reducing the number of Aborigines in custody. Consistent with the recommendations of the Royal Commission and the Joint Select Committee on Parole, action has been and is being taken to ensure that Aboriginal people are consulted and involved in the development and operation of programs for Aboriginal offenders. Examples include the appointment of Aboriginal staff to provide pre-sentence reports to the courts on Aboriginal offenders, the development and provision of culturally relevant literacy, alcohol and substance abuse programs, and the employment of Aboriginal staff to facilitate the compliance of Aboriginal offenders with community based penalties such as work and development orders, community service orders and parole.

The high number of Aborigines in prison on alcohol related offences will be a major focus of attention. In conjunction with the local Aboriginal community and the Alcohol and Drug Authority, the Department of Corrective Services is developing a program in Roebourne to facilitate the diversion of Aboriginal offenders from imprisonment where offending behaviour is associated with abuse of alcohol. The program will be residential and will be

managed by Aboriginal community members with support from the Department of Corrective Services and Alcohol and Drug Authority staff. It is intended that appropriate offenders will be placed on the program by the sentencing court as a condition of probation. The program itself is expected to include three major components: Assessment, alcohol education and treatment, and relapse prevention. Depending on the success of the Roebourne program, it is intended to implement similar programs in other regions of the State for Aboriginal offenders with alcohol problems.

In addition, the Department of Corrective Services is developing a proposal to involve Aboriginal alcohol treatment agencies and community groups in the provision of pre-sentence advice to the courts, and the provision of culturally appropriate treatment and supervision programs for offenders. This is directed to achieving increased participation by Aboriginal offenders in community based correctional programs, a reduced rate of alcohol related offending, and a higher rate of successful completion of community based orders by Aboriginal offenders. Funding assistance for these initiatives will be sought from the Aboriginal and Torres Strait Islander Commission.

The feasibility of establishing an Aboriginal bail hostel in the Perth metropolitan area is currently being examined by the Department of Corrective Services. Such an initiative should help reduce the number of Aboriginal offenders remanded in custody. Funding by ATSIC will also be sought for this initiative.

Limitation on short sentences: It is now generally accepted that short prison sentences of six months or less are of no or extremely limited benefit in terms of either crime prevention or rehabilitation. Indeed, there is a serious argument that short sentences, especially with young or early offenders, may actually increase the tendency to criminal careers. Offenders serving sentences of six months or less at any given time make up about 15 per cent of the prison population, or about 260 prisoners at present rates.

A number of countries have limited the imposition of short sentences in particular by the provision of statutory criteria for imposing a custodial sentence. My report of the official visit to Europe dated 12 November 1991 and tabled in Parliament on 3 December 1991, included the following recommendation -

> The inclusion in legislation of broad criteria to be taken into account by sentencing authorities in the determination of sentences and particularly before the imposition of any custodial sentence. These guidelines should contain a presumption against the use of imprisonment particularly in the case where a sentence of imprisonment of six months or less is being considered, and a presumption in favour of the use of a fine or community based penalty except where imprisonment is considered to be the only appropriate penalty because of the seriousness of the offence or for the protection of the public.

Legislation to implement this recommendation, including a requirement that, where the sentencing court does impose a sentence of six months or less, it must provide specific reasons in writing why imprisonment is the only appropriate penalty, is in the Criminal Law Amendment Bill (No 2) 1992, which was introduced on 4 June 1992 and is currently before the Legislative Assembly. I acknowledge with pleasure that this provision is substantially consistent with the report of the Joint Select Committee on Parole.

Hon P.G. Pendal: Why are you wasting the first hour with this stuff?

Hon J.M. BERINSON: I am genuinely sorry that Hon Phillip Pendal takes that attitude. This is the third occasion on which I have made a comprehensive statement at the same time as this on the rate of imprisonment. I have never heard anyone else in this Chamber object to that.

Hon P.G. Pendal: You are abusing the one hour.

Hon J.M. BERINSON: Alternative means to enforce fines: The existing work and development order system was intended to divert from prison those minor offenders who do not pose a threat to public safety. The number of offenders on this program has increased rapidly. In the year to June 1990, 2 636 orders were issued. By 1991, numbers had tripled to 7 767. In the year to June 1992 the number of orders increased again to 12 953. However, there has been a distortion of the intended effect of these orders in that fine defaulters are often using them to evade their primary obligation, which is to actually pay the fine. Too

many offenders who are fined are making no effort to pay, and, in effect, are volunteering to do work and development orders instead.

To partly address this problem, the Government is looking to increase the effort to enforce the payment of fines. This will be done by both legislative and administrative means. Amendments to the Justices Act contained in the Acts Amendment (Jurisdiction and Criminal Procedure) Bill, which I also introduced on 4 June 1992, will allow, in appropriate cases, for greater use of confiscation of goods as a means of enforcing fines. Enforcement in such cases will be done by something akin to debt collection. It is recognised that, especially if numbers are significant, the police cannot reasonably be asked to undertake this task and alternative means of administration, possibly by court staff and/or private debt collectors will need to be developed.

There are many practical difficulties involved, but the principle is sound; that is, where an offender is fined, and has the ability to pay but declines to do so, every effort should be made to collect that penalty whether by allowing time to pay, payment by instalment or credit, or, in the last resort, by executing against property. Imprisonment in default, or electing to perform a work and development order, should not be options where an offender has the means to pay, but does not wish to do so.

It has been argued in the past that it is not cost effective to enforce collection of the small amounts of many fines and it is certainly a fact that the cost of recovery action may often exceed the value of the fine itself. Against that, however, the cost of enforcing payment of a fine by execution against goods cannot be more, in both human and money terms, than keeping a fine defaulter in prison. Execution against goods will reinforce the principle that where a fine is imposed by the court, payment should be enforced against the offender unless his or her means would make that genuinely unreasonable. As indicated, every facility will continue to be given to allow time to pay, and payment by affordable instalments. The proposed introduction of unit fines will reinforce the fairness of this strengthened enforcement procedure. I emphasise again that an offender who is assessed as unable reasonably to pay a fine will continue to be eligible for the work and development system so as to prevent imprisonment in default to the maximum extent possible.

Unit fines: The Government has already announced its decision to amend the present system of fines so as to take into account the offender's capacity to pay. A system is now being developed whereby the decision as to the amount of a fine will take direct account of the offender's capacity to pay.

This approach was also outlined in my report of the official visit to Europe. The European system of unit fines sets the amount of a fine as a product of two factors; the seriousness of the offence measured in units, and the level of disposable income of the offender. A recent assessment of this approach in four magistrates' courts in England found that the unit system was more fair in terms of the impact of the penalty on the rich and the poor, more effective in maximising the rate of payment of fines, and more efficient in terms of minimising administrative costs. Furthermore, the system received widespread acceptance by the courts, the police, the community generally, and the offenders. It is proposed to conduct a trial program of unit fines in one of the Perth metropolitan Courts of Petty Sessions in place of the existing traditional system. Administrative and legislative requirements for the pilot scheme are currently being developed.

Driving offenders: Between 1988 and 1991 an annual average of 12 000 persons were charged with drink driving offences under one or other of the blood alcohol level categories and subsequently fined under the Road Traffic Act. The annual average of receivals into prison for alcohol related offences under the Road Traffic Act for the same period was 890 persons of whom more than half were fine defaulters. The number of fine defaulters on work and development orders was very much higher.

Drawing on the experience of other States, it is intended to examine the feasibility of a system whereby unpaid driving related fines - not restricted to fines for drink driving, but not including parking offences - would result in the automatic suspension of the offender's driver's licence until the fine has been paid, or until reasonable arrangements have been made for the fine to be paid. Work and development orders would continue to be available to meet the cases of genuine inability to pay. Work is now under way to identify the legislative and administrative arrangements which would be required if such a scheme proceeded.

Mobile work camps: The Joint Select Committee on Parole commented on the establishment in the Northern Territory and Queensland of mobile work camps which have been used to accommodate low security prisoners and involve them in community work. In the Northern Territory the work has involved such projects as the construction of nature trails in national parks, while in Queensland the focus, initially, was on flood relief and assistance in rural areas. The community response in Queensland in particular has been very positive. The camps provide a useful and cost effective alternative to imprisonment in a minimum security prison, and have been found to be suitable for low risk offenders who are either serving short sentences or approaching the end of a longer term of imprisonment. Based on the experience in these other jurisdictions it is intended, initially on a small scale, to test this approach to offender management in remote locations in Western Australia.

Consideration is now being given to pilot work camps in the Peron National Park at Shark Bay and at eastern goldfields. Department of Corrective Services staff are working closely with officers of the Department of Conservation and Land Management. It is proposed that each camp would accommodate approximately 20 prisoners selected according to the following criteria: Minimum security rating; no significant crimes of violence; no sex offences; and willingness and ability to work. Work would be closely supervised in eight hour work days five or six days per week with recreation allowed.

The camps will provide an appropriate punishment for selected offenders, remove them from the potentially contaminating effects of traditional prisons, and provide them with regular work experience and an opportunity to compensate the community to some extent through constructive public works which would otherwise not be implemented. Queensland has estimated that the value of work performed from its mobile camps in its first 12 months of operation was not less than $5 million. This did not displace paid employees; it was all work which, otherwise, would not have been done. The camps should also help to relieve the pressure on our minimum security prisons and, judging by the Northern Territory experience, it is expected that mobile work camps will be of particular relevance to the management of Aboriginal offenders.

Conclusion: The State's high rate of imprisonment continues to be a serious and frustrating problem, and the Government acknowledges that effective and sustained solutions continue to be elusive. Prisons are and will continue to be needed for a range of offenders who cannot be dealt with adequately in any other way. However, in the case of many offenders still being imprisoned, the penalty is pointless, extremely costly to the community in both financial and social terms, and even counterproductive. The drive to reduce the rate of imprisonment must continue and the refinement of existing measures together with the further measures which I have outlined today will indicate the Government's determination to achieve that end.

STATEMENT - BY THE PRESIDENT

Thomas, Hon Bob and Family, Condolences

THE PRESIDENT (Hon Clive Griffiths): I intended to do this at the beginning of the sitting and apologise that I did not. I notice that Hon Bob Thomas is in attendance today. On behalf of the members and staff of the Legislative Council, I extend to Hon Bob Thomas and his family our sincere condolences on the recent sad bereavement in his family.

MOTION - STANDING ORDER No 234 SUSPENSION

Second Reading of a Bill Procedure Change

HON GARRY KELLY (South Metropolitan) [3.07 pm]: I seek leave to alter my motion by deleting the words "That SO 234 be repealed" and substituting the words "That for the remainder of this Session SO 234 be suspended".

Leave granted.

Hon GARRY KELLY: I move -

> That for the remainder of this Session SO 234 be suspended and the following SO substituted -

Procedure after Second Reading

234. (1) Subject to this order, a Bill stands referred to a committee of the whole after its second reading.

(2) Except as provided in subclause (3), it is in order for the Minister or Member in charge of a Bill immediately after the second reading to move that there be no committee stage and that the question for the third reading be put forthwith or be made an Order of the Day for a future sitting day. The question shall be put without amendment or debate.

(3) Subclause (2) does not apply where -

(a) notice has been given under SO 233;

(b) notice of an Instruction has been given,

and a question put under subclause (2) is superseded by a motion to refer the Bill to the Legislation Committee or another committee.

This motion to suspend Standing Order No 234 is a fairly minor change to the procedure after the second reading of a Bill and applies only to Bills to which there is no opposition and to which no amendments have been circulated. The situation now is that when Bills such as these have been read a second time, we must go into Committee. As Chairman of Committees I usually get into the Chair and ask whether any member wishes to speak to any clause. Usually no-one says anything and the question is put that the Bill stand as printed. The Minister in charge of the Bill then moves to report. We go through the rigamarole of going into and out of Committee and reporting that the Committee has agreed to the Bill without amendment. There may be some efficacy in going through this head patting and tummy rubbing exercise, but I see no need for it.

Hon Barry House: Perhaps it is a necessary procedure rather than a rigamarole.

Hon GARRY KELLY: That may be. However, when no amendments are listed and when all members agree to a Bill, I see no reason to go into and out of Committee to say the Bill has been through the Committee stage. It is not a big deal and, because I did not want to ask the House to contemplate a repeal of Standing Orders, I have suggested that we try it for the rest of the session.

Hon George Cash: It is a very major change in procedure.

Hon GARRY KELLY: No, it is not. I will put my point and Hon George Cash can then put his viewpoint.

Hon George Cash: You dismiss the Committee stage as being worth nothing.

Hon P.G. Pendal: It is a major change.

The PRESIDENT: Order! Hon Garry Kelly was right a while ago when he said that other members can put their views later, and I suggest those members do that.

Hon GARRY KELLY: In the circumstances in which the proposed sessional order will operate, it is restricted to those Bills with which everyone agrees.

Hon Barry House: Perhaps someone might wish to discuss the Bill.

Hon GARRY KELLY: Hon Barry House should read the motion; that contingency is provided for in the structure of the proposed Standing Order. It is only to be used for those Bills which are not opposed and for which no amendments have been circulated on the Notice Paper. In those circumstances it is not necessary to go into Committee. I refer the member to subclause (2) which states -

> Except as provided in subclause (3), it is in order for the Minister or Member in charge of a Bill immediately after the second reading to move that there be no committee stage . . .

The Minister cannot sneak in and dispense with the Committee stage on a whim. He must move a motion to that effect and, if anyone objects and indicates that he or she wants to speak on the Bill, the Minister will not proceed with the motion. The last sentence of subclause (2) states that the question shall be put without amendment or debate. If a lengthy

debate were to ensue on whether or not there should be a Committee stage, we might as well go into Committee and make progress in that manner. It is simply a method of streamlining procedure and making the place a mite more efficient. I understand it is practised in other Parliaments and it is not unknown in the Westminster system. The House is the master of its own procedures and, if it so determines, may deal with certain legislation without a Committee stage. That is for the House to decide. I ask members to answer the following question: What is the point -

Hon N.F. Moore: Of this debate now?

Hon GEORGE CASH: Why not take it to the Standing Orders Committee?

Hon N.F. Moore: Let us deal with more important business.

The PRESIDENT: Order! Members will come to order. Hon Garry Kelly should ignore the interjections.

Hon GARRY KELLY: I will ignore all future interjections, Mr President, but in answer to Hon George Cash: He has a motion on the Notice Paper for a sessional order to replace Standing Order No 164 that could also have been referred to the Standing Orders Committee. Perhaps he should follow his own advice.

Hon Peter Foss interjected.

Hon GARRY KELLY: I decided to change it so that members were not asked to repeal a Standing Order and to put this in its place. It would be useful to trial this amendment to see whether it has any validity. Under normal circumstances legislation goes through a Committee stage to consider the detail of and amendments to the Bill. If the Bill is not opposed and no amendments have been circulated, why is a Committee stage necessary? As I said, in the way I have amended the motion as it appears on the Notice Paper it is now only a sessional order which would apply for the balance of this session. If it does not work, the sessional order will lapse and we shall revert to the status quo. I urge members to give this matter some consideration, rather than decide that all Bills must go through the Committee stage because that is the way it has always been done.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [3.18 pm]: I oppose this motion in its present form. I recognise that Hon Garry Kelly was given leave of the House to amend his motion so that the change would become a sessional order. However, I am opposed to it in the main because of the manner in which it has been dealt with. At no stage did Hon Garry Kelly suggest it be referred to the Standing Orders Committee for its consideration.

Hon Garry Kelly: I am quite happy to do that.

Hon GEORGE CASH: It will save me a lot of time if that is the case, because that is where amendments to the Standing Orders should be properly discussed.

Hon Garry Kelly: Will you send your motion there too?

Hon GEORGE CASH: If necessary. I certainly have no objection to doing that. Hon Garry Kelly tried to suggest that this was nothing more than a minor procedural change. The fact is that this change would allow the Government to move that the Committee stage be dispensed with and, with the numbers it has in this House, the motion could be passed. That seems to be quite contrary to the purpose of a second reading debate, the Committee stage and the third reading in this Parliament.

Hon Garry Kelly argues that it is at times inconvenient to move from the second reading stage into Committee only to find that no-one wants to raise matters in Committee, and then to move out of Committee to proceed with the third reading stage. It is true that at times that can take up to two minutes. However, as the motion stands, if a member objected to the motion proposed by Mr Kelly he could call for a division and rather than it taking only two minutes to decide whether to go into Committee, it could take considerably longer.

Firstly, I suggest that we would be failing in our duties to consider Bills were we not to have a Committee stage or to put ourselves in the position where it could be bypassed on a vote of the House. Secondly, if Hon Garry Kelly is looking for some efficiencies he should consider that in some Parliaments, at the second reading stage of "very simple Bills" an indication is given by the Opposition that there is no need for the matter to go into Committee, and that a

provision exists in the Standing Orders for the Minister to seek leave of the House not to proceed to Committee once that indication has been given by the Opposition. The fact that leave is necessary to bypass that Committee stage at least gives every member of this House the opportunity to consider whether he or she wants to comment at the Committee stage, because one dissenting voice would mean leave was not granted to bypass that stage; we would need to move into Committee and allow members to speak and, at the completion of the Committee stage, move to the third reading stage. Therefore, as for efficiencies or trying to save time, Hon Garry Kelly is going about it the wrong way. More than that, apart from there being other opportunities that the Standing Orders Committee might like to consider to improve our procedures or efficiency in the management of the House, I argue that the Committee stage of any Bill is critical because it is a stage not only when every clause is able to be considered but also when Committee members can consider every word of a Bill and question the interpretation of new words. It is a very important stage.

The Opposition cannot support the motion in its present form. However, I understand and accept Hon Garry Kelly's comment by way of interjection that he has no objection to this motion's being sent to the Standing Orders Committee for its consideration. It may be that after some consideration an alternative motion is suggested which would not cause members to be precluded from participating at the Committee stage if that were their intention. In saying that, perhaps I should move that the motion be referred to the Standing Orders Committee for its consideration and report.

The PRESIDENT: The member should move to delete the first paragraph, and to substitute other words.

Hon GEORGE CASH: I thank you for that advice, Mr President. I withdraw any reference to an amendment. I have indicated that the Opposition opposes the motion in its present form. Perhaps the best way to settle the matter is to put it to the vote.

HON J.N. CALDWELL (Agricultural) [3.25 pm]: The National Party supports the Liberal Party in rejecting the motion. We have already spent 16 minutes on it. As stated by Hon George Cash, in many cases the Committee stage lasts for only two minutes; we could have gone through a Committee stage eight times in the last 16 minutes. We have already wasted time. I see no reason to divert from our protocol for dealing with Bills. It is important to ask questions at the Committee stage. Often no amendments are moved, but still members are entitled to ask questions even if about only one word. We should not move away from the current Standing Orders, although I am happy for the Standing Orders Committee to consider the matter.

Amendment to Motion

HON TOM HELM (Mining and Pastoral) [3.28 pm]: I move -

> That the words "That, for the remainder of this session, SO 234 be suspended and the following be substituted -" be deleted and the words "That this question be referred to the Standing Orders Committee" be substituted.

Hon George Cash has advised the mover of the original motion and the House that this is the best way to deal with the matter rather than spending more time cluttering up the *Hansard*. This is the more sensible way to deal with the matter, considering what has been said so far.

Amendment put and passed.

Motion, as amended, put and passed.

MOTION - SWAN BREWERY PRECINCT ORDER No 2

Disallowance of Order

HON P.G. PENDAL (South Metropolitan) [3.29 pm]: I move -

> That the Swan Brewery Precinct Order No 2, 1992, published in the *Government Gazette* on 1 September 1992 and tabled in the Legislative Council on 3 September 1992 be, and is hereby, disallowed.

Many of the points of principle have already been argued in a previous motion disposed of by the House last night concerning the Swan Brewery redevelopment but the subject of this

motion shows beyond any dispute, and more than anything that was dealt with yesterday, the preferential treatment that has been given to Multiplex Constructions Pty Ltd by this Labor Government in the granting of all restaurant licences for the project.

One wonders why it is that the State Government leaves in place a State licensing court when its powers are being usurped in the way proposed by the heritage order. I remind members that the heritage order we are being asked to set aside says that the Heritage Council may issue restaurant licences for premises comprising part of Perth lot 1035.

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

CRIMINAL LAW AMENDMENT BILL (No 2)

Report

Report of Committee adopted.

MEMBERS OF PARLIAMENT (FINANCIAL INTERESTS) BILL 1989

Second Reading

Debate resumed from 2 September.

HON P.G. PENDAL (South Metropolitan) [3.32 pm]: It is almost possible, nine years after Labor came to office, to get out a set stereotype speech about ethics and apply it to everything that the Government is doing.

Hon Kim Chance: We have noticed that.

Hon P.G. PENDAL: The debate on an earlier matter that has just been chopped off at the knees had one or two arguments that would apply in the debate on this Bill. Some weeks ago, I believe it was the Leader of the House who made some moves within the Chamber to have second reading speeches incorporated into *Hansard* for Bills the explanation of which had not been delivered to the Chamber orally. At the time, the matter that is now before the Chair would have been a classic case to show how the system can be abused when it is sought to assume that certain things have gone before the House. It is not unreasonable that when a member is leading for the Opposition in this House he or she, in order to respond to the debate, should go to the original debate in the Legislative Assembly to find what the Government said and also to check what colleagues have said. If members in this House had gone to check on what the Government said in the Legislative Assembly on this matter this year, they would not have found anything. If they had gone to the 1991 calendar they would not have found anything either. Equally, if members had gone to the parliamentary record to see what this Bill was about, even in the year 1990, they would not have found any reference to it. Today we are dealing with a Bill that was given a second reading by a Minister in the Legislative Assembly three years and three weeks ago. What a sham! Parliamentary debate is about across-Chamber discussion on matters brought in by one's opponents at least within memory.

Hon D.J. Wordsworth: That is the trouble with reinstating matters on the Notice Paper.

Hon P.G. PENDAL: Absolutely. It has been three years and three weeks since this Bill was introduced. Not only is that bad in terms of the interjection from Mr Wordsworth, but also it shows that the Government is proceeding with a debate the provisions of which cannot possibly affect any of the members of the outgoing Government. Certainly, Mr President, it should not be lost on anyone in this House that the Leader of the House will not be here next year; so these provisions will not apply to him.

Hon Tom Helm: They will apply to you and me.

Hon P.G. PENDAL: Exactly. This Bill was introduced into the Legislative Assembly and read a second time by the then Premier, Mr Peter Dowding, who of course has since come to his own inglorious end. I suspect that by the time the Royal Commission is finished with him it will be an even more inglorious end.

Hon Tom Helm: Is that why you won't deal with the Bill?

Hon P.G. PENDAL: Mr Dowding introduced a Bill for which there has been no discussion since 31 August 1989. Mr Dowding introduced another Bill on that day - it was the other great diversion - the Daylight Saving Bill. Frankly, this Bill will get from the people of Western Australia the same fate as the Daylight Saving Bill.

Hon Tom Helm: Do you want to test it? Why not move to go to a referendum?

Hon P.G. PENDAL: That might not be a bad idea. Let us tack a few other things onto the referendum. I can think of a few things, like whether we should retain a dopey brewery upon which the Government has spent $15 million of taxpayers' money.

Hon B.L. Jones: A dopey brewery?

Hon P.G. PENDAL: Yes.

Hon B.L. Jones: You are the shadow Minister for Heritage and you say it's a dopey brewery?

Hon Derrick Tomlinson: If Hon Beryl Jones has ever been to a brewery, she would know how dopey one can get.

Hon P.G. PENDAL: The first thing we need to establish is that we are debating a Bill that has broken Commonwealth records. I do not think anywhere else in a Commonwealth Parliament on the face of the globe has a Bill that had been dealt with in one House and then taken three years and three weeks to get up the corridor.

Hon Tom Helm: Somebody had to get it right.

Hon P.G. PENDAL: We have seen the departure of Mr Dowding in that period.

Hon John Halden: We have seen Mr MacKinnon go, helped by you.

Hon P.G. PENDAL: I can assure Hon John Halden that another Labor Premier is about to be helped along by us to the same inglorious end that Mr Burke and Mr Dowding have suffered.

Hon Bob Thomas: Are we reading the same polls?

Hon Tom Helm interjected.

The DEPUTY PRESIDENT (Hon Doug Wenn): Order!

Hon P.G. PENDAL: I do not know why the Bill has taken three years and three weeks to get to this place. Maybe someone on the Government side will tell me who introduced the Bill in this House? Was it Hon John Halden?

Hon John Halden: I don't think so.

Hon P.G. PENDAL: He cannot even remember, and he is part of this Government. The Bill has a title that indicates it is about the financial interests of members of Parliament. I am a little like a former member of this House, the late Graham MacKinnon, who was always a bit savage about people who wanted him to disclose his financial interests. He was reluctant to do so on the grounds that it might prove to the community how inconsequential were his financial interests. I have to say that that is the first thing the register would show about me.

The Opposition intends to move some major amendments that affect the title of the Bill. If we are to have a Bill of this kind, and if the Government is insistent, let us have it - I will go along with it - but let us be serious about it and bring into the Bill's embrace the people who genuinely make the decisions that may or may not be the subject of improper pecuniary interests. By that the Opposition means that in the Committee stage it will seek to amend part of the title and simply call this the Financial Interests Bill. We will bring within its net members of Parliament, but we will also widen it to ensure that every permanent head of a Government department and statutory agency is brought within its purview, and we will make sure that that other most influential internal section of Government, Government advisers, also is brought within the scope of the Bill. In other words, let us do the job properly and bring in all those people who exercise the real authority over decisions that might be purchased improperly by people in the wider community.

It is an interesting Bill because it demands that members of Parliament fill in a form declaring their assets and bank accounts but not go so far as to say what those assets and accounts are worth. One would have thought that a Government obsessed with being stickybeaks about other people's affairs, but very conscious of covering up its own grubby, tawdry internal affairs, might have wanted to put a dollar value on those assets and accounts.

The Bill requires that the forms to be filled in by members of Parliament be lodged with the Clerk of the House and then be open to scrutiny by anyone who wants to look at them. On the surface that sounds a perfectly reasonable proposition. The amendments to be moved by

the Opposition will, I suspect, put the Government to the test in much the same way that we intend doing in relation to the political parties disclosure legislation. If we are to have a register, it should be kept not by the Clerks at Parliament House, but rather by the Registrar of the Supreme Court. Then people who believe they have something which indicates a conflict of interest will be able to approach the Registrar and ask that certain information be placed before the Chief Justice. There may be other people - other respected office bearers in Western Australia - to whom that task might be more appropriately entrusted. One of the things we have done under the Westminster system over the years is to entrust to judges tasks that sometimes are inappropriate to their role.

Sitting suspended from 3.45 to 4.00 pm

Hon P.G. PENDAL: I said earlier that it is universally accepted in our system that we sometimes misunderstand the role of judges. It is often said that when judges are asked to be Royal Commissioners they have the opportunity to decline the invitation and they often do so on the grounds that it is inappropriate for a person in a judicial role to sit in a quite different environment such as a Royal Commission. Similarly, I have heard it said that it is not appropriate to set up a system to check the financial interests of members of Parliament or anyone else and use the Chief Justice in a way that is suggested by this Bill.

It may be that the Government has a better solution to the one put forward by the Opposition. If there is a better alternative it may be the case that the principle contained in the Opposition's proposed amendments can be adhered to; that is, that it not be necessary for those registers to be kept by the Clerk of the Parliament and that they be open to all and sundry who pass by, but that they be entrusted instead to someone like the Registrar of the Supreme Court and then open to someone who can show prima facie that there is a conflict of interest. I will deal with this matter at the Committee stage, but that is what is intended by the new clauses which touch on the keeping and inspection of registers.

Under our proposed amendments any request by a member of the public to inspect the register would be handled, in the first place, by the registrar and he would have the capacity to refer the matter to the Chief Justice to advise whether a return filed by a member of Parliament or a public official reveals a possible conflict of interest. From the Opposition's point of view it makes it a more serious attempt to put public officials under genuine scrutiny while at the same time acknowledging that people in public office have some rights to privacy, even though those rights might of necessity be limited by the Bill and even by the Opposition's proposed amendments. There is no doubt that Ministers, heads of department and heads of Government agencies exercise far more influence, for example, in the awarding of contracts than an ordinary member of Parliament would exercise in a lifetime in this place. The reality is that members of Parliament, unless they are Ministers, are never in the position to influence the outcome of events. I cannot think of one instance where a member of Parliament has direct influence over these matters. Therefore, we should put them into the same category as Ministers and the departmental and quango heads.

At the moment members of Parliament are picked up in the net for no better reason than they appear to be a good target. The provisions of the Bill, which I have read carefully, would not pick up someone who kept a satchel full of bank notes in his office or someone who dealt in the stamp trade. If it will not pick up the satchel bearers or the stamp traders, whose actions prima facie do constitute improper conduct, I wonder why it is intended to pick up people like me and others who do not receive any satchels full of money and who do not trade in stamps.

It occurs to the Opposition that we are dealing with a Bill that is pretty transparent, is intended to be cosmetic and is intended to give the public the impression that something is being done. It certainly does not pick up in the net Premiers or Ministers who might tell lies in the course of their work, but it is possible that Premiers and Ministers can tell lies about pecuniary interests or even political interests.

Hon Mark Nevill: And Opposition members.

Hon P.G. PENDAL: And Opposition members. They would never be picked up in the scope of this Bill. The Bill refers quite specifically to financial interests, which is a problem in some instances, but it does not address the wider problem of the ethics, behaviour, standards and conduct of public officials. I do not know, for example, what public benefit would be

derived from the public's knowing that my wife and I, along with the National Bank - mainly the bank - own a property at 27 York Street, South Perth. There, I have done it! I have disclosed my asset! Is that even remotely interesting or relevant to someone in the wider society?

Hon Mark Nevill: It could be.

Hon Derrick Tomlinson: It is remotely interesting.

Hon P.G. PENDAL: As Hon Derrick Tomlinson has said, it is remotely interesting - it is interesting at the margin.

Hon Peter Foss: Curious.

Hon P.G. PENDAL: Yes, it is curious.

Hon Mark Nevill: If I had your assets, I would be embarrassed.

Hon P.G. PENDAL: That is the point I was getting at when I paraphrased the late Mr MacKinnon. I know the member is not talking about my financial debts. The fact is that Mr MacKinnon was always frightened that if his financial affairs were exposed they would show him to be a commercial failure.

Gifts and the like valued at under $500 do not have to be disclosed under this legislation. That is a bit like the disclosure legislation related to political parties; it is an invitation to rort! If someone were going to pay a member for a decision that he or she made improperly he would hardly send the member a cheque for $50 000 and ask for a receipt.

Hon Peter Foss: No, a brown paper bag.

Hon P.G. PENDAL: Exactly! However, there are no brown paper bag provisions or sexual favours provisions in this legislation.

Hon Peter Foss: Stamps?

Hon P.G. PENDAL: No, there is no stamp provision. Members opposite laugh, and I do not blame them because they know, as I do, that this legislation is a nonsense; it is a token so that at the end of the day the Labor Party can say that it did its best but that the Opposition made the legislation unworkable. I do not think that the Opposition should make the legislation unworkable. If, at the end of the day, the Government will not accept the Opposition's amendments, then it should put the Bill through. I suspect that that is what will happen.

One of the problems I had was determining the Liberal Party's position on this matter; not because of any doubt but because the decision was made so long ago it had been overtaken by 50 000 other decisions. It is three years and three months since this Bill was introduced into the other place, which presumably means it is at least three years and three months since it went through the Opposition's party room.

One of the disclosures one has to make relates to contributions to out of State travel. I wonder whether the travel provided by Mr Rick Stow for Brian Burke when he whisked him off to Fiji would have shown up under such legislation if there were no willingness on the part of the recipient to be honest about that happening.

Hon Max Evans: A good point.

Hon P.G. PENDAL: No suggestion was made that Mr Burke received a backhander from Mr Stow, only that Mr Stow said that he looked as though he needed a break, the jet was available, and did he want to fly to Fiji to have a few days off. That will be disclosable under this legislation, as will any out of State travel.

Hon D.J. Wordsworth: What if someone takes an upgrade on an airline ticket?

Hon P.G. PENDAL: I suppose it is possible for a member to go to America on a ministerial visit and attend all the art galleries.

Hon Derrick Tomlinson: And the restaurants.

Hon P.G. PENDAL: Yes, and all the restaurants; and into the bargain take an upgrade on the air fare. I believe that would constitute a contribution to out of State air travel. Therefore a Minister in that situation would have to disclose that happening. However, it would still depend on the goodwill of that Minister. This legislation is unenforceable and subject to the

goodwill of the people involved. If a person wanted to circumvent the legislation it would become unenforceable and unenforceable law is bad law because it is held up to ridicule and contempt.

I notice that under this legislation one has to spell out positions held in the trade union movement and business or professional associations. I find it curious that a member would have to list the positions he holds for which he is not remunerated. I am unsure whether that makes any sense because we are talking about a Bill which includes in the title the words "the financial interests of members". If a member were occupying the office of honorary auditor, or as I do the presidency of the South Perth Historical Society - a much sought after role I hold despite the fact that I am not remunerated for doing so - I wonder what sense there would be in that requirement. I wonder, too, whether that would put a person like Hon Fred McKenzie in the odd position of having to talk about trade union positions as one who has had an honourable connection with a trade union for years. That connection does not seem to be relevant.

The Bill envisages that members of Parliament will be punished for contempt if they misuse information they learn from the register. I find that odd because my reading of clause 17 of the Bill is that there is no such restriction on a private individual who misuses such information. The member handling the Bill can tell me whether I am wrong in my understanding of that, or, if I am right, the logic behind that requirement; that is, that the Bill provides for punishment of any member of this Chamber who looks at the register with the Clerk and then misuses the information gained. Members can be dealt with for contempt in that situation. However, Tom Smith who walks past in Harvest Terrace thinking that his day has not been very exciting so he pops in to Parliament and looks at the list of Mr Halden's financial interests and then uses that information in a wider public sense, will not be subject, as far as I can tell, to the restrictions or recriminations applying to members of Parliament under this legislation.

Hon D.J. Wordsworth: You get someone else to do your dirty work for you!

Hon P.G. PENDAL: That is an interesting comment. Maybe that is the way it was intended by the Government when sponsoring this Bill.

Hon Peter Foss: What do you think would happen if Mr Pearce or Mr Burke committed a contempt under this legislation? Do you think a House run by the Government would punish that contempt?

Hon P.G. PENDAL: Hon Peter Foss' interjection is valuable to the debate.

Hon John Halden: What was it?

Hon P.G. PENDAL: Hon Peter Foss raised the question of a person like Hon Bob Pearce, who got hold of the record of the private banking transactions of Mr Keith Simpson and then went into the Legislative Assembly and blabbed about it for all the world to hear. The point about Hon Peter Foss' interjection is that no law will guard people against an individual who is incapable of proper conduct. A Minister who steals private information in any situation - and that information is not covered by this legislation - and uses that information in the parliamentary arena is hardly a person in whom one can have any trust. Again, it comes back to the point I raised earlier about common decent behaviour and how decent behaviour is required in order to make legislation like this work.

Hon Peter Foss: Mr Burke's record is that he squashed continually members of the Opposition for contempt and ignored blatant breaches by his own people.

Hon P.G. PENDAL: Absolutely.

This Bill was drafted - I cannot say in haste, because it is now three or four years old - with sinister motives in order to make good a Government which is struggling to resurrect a very sordid reputation. One can only sympathise with the Clerks of the Parliament, who will be in the invidious position of being the keepers of the record, to which any person will be able to come in off the street and gain access. Perhaps we should eliminate the role of the Clerks in this matter and take out a couple of full page advertisements in the *Sunday Times* once a year so that people will not have to go to the trouble of wandering in off the street to do what is envisaged in the Bill.

In the final analysis, the Opposition will permit the Bill to pass, notwithstanding that we

think it is a rort, and only after we have sought to amend it. I believe that the amendments will appeal both to the National Party and to the Independent. We will move to widen the scope of the Bill to eliminate references just to members of Parliament. Members of Parliament will be included, but so too will departmental heads and the advisers who have occupied such a singularly powerful role at the side of Labor Government Ministers over the the past nine years.

Hon Tom Helm: What about the advisers of the Liberal Party and the Independents next year?

Hon P.G. PENDAL: Next year, when a coalition Government is in place, and if this Bill becomes law, advisers to the Liberal and National Party Ministers will be picked up in the scope of this Bill.

Hon John Halden: You will not be here!

Hon P.G. PENDAL: It is true that I will not be here, but I will be coming back to haunt the member for a long time!

That is the position of the Opposition on a Bill which is not serious and which is no more serious than the Government which sponsors it. The Government introduced this Bill with a bit of a smile on its face, and the Attorney General had a doubly big smile because he said to himself, "Well, it does not matter now. The Bill will not become operative until after the first election after the Bill becomes law." Where will Mr Berinson be then? He will not be a member of Parliament.

Hon J.M. Berinson: I could nominate for South Perth yet!

Hon P.G. PENDAL: Be my guest!

Hon J.M. Berinson: It could well be the case that I will come back to haunt you!

Hon P.G. PENDAL: The Attorney General's capacity to come back and haunt anyone will be severely limited fairly soon.

Hon George Cash: You would pay Mr Berinson's nomination fee!

Hon P.G. PENDAL: Absolutely, although he is the last person who would need to have his nomination fee paid for him. However, I would willingly pay it so that he could come across to South Perth and be a candidate of whatever description he wanted. This Bill will not apply to people like Hon Joe Berinson. It is just sheer coincidence that he will be gone from the Parliament, after this Bill has been held up for three years within the Labor Caucus by people who said, "Steady on."

Hon J.M. Berinson: Who said, "Steady on"? The Bill has been held up by your crowd.

Hon P.G. PENDAL: It has not. The Government introduced the Bill in 1989, and it has not advanced it out of the Legislative Assembly in three years. The Government is a bit like St Augustine of old, who said, "Lord make me poor, but not just yet." In this case, Government members are saying, "Let us be accountable for our financial concerns and for our pecuniary interests, but not just yet." The Government has taken three years to get around to a Bill which it could have passed in 1989. However, the Government chose deliberately in August 1989 not to advance the Bill.

Hon J.M. Berinson: Absolute rubbish! It is all based on the unwillingness of your side to accept things of this kind.

Hon P.G. PENDAL: I ask you, Mr President, this question: Was it within the power of the Dowding Government to advance this Bill in the Legislative Assembly without the help of the Opposition? The answer is: Of course it was. The Government used its numbers to pass the anti-duck shooting legislation and the daylight saving legislation. Why did the Government not use its numbers to pass this Bill in the Legislative Assembly?

Hon J.M. Berinson: Are you saying we have never had a financial interests Bill in this House?

Hon P.G. PENDAL: I am saying that for three years -

Hon J.M. Berinson: What about the years before that? We could have had it six years ago.

The PRESIDENT: Order! I will not call order again. I am getting fed up with the total lack

of dignity in this place, which indicates to me that people are holding this place in contempt. I will take some action shortly just to reassure you that I will not abide by that.

Hon P.G. PENDAL: Of course, for a year or 15 months, whatever it was, the Government was without a majority in the other House, but for the two years prior to that, when it could have advanced this Bill, did it do so? The answer is no. I ask this rhetorical question: Why did Premier Dowding in September, October, November and December of 1989 not advance this Bill when he had the numbers to do so? I ask a further rhetorical question: Why did Premier Lawrence, the great paragon of virtue -

Hon Mark Nevill: Hear, hear!

Hon P.G. PENDAL: Why did Premier Lawrence, who has been named in the most serious way for her having lied to the Parliament, not advance the Bill in March, April, May, June and right to the end of the calendar year 1990, when she had the capacity to do so?

Hon Mark Nevill: Why did you stop it?

Hon P.G. PENDAL: We did not stop it. The adjournment was moved by Mr Mensaros. That is how long ago this was.

Hon John Halden: It is obviously your fault.

Hon P.G. PENDAL: The poor man has gone to his reward. The legacy of this Bill is that the Government allowed debate to be adjourned on 31 August 1989 by Mr Mensaros, and it has been buried by the Labor Government ever since.

Hon Tom Helm: It was your adjournment.

Hon P.G. PENDAL: The member who just interjected clearly does not understand that the adjournment is ultimately in the hands of the Government of the day. We have heard in this place appeals for us not to interfere with the Notice Paper as it is the prerogative of the Government. However, at no stage in the 36 months and three weeks since that adjournment has the Premier walked into this Parliament and dealt with this legislation.

Hon Tom Helm: You could do it yourself.

Hon P.G. PENDAL: It is a Government Bill, you silly man!.

Hon Tom Helm: It is your Parliament; you have the numbers.

Hon Derrick Tomlinson: Why are we not in Government?

The PRESIDENT: Order! Members are about to find out whether I have the numbers. If Hon Tom Helm continues to interject, I will put that to the test.

Hon P.G. PENDAL: Ultimately, the Labor Party did not want the Bill to proceed. We can only speculate why now, at the eleventh hour -

Hon Mark Nevill: You have your choice.

The PRESIDENT: Order! My earlier comment applies also to Hon Mark Nevill.

Hon P.G. PENDAL: This Bill will pass. It has been designed by the Labor Party to leave gaps big enough to drive a bus through. It will not add one iota to the ethical conduct of government because one cannot legislate for ethics and behaviour; if people are inherently dishonest, that is the way they will conduct their affairs. This Bill does not deserve to be passed by this Labor Government, but the public are entitled at least to believe that some progress is being made to make the system more honest than it has been, particularly under three successive discredited Labor Governments. For that reason I intend moving some major amendments during the Committee stage.

HON PETER FOSS (East Metropolitan) [4.32 pm]: I echo Hon Philip Pendal's comments on the Members of Parliament (Financial Interests) Bill. From a personal point of view, it will be interesting if this Bill is passed as it will show the erosion of my personal assets since coming into this Parliament. Another problem it will impose is working out what my assets are. Since I left my legal firm and have had to look after my accounting, it has become an increasingly difficult matter to sort out.

Hon Max Evans: I will do it for you.

Hon PETER FOSS: However, these are minor personal problems which can be overcome.

Hon Philip Pendal made an important point regarding the purpose of Parliament and the Executive.

This legislation arose out of the proposition that people in local government disclose interests, so why should State government not do it also? However, this is based on a misunderstanding about the role of government. In Parliament we have people who are purely and simply private members - they are members of Parliament and that is all. Other members are official members because they hold office. Members of the Executive can cause things to be done for specific purposes affecting specific people, and the fact that these people also happen to be members of Parliament confuses the issue.

If a person is a member of the Executive, he or she has the ability to benefit individuals. Each day these people make decisions which will place the whole support of government behind or against a proposition. Also, members of local governments decide things in a similar way and have the power to determine what happens to individuals. However, unofficial members of Parliament - and even official members when it comes to voting in Parliament - have no such ability or influence. All we can do is pass laws of general application.

In those circumstances it is not a bad thing that we have particular interests because that is the reason that we are here. We are here as property owners, shareholders, professionals, members of associations and unionists. We have the interests of our professions, trades, occupations, properties, friends, relatives and a panoply of areas to represent - that is why we are here and what representative government is all about. We are a cross-section of vested interests in our community. If we were sanitised and did not have those prejudices, it would be a waste of time for us to be here. It is important in Parliament that we allow those prejudices, backgrounds and interests to be exercised in making our decisions. That is the point of Parliament. Too many people have missed that point.

Problems arise when persons have the right to make decisions which affect individual cases. However, as members of Parliament, we have no such right as we make only general laws. I have even heard the suggestion that the next logical step is to prevent parliamentarians from voting on matters in which they have an interest! This is ludicrous.

Hon D.J. Wordsworth: What about our electorates?

Hon PETER FOSS: Exactly! We are here because we share all the interests of our electorates. We fight for their prejudices, wants and interests. We represent a patchwork of interests, which comprise our individual character. These characteristics are distinguished and one must express one's interest as part of the ability to make a decision.

Hon Phil Pendal made the point which is obviously correct: Executive power is always, and always has been, subjected to enormous influence by people who are not even elected members of Parliament. I refer to Government bureaucrats, and, in later years, political advisers. In many ways these people have greater influence than members of the Executive, particularly in strictly disciplined parties like the Labor Party. In those circumstances, it is important that when a party is in power, the advisers have just as much right to be caught up by disclosure legislation as members of the Executive.

I realise that it seems appropriate that all members of Parliament should disclose their interests. It may be a good discipline for me to at long last work out my assets, and the horrible fact that my income is nothing like it was before I became a member of Parliament. Probably to that extent it is not that much of a burden. However, we must not lose sight of the principle behind the legislation.

I now raise some detailed points in the Bill, which has some serious problems. Although this does not relate to this Bill, I understand, for example, a Mr Spender, a Federal member of Parliament, is married to Carla Zampatti.

Hon John Halden: Don't let the facts bother you.

Hon Max Evans: She would have had more wealth than he had.

Hon PETER FOSS: He was required to disclose her financial situation, but as far as she was concerned it was her business. She had no intention of disclosing to her competitors the intricate details of her finances. That is an example we must keep in mind.

Hon Max Evans: The wife of Bob Brown, the Federal Minister for Land Transport, would not put in a return either.

Hon PETER FOSS: For some reason, the public seem to think they own our families as well as us. I, for one, find it offensive that anything relating to my wife should have to be disclosed. However, I see the logic concerning Ministers and Public Service executives. My wife has not been elected to Parliament. I am barely being paid and she is certainly not. The only implication for my wife of my being a politician is that she does not get to see me very often. That may be a plus, but I understand from her that she considers that to be to her detriment. The interference with our families' affairs is an imposition, and it is unreasonable for that to happen with unofficial members of Parliament.

Hon John Halden: Does the proposition of Hon Phillip Pendal regarding the Supreme Court, overcome the problem?

Hon PETER FOSS: I think it probably would. In that case people's affairs could not be put on public display.

Hon John Halden: Could a prima facie case not be established -

The DEPUTY PRESIDENT: Order!

Hon PETER FOSS: I was finding the interjection useful, Mr Deputy President.

The DEPUTY PRESIDENT: I will let the interjection go, but we do have a Committee stage.

Hon John Halden: Could a prima facie case not be established that a wife's dealings were illegal, therefore they should be disclosed even under the amendment proposed by Hon Phillip Pendal?

Hon PETER FOSS: That may be so, but it would be rather hard to establish illegality by an unofficial member.

I cannot think of an instance, except perhaps for State ratified agreements, where an unofficial member has an interest, which is not legitimate. If I were to own shares, and Parliament were discussing a general law which affected companies, what would be the relevance of my being motivated by concern for how that would affect me financially? That would be a damned good reason for me to say I did not like the legislation. If the Liberal Party in Government decided to abolish trade unions, that would be a very good reason for Labor Party members to say they were against legislation.

Hon Mark Nevill: We should not have compulsory membership of the Law Society of Western Australia, should we?

Hon PETER FOSS: We do not have compulsory membership.

Hon Mark Nevill: One has to get one's practising certificate before one can practise, which is the same thing.

Hon PETER FOSS: No; it is not. Yesterday we dealt with the Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Bill. As a lawyer I got stuck into the legislation on behalf of what I saw was the interest of lawyers. I do not apologise for that. If I did not do that I could be criticised; that is why I am here. It is perfectly legitimate that any disclosed or undisclosed interest should be represented by a member of Parliament, because that is what members are here for. If, on the other hand, I were a Minister and did something to put money in my pocket, that would be a different matter. However, I cannot see that ever applying to a private member, let alone the wife of a private member. The Bill provides for unwarranted interference of our lives when we already bear that burden by virtue of our being members of Parliament. We should not be legislating for any more interference when it has not been established - at least to my satisfaction - that members of Parliament have the ability, because of their private interests, to influence issues. I referred to Carla Zampatti and I am grateful to Hon Max Evans for his example of Bob Brown.

Another matter that concerns me very much is trusts; clause 8 does not appear to have been very carefully thought through. Clause 8 requires members to disclose in a final return the name and address of the settlor and the trustee of any trust in which members hold a beneficial interest or of any discretionary trust of which members are a trustee or object. The

problem with discretionary trusts is that they are extraordinarily widely drawn; that is how they work. Some of them have, as their objects, such enormously wide groups of people that one may not even know one is an object of a discretionary trust.

Hon Max Evans: Is an object a beneficiary?

Hon PETER FOSS: I think that is what it means. The term must be "object"; one cannot be a beneficiary under a discretionary trust because one does not have any benefit until the trustees have exercised their discretion in one's favour.

Hon Max Evans: Under the Pay-roll Tax Act an object can be grouped for payroll tax purposes.

Hon PETER FOSS: The situation is worse than that. Some discretionary trusts are so wide in their terms that, at any time, the trustees are capable of putting somebody in.

Hon John Halden: What is meant by putting somebody in?

Hon PETER FOSS: Adding someone's name as a possible object. Some discretionary trusts in Western Australia are so broadly termed that everyone in here is able to be an object. We would all have to make a declaration in relation to a couple of thousand trusts which were collated into a standard document put out by Parker and Parker in 1975. That is how broad is a discretionary trust. I do not think anyone could comply with this clause appropriately. The Bill should provide for where a member has been specifically named in the trust as a possible object or has at some time in the past received a distribution. The clause is fraught with danger.

Hon Max Evans: Or it could be that a person of a discretionary trust will not be named until someone dies.

Hon PETER FOSS: That is true. It would be rather embarrassing to find out afterwards that it was there.

Clause 12 requires disclosure of positions in trade unions and professional business associations. I am rather curious to know what one should include under that. Since I have been a member of Parliament I have joined a variety of organisations which I would not normally have joined. I am a member of the Gidgegannup Agriculture Society.

Hon P.H. Lockyer: And a fine society it is.

Hon PETER FOSS: Yes, it is a fine society and it has the leading goat show in Australia.

Hon D.J. Wordsworth: Does the Government make any allocation to it?

Hon PETER FOSS: I do not know because I have not followed it closely, but it is quite possible. I am also a member of the Mundaring Educational Scholarship Trust, and I joined the Midland and Districts Chamber of Commerce.

Hon B.L. Jones: We are impressed.

Hon PETER FOSS: I am not saying it to impress members, but it sounds as though I must pay far more attention when joining these associations. I have become a patron of the Western Australia Travel League. Although I have been serious in joining these groups, I have been somewhat light-hearted in the manner in which I have not kept a complete record of my associations with them. Are they associations I need to record? I have joined them in connection with my current occupation as a member of Parliament.

I was trying to put the point previously of the difficulty of enforcing this provision. I understand why it has been done this way and why a member of Parliament shall be judged to be in contempt if he or she breaches the Act. However, it means that the matter will be determined by the majority in a House. It may be that things have changed in the lower House of late because the Government does not have the numbers, but that is an unusual situation. I ask members to cast their minds back to the time when Mr Burke was Premier. Do they think for one moment that if a member of the Labor Party in the lower House had offended against this provision, that there was even a snowflake's chance in hell that he would have been proceeded against?

Hon Tom Helm: Of course.

Hon PETER FOSS: There is not even the slightest chance that it would have happened. Do

members think that if there was even the slightest whiff that an Opposition member had offended, he would have been proceeded against? I say that he definitely would have been. An example occurred in another place when the present Leader of the Opposition had the numbers in the lower House used against him. There is a serious flaw in the enforcement of this Bill that the chance of its being seriously enforced will depend on whether the person in breach is a member of the party who holds the majority in a House or is a member of the party which has a minority in the House. That is a fundamental flaw of the whole matter. For that reason I believe something quite serious should be done in order to change it. I support the remarks made by Hon Phillip Pendal and look forward to seeing the reaction to the amendments he proposes.

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

PARLIAMENTARY AND ELECTORATE STAFF (EMPLOYMENT) BILL 1991

Second Reading

Debate resumed from 2 September.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [4.55 pm]: This Bill has had a chequered history, even though it has only recently been introduced into this House. It sat around in another place for a considerable time, and it relates to amendments made to the Industrial Relations Act in 1987. As a result of amendments made to that Act in 1987, and a subsequent attempt to introduce an award for persons working in Parliament House and in electorate offices, Commissioner Fielding of the Industrial Relations Commission questioned who the employer was. Commissioner Fielding commented in general terms that, although he had had discussions with representatives of this Parliament and had heard arguments from a number of other parties, he was nothing short of confused as to who should be regarded as the employer of persons working at Parliament House and in electorate offices. When that question was identified by Commissioner Fielding, further investigations were carried out into the definition of "employer" as it applied to people working at Parliament House. Lengthy negotiations took place to determine the position.

You, Mr President, because of the special position you hold in this Parliament, will be aware that arguments were put to the Industrial Relations Commission that you, as President of the Legislative Council, should be considered the employer of persons employed by the Legislative Council, and that the Speaker of the Legislative Assembly should be considered the employer of persons employed by the Legislative Assembly. In the case of those persons not directly employed by those departments who came into a different category, such as those in the Parliamentary Library and those governed by the Joint Printing Committee, which includes Hansard, you, Mr President, and the Speaker of the Legislative Assembly would be considered the joint employers. An interesting argument developed when that proposition was put some years ago, and the Clerks of both Houses argued that they should be considered the employers of people working at Parliament House. In fact, the Clerk of the Legislative Council believed that, under section 74 of the Constitution Act and certain provisions of the Financial Administration and Audit Act, he as the accountable officer of the Legislative Council and given other special considerations contained in the Constitution Act, should be considered the employer of persons attached to the Legislative Council. Clearly, there was a need for the matter to be clarified and advice was sought by various parties interested in determining who was the employer of staff at Parliament House. Mr Marquet, in his capacity as Clerk of the Legislative Council, sought advice from a learned solicitor. For the purpose of this debate and to ensure that members know the depth to which it was necessary to go to try to determine who the employer was, I will read part of the advice received by the Clerk in 1989. The letter was from Mr P.W. Johnson, a barrister whose address is Wickham Chambers, Hay Street, Perth

[Questions without notice taken.]

Hon GEORGE CASH: One of the reasons this Bill is in the House is the confusion that existed following the passage of a Bill in 1987 that amended the Industrial Relations Act and, in particular, section 23 of that Act. Before I read the letter to which I referred earlier, it is important that I indicate to the House the sequence of events which made it necessary for the Clerk of the House to seek legal advice to determine whether he should be considered as the

employer of persons working at Parliament House or whether the Presiding Officer of the Legislative Council should be determined to be that employer.

Section 7 of the Industrial Relations Amendment Act No 4, Act No 119 of 1987, amended section 23 of the parent Act as follows -

> Section 23 of the principal Act is amended in subsection (1) by deleting the passage beginning with "except any matter provided for in paragraph (a):" and ending with "(ii) an officer or employee on the Governor's Establishment;" and substituting a full stop.

The intention of that amendment was to delete from the parent Act the exception that the jurisdiction of the Industrial Relations Commission did not extend to an officer or employee in either House of Parliament or under the separate control of the President or the Speaker, or under their joint control, or persons employed by a committee pursuant to the joint standing rules and orders of the Legislative Council and the Legislative Assembly, or a person employed by the Crown, or a person who was an officer or employee on the Governor's establishment. That Act removed that exception from the Industrial Relations Act and thereby brought into the jurisdiction of the Industrial Relations Commission those persons who are referred to in section 23(1) of the Industrial Relations Act. The Government, after seeing it pass through both Houses, was then a party to hearings before the Industrial Relations Commission in which electorate officers and others were keen to pursue the completion of an award. It was during those discussions that questions were raised about who was the employer of people employed at Parliament House and in our electorate offices.

I return to the point I had reached prior to question time; that is, whether the Clerks of the Parliament or the Presiding Officers of the Parliament were the employer. I said earlier that Mr Marquet, the Clerk of the Legislative Council, believed that the Constitution provided him with the necessary authority for him to believe that he was the employer. He was supported in his view by certain provisions in the Financial Administration and Audit Act. On the other hand, relying on the traditions and customs of certain other Houses of Parliament around the world, the President of the Legislative Council and the Speaker of the Legislative Assembly believed they should be determined as the employers for the purposes of the Industrial Relations Act. It was because of that conflict that Mr Marquet sought advice from Mr P.W. Johnston, a barrister who has chambers in the Wickham Chambers in Hay Street, Perth. It is important, for the purposes of understanding this Bill, to understand the questions of law that arose in determining whether the Clerk of the Parliament should be determined to be the employer or the Presiding Officers. It is fair to say that, because of the relationship that exists between the Presiding Officer and the Clerk of the Parliament, the question needed to be determined very clearly so that, on any future occasion, conflict could not occur. The letter addressed to Mr Marquet states -

> Dear Laurie,
>
> Identity of Employer of Parliamentary Staff
>
> In your letter of November 10 1988, you have sought my opinion whether the Clerks of the Legislative Council and the Legislative Assembly are, or can be regarded as, the "employer" of the Parliamentary Staff for the purposes of the Industrial Relations Act 1979 (WA). My short answer to that specific question is that each of the Clerks is capable of being treated as an "employer" for the purposes of that Act with respect to the members of the Parliamentary Staff associated with each House. To say that is not to make a definitive judgment on the matter (I should want to discuss the implications of this advice with you further), nor is it to deny that, for the same or similar purposes, other office-holders of the Parliament, and specifically, at least whilst their respective Houses are in session, the Speaker of the Legislative Assembly and the President of the Legislative Council could be too. I realise this is a guarded and restricted answer but, having in mind the complexities of the issues involved in an examination of the legal personality of Parliament, and of each separate House, it would be inappropriate, in my opinion, to seek to answer the limited question you have posed by reference to wider issues.
>
> In saying this, I would regard the matter of whether the House of Commons had, at the time of the passing of the Constitution Act 1889, a power to employ servants, as a

relevant consideration, but I am not convinced that an answer to that question is determinative of the statutory issues under consideration. The engagement of staff might be argued to be something incidental to the legislative functions of the Houses, rather than a power (See Attorney-General for the Commonwealth v MacFarlane (1971) 18 FLR 150, 157).

Primarily, the specific issue turns on the meaning to be ascribed to particular terms as used in the Industrial Relations Act, as construed in the context of the objectives and the purposes underlying that Act. (Section 18 Interpretation Act 1984). The objectives in the case of that Act include making effective the processes of negotiation and settlement of employment conditions.

It is relevant to note that the critical term "employer" is defined in section 7(1) of the Industrial Relations Act as including -

(a) persons, firms, companies and cooperations; and

(b) the Crown and any Minister of the Crown, or any public authority, employing one or more employees.

"Industry" includes (inter alia) any undertaking or calling of employers, and the exercise and performance of the functions, powers and duties of the Crown and any Minister of the Crown, or any public authority. In this expanded sense it goes beyond the natural meaning which would not ordinarily embrace the parliamentary process.

"Public authority" means "the Governor in Executive Council, any Minister of the Crown in right of the State, State Government Department, State trading concern, State instrumentality, State agency, or any public statutory body, corporate or unincorporate, established under a written law . . ."

Section 23(1) vests jurisdiction in industrial matters in the Industrial Relations Commission except for certain matters relating to discipline of persons who are -

(i) an officer or employee in either House of Parliament

(I) under the separate control of the President or Speaker or under their joint control;

(II) employed by a Committee appointed pursuant to the Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly; or

(III) employed by the Crown.

The inference could be drawn that those exceptions aside, the Commission could exercise jurisdiction over parliamentary staff.

Pausing at this juncture, I would not myself be satisfied that it is proper to call Parliament a "Public Authority" within any of the above descriptions. The Governor in "Executive" Council, for instance, could not be equated with the Governor as part of Parliament, nor should Parliament be regarded as a State Government Department, instrumentality agency or a statutory body, although one could stretch the meaning of the latter words to embrace the organisation so termed. "Parliament" (meaning "the Parliament of the State"; Interpretation Act, Section 5) should be given its natural meaning in terms of the way it is used in section 2 of the Constitution Act 1889. In subsection (2) thereof the Parliament of Western Australia "consists of the Queen and the Legislative Council and the Legislative Assembly." For the purposes of this tentative advice, I see this as one of the most significant pointers to the way in which the issues presented to me should be addressed. Parliament, as constituted by the three named elements, is a greater entity than each of its distinct parts and indeed is capable of existence as a body corporate that continues to exist whether or not any of its particular constitutive elements exists or not. (In this respect I agree to some extent though not wholly with the view expressed by Quilliam J in Ualesi v Ministry of Transport [1980] 1 NZLR 575, at 577. His Honour there did not necessarily accept the views expressed in two earlier cases, Simpson v Attorney-General [1955] NZLR 271, and Police v Walker [1977] 1 NZLR 355, which dicta suggested that a House of Parliament could cease to exist upon dissolution.)

Returning to the Industrial Relations Act, it is significant that Section 80C(1) excludes from the definition of a "Government Officer" "(g) any person who is an officer or an employee in either House of Parliament -

(i) under the separate control of the President or Speaker or under their joint control;

(ii) employed by a Committee appointed pursuant to the Joint Standing Rules and Orders of a Legislative Council and a Legislative Assembly; or

(iii) employed by the Crown . . ."

It follows that the definition of "employer" in Section 80C has no reference to the employment of those officers enumerated above.

Whether the more general definition of "employer" in section 7 operates to include either the Clerks of the Houses is another matter. One has to approach the concept of "employer" to some degree as parasitic upon the meaning of "employee" in the same section. That definition, as expanded at common law, requires a consideration of the relationship between the persons said to be the employer and employee, largely in terms of whether the former has control over the activities of the latter and whether the "employee" can be said to be part of the organisation or apparatus of the "employer". Given the generality of these expressions it seems to be clear that a relationship of employment exists, for the purposes of the Industrial Relations Act between the parliamentary staff and the "Crown". The "Crown" is however largely an abstract notion, and is capable of several manifestations. One could in broad summation say that the juristic entity of the State of Western Australia may be equated with the body corporate, probably a corporation sole of "the Crown". But when regard is had to the statutory distinction between Parliament and the Executive (the latter manifested either through Ministers of State, the Executive Council, the Governor in Executive Council or the Departments of the Government) I incline to the view that it is the Crown manifested as Parliament that is to be appropriately termed the "employer" of the Parliamentary Staff. As already explained, I do not think this carries the implication that Parliament is to be reduced to its several parts of the Governor (as the Queen's representative) and each of the two Houses. As pointed out in Simpson's case (supra) the Vice-regal representative (in that case the Governor-General of New Zealand) can continue to perform the legislative function of assenting to legislation even if a House is dissolved.

Given that the Crown, manifested as Parliament, is the employer, the question then becomes who may represent Parliament in relation to "industrial matters". For the purposes of this advice, I do not find it necessary to form a view whether either the Speaker or the President of the Council could perform the functions of the Crown as employer under the Industrial Relations Act. Given the inclusive character of the definition of employer I am of opinion that whether the Speaker and the President could separately represent the Crown, the Clerks of the respective Houses could properly be regarded as performing that function also. This is notwithstanding that the Clerks may themselves be regarded, for other purposes, as "officers of the Crown" having regard to the mode of their appointment (Redlich The Procedure of the House of Commons (1908) p 173). It is possible to regard a person as capable of having more than one employer (see Marrow v Flimby Co. [1898] 2QB 588) although in the particular case under consideration, I do not regard the situation as one where there is more than one employer; it is simply the case of one employer, the Crown, that is capable of acting through the agency or alter ego, perhaps, of several individuals, including the Clerks.

This may give rise to practical difficulties if representation were to be attempted by all those capable of being so regarded. However having regard to the customs and practices, involving deference to the Presiding Officers of the Houses, acting in accordance with the wishes of each House, I should think the practical difficulties are capable of resolution. The fact that, at least so far as the Speaker of the Legislative Assembly is concerned, there may be problems of continuity (see Police v Walker, supra) may point to the desirability of representation of the Crown being effected

through the permanent officers, the Clerks. As Sir William Anson, the Law and Custom of the Constitution (1911) p.153 points out the officers of Parliament under the Speaker are not affected by dissolution.

The views I have expressed in this letter should provide a starting point for further analysis of the problem, if thought fit. I emphasise that I have not sought to express a concluded view and would only be prepared to do so after further consideration.

Yours sincerely, (P.W. Johnston).

I believed it necessary to read that fairly lengthy advice to indicate the complexities of the law that could be invoked in respect of whether it was the Clerks of the House or the Presiding Officers of the Parliament who should be deemed, or could be determined, to be the employers under the Industrial Relations Act as it was proposed and was amended in 1987.

The fact is that although that amendment went through both Houses of Parliament the signal had been given to the Government that questions of conflict could arise between the Clerks and the Presiding Officers as to just who was the employer and it was decided in 1988 by the Government not to proclaim that part of the Industrial Relations Amendment Act - No 119 of 1987 - because it was considered by Commissioner Fielding that greater clarification of the definition of the employer of the employees at Parliament House was necessary.

It just so happens that the Government, having decided that greater clarification was necessary, also decided a need existed to introduce a Bill to give effect to that clarification. One of the reasons stated by the Government for the length of time that has elapsed since it was clearly pointed out there were potential areas of conflict if this matter were not given legislative standing was the considerable negotiations over a period with the Clerks of the Houses, the Presiding Officers, representatives of the employees of the Parliament, and representatives of the Industrial Relations Commission.

Those negotiations were said to be lengthy and drawn out. As a result of the complexity of the legal position relating to the authority of the Clerks and the Presiding Officers of the Parliament, the matter has taken a much longer time to deal with than anticipated originally. The Bill goes to great lengths to state in a definitive way just who is to be considered the employer of persons working at Parliament House and those persons who are determined to be electorate officers; that is, the people who assist members of either the Legislative Council or the Legislative Assembly in their electorate duties.

I will go through the Bill so that members understand clearly just who is to be regarded as the employer when it comes to matters before the Industrial Relations Commission as they affect employees of the Parliament including electorate officers. The Bill clearly defines "electorate officer" as follows -

"electorate officer" means person appointed to be an electorate officer -

(a) to assist a member of the Legislative Council or a member of the Legislative Assembly in dealing with constituency matters; or

(b) to assist the secretary of a parliamentary political party.

The definition of the "the President" and "the Speaker" is clearly stated in the Bill and I do not believe I need to read those definitions to the House as members have a copy of the Bill before them.

Other areas in the Bill clearly define various departments within the Parliament; for instance, there is reference to the "Department of the Legislative Council", which is to be construed as a reference to the department of the staff of Parliament principally assisting the President in the administration of the affairs of the Legislative Council. There is equally a reference and definition of the "Department of the Legislative Assembly" as it affects the Speaker and the affairs of the Legislative Assembly. The Bill refers to the "Department of the Parliamentary Reporting Staff", and any reference to that department is to be construed as a reference to the department of the staff of the Parliament principally assisting the President and the Speaker in the reporting of parliamentary debates.

The term "Department of the Parliamentary Library" is to be construed as a reference to the department of the staff of the Parliament principally assisting the President and Speaker in

the administration of the library of the Parliament. Members would also be aware that Parliament House has a catering service, a building and grounds management and maintenance service, security service and a finance and personnel area of management. In that regard, any reference to the "Joint House Department" is to be construed as a reference to the department of the staff of the Parliament principally assisting the President and the Speaker in the provision of certain financial and personnel management services to other departments of the staff of the Parliament; catering services; building and grounds management services; and security services.

There are, as one would expect, references to the term "Chief Hansard Reporter", the "Parliamentary Librarian" and the "Executive Officer of the Joint House Department". It is intended for the purposes of the Bill that the President acting on the recommendation of the Clerk of the Legislative Council in respect of persons employed in the Department of the Legislative Council, and the Speaker, acting on the recommendation of the Clerk in the Legislative Assembly in respect of persons employed in the Department of the Legislative Assembly, should be the employers of those respective employees. The President of the Legislative Council and the Speaker of the Legislative Assembly are to be joint employers of the persons employed by the Department of Parliamentary Reporting Staff, the Department of Parliamentary Library and the Joint House Department subject to their acting jointly on the recommendations of the respective heads of department.

Sitting suspended from 6.00 to 7.30 pm

Hon GEORGE CASH: On reflection during the dinner suspension I thought I may have mistakenly not made the situation clear regarding the President of Legislative Council and the Speaker of the Legislative Assembly being employers of certain persons in Parliament House. The Presiding Officers are in fact only the employers as such - that is, the President and the Speaker acting jointly - of the Chief Hansard Reporter, the Parliamentary Librarian and the Executive Officer of the Joint House Department.

The employer status of the President and the Speaker regarding other staff is subject to a very important qualification: The President, acting on the recommendation of the Clerk of the Legislative Council - this is the important point - is, subject to section 35 of the Constitution Act, the employer of each member of the Department of the Legislative Council - that is, apart from the Clerk and the Deputy Clerk of the Legislative Council. That is an important distinction. Although the President will be recognised as the employer of those persons, he is subject to the recommendation of the Clerk.

Again, the President acts on the recommendation of the Director General as the employer of each electorate officer who is appointed to assist members of the Legislative Council in dealing with constituents, or the secretary of a parliamentary political party who is a member of the Legislative Council.

The Speaker, acting on the recommendation of the Clerk of the Legislative Assembly, is, subject to section 35 of the Constitution Act, the employer of each member of the Department of Legislative Assembly, other than the Clerk and the Deputy Clerk of that Chamber. Again the Speaker acts on the recommendation of the Director General as the employer of each electorate officer who is appointed to assist members of the Legislative Assembly in dealing with constituency matters, or the Secretary of the parliamentary political party who is a member of the Legislative Assembly.

That qualification also applies for the employers of the Joint House Department. The President and the Speaker acting jointly, on the recommendation of the Executive Officer of the Joint House Department, are the employers of each member of the Joint House Department, other than the Executive Officer - that person comes into a different section. The President and the Speaker acting jointly, on the recommendation of the Chief Hansard Reporter and the Parliamentary Librarian, will be the employers of members of the Department of the Parliamentary Reporting Staff and the Department of the Parliamentary Library respectively, apart from the Chief Hansard Reporter and the Parliamentary Librarian.

Also, it is important to note that powers of delegation are available to both the President and the Speaker. In that regard they are able to delegate to the Clerks of their respective Houses, and to the Director General regarding electorate officers.

Another matter which requires comment is the exclusion in the Bill of both Clerks and

Deputy Clerks as employees of the Parliament, or, indeed, as employees of either the Speaker or the President. As members would be aware, the Clerks and the Deputy Clerks are appointed under the warrant of the Governor, and, as such, are not deemed to be employees for the purposes of this Bill.

It was necessary to clarify just who are to be the employers of parliamentary staff, and the Bill will clearly achieve that. However, it is disappointing that it has taken so long for this Bill to come back before the Parliament. Legislation was passed in 1987, but some confusion arose regarding the question of employers and it has taken until now for this legislation to come before the Parliament. However, it is now here, and all parties agree that it is necessary to clarify the situation.

The very complex legal argument to which I referred regarding whether the Clerks or the Presiding Officers were the employers of staff highlighted the need for this measure. With the support of the Parliament that clarification can be put into effect.

HON JOHN HALDEN (South Metropolitan - Parliamentary Secretary) [7.39 pm]: I thank the Leader of the Opposition for his support on this Bill and for his detailed analysis of the various problems it has incurred since the original Bill was introduced in 1987. As the Leader of the Opposition has said, one of the problems was the need to clarify who was the employer. The Bill has been delayed because of the very exhaustive consultations and legalistic process to establish that. Having done that, any fair minded member who reads the advice that Hon George Cash has read into the *Hansard* will see that this Bill very clearly exemplifies that advice. The Bill now clarifies all matters and it is hoped that, for the first time, employees of this Parliament will have access to the Industrial Relations Commission. As the Leader of the Opposition has said, everyone will be happy with that outcome. All matters that needed clarifying have been clarified. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee and Report

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

Third Reading

Bill read a third time, on motion by Hon John Halden (Parliamentary Secretary), and passed.

GOVERNOR'S ESTABLISHMENT BILL 1991

Second Reading

Debate resumed from 2 September.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [7.43 pm]: This Bill is to make the Governor the employer of staff on the Governor's establishment and for related purposes. The previous Bill dealt with parliamentary and electorate staff. As I explained when speaking to that Bill, that Bill was needed to identify the employer of those people. Equally, this Bill identifies the employment responsibilities of persons employed on the Governor's establishment. It mirrors substantially the provisions of the Parliamentary and Electorate Staff (Employment) Bill 1991. If this Bill is passed it will enable persons employed on the Governor's establishment to have access to the Industrial Relations Commission. These employees were not included under the previous Bill in an acknowledgment of the principle of separation of power between the Executive and the legislative arms of Government. Considerable discussion took place with His Excellency the Governor on this Bill. The Minister responsible for the office of Premier and Cabinet has conducted those negotiations and discussions over an extended period. Both parties are satisfied with the provisions of the Bill.

As with the previous Bill, the Opposition expresses some concern at the length of time taken for the Bill to come before the House. However, that argument was put in the previous debate and does not need restating. The Opposition supports this Bill and urges the Government to see that it is proclaimed without further delay.

Question put and passed.

Bill read a second time.

Committee and Report

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

Third Reading

Bill read a third time, on motion by Hon John Halden (Parliamentary Secretary), and passed.

ACTS AMENDMENT (PARLIAMENTARY, ELECTORATE AND GUBERNATORIAL STAFF) BILL 1991

Second Reading

Debate resumed from 2 September.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [7.47 pm]: This Bill follows the previous two just passed by the House and seeks to amend a number of Acts as a result of the previous two Bills. As members will know, those Bills were designed to define the position of the employer of staff at Government House, Parliament House and electorate offices. The Liberal Party recognises the need for the various amendments in this Bill. However, it has some difficulty with one area; that is, the Parliamentary and Electorate Staff (Employment) Bill 1991. The amendments to the Industrial Relations Amendment Bill (No 4) which were passed in 1987 and which would have determined who was the employer of staff at Parliament House and electorate offices, were not proclaimed at the time. Therefore, persons who would have been entitled to access to the Industrial Relations Commission had the previously passed two Bills been proclaimed in 1988 were prevented from that access. That argument was put during the debate on the Parliamentary and Electorate Staff (Employment) Bill. The Government intends, retrospectively by way of clause 9 of this Bill, to allow persons who were employed at Parliament House or who were electorate officers in 1987 to have the same right of access to the Industrial Relations Commission for the period from 1987 until when the Parliamentary and Electorate Staff (Employment) Bill is proclaimed, even though the Bill is to be proclaimed in 1992. Clearly, that involves an element of retrospectivity. Although it was argued in the other place that the Parliament's intent was there in 1987, regrettably, because of the failure of the Government to proclaim that Bill, that access has been denied to certain people. I will describe the persons covered by section 29 of the Industrial Relations Act as wages staff and members of the public servants who are covered by section 80C(1) of the same Act as salaried staff. It is true that the Opposition is not concerned about the persons who are covered by the provisions of section 29 of the Industrial Relations Act because at all times they have had access to the Industrial Relations Commission. In respect of those public servants covered by section 80C of the Act a problem arises because persons deemed to be public servants under this section are entitled to access to the Industrial Relations Commission by way of appeal only if they make that appeal within 21 days of being terminated from their employment. That is significantly different from the provision contained in section 29 of the Act.

In this Bill the Government is proposing a 90 day moratorium for those persons who would have been covered had the Bill been proclaimed in 1988. The Opposition is of the view that retrospectivity is wrong at the best of times and should be considered only under the most extreme circumstances. The question of retrospectivity was raised on a number of occasions by the Opposition in the other place and it put forward the view that it does not accept retrospectivity unless it is under very extreme circumstances. The second reading speech does not identify any extreme circumstances in respect of this Bill. Therefore, the Opposition is unable to make a case to agree to the retrospectivity clause contained in the Bill. It was suggested to me in discussions I had with persons expert in the area of industrial relations that even if the Opposition - I note that Hon John Caldwell is indicating that the National Party is of a similar view and perhaps I can use the term to describe the Liberal and National Parties' view as the coalition's position -

Hon John Halden: There is not one of those.

Several members interjected.

Hon GEORGE CASH: I can assure members opposite that we are working hard towards it.

Hon Bob Thomas: You have not got much time left.

Hon GEORGE CASH: We are working hard on it and I am very pleased with the results thus far.

The consultations I have had with experts in the field of industrial relations indicate to me that if any access were to be granted to persons who might have been covered had the Bill been proclaimed in 1988 as anticipated by the Parliament, that period of access should not be in excess of what would have been provided then; that is, 21 days rather than the 90 days the Government is proposing in this Bill.

I refer to the *Government Gazette* in which the Industrial Relations Commission's regulations of 1985 are published and in particular to regulation No 45 which covers Public Service appeals and it reads -

> (1) An appeal to the Board under section 80I(1) of the Act shall be commenced by filing a Notice of Appeal in accordance with Form 10.
>
> (2) An appeal shall be commenced within 21 days after the date of the decision, determination or recommendation in respect of which the appeal is made or where that decision, determination or recommendation is published in the *Government Gazette* within one month of the date of that publication.

The regulation then sets out the various processes necessary for the filing of the appeal; I will not waste the time of the House in further reading the provisions of regulation 45.

Twenty-one days is sufficient for persons who wish to appeal against matters affecting them as public servants. The Government could surely not expect to grant those persons who might have been covered had the Bill been proclaimed in 1988 this fanciful 90 days instead of 21 days.

The Opposition is not prepared to accept 90 days and it will vote against it because it believes retrospectivity is wrong. If we lose that vote I give notice to the House that I will move to substitute 21 days for the 90 days provided for in the Bill. With those comments the Opposition supports the other provisions of the Bill.

HON JOHN HALDEN (South Metropolitan - Parliamentary Secretary) [7.58 pm]: I thank the Leader of the Opposition for his support, albeit in part, for the Bill. From the discussions I have had with him I understand the difficulty the Opposition has with clause 9. The Government views this clause as a matter of equity. The difficulty is that in the past there has been publicity regarding unfair dismissal of parliamentary employees. I am not prepared to suggest it was justified, but the Government believes that in order to clear the air it is appropriate that the period be extended to 90 days. I make it clear to the House that the 90 day period applies for only 90 days after proclamation of this Bill. After that time has expired any staff member dismissed from the employ of Parliament will have 21 days in which to appeal. The proposed 90 days is a courtesy to people dismissed since 1988 and who for some reason - for example, they may no longer live in this State - want to consider their options and seek advice. This clause will provide for allegations of unfair dismissal from the Parliament to be put to one side forever. I understand the statement by the Leader of the Opposition about the Liberal Party's opposition to retrospectivity, except under special circumstances. I suggest that putting this matter to rest once and for all is a special circumstance. Of course, we will debate this matter in Committee and we can then go through the various arguments in greater detail. I welcome that opportunity, and I am pleased that the Opposition supports the remainder of the Bill.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon John Halden (Parliamentary Secretary) in charge of the Bill.

Clauses 1 to 8 put and passed.

Clause 9: Section 80C amended, and transitional -

Hon GEORGE CASH: The 90 day period is specified at line 9 on page 8 of the Bill. In general terms, the Government proposes that those persons who will be covered by the provisions of the Industrial Relations Act as a result of the passing of the earlier two Bills, will now be given what could be termed as 90 days grace in which to lodge an appeal against their dismissal, or termination or some other complaint relating to their employment at Parliament House. I have made it very clear on a number of occasions in this House that the Liberal Party does not believe in the concept of retrospectivity unless it is under most extreme circumstances. The Government has not indicated in either the second reading speech or its response to the second reading debate that those extreme circumstances exist. Therefore, the Opposition cannot support the 90 day period of grace.

However, it is important to note that the Opposition supports the major portion of this Bill and, in voting on clause 9 it is important that the Government and the Opposition understand exactly what is involved. Clause 9 is a very lengthy clause which deals with matters other than the 90 day period of grace. We must be careful not to delete more than is intended by my comments.

Hon JOHN HALDEN: For the sake of clarity and with the concurrence of the Leader of the Opposition, I will read some comments that have been prepared to clarify the situation.

Section 23 of the Industrial Relations Act was amended by section 71 of the Industrial Relations Amendment Act (No 4) of 1987. This amendment, which has yet to be proclaimed, has the effect of widening the jurisdiction of the Industrial Relations Commission so that it may hear claims by employees and former employees of Parliament House alleging that they were unfairly dismissed from their employment. The remainder of the Bill was assented to on 31 December 1987 and proclaimed on 4 March 1988. Applications of the kind referred to above may be filed with the Industrial Relations Commission pursuant to section 29 of the Industrial Relations Act 1979. There is no prescribed time limit within which such applications may be filed in order to give the Industrial Relations Commission jurisdiction to hear the claims. Accordingly, following proclamation of the 1988 amendment to section 23 of the Industrial Relations Act, any former employee could file such an application irrespective of the actual date of the event which gave rise to the application. There is an increasing body of authority from the Industrial Relations Commission, however, which is indicative of a disposition the Commission has about applications that are filed which relate to incidents that occurred in the distant past. That is not to say, however, the commission does not have the jurisdiction to deal with those matters, because it does.

Most importantly, and I hope the Opposition will understand the reason for this clause: Thus, had the Government elected not to make salaried officers at Parliament House and electorate staff, Government officers, such staff would have access to the general jurisdiction of the Commission via sections 23 and 29, in the same manner as wages employees will have following proclamation of these Bills. Under sections 23 and 29 they have unlimited time in which to apply, and the Government proposes to limit it to 90 days. That is the significance and it is perhaps the special circumstances to which the Leader of the Opposition referred in the second reading debate. The Government is trying to be fair and reasonable, and achieve a compromise between regulation 45, which provides for 21 days, and unlimited time. It has opted for 90 days. The Government decided to widen the jurisdiction of the Public Service arbitrator so that he could deal with like claims by former salaried staff. A difficulty arises as a consequence of regulation 45 of the Industrial Relations Commission regulations of 1985, which imposes a 21 day time limit on the filing of applications alleging unfair dismissal with the Public Service Appeal Board.

Irrespective of the date of proclamation of the 1988 amendment or the current Bill, it would obviously not be possible for former salaried staff to comply with the regulation. Accordingly, the Government decided, in the interests of equity, to make separate provisions to effectively set aside regulation 45 for 90 days, within which any former salaried employee could file an application with the arbitrator. After 90 days, salaried staff must comply with regulation 45.

The reason for the 90 days is that after a considerable time delay, the former staff may no longer be in Western Australia and may need some access to the information that the

provision for appeal is open to them. They must consider whether to make an appeal and whether they have witnesses or documentation to support that appeal. That may require them to obtain correspondence and legal advice, and they may need to find suitable witnesses who may no longer be employed by the Parliament or State Public Service and who may, likewise, no longer be in Western Australia. It would be a very taxing requirement if people had to do that within 21 days. I do not think it is an undue burden to give those people an opportunity to consider their respective chances and the evidence they may be able to gather. I understand the Liberal Party members' grave concerns about and philosophical position on retrospectivity, although I do not agree with them necessarily and on every occasion. I suggest that, on this occasion, 21 days is a very taxing time limit which does not provide natural justice to previous employees of this Parliament because it does not give them sufficient time in which to consider their options. It is appropriate that, on this occasion, the Committee allow retrospectivity.

Hon GEORGE CASH: The arguments put by the Parliamentary Secretary are basically along the lines of the arguments that have been put to me privately. However, they do not address the question of retrospectivity. I understand the argument about equity, but that does not overcome the problem of retrospectivity. Clause 9 has two parts, subclauses (1) and (2), and it would appear that in order for the Opposition to vote against the 90 day period of grace, it will be necessary for us to oppose clause 9(2) only and not clause 9(1).

The CHAIRMAN: Order! The Committee can deal only with the clause as a whole, so the motion will be that the clause stand as printed. If the Leader of the Opposition wants to delete something, he will have to move an amendment to do so.

Hon GEORGE CASH: Mr Chairman, I thank you for that advice. That is my intention. However, I want the Parliamentary Secretary to confirm that were we to vote against clause 9(2), clause 9(1) would stand, because that applies to other areas. This is a complex Bill and I do not want to destroy everything that we have done tonight by deleting more than is required in order to defeat the 90 day period of grace. I will seek to move an amendment to delete clause 9(2), but I want the Parliamentary Secretary to understand what I am attempting to achieve.

Hon JOHN HALDEN: There are two ways to achieve the Leader of the Opposition's end. One way is to go down the path that he has suggested. The other way is to change clause 9(2) so that the 90 days becomes 21 days. That would be a simpler amendment. I suggest that the Leader of the Opposition not defeat the clause but move to amend the 90 days to 21 days.

Hon GEORGE CASH: I understand what the Parliamentary Secretary is saying, and I have before me an amendment to page 8, line 9, to delete "90" and substitute "21". However, the Opposition sees that as the second best option. We do not agree with the concept of retrospectivity as it applies to this Bill. Indeed, my first aim is to delete clause 9(2), which would remove completely the question of retrospectivity. Were that removed, a member on this side of the Chamber would attempt to move that 21 days be substituted for 90 days. I am not happy with substituting "21" for "90" at this stage because that would be only second best. In order to cover fully the question of retrospectivity, we would need to delete clause 9(2) in its entirety. To change "90" to "21" would only reduce the period of retrospectivity.

Hon JOHN HALDEN: Although I am prepared to assist the Leader of the Opposition in regard to an amendment which he may or may not make, I do not agree with the two courses of action that are open to him. I again suggest to the Chamber that this is a simple matter about retrospectivity and equity. The retrospectivity allows for equity; namely, the retrospectivity will allow people who believe that they have been dismissed unfairly from this Parliament to make application to have their argument heard. The Government believes that those people should be given 90 days in which to make application because when we bear in mind the possibility of a considerable time delay, 21 days is probably not a suitable length of time to enable people to consider their options. If we do not have retrospectivity, clearly there will not be any equity, and if we do not have 90 days, clearly the degree of equity will be reduced considerably. Members on both sides of the Chamber would understand that people have made accusations that they have been dismissed unfairly, and this Bill provides an opportunity for those people to make that claim, have it heard appropriately, and have a decision made in an appropriate tribunal. If people choose that

option, put forward their case and take the appropriate avenue open to them, so be it, but let us not curtail people's opportunity to do that, because I suggest that were we to do so, people would take the opportunity of again criticising the Parliament. I do not think any member necessarily likes to see criticism of the employment policies of this Parliament, and I do not think any member would want to see continue that opportunity of criticising the Parliament. This is a once only offer of 90 days. After that, under the regulation it is the same for everybody; that is, 21 days. The Government is doing this for very special reasons. I suggest that members support the proposition put forward by the Government.

Hon J.N. CALDWELL: I direct my question to the Leader of the Opposition. If the Chamber decides to reject the proposition of 90 days, for how many days will staff have the right of appeal?

Hon GEORGE CASH: The intention of deleting the 90 days grace is to not allow any retrospectivity for those persons who are not presently covered by the Bills which were recently passed by the House. The problem has arisen because the Government had both Houses of Parliament agree in 1987 to amendments to the Industrial Relations Act which would have brought employees of Parliament House under the purview of the Industrial Relations Commission; however, that Bill was not proclaimed. The Government, with the 90 days grace provision in this Bill, is effectively trying to bring those people to account and allow them to lodge appeals about dismissals or terminations that may have occurred in the period from 1987 to today. The Opposition does not agree with that retrospectivity and believes it should be deleted from the Bill. As soon as the Bills which have just been passed are proclaimed, those people covered under section 29 of the Industrial Relations Act will have the right to make applications for events which occurred at any time in the past. Those people who are covered under section 80C of the Industrial Relations Act will be entitled to the 21 day rule, provided under regulation 25.

Hon JOHN HALDEN: I do not disagree with the comments made by the Leader of the Opposition. What will happen in such cases is that if the Opposition's amendment is supported, former salaried officers will have no right of access to appeal. The equity argument is that they have none. George is quite happy -

The CHAIRMAN: Order! We have official titles in this Chamber and I suggest the member uses them rather than only Christian names.

Hon JOHN HALDEN: Thank you, Mr Chairman. The current salaried officers will have 21 days to make an application, because that is covered under the appropriate regulations. However, wages staff will have no time limits placed on them at all. Therefore, wages staff members who were dismissed in 1950 could apply to have their dismissal heard now. That is what I refer to about the equity. It must be clear to members that the Government is providing different tiers of protection for people. I do not want to interfere in the member's line of questioning, but it must be made clear to people - and I am not suggesting in any way that the Leader of the Opposition attempted to mislead Hon John Caldwell - that is what it means in lay terms. Wages staff will be able to make claims for any time in the past but former salaried staff will not be able to make applications at all.

Hon REG DAVIES: I understand that this Bill encompasses a period of four years for people who consider they have been dismissed without due cause. Would the Parliamentary Secretary indicate approximately how many people this Bill will affect under the retrospective amendment?

Hon JOHN HALDEN: I am advised that four people will be affected by the amendment; however, there may be one or two more.

Hon GEORGE CASH: I move -

Page 7, line 11 to page 8, line 9 - To delete subclause (2).

Division

Amendment put and a division called for.

Bells rung and the Committee divided.

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

Division resulted as follows -

Ayes (12)		
Hon J.N. Caldwell	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon George Cash	Hon Murray Montgomery	Hon Margaret McAleer
Hon Max Evans	Hon N.F. Moore	*(Teller)*
Hon Peter Foss	Hon P.G. Pendal	
Hon Barry House	Hon W.N. Stretch	

Noes (13)		
Hon J.M. Berinson	Hon Tom Helm	Hon Bob Thomas
Hon Kim Chance	Hon B.L. Jones	Hon Doug Wenn
Hon Reg Davies	Hon Garry Kelly	Hon Fred McKenzie
Hon Graham Edwards	Hon Mark Nevill	*(Teller)*
Hon John Halden	Hon Sam Piantadosi	

Pairs	
Hon R.G. Pike	Hon T.G. Butler
Hon Muriel Patterson	Hon Cheryl Davenport
Hon D.J. Wordsworth	Hon Tom Stephens
Hon E.J. Charlton	Hon Kay Hallahan

Amendment thus negatived.

Hon GEORGE CASH: I indicated prior to the division that I would prefer that the retrospectivity aspect had been removed from this Bill. It is obvious from the vote that the Opposition does not enjoy support on the retrospectivity question and as such there is no purpose my asking for the Bill to be recommitted.

Clause put and passed.

Clauses 10 to 14 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon John Halden (Parliamentary Secretary), and passed.

LEGAL PRACTITIONERS AMENDMENT (DISCIPLINARY AND MISCELLANEOUS PROVISIONS) BILL

Committee

Resumed from 22 September. The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon J.M. Berinson (Attorney General) in charge of the Bill.

Clause 37: Section 34A inserted -

Progress was reported after Hon Peter Foss had moved an amendment on an amendment moved by Hon J.M. Berinson (Attorney General).

Hon J.M. BERINSON: Since our debate last night I have again considered the amendment proposed by Hon Peter Foss, but I remain unable to accept it. Mr Foss has repeatedly referred to his own and to his firm's procedures and experience in support of his proposals. That, of course, is perfectly proper and even helpful to some extent. I should perhaps make it clear that for my own part I rely on a broader base, namely the experience of the Barristers Board and, in particular, the advice of the Solicitor General, who has acted as chairman of that board for some years. The advice that I have is that the experience of the board in recent years has involved, firstly, a marked increase in the complaints of serious overcharging, and secondly, a marked increase in complaints about the unauthorised or doubtful application of trust moneys. I should stress that proposed section 34A is a direct result of the repeatedly

expressed concern of the Barristers Board to have stronger measures available to it to deal with actual problems which have come to its attention.

My own amendment reduces the scope of the original Bill in going to meet the point of the board's concern. Unfortunately, the effect of Mr Foss' amendment would be to go in precisely the opposite direction to the board's concern, and I stress again that that concern is based on the actual experience of the organisation, which historically has had the responsibility for the regulation and discipline of the legal profession. In other words, we are dealing with a concern by the Barristers Board for a firmer regulatory base and with a proposition by Mr Foss which would weaken the regulatory powers which the board already regards as inadequate. The burden on the profession of my amended section 34A would be well within reasonable limits and would involve little more in practical terms than already applies. Obligations would however be clearer than they currently are and that would be desirable in itself. The competing interest in this case must also be given proper weight and I refer to the interests of solicitors' clients.

What is involved here is modest enough. Notice of an intention to draw against funds held in trust cannot be regarded as unreasonable. That is required even now by the provisions of the code of ethics. It has been suggested to me in this context that there are additional considerations in favour of notice which cannot be defined too exactly, but which should not be ignored on that account. These include, for example, a disincentive to any tendency by a practitioner to be too ready to transfer funds from a trust account in moments of crisis.

As to the question of accounts being signed, Mr Foss' arguments on a theoretical basis are reasonable enough. The fact remains, however, that, on the advice which I have received on this aspect of the Bill, there are cases in increasing numbers where the board has found it important to have the provision for signed accounts available. Could I also say in this context that Mr Foss' complaint against the requirement for signed accounts is the only one that I have ever heard. As far as I can recall, not one other single practitioner has ever raised the issue with me. Moreover, I believe I am right in saying that the Law Society has never argued against the requirement for signed accounts and has not argued against it either in the course of its comprehensive submissions on other aspects of this Bill. This raises the possibility that Mr Foss' amendment in this respect is advancing a remedy in search of a problem.

I conclude with another comment on the extent to which Mr Foss has relied on his own firm's practice and experience. The problem here is that that firm, given its size alone, is far from typical, nor from the advice I have received do problems normally emerge in firms of that type. The problems are much more likely to come in respect of sole practitioners, or small firms who do not have the sophisticated technology and accounting staff to attend to the proper standards in the way that do very large firms. The associated fact is that these smaller practices collectively deal with a huge number and by far the greater proportion of clients. The balance, therefore, which members must now consider is the convenience of the procedures to be followed by legal practitioners on the one hand and on the other the interests of consumers which might well be jeopardised if we were to go down Mr Foss' path. That is the choice we have. I want to emphasise again that this is not a competition between Mr Foss' views and my views.

Hon Peter Foss: Of course it is.

Hon J.M. BERINSON: This is a competition between Mr Foss' views and the views of the Barristers Board.

Hon Peter Foss: The Law Society's views. You know this clause has been suggested by the Law Society.

Hon J.M. BERINSON: Not in respect of the signatures. I am sorry Mr Foss was not listening to me.

Hon Peter Foss: The signatures have nothing to do with it. There is nothing about any signatures in it. It does not refer to signatures.

Hon J.M. BERINSON: I am sorry Mr Foss was not listening to what I was saying.

Hon Derrick Tomlinson interjected.

Hon J.M. BERINSON: Mr Tomlinson can tell Mr Foss that there has been no submission

from the Law Society opposing the continued requirement for signed bills. That is the first point. In any event, I cannot for the life of me understand how Mr Foss can counter my -

Hon Max Evans: Brilliant argument!

Hon J.M. BERINSON: I would not have said that, but if Mr Evans says it, I would not deny it. I cannot understand for the life of me how Mr Foss can attempt to argue against my proposition that what I am advancing is the Barristers Board's view with an argument that is not the Law Society's view.

Hon Peter Foss: This is the Law Society's view.

Hon J.M. BERINSON: Okay. Mr Foss is advancing on this narrow question the views of the Law Society and I am advancing the views of the Barristers Board.

Hon Peter Foss: That is the point I was making. It is not, as you suggested, me against the world.

The CHAIRMAN: Order! It is very nice listening to this private debate between the two members. However, it would be a lot better if the whole Committee were involved.

Hon J.M. BERINSON: I was in the course of being modest and making it perfectly clear that, unlike Mr Foss, I was not relying to a large or indeed to any extent on my experience in this matter.

Hon Peter Foss: You could not.

Hon J.M. BERINSON: That is right, I could not. I am not at all embarrassed when Mr Foss points that out. I see no reason to be embarrassed. More than that, I feel the argument is better coming from the Barristers Board than from either Mr Foss or me, despite his experience. The reason for that is that it is the Barristers Board and not any individual practitioner or the Law Society which has had the responsibility for regulating and disciplining the profession and it is the Barristers Board therefore to whom I look for some indication of the problems which it perceives and which it would like to have addressed. We are not dealing with a huge issue here.

Hon Peter Foss: I am glad you recognise that.

Hon J.M. BERINSON: Why would I not recognise it. It is one of the reasons that I think that there really should be some limit to which Hon Peter Foss pushes his point of view.

Hon Peter Foss: No, there should be a limit to the point of view you push.

Hon J.M. BERINSON: Members can see why Mr Foss was a member of such a large firm. I am sure it found him irreplaceable. Anyone who can mouth an argument going in two directions virtually in the course of a single sentence has to be a very valuable member of a firm.

None of that changes the argument which I am putting. It is based fairly and squarely on the advice I have from the Barristers Board and particularly from the Chairman of the Barristers Board. That advice is based in turn on its experience and on the obligations which it has had to meet. That creates a view of this area which is quite different from the view of a practitioner, or of a firm or, for that matter, of the Law Society which is there primarily, it should be accepted, to represent the profession. The duty of the Barristers Board goes wider: To give primary importance to the interests of clients where there is a prospect or possibility of a clash between the two. That is what we are looking at here. I repeat, there has never been a proposition put to me by anyone, except Mr Foss, about the repeal of provisions relating to the signing of bills. I include in that the Law Society which, as I say, has not to my recollection ever raised the point either. True enough, the Law Society has looked to avoid the need for practitioners to advise their clients that they are actually drawing on trust funds. Frankly, I cannot accept the Law Society's view that a 14 day notice period somehow involves a serious problem with cash flows. Many businesses in this town would be only too delighted if they could rely on payment within 14 days. The proposal in this respect is not unreasonable; it is not burdensome. Apart from the fact that it specifies the period it does not change the current principle which under the Law Society's own code of ethics calls for advance notice that a trust account is to be drawn upon. In short, it is a reasonable and indeed modest proposal, and I urge the Chamber to accept it on that basis.

Hon PETER FOSS: I feel I should mention other than by way of interjection that the amendment I have moved was suggested by the Law Society itself.

The CHAIRMAN: At least your comments will be in order.

Hon PETER FOSS: To some extent the fact that Hon J.M. Berinson has relied on the advice of Mr Parker probably only compounds the fact that Mr Parker has never run a commercial business. He has always been involved, as far as I know, in the Crown Law Department, and I do not say that by way of criticism, but purely to point out -

Hon J.M. Berinson: Are you suggesting his experience on the Barristers Board would not make him very well aware of commercial practice?

Hon Max Evans: Yes, I do.

Hon PETER FOSS: It would have given him very little knowledge of what it is like to run a firm. I am terribly sorry, but that is all too true. What is more, one of the questions that arose before the Standing Committee on Legislation was the fact of the ex officio membership of silks on the Barristers Board. The Clarkson report suggested the Barristers Board should not have ex officio silks, one of the reasons being that for a long time now silks have been appointed only from the independent Bar, and are no longer members of a fused profession and they may be rather remote from the ordinary problems of the profession. For instance, the people who engage in litigation are a small part of the profession; those who go to the independent Bar are an even smaller part of the profession; and those of the independent Bar who take silk are an even smaller part.

The justification given by Mr Pullin as to why their presence was still justified was twofold: Firstly, nearly all of them had spent a considerable period of time working in a firm, and unfortunately that does not apply to silks who come out of Crown Law - they have absolutely no experience of running a commercial enterprise and of having to find their money and finance a business. Unfortunately, too few people in Government realise what it is like to be out there, especially in times like these, making a cash flow and being able to sustain a business. It is one of the reasons one asks people for money on account.

One of the main reasons for keeping silks is that they do provide a useful pool of necessary people on the disciplinary side, not so much because they are good at setting the rules for admission to the profession, or any other aspects, but because they are quite good at trying the facts. I do not have a great deal of time for Mr Parker's ability to know what it is like to run a professional practice. He would have absolutely no idea. I do not say that in any way to criticise him; I am pointing out an obvious fact.

One of the things the Barristers Board should be looking at in this case is not to go against the view of the Law Society, which I think is a good one, but to recognise that what I have proposed in respect of a firm such as the one to which I used to belong is a perfectly reasonable proposition. I think the Attorney General accepted that in relation to a firm such as mine. What the Barristers Board should be aiming for is not to bring firms such as mine back to Dickensian methods - in other words, to change them from a commercial to a non-commercial procedure - but to deal with those practitioners who do not have proper procedures. It is not difficult to get those proper procedures now; anyone can buy a computer. I have one here which is about the size of a book and it would be able to do all of this work easily. The fact is there are practitioners out there who do not run their practices properly.

Hon J.M. Berinson: I ask you seriously what you find uncommercial about a requirement for a practitioner to advise his client before he takes his money.

Hon PETER FOSS: It is uncommercial because it requires, first of all, that when he is sending out a bill he must look to see what money he has, he must send the bill and advise the client, he must put through another accounting transaction later on when the money has gone, and then another to transfer that money.

Hon J.M. Berinson: Surely your computer could automatically process a transfer after 14 days?

Hon PETER FOSS: Now come on, Mr Berinson; we do not have any automatic transfers of trust funds. The only trust transfers we make are those ordered to be made by partners.

Hon J.M. Berinson: What I am saying is perfectly consistent with that.

Hon PETER FOSS: I do not think it is.

Hon J.M. Berinson: Of course it would have to be authorised to take place at a date when it could reasonably be assumed that the client had had notice it was going to happen.

Hon PETER FOSS: One gives notice so that the client can tax one's bill if he does not like it; whether one has transferred it then makes no difference. The client knows that is what one will do with it because that is why one received the money in the first place. The first thing to happen is that it is authorised by the client according to the terms under which the money is held under the control of the practitioner. The practitioner received the money from him on the basis that the practitioner was intending to use it to apply towards his costs and disbursements. It is only because of the legal practitioners Act that a practitioner does not put the money in his general account. If it were anybody else but a lawyer, such as an accountant, an architect or a builder, and the person had these moneys in on account, he would stick it in his general account. Only practitioners are required to put the moneys in trust accounts.

Hon Max Evans: They are actually fees in advance.

Hon PETER FOSS: Practitioners are already subject to a disability because they are lawyers; they cannot use that money. Everyone else is entitled to use that money for his cash flow in order to carry out his business. Practitioners have actually to complete the business and send out a bill before they are entitled to transfer the money.

Previously I explained that out there in the real, commercial world, generally speaking lawyers have paid their tax and the provisional tax on a profit they have not actually received from the client. The fact is that lawyers have placed on them sufficient strictures because of this Act. A practitioner might say, "Can I have the money in on account of the costs, and when I have done the work I will send you a bill and debit you for it." The client still has the right to tax the bill. He does not even have to sue the practitioner; he can go along to the taxing master and tell him that he does not like the bill and would like him to have the practitioner justify it. The taxing master taxes, and if he does not like it he writes it down and the client is entitled to have that money back again. The clients are perfectly well protected. In my firm, I would certainly not like a partner to authorise something that was to happen 14 days from now. I would like to know right now that it was all right, and then I would authorise it. That is a proper business practice. I would not like to have it done automatically by computer 14 days later because of something I had done 14 days earlier.

What the Attorney is proposing at the suggestion of the Barristers Board has been proposed by people who have never had to run a business and do not know how to run a business commercially.

Hon J.M. Berinson interjected.

Hon PETER FOSS: I suspect the Attorney General's advice has come from the Solicitor General, though.

Hon J.M. Berinson: That is where it has come from directly, but I am sure you are not in a position to say that it does not represent the view of the Barristers Board as such.

Hon PETER FOSS: I am sure the specific matters the Attorney has raised have been raised only with the Solicitor General, not with the Barristers Board.

Hon J.M. Berinson: The whole of this Bill has been raised with the Barristers Board as a whole.

Hon PETER FOSS: The fact remains that what the Attorney is wanting to do is the reverse of what the Barristers Board should do.

If the Barristers Board wished to overcome this problem the best way to do that would be to raise the accounting standards of all members of the profession. If anything, the Attorney General should be thinking of requiring the profession to have a proper system of accounting which makes it easier for its members to comply with all these requirements. If that is done, rather than taking to the firms - that is, the majority of the Law Society's representatives who do these things properly - and trying to bring them back to the age of Dickens, these sorts of problems will not arise.

Hon MAX EVANS: I have had a lot to do with managing my firm during my professional life. I have also managed a large legal firm in Perth. The average chartered accountant or lawyer has little knowledge of how his firm runs. Mr Foss and I have compared notes on this subject as we have both had a lot to do with the administration of our firms. His firm is bigger than mine, which at one stage employed 100 people. I know a number of people who have gone to the Bar who did not have a clue about how their firm was run. A long time ago I used to give papers on running an accounting practice. I was one of the first people in Australia to do that both here and in the Eastern States.

I remember Jock Morrison, the head of Boans whose father's firm was Rank and Morrison, asking me whether we had a proper accounting system because all he used to get was a piece of paper at the end of the year with the instruction to put it in his tax return. That was all most partners knew about running their firms. A lot of these approaches need changing.

A similar problem arose some years ago which the Attorney General may recall. The Institute of Chartered Accountants backed the Attorney General in his approach that all annual returns should be lodged by 31 October. Most of the people on the national board of the Institute of Chartered Accountants are auditors who have never prepared annual returns and who think there is no difference between lodging a return on 31 October and 31 January. The problem is that only 50 per cent of returns are ready to be done then. I started a wave throughout Australia to change that. Many people who make these rules and regulations do not have their hands on in the profession. One should consult with people who have done these things in larger firms.

Years ago the trust accounts of real estate agents had to be kept in bound receipt books and it took years to change that system to the Kalamazoo loose leaf system. It was difficult to change because the system said that they had to have bound receipt books because of the rules set by some galah years before when people were making only a couple of sales or had a couple of rental properties and their entries could be written in a bound book. I go along with Mr Foss that people must have hands-on experience in this area. I know quite a few barristers who are now judges who were not the best at administration and we had to sort them out. Things should be made simpler and easier.

The Attorney General knows that in his profession as a pharmacist people have had to change many things, but there is still too much paperwork involved. This problem should be reduced because it is already hard enough for people to make a living in these professions. We are talking about getting money out of trust accounts in 14 days. People are not waiting only 14 days because some work has taken six or nine months to complete. Accountants, lawyers and architects build up huge fees over six or 12 months and when they finish they hope they get paid. As a result of the Henderson case as soon as a fee becomes recoverable it became taxable. If someone gets all their fees rendered at the end of June and they are not paid quickly they end up in next year's tax return. To say that one should only have to press a button to transfer money from a trust account to a general account using a computer frightens me as we know what computers can do. That any money could come out of a trust account automatically in 14 days is quite frightening.

Hon J.M. Berinson: I was not intending to pursue that interjection.

Hon MAX EVANS: Big practices have big overheads and fees and their programs involve tens of millions of dollars. A lawyer cannot get an interim fee and must stick his money in a trust account. Chartered accountants can get their fees quarterly, half yearly or at some time and spend it. We must apply a bit of commonsense in this case.

Hon FRED McKENZIE: I have heard the lawyers and accountants arguing this matter. They know the high regard in which I hold them and their professions. However, I am also aware of the fees they charge and the complaints I get from consumers. I stand here as a consumer. Mr Berinson said to the Chamber that this was not a competition between him and Mr Foss. After listening to the debate I believe it is a matter of whether one takes the side of the Law Society or the Barristers Board. I am on the side of the board, which puts me on side with Mr Berinson.

People should take note of what the Barristers Board says. People who complain about lawyers have quite often been to the Law Society because they are confused. They do not know that the Barristers Board is the proper place to register a complaint so that it may be

heard properly. People say to me that they have been to the Law Society but they are dissatisfied, so I refer them to the Barristers Board. We know that the proper adjudicator of a dispute between a client and his lawyer is the Barristers Board. If the board suggested this method of billing and the Attorney General is supporting that suggestion because of the advice given to him, we should all follow that course. It is as simple as that.

I am representing consumers as I see many of them in the community. I have no interest in either the legal profession or the accounting profession, but I do have an overall interest in this matter. The bulk of the people who come to see me with a complaint about a lawyer I send to the Barristers Board. If the board has advised the Attorney General that this is the way to go, he has my support.

Hon PETER FOSS: It was touching to hear Mr McKenzie's belief that the Barristers Board is a consumer organisation. It would be more accurate to say about it, and about the chairman's attitude in particular, that its approach is what is the easiest way for it to prove the case against a particular practitioner. That is my complaint. I am quite happy to recognise that the Barristers Board has a particular outlook on life. I do not believe that is a consumer outlook. It has the problem that it is a prosecutor. In such circumstances it is of no benefit to the consumer but will involve considerable costs in the end because of the way its business is carried out.

Division

Amendment on the amendment (words to be deleted) put and a division called for.

Bells rung and the Committee divided.

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

Division resulted as follows -

Ayes (13)

Hon J.N. Caldwell	Hon Barry House	Hon W.N. Stretch
Hon George Cash	Hon P.H. Lockyer	Hon Derrick Tomlinson
Hon Reg Davies	Hon Murray Montgomery	Hon Margaret McAleer
Hon Max Evans	Hon N.F. Moore	*(Teller)*
Hon Peter Foss	Hon P.G. Pendal	

Noes (12)

Hon J.M. Berinson	Hon B.L. Jones	Hon Doug Wenn
Hon Kim Chance	Hon Garry Kelly	Hon Fred McKenzie
Hon Graham Edwards	Hon Mark Nevill	*(Teller)*
Hon John Halden	Hon Sam Piantadosi	
Hon Tom Helm	Hon Bob Thomas	

Pairs

Hon R.G. Pike	Hon T.G. Butler
Hon Muriel Patterson	Hon Cheryl Davenport
Hon D.J. Wordsworth	Hon Tom Stephens
Hon E.J. Charlton	Hon Kay Hallahan

Amendment thus passed.

Amendment on the amendment (words to be substituted) put and passed.

Amendment, as amended, put and passed.

Clause, as amended, put and passed.

Clauses 38 to 47 put and passed.

Clause 48: Section 65 amended -

Hon PETER FOSS: I move -

Page 68, lines 24 to 28 - To delete all the words after the word "practitioner".

This is the other end of the argument we had before. I do not propose to add anything further.

Hon J.M. BERINSON: I accept also that the die is cast on this issue by the decision which the Committee has just made. I can at least make it clear however that, if anything, the deletion of the requirement to sign an account at this point is even more undesirable than in respect of the new provisions in section 34A. But having said that, I see no point in again going through the reasons for that. I emphasise again that the passage of this amendment would be entirely contrary to the views of the Barristers Board.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 49 put and passed.

Clause 50: Section 68A amended -

Hon J.M. BERINSON: I move -

> Page 72, lines 16 and 17 - To delete "deceased or incapable; or" and substitute "deceased, incapable or insolvent;".

Clause 50 is to amend section 68A of the Act which deals with persons entitled to have costs taxed. The clause presently refers to a person authorised to administer the estate or affairs of a person who is deceased or incapable but does not refer to a person who is insolvent. That deficiency is remedied by the amendment. The Law Society requested the addition of a provision entitling a beneficiary of a trust estate or fund, against which costs may be chargeable, to have the costs taxed. That amendment is included here.

Hon PETER FOSS: I support the amendment. The wider we can place the opportunity for people to challenge lawyers' fees, without going to court to do so, the better - in particular, even the people who are not contractually bound to pay fees. It was always a problem area whether a person could be charged and how far it went. Obviously it included the person who had to pay the fees but it usually meant the person had to pay by agreement with the person contracted by the lawyer. The broader this is, the better, because it is a quick, simple and cheap way for a person to challenge the amount of the lawyers' fees. We accept the amendment.

Hon J.M. BERINSON: I should clarify my earlier comments by indicating that they relate to both the amendment circulated in my name to lines 16 and 17 at page 72, and to line 20 at page 72.

Amendment put and passed.

Hon J.M. BERINSON: I move -

> Page 72, line 20 - To delete the comma and substitute the following -
>
> ;or
>
> (iv) a person who is a beneficiary of a trust estate or fund against which costs may be chargeable;
>
> Page 72, line 26 - To delete "deceased or incapable or" and substitute the following -
>
> deceased, incapable or insolvent or who is
>
> Page 73, lines 8 and 9 - To delete paragraph (e) and substitute the following -
>
> (e) at the end of paragraph (d), by inserting the following -
>
> and

This last amendment is to correct a small drafting error.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 51 to 54 put and passed.

Clause 55: Amendments, by way of revision -

Hon J.M. BERINSON: I move -

Page 92, lines 8 to 26 - To delete the provision relating to section 68A.

This amendment also is to correct a drafting error. The words to be deleted are provided in clause 50.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 56 put and passed.

Clause 57: Section 4 amended -

Hon J.M. BERINSON: I move -

Page 100, line 15 - To delete "that Part of that Act" and substitute "Part IV of the *Legal Practitioners Act 1893*".

This amendment is to correct reference in the original Bill to the wrong Act.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

ACTS AMENDMENT (JURISDICTION AND CRIMINAL PROCEDURE) BILL

Second Reading

Debate resumed from 26 August.

HON J.M. BERINSON (North Metropolitan - Attorney General) [9.22 pm]: I welcome the support for this Bill by the Opposition. That was conveyed by Hon Peter Foss who, however, in the course of his speech expressed a number of reservations. I will deal with them in turn: He asked, firstly, whether proposed section 570A would allow an examination of interview videotapes to check them for possible alteration. In the event of a challenge to the authenticity of the videotape an accused person will be able to apply to the judge under section 570F for permission to supply the tape for scientific examination. No difficulty is anticipated with this provision provided that the people who examine the tape undertake to return it on completion of examination. Section 570D requires the videotaping of admissions in serious cases. It was drafted with the cost of implementing the system in mind. The mandatory provisions under section 570D(2) apply only in relation to indictable offences that are not triable summarily. These are obviously offences of the greatest seriousness. It is important to note that this provision does not preclude the videotaping of confessions in other cases and it is anticipated that in most cases the police will in fact also use videotapes when dealing with indictable offences which are triable summarily. However, indictable offences triable summarily, whether at the election of the accused or of the prosecution, are not made subject to the special and effectively mandatory provisions of section 570D(2).

Hon Peter Foss queried also whether section 570D might not apply at all to offences in the Children's Court because all charges in that court are tried in a summary manner; that is, without a jury. Pursuant to the Criminal Code some of those offences are indictable offences which are not triable summarily. Murder is one obvious example. Notwithstanding the code, however, such offences are tried summarily in the Children's Court because the offender is a minor. Proposed section 570D(1) defines "accused person" to be a person charged with an indictable offence that is not triable summarily. This definition is intended to include a child charged with an indictable offence not triable summarily even when the case is in fact dealt with summarily in the Children's Court. If it is tried in the Children's Court it will be dealt with summarily as if it were a trial on indictment. This follows from section 19B(4)(c) of the Children's Court of Western Australia Amendment Act (No 2), which provides that "The court shall, subject to the provisions referred to in section 19(1) hear and determine the charge as if the complaint were an indictment and the hearing were a trial of indictment and the Criminal Code shall apply with such modifications as the circumstances require; but the child is not thereby entitled to have any issue tried by a jury."

Hon Peter Foss also suggested that all admissions by children should be videotaped. While

the force of that suggestion is understood, it would be quite impracticable to attempt to implement it. The arrangement proposed for the videotaping of confessions is that all CIB offices in Western Australia will be equipped with appropriate videotape recorders, but ordinary police stations will not. Admissions made by children extend over the whole range of offences and are concerned in the great majority of cases with offences at the lower level of seriousness. In these circumstances, it would simply not be practicable to provide that all admissions made by children should be videotaped. It would involve a tremendous and unjustified expense for the system to be extended so far and that would be the case both for the required new equipment and of the additional relevant police manpower.

In summary, while a concern for the protection of juveniles is appropriate, there is here, as in many aspects of the law enforcement system, a need for a proper and sensible balance.

Hon Peter Foss also referred to section 570(D)(3), which provides that subsection 2 does not apply to an admission by an accused person made before there were reasonable grounds to suspect that he or she had committed an offence. Again, it is only fair to acknowledge that the section can raise the sort of problem to which Hon Peter Foss referred. However, it would again be impractical to provide otherwise. When the police attend the scene of a crime - there may, for example, have been a death or serious injury at a party - it is often necessary for the police to interview a range of people, each of whom may in theory be a suspect. In a recent case there were about 40 people at a party where a death occurred. When the police arrived, they had no idea who had caused the death. They therefore set about interviewing all 40 people, or such of them as they could obtain information from, in order to ascertain who was the alleged offender. It would not have been possible for all interviews to be videotaped in those circumstances. Most of them, in any event, were irrelevant to the subsequent case.

Hon Peter Foss also asked why the Commissioner of Police would need to get back videotapes from an accused person after a trial and any associated appeal processes have been completed. The major reason for this provision is the concern of the police that the retention of the videotapes in the community could result in interviewing police officers being more readily identifiable by criminals. Unlike records of interviews or statements, a videotape provides a visual image of the police officer who is conducting the interview, and experience has indicated that police officers can be put at risk as a result. This problem was strongly put by the police when this proposal was first considered and it was mainly to safeguard the interests of police officers that the regime proposed in this legislation was developed.

Another matter which was raised in the second reading debate was proposed section 19B, which requires the court in sentencing remarks to particularise the discount that has been given for an early plea of guilty. The purpose of this proposed section is to encourage offenders to plead guilty at an early stage on the basis that they would know the "discount" that could be available. A provision of this kind, which almost always appears in modern sentencing Statutes, is obviously not designed to make people plead guilty when they are not, and there is no reason to expect that result.

Hon Peter Foss also questioned why the fourth schedule is repealed. The fourth schedule contains forms used under the Act. There are 71 forms and most are not used. They clutter up the Act and cannot be readily amended because they are in the Act and not in the regulations. The clause repealing the fourth schedule will not be proclaimed until new forms are prescribed in regulations.

Schedules 5 and 6 have been omitted from the current reprint as they are spent schedules. Because they are omitted, they are not repealed. The amendment formalises the repeal of these schedules.

I hope that I have commented, even if briefly, on each of the matters that were raised in the second reading debate. I also draw the attention of members to amendments to this Bill which have been circulated in my name. Needless to say, I will not attempt to go into detail on them now, but it might help if I indicate that although the amendments are fairly lengthy they really come down to a couple of relatively clear propositions. The first one relates to the recently announced decision by the Government to allow video linking to replace, in appropriate cases, the actual physical appearance of remand prisoners on the regular eight day remands.

The second lengthy set of amendments relates to the provisions in the Bill which deal with the attempt to firm up the capacity to enforce the payment of fines by the confiscation of goods in appropriate cases. Without going into detail, one of the weaknesses of the present work and development order is that, contrary to the original intention of that system, advantage has been taken by offenders who are subject to fines to avoid the payment of them, even though they can afford the cost, by simply opting for work and development orders instead. The work and development order system was established to meet the need of offenders who are subject to fines and who do not have the financial capacity to pay them. It was never intended to be a means of allowing offenders to opt out of obligations imposed on them by the court as a proper sentence in a particular case.

We will, of course, consider these amendments in detail during the Committee stage, but I thought it might be of some assistance to indicate the purpose of them now so that any comments members might wish to make could be developed against the reasoning behind them. With those remarks I again thank the Opposition for its support of this Bill and I commend the second reading to the House.

Question put and passed.

Bill read a second time.

MOTION - SELECT COMMITTEE ON *BATAVIA* RELICS

Appointment

Order of the Day read for the resumption of debate from 2 September.

Question put and passed.

Point of Order

Hon J.M. BERINSON: Mr President, I think there has been some misunderstanding of the procedures.

The PRESIDENT: The question has been put and agreed to.

Hon J.M. BERINSON: I suggest we look to some way to remedy the situation which precludes one or two members from speaking on this motion. Mr President, I am sure you would know a way of achieving that end, even though I do not.

Hon P.G. PENDAL: In the normal course of events there will be a second motion moved to appoint the membership of the committee and as it is a debatable motion I wonder whether it will provide Government members with the opportunity to express their views on the substantive matter.

The PRESIDENT: It does not. The way to overcome it is to give seven days' notice to repeal the decision.

Hon J.M. BERINSON: I was trying to accommodate a few members on the other side of the House to expedite this matter, but I was not planning to expedite it this far. As I understand it, any comment on this matter would be fairly limited. Mr President, would it be in order to seek leave to allow Hon Kim Chance to speak on this matter despite the motion having been carried?

The PRESIDENT: I would have to rule that that is not in order because the question has been determined. Therefore, there is no provision for any member to speak on it now. The subsequent motion which Hon Phillip Pendal spoke about is for the appointment of the membership of the committee. Even in that debate I would find difficulty in accommodating the Attorney's request. The point about it is that if the question is not going to be opposed I cannot see the point of wanting to do anything. If it is going to be opposed there is a procedure clearly set out; that is, that seven days' notice be given in order to repeal that decision. If I am being asked to accommodate a member simply because he did not get the opportunity to say something, I cannot do it.

Hon J.M. BERINSON: Following up Hon Phillip Pendal's question, it might be in order on the motion for the appointment of the members for one or other of the members to indicate why they are prepared to support that motion. Time will tell.

MOTION - SELECT COMMITTEE ON *BATAVIA* RELICS

Appointment

HON P.G. PENDAL (South Metropolitan) [9.41 pm]: I move -

> That the Hons P.G. Pendal, Kim Chance and Derrick Tomlinson be appointed to serve on the committee and that the chairman be Hon P.G. Pendal.

HON KIM CHANCE (Agricultural) [9.42 pm]: I am pleased to support the motion introduced by Hon Phillip Pendal. In doing so I recognise the long held aspiration that Geraldton people have had that one day the *Batavia* will return to the region which has adopted that vessel's name as a focus for its tourist promotion.

The Batavia Coast is an evocative name, a reminder that long before recognised European settlement of Australia other European and Asian cultures were aware of our vast continent, had landed here, and had hunted, fished and restocked their water supplies in Western Australia. Europeans and Asians had met and communicated with Aboriginal Australians and, presumably, some had remained and assimilated with Aboriginal people. There is considerable evidence of that.

The name and the relics of the vessel *Batavia* have also told us a story of an incredible incident which occurred on Houtman Abrolhos so many years ago. It is a story of such cruelty and ferocity that the people who unfolded it piece by piece, bone by bone, must still be haunted by it. The Batavia Coast claimed many other victims, in addition to the *Batavia*. Vessels travelling eastward on the roaring forties frequently underestimated the distance they had travelled and left their northward run to Java too late. Before regaining their bearings some vessels ended their days on the uncharted and treacherous reefs, and the towering cliffs of the mid-west coast. In much the same way as the Skeleton Coast off Namibia, the Batavia Coast was a place feared and dreaded by seamen of the day.

The discovery and recovery of the *Batavia* relics is a story in itself, and Geraldton people strongly identify with the events that led to this remarkable piece of Western Australian history. While it is acknowledged that perhaps no facilities exist in Geraldton which would be suitable for the proper housing of the *Batavia* and its relics at this stage, I believe it is appropriate for a Select Committee of this House to determine the facts surrounding the recovery of the vessel and to give the people of Geraldton the opportunity to voice their opinions on the preferred future location of those relics. I commend the motion.

HON P.G. PENDAL (South Metropolitan) [9.44 pm]: I thank the member for his support, albeit by a circuitous route. It is the intention of the committee that the matter be dealt with quickly and, in fact, I have already informally indicated that it would be ideal for evidence to be taken in Perth from museum and other officials in the week commencing 5 October. The committee would then move to Geraldton where a number of local people with an interest in the matter want to be heard. I want this matter brought back to the Parliament as quickly as possible because it is seen as a pressing concern on the Batavia Coast. I thank the House for its support of this measure.

Question put and passed.

APPROPRIATION (CONSOLIDATED REVENUE FUND) BILL

Consideration of Tabled Paper

Debate resumed from 22 September.

HON KIM CHANCE (Agricultural) [9.46 pm]: Prior to the adjournment last night, I had almost completed my comments with regard to the failure of a company in my electorate and the consequential damage which is affecting farmers who supplied that company. I did not name the company concerned in this place for two reasons; firstly, I am not convinced that the use of parliamentary privilege should be employed simply because it is there and, secondly, in raising the matter I have been conscious of the need to take care that no action of mine will contribute to any prejudice which may be a handicap to discussions between the parties concerned. I express my appreciation to Hon Peter Foss and Hon David Wordsworth who gave me advice following last night's adjournment, and Hon Julian Grill who assisted me prior to that. I am grateful for the interest shown by all members in the matter. I hope I will have the opportunity to report to this House further on the matter as developments occur.

On a brighter note, I share with honourable members my impressions of a day I spent recently with the central west coast tourism development committee. This committee is made up of people from Jurien and Cervantes who have an interest in tourism, together with members of the Dandaragan Shire Council. It is working extremely well in promoting the tourism potential of the area known as the central west coast, which includes Jurien and Cervantes. The balance of the area includes the coastal towns of Lancelin to the south, in the shire of Gingin, and Green Head and Leeman to the north. This coastal area, which is well known to Hon Margaret McAleer, is one with which I have not been very familiar. As a result of the kind hospitality of the central west coast tourism development committee which took the time to give me a thorough tour of the attractions of that part of the region, which included just a part of the Dandaragan and Coorow Shire coastal plain, I am now not only better informed but also very impressed with the region's potential.

When I was in Jurien earlier in that same week and said I would be returning to Geraldton that afternoon, I was told of a shorter route which took me to Leeman and thence up the coast road to join the Brand Highway about 30 km before Dongara. It is literally a coast road. It winds through the sand hills a very short distance from the beach, and in rocky areas the road is on the shoreline. After the mind-numbing boredom of the hours I have travelled on the Brand Highway - excellent though that highway is - travelling on this road was a real pleasure. The central west coast tourism committee and the Shire of Dandaragan are seeking assistance to meet their aim of constructing a tourist road of this type from Cervantes, through Jurien to link with the Leeman to Brand Highway road.

Hon Derrick Tomlinson: Is that past those infamous squatters' shacks?

Hon KIM CHANCE: I am glad Hon Derrick Tomlinson mentioned the squatters' shacks, and I will address that in a moment if I may finish this subject. The ultimate aim of the shires is that the coast road will also extend southwards from Cervantes and connect with Lancelin and, thus, direct to Perth via Yanchep and Wanneroo.

The current cost of building this road to a good bitumen standard is about $20 million and to a good gravel standard about $6 million. While there will be a small difficulty in this road's circumnavigating some Commonwealth land just north of Lancelin that is used as an ordnance range, the engineering of the road is relatively simple. The cost of building the road would quickly be returned in tourist dollars because it would make the area more accessible and the amazing potential of the region could be appreciated by a greater number of people. To put that $20 million in perspective in a tourism context, that is almost exactly the amount that was spent last year by recreational tourists in Western Australia on caravan park fees alone.

I support strongly the aims of those hardworking people, who are a credit to the Shire of Dandaragan. I hope I will be able to play a part in assisting the commitment to build this road, which will be the most effective contribution to Western Australian tourism that I can imagine, not only because it will service the region, but also because it will provide a valuable tourist link from Perth to the Midwest and will separate the Brand Highway commercial traffic from the traditionally slower tourist traffic.

Since Hon Derrick Tomlinson raised the question of the squatters' shacks, one of the reasons that the Shire of Dandaragan is so keen to develop the road is so that it can better manage the squatters. The Shires of Coorow and Carnamah have found that the coast road which exists through those shires makes it easier for them to manage the squatters because it will enable ready access to the squatters' shacks. The Shire of Dandaragan, which I am told has the bulk of the squatters' shacks, has virtually no access to those shacks because access from Cervantes to Jurien can be gained only by going well off the coast and then returning to the coast.

I have not mentioned that the road will provide a huge saving in local travelling time between those two towns in the Shire of Dandaragan. I believe that the distance amounts to about 37 kilometres. I commend the motion to the House.

HON P.G. PENDAL (South Metropolitan) [9.52 pm]: I support the tabling of the Estimates of Revenue and Expenditure papers. In the course of my remarks I will touch on a number of subjects, including the state of the finances of Western Australia; the recent controversies that have surrounded the Christian Brothers teaching order in Western

Australia; the concern that has been expressed about the reversal of the recommended sequence for the approvals for the Ellenbrook urban development; and, finally, my concerns about the direction that is being taken in respect of an environmental appeals mechanism.

In making my remarks about the state of the finances of Western Australia, it is necessary for me to go no further than the remarks made by the Federal Treasurer when he commented upon the recklessness with which the Western Australian Government has handled its finances. It should come as no surprise to members of this House or, for that matter, to the long suffering taxpayers that Western Australians have been subjected to an unparalleled period of reckless and ruinous behaviour by the Government. In May this year, the Federal Treasurer put some respective on that, when he was accused of making ungenerous comments about his State counterparts, when he referred to the State Government's having squandered millions of dollars. That was his response to the Premier's request that the State be given a greater share of the Federal largesse. The only matter on which I take issue with the Federal Treasurer is that Mr Dawkins is somewhat wide of the mark financially, and that is a bit of a worry, given that the national economy is in his hands. Mr Dawkins talked about the squandering of millions of dollars by the Governments of this State in the 1980s, but he vastly understated the recklessness to which I have referred. At last count, we would have been looking at in the order of $1.5 billion. That is far greater than the ruin that Mr Dawkins acknowledged when his remarks were quoted in *The West Australian* on 9 May this year.

I turn now to the serious and sad situation that confronts the Christian Brothers in Western Australia. In a way, we have seen something of a phenomenon this year that may see this week set aside as "Kick a Mick Week". That is not, incidentally, without some justification. The Catholic Church happens to be a huge and benevolent organisation.

Hon Garry Kelly: Are you talking about Boys Town?

Hon P.G. PENDAL: I will be. If things happen not to be right in an organisation when they should be right, then it is understandable that there is probably disquiet about people's conduct. However, I have become a bit fed up at the critics of the Christian Brothers in Western Australia, given that for the last 160-odd years, Western Australia as a society has bled dry the services of Catholic institutions that were among the few to minister to outcasts in our society. I remind members not only of the historical context but also of the fact that those services are continuing to this day. Thousands of priests, nuns and brothers have devoted their lives to lepers, drunks, orphans and rejects, at a time when those people were abandoned by most sections of society, including successive Governments. The efforts of those people are unquestionably being denigrated because of an errant few.

When the State Governments of the 1930s did not want to know about the lepers in the Kimberley, the only people in society who stepped in to help - in this case at Derby - were the nuns of the St John of God order. When typhoid and other shocking living conditions were killing young people on the Kalgoorlie goldfields, and one has only to look at the tombstones at the cemetery to see the effect that had in a short period throughout the 1890s, it was a Catholic order of nuns that came to the town, if it could be called a town at that time, and gave practical Christianity to people whose illnesses in fact threatened the lives of the people who went to minister to them.

Back in the 1860s people were trying to make ends meet and the colony could not afford to look after its orphans. I remind members that it was the Catholic Church which was sponsoring and taking care of those rejects of society. This is perhaps closer to home to most of us than the typhoid and leprosy cases, which are a little remote. The Catholic education system in this State since 1846 has relieved society of the burden of educating one quarter of its children.

Hon Garry Kelly: Are you a product of it?

Hon P.G. PENDAL: I was going to come to that. I was a product of the Christian Brothers' education, and I know it will induce the member to say, "Yes, it shows."

Hon Derrick Tomlinson: You are one of those who relieved the burden of education.

Hon P.G. PENDAL: Some would say that I was relieved of the burden of any education. However, the Catholic hospitals and school system to which I refer were operated by the Catholic Church and were open throughout this period to all comers, whether they were Catholic or non-Catholic. Many members in this Chamber benefited from that.

I feel used, as many Catholics in this community feel used, when society, which benefited hugely from the majority of the priests, brothers and nuns, has turned in judgment because of the alleged actions of a few. I am sure that some misfits crept into the priesthood and the religious life of the Catholic Church. The bad apple syndrome is as old as time itself. Those who know their *Bible* history from a Christian perspective will know that our friend Judas was only the first weak link. To the extent that misfits creep into the system, I do not condone their actions and neither does the Catholic Church.

Referring to Mr Kelly's interjection, throughout my formative years - whatever members may think of the ultimate product - I was treated kindly by the nuns of the Sisters of Mercy, the Marist Brothers, and more recently the Christian Brothers. I received the strap pretty regularly, but when I look back it was mostly thoroughly deserved.

Hon George Cash: And inadequate!

Hon P.G. PENDAL: I know that Mr Cash finds that hard to believe.

Hon Garry Kelly: Haven't many people been mistreated and had nowhere to turn for many years until these stories came out?

Hon P.G. PENDAL: I am not saying that what some of those people say is not perfectly accurate -

Hon Garry Kelly: It may not be accurate, but they had nowhere to go.

Hon P.G. PENDAL: However, it has been for too long a one-sided argument. These people have provided a service which no-one else wanted to provide, and in a general sense have been condemned because of the actions of an errant few.

Hon E.J. Charlton: This was in an era with a great deal of heartache and hardship and with hard, punishing lifestyles right throughout society.

Hon P.G. PENDAL: That is correct. The conventional wisdom at the time of my childhood would today be regarded as socially unacceptable; today it would be frowned upon and in some cases looked upon with abhorrence. The administration of corporal punishment is such an issue. I am 45 years of age -

Hon E.J. Charlton: Is that all?

Hon P.G. PENDAL: I know that it comes as a surprise to the member. In my school days corporal punishment was handed out liberally. A child was given a clout whether he or she was at home or school, and the idea of spanking children was the conventional wisdom. As a parent with children in their late teens or early 20s, I have administered some of that discipline and it has not done anyone much harm.

Hon Derrick Tomlinson: You are not suggesting that some of the things complained about at Castledare, Clontarf and Bindoon were not justified?

Hon P.G. PENDAL: Mr Tomlinson will know that I said that the misfits and misdeeds which crept into the system should be dealt with. One of the positive things to arise from this exposure has been the opportunity for people - provided they did not go overboard - to demand the high standard of others which they demand of themselves. Ultimately, I believe these people became their own harshest judges.

Hon E.J. Charlton: Instead of it happening in schools now, it is happening in the home. Instead of belting the children, they are belting each other. I refer to the minority of cases, as with the matter to which you refer.

Hon Tom Helm: What a silly thing to say.

Hon E.J. Charlton: That is good coming from you, boofhead.

The DEPUTY PRESIDENT: Order!

Hon P.G. PENDAL: I come to their defence without condoning any misconduct, particularly in an organisation which demands high standards of others. More drunks, rejects and poor children were cared for, and continued to be cared for, by these organisations -

The DEPUTY PRESIDENT (Hon Doug Wenn): Order! I see that Hon Tom Helm and Hon Eric Charlton have moved a little closer together to speak to each other. They should keep their conversation level down.

Hon P.G. PENDAL: These people were cared for daily by those Catholic institutions, which helped more people than any other non-Government or Government organisation in this State, and I dare say in this country. I repeat, no-one can condone the wrongdoing, but neither should the actions of those few wrongdoers obscure what has been selfless and even heroic work. The Catholic institutions would look after the battlers when many others preferred to turn a blind eye to those same unfortunate people.

Like other members, I received an approach by the President of the Clontarf Old Boys' Association, Maurice Whitfield. I shall briefly read into the record the horror with which the old boys' association regarded the criticism of the Christian Brothers as though that behaviour was the norm. For thousands of students across this State, many of whom were in the categories to which I have referred, the Christian Brothers was the only source of real and legitimate affection which they had ever received. The letter reads -

> We, the Committee of the Clontarf Old Boys Association, all ex-pupils of Clontarf, write this letter because of the recent spate of articles attacking the Christian Brothers and their work in their institutions namely: Clontarf, Castledare, Bindoon and Tardun.
>
> We are disenchanted by accusations which have been made and then taken up strongly by the media and given excessive coverage. When our President objected to these attacks and spoke with thanks of the care, training and support of the Brothers, he received an abusive letter in reply. We are aware that it is a small vocal minority who are promoting these charges. Unhappy grown-ups tend to magnify the grievances of their childhood, and use this as a reason for their own failures in their adult lives. Today these embittered children have turned to the media, books, the press, television and radio, for revenge.

I happen to think that there would have been people whose criticisms and complaints were justified. I do not necessarily agree with Maurice Whitfield that all was well, but nonetheless he goes on to say, and these words are worth noting given that they come from the Clontarf Old Boys' Association -

> During our years at Clontarf we lived a very ordered way of life. Scholastically we were at school to the Junior Certificate level and those who showed an aptitude for study and further advancement were enrolled at Aquinas College to complete their Leaving Certificate. Sport was high on the agenda both within the school and beyond. Leisure activities were well catered for with the football fields, the river, the farm, horses and the band. The maintenance of the property was in our hands and each of us had to tend to daily chores. All of this instilled into us the manly virtues of discipline, self reliance, sociability and fair play.

Hon Sam Piantadosi: Clontarf used to hold a big raffle every year and all the students at the Christian Brothers' schools had to sell the raffle books to support Clontarf.

Hon P.G. PENDAL: It sounds as though the voice of experience has interjected to support my remarks.

Hon Sam Piantadosi: I walked many miles selling those tickets.

Hon P.G. PENDAL: Just as it has been reflected that perhaps the Christian Brothers went wrong with me, somewhere along their education process they did not do an awful lot for my good friend, Mr Piantadosi.

The letter goes on to say -

> Our religious living was attended to by our daily prayer and the use of the Clontarf chapel.
>
> We made contacts and formed firm and lasting friendships with Catholic families, when we were their guests on one Sunday of each month. Also it was organised that each boy spent the Christmas vacation with a Catholic family. As well as giving us an experience of family living, this added a refining and socialising aspect to our lives.

If members want to talk to someone about life as an orphan, an Aboriginal reject, they should talk to someone like Robert Isaacs, who was a chairman of the Aboriginal Housing Board

and in more recent days has become the endorsed Liberal candidate for Thornlie. Putting politics aside, by anyone's yardstick Robert Isaacs is an impressive person of Aboriginal descent who never knew who his parents were and who was dumped in the Catholic orphanage at Clontarf at a very early age. Members should have a talk with someone like Robert Isaacs to understand the influence of the Christian Brothers on his life. Mr Isaacs is a role model for Aboriginal people and could do the so-called best of white society proud. He will be the first to tell members that the Christian Brothers were in some cases harsh and hard disciplinarians, but he also says that they gave him a chance to survive and flourish in life. It would do well for a lot of people to listen to the story of the life of Robert Isaacs. I do not want to say anything more on that, and I certainly do not want to be seen as condoning activities, practices, brutality or whatever it might have been, but some balance is needed in this debate and I hope I have played some small part in achieving that.

The third matter I want to touch on briefly concerns the huge Ellenbrook estate that will be opened up in the northern suburbs. Members will be aware that that project is currently part of the Environmental Protection Authority process. The EPA has recommended that wetlands in the north west development should be set aside for preservation. I am pleased at that, and at the response of the proponents, the various companies involved. I am equally pleased at the response of the local residents who worked to have that land alienated. Of course, it has come down to a dispute over the next lot of land to the east of the north western wetlands. My understanding is that the EPA has said that it should be zoned urban deferred, but that it should not be rezoned until a variety of environmental studies has been carried out. However, the Minister for the Environment has reversed that procedure. Some effort has been made on behalf of the local people to have a disallowance motion moved. I for one do not intend to be part of that, notwithstanding my regard for the people involved. But the Minister has reversed the order of things to that extent. One is entitled to ask in this debate whether the Leader of the House might ultimately say in his response why it is that the Minister for the Environment has acted in that way.

Incidentally, I am interested to know whether the Mt Lawley company which was the owner of that property to which I have referred will be compensated. I wonder whether it will be properly compensated and whether we should be going down the path of the compensation provisions that the Opposition wrote into the Heritage Bill. The Opposition extended the form of compensation to the properties involved under the heritage laws, and to the principle of injurious affection. One is entitled to ask whether something like that can be arranged in this case.

That leads me to a matter that is directly raised in the Program Statements of the Budget. I am absolutely puzzled about the placement in the Budget documents of a new item called "Environmental Appeals Committee". This is a new creature to State Government. I find puzzling that the environmental appeals committee has been placed under the umbrella of the Department of Conservation and Land Management. I notice that it has not been placed under the umbrella of the Environmental Protection Authority. Bearing in mind that for months public discussion has centred around the need for some sort of appeals mechanism that results from decisions or recommendations of the EPA, this matter was not without some controversy. Members will recall that I made an issue in this House of the proposal to make Adele Farina the convenor of that appeals mechanism. I intend to touch on that in a few minutes. However, what puzzles me for the time being is that the appeals mechanism is being set up, not under the umbrella of the EPA, but it has been transferred to Mr Pearce's other umbrella organisation, the Department of Conservation and Land Management where it does not belong. There is no reason for that department to have an appeal mechanism in place because the mechanism is intended to deal with recommendations of the EPA. One wonders whether the EPA has said it does not want it and whether that arose out of the intention to appoint Adele Farina to that position.

Hon Peter Foss: A sort of appeal from Caesar to Calpurnia.

Hon P.G. PENDAL: Very well said, Mr Foss. I notice, incidentally, that we do not yet have an appeals system, but five people have been appointed to administer it at a cost of $312 000. I would not mind a bit of that extra help in my electorate office, which operates currently with one full time person and three part time volunteers. I wonder whether we are not putting the cart before the horse by giving people a budget without appointing a committee to hear any appeals.

Recently, I received complaints from scientists in the Commonwealth Scientific and Industrial Research Organisation in Western Australia who are adamant that if we are to have an environmental protection appeals system in Western Australia, we should have someone better than Ms Adele Farina in charge of it.

Hon Sam Piantadosi: There is nothing wrong with Adele Farina.

Hon P.G. PENDAL: She may well be a very capable administrator. However, in the eyes of the scientists she is not a person who should be put in charge of an appeals system which relies overwhelmingly on scientific input.

Hon Sam Piantadosi: Name one.

Hon P.G. PENDAL: The CSIRO staff members who, of course, are overwhelmingly from science disciplines object strenuously to having someone of the calibre of Adele Farina as the chairperson of that body.

Hon Sam Piantadosi: They cannot handle a woman.

Hon P.G. PENDAL: I do not think that has anything to do with their objections. The basis of their objection is that members dealing with matters of science should at least have some background in them.

Having moved in this House some time ago a motion to get some straight answers about the appointment of Adele Farina, the Opposition will have no compunction about moving the motion again if it finds that the Government is proceeding with her appointment to that very sensitive position.

Hon Sam Piantadosi: Are they the same people who advised you on the whereabouts of the Churchill estate?

Hon P.G. PENDAL: My friend, Hon Sam Piantadosi, is preoccupied unduly with the Churchill estate. If we send him to a psychiatrist, he would tell us about some dark secret from his past. I assure Hon Sam Piantadosi that the Churchill estate is under control from the Opposition's point of view.

I intend to raise other matters in other debates. However, for the time being, I support the motion before the House, albeit reluctantly. I support it because it is convention and constitutional practice for the Parliament to pass the Budget. However, the Government does not deserve to be given approval for the expenditure of $5 billion or $6 billion annually, given its record and given the way that it has treated the public purse with such contempt. Notwithstanding that, the conventions demand that one supports the Budget and I do so.

Debate adjourned, on motion by Hon Barry House.

House adjourned at 10.26 pm

QUESTIONS ON NOTICE

PLANNING AND URBAN DEVELOPMENT, DEPARTMENT OF - MAYLANDS CLAYPITS WETLANDS

Wetlands and Residential Development Compromise Plan - Government Decision

576. Hon P.G. PENDAL to the Minister for Education representing the Minister for Planning:

(1) What is the Government's current stance over the compromise plan of the Department of Planning and Urban Development to allow retention of approximately 50 per cent of the Maylands claypits, wetlands and residential development by the City of Stirling on the other 50 per cent?

(2) When will a final decision be made by the Minister?

(3) If the City of Stirling declines to advance the matter will the Minister consider taking the initiative?

Hon KAY HALLAHAN replied:

The Minister for Planning has provided the following reply -

(1) A study group comprising officers from the Department of Planning and Urban Development, City of Stirling, Swan River Trust, EPA, local ward member Cr Cook, Dr Judy Edwards MLA and representatives from People for the Peninsula and Maylands Residents' and Ratepayers' Association, have investigated planning, infrastructure and environmental issues of the Maylands Peninsula. The resultant development concept plan produced by DPUD seeks to achieve a balance between residential potential and the water quality and fauna habitat issues of the area. The Government has not adopted a position on the plan.

(2)-(3) It is intended that in the near future the Minister for Planning will meet with Stirling City Council to discuss the findings of the study and to progress consideration on the future of the claypits and their environs.

LAND - EAST GASCOYNE

Stocking Rates for Properties - State of Range Land Report

610. Hon P.H. LOCKYER to the Minister for Education representing the Minister for Lands:

(1) Are any steps being taken to set stocking rates for properties in the East Gascoyne as a result of a report on the State of the range land?

(2) If so, is the report a public document and has its recommendations been accepted by the Government?

Hon KAY HALLAHAN replied:

The Minister for Lands has provided the following reply -

(1) A report on the condition of the Gascoyne catchment (Wilcox and McKinnon) was published in 1972 and provided recommended stocking rates for pastoral stations within the catchment area.

(2) The report is a public document. The stocking capacities recommended in that report were not accepted in all cases but were subsequently set and agreed by inspection committees established specifically to review each individual station property. These inspection committees of three members comprised the lessee of the pastoral property concerned in company with officers from the Department of Agriculture and the Pastoral Board.

VICTIMS OF CRIME - COMPENSATION PAYMENTS
Total Awards; Eligibility Guidelines Tabling

633. Hon MURRAY MONTGOMERY to the Attorney General representing the Minister for Justice:

(1) What is the overall total of moneys awarded as compensation to the innocent victims of crime so far this financial year and how many victims have been compensated?

(2) Will the Minister table the guidelines that are used for determining eligibility for compensation as a victim of crime?

Hon J.M. BERINSON replied:

The Minister for Justice has provided the following reply -

(1) To the end of August, 129 awards were made to 107 applicants totalling $789 672.68.

(2) The guidelines are set out in the Criminal Injuries Compensation Act 1982 and 1985 (as amended).

(a) An applicant must prove the injury is a consequence of an offence or alleged offence.

(b) No award will be made if the applicant failed to assist in enforcement; that is, failure to give information which helped to identify, apprehend or prosecute the offender, to the relevant authority such as police or local councils (as in the case of a dog attack).

(c) No award where compensation is likely to benefit the offender.

(d) Contributory behaviour by the applicant is also considered.

BUDGET RENT A CAR - GOVERNMENT CAR HIRE CONTRACT

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

(1) Has Budget Rent-a-Car been awarded the State Government contract for car hire?

(2) If so, what are the reasons for awarding this contract to Budget?

Hon KAY HALLAHAN replied:

The Minister for Services has provided the following reply -

(1) The State Government has awarded the contract to Budget (WA).

(2) Budget (WA) submitted the lowest tender overall, to service Perth and country areas.

RESERVE NO 19253 - MEEKATHARRA-WILUNA AREA
Mingarri Group Transfer

635. Hon N.F. MOORE to the Minister for Education representing the Minister for Lands:

(1) Has Reserve No 19253 between Meekatharra and Wiluna been formally handed over to the Mingarri group?

(2) If so, when and what are the reasons for transferring the reserve?

Hon KAY HALLAHAN replied:

The Minister for Lands has provided the following reply -

(1)-(2)

No. However, the Government is investigating a proposal by the Mingarri Aboriginal Association for the use of the reserve and consultation has occurred with a number of agencies in this regard.

INDUSTRIAL SITES - KALGOORLIE
Land Purchase Agreement

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

(1) What action has been taken to secure land for the proposed industrial site at Kalgoorlie?

(2) How much land has been secured and what was the price paid for the land?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1) An agreement with the owner of Mungari Station is currently being prepared by LandCorp. This will secure land subject to all environmental and planning approvals being in place.

(2) The area under consideration is approximately 750 ha. The land is subject to a pastoral lease and has not yet been purchased.

PILBARA DEVELOPMENT COMMISSION - PORT HEDLAND OFFICE DECISION
Karratha Office Arrangements

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

(1) Why has it been decided to locate the office of the Pilbara Development Commission in Port Hedland?

(2) What office arrangements will be made in Karratha?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1) The Pilbara Development Commission will have offices in both Karratha and Port Hedland, because they are the two major towns in the Pilbara.

(2) In Karratha, the Pilbara Development Commission will be located in the office previously occupied by the Department of State Development, at the corner of Welcome Road and Scaripple Road.

BUDGET - GENERAL LOAN AND CAPITAL WORKS FUND ESTIMATES OF EXPENDITURE
New Works - Investment Incentive Program

645. Hon MAX EVANS to Hon Tom Stephens representing the Minister for State Development:

With respect to the General Loan and Capital Works Fund Estimates of Expenditure at page 26 under the heading of New Works -

(1) Would the Minister provide all the details of the investment incentive program?

(2) If this is an intangible incentive program why is it not a charge to the Consolidated Revenue Fund?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

The investment incentive program is by no means intangible. The program is specifically targeted at strategic industries which will bring long term economic and social benefits to Western Australia. To this end the utilisation of General Loan and Capital Works Fund is entirely appropriate.

BUDGET - GENERAL LOAN AND CAPITAL WORKS FUND ESTIMATES OF EXPENDITURE

Building Better Cities Program Funding

647. Hon MAX EVANS to the Minister for Education representing the Minister for Planning:

With respect to the General Loan and Capital Works Fund Estimates of Expenditure at page 57 under the heading of Building Better Cities Program -

(1) Would the Minister provide all relevant details of $7.46 million under the 1991-92 program together with the $17.474 million under the 1992-93 program?

(2) Why was only $40 000 expended last year?

(3) Why is the Western Australian Government funding this program and not the Federal Government?

Hon KAY HALLAHAN replied:

The Minister for Planning has provided the following reply -

I am advised that -

(1) The State Government has signed an agreement with the Commonwealth for this State to receive a total of $78.3 million over the five years of the Building Better Cities program. The Building Better Cities agreement between the Commonwealth and the State was finalised in April 1992 and grants to the State under this agreement are classified as general purpose capital assistance. An amount of $7.5 million under the Building Better Cities program was received in 1991-92 and this amount is included in the opening balance of the General Loan and Capital Works Fund to finance planned expenditures under the Building Better Cities program during 1992-93. The $7.5 million was received for four area strategies - Perth $3 920 000; Stirling $1 340 000; Bunbury $140 000 and Fremantle $2 100 000.

An additional amount of at least $17.5 million was expected to be received in 1992-93 under the second year of the Building Better Cities program. Accordingly an appropriation of $24.9 million to cover expected payments to departments and authorities carrying out capital works projects under the Building Better Cities program has been made in the estimates.

In addition, the Commonwealth Budget, announced on 18 August, provides for additional funding of up to $5.8 million to the State in 1992-93 to advance projects which are able to generate employment under the Building Better Cities program bringing the total which WA now expects to receive in 1992-93 to $23.3 million which will be allocated to Perth ($12m), Stirling ($4.5m), Bunbury ($4.94m) and Fremantle ($1m). This leaves $830 000 unallocated.

(2) The Building Better Cities program was announced in 1992 and the Commonwealth negotiated on a State by State basis in late 1991 and 1992, resulting in an agreement being signed with WA in April 1992. Taking into account planning and the time needed to set up appropriate area structures, only $40 000 was spent but all the available funds will be spent this year.

(3) Grants to the State under the Building Better Cities program are paid as general purpose capital assistance and under the Financial Administration and Audit Act are required to be paid into the General Loan and Capital Works Fund.

BUDGET - GENERAL LOAN AND CAPITAL WORKS FUND ESTIMATES OF EXPENDITURE

"State Housing Commission - Works in Progress - Completed Works - New Works" - Value of Purchase of Homes and Aboriginal Homes

648. Hon MAX EVANS to the Leader of the House representing the Minister for Housing:

With respect to the General Loan and Capital Works Fund Estimates of Expenditure at page 31, "State Housing Commission - Works in Progress - Completed Works - New Works", will the Minister advise -

(a) the value of the purchase of homes in the 1991-92 program of $52.8 million;

(b) the value of the purchase of homes in the 1990-91 program of $31.048 million;

(c) the value of the purchase of Aboriginal housing in the total of $20.811 million;

(d) the value of the purchase of houses in the 1991-92 program of $52.832 million and the proposed expenditure of $62.979 million under the 1992-93 program; and

(e) the estimated value of the proposed purchase of houses in the 1992-93 program of $130.465 million and the $84.083 million of the proposed expenditure during 1992-1993?

Hon J.M. BERINSON replied:

The Minister for Housing has provided the following reply -

Note: "Purchase of homes" is interpreted as spot purchase of established properties.

(a) $3.969 million.

(b) $1.622 million.

(c) $1.436 million.

(d) $3.983 million ($3.969 million + $0.014 million).

(e) (i) $22.812 million.

(ii) $22.732 million.

GEOGRAPHE BAY - RECOMMENDATIONS FOR COASTAL RESERVES, BUILDING SETBACKS AND DEVELOPMENT CONTROLS REPORT

Consultations with Landowners - Public Submissions

649. Hon BARRY HOUSE to the Minister for Education representing the Minister for Planning:

(1) Were all the individual landowners who were to be affected by the Recommendations for Coastal Reserves, Building Setbacks and Development Controls along Geographe Bay consulted prior to the release of the document?

(2) If not, why not?

(3) Who else was consulted when compiling the report?

(4) Are the recommendations open for public comment?

(5) If so, when does the period for public submissions close?

(6) If not, why not?

Hon KAY HALLAHAN replied:

The Minister for Planning has provided the following reply -

(1) Landowners were not consulted individually. However, the opportunity to have input into the study has been facilitated in three

ways: First, landowners have registered concern about shoreline changes in Geographe Bay, relative to their individual properties, through planning processes associated with "South West Strategy" and the "Leeuwin Naturaliste Region Plan Stage 1." Policy statements included in these documents called for a study of the potential risk to land holdings and development in Geographe Bay caused by natural shoreline movement. Second, the process of producing the plan has involved discussions with landowners who are proponents of development, relevant Government agencies, and particularly the Busselton Shire Council which jointly produced the plan. The advised development line in the plan represents a negotiated position between the setback to development required under the existing town planning scheme and scientific evidence of shoreline fluctuation. Third, the document is not a statutory document. It has been released for discussion and to assist local and State Government decision makers in responding to proposals for development in the short term.

(2) See (1) above.

(3) Statistics on shoreline movements are photogrammatically prepared by the Department of Marine and Harbours. This information has been supplemented by ongoing research being carried out by several State Government departments and the University of Western Australia.

(4) Yes.

(5)-(6) There is no set date as it is intended that the recommendations will be reviewed in the context of regional studies being undertaken and, especially, the review of the Busselton District Zoning Scheme.

ENVIRONMENTAL PROTECTION AUTHORITY - COFFEE ROASTING FUMES 44 KING STREET PERTH COMPLAINTS
Occupational Health, Safety and Welfare Department Report

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

(1) Has the Environmental Protection Authority received from the Department of Occupational Health, Safety and Welfare a report related to coffee bean roasting odours emanating from the cafe located at 44 King Street, Perth?

(2) Will a copy of this report be given to the complainants, a nearby company, involved in this situation?

(3) If so, when?

(4) What are the main findings of the report?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) Yes.

(2)-(3) I am advised by the EPA that a copy of relevant sections of the report was given to the complainant on the afternoon of 14 September 1992.

(4) I am further advised by the EPA that no chemicals associated with coffee roasting fumes could be detected in air samples collected from the complainant's premises; an evaluation is being made of the significance of other chemical species in the samples.

SWAN BREWERY SITE - ARCHAEOLOGICAL DIG PROPOSAL
Area

664. Hon P.G. PENDAL to the Minister for Education representing the Minister for Heritage:

I refer to the Minister's answer to question on notice 495 of 1992 and ask -

(1) How extensive is the archaeological dig likely to be?

(2) Will it encompass the whole site?

(3) If not, why not?

Hon KAY HALLAHAN replied:

The Minister for Heritage has provided the following reply -

(1) The developer is responsible for ensuring that an archaeologist is available when excavation work is carried out, to record any items of interest.

(2)-(3) The initial brief will cover excavation work for buildings. Depending on findings, this may lead later to more extensive archaeological excavation on the site.

ENDANGERED SPECIES - PROTECTION LEGISLATION
Developers, Licence or Approval Requirements

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

(1) What State and Commonwealth Government safeguards or legislation are in place (if any) to prevent the destruction of endangered species and their habitats?

(2) Is a licence, or approval, required before a developer can proceed with work which will destroy an endangered species and/or its habitat?

(3) If so, who administers such licensing procedures?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(2) In Western Australia the Wildlife Conservation Act 1950 provides that declared rare flora may only be taken with the Minister's written consent to do so. The Act also protects fauna declared as likely to become extinct, rare, or otherwise in need of special protection, but this does not specifically extend to their habitats. As previously announced, the Government will be introducing legislation into the present parliamentary session to replace the Wildlife Conservation Act 1950, for the purpose of improving the conservation and protection of the State's flora and fauna. The Commonwealth Minister for the Environment has stated her intention to introduce endangered species legislation.

(3) In respect of consent to take declared rare flora, the Minister administers this procedure with advice from the Department of Conservation and Land Management. A similar procedure applies to fauna.

LIVE CATTLE - KIMBERLEY AREA
Indonesia or South East Asia Markets

690. Hon P.H. LOCKYER to the Minister for Police representing the Minister for Agriculture:

(1) Are any steps being taken to seek markets in Indonesia or other areas in South East Asia for the sale of live cattle from the Kimberley area?

(2) If so, where are these markets being sought and by whom?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following reply -

(1)-(2) Markets are currently being sought in Indonesia, Malaysia and the Philippines by private exporters. The Department of Agriculture and Department of State Development provide support to those activities.

LEARMOUTH AIRSTRIP - EXPORT OF FRUIT, VEGETABLES, SEAFOOD
International Aircraft Arrangements

691. Hon P.H. LOCKYER to the Minister for Police representing the Minister for Agriculture:

(1) Does the Government support the possibility of overseas or international aircraft using Learmonth airstrip to allow the exporting of fruit and vegetables from Carnarvon and seafood from Exmouth?

(2) If so, what steps are being taken to assist these arrangements to progress?

(3) Will the Minister confer with his Federal colleagues to assist with progress towards the exporting from the Learmonth base?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following reply -

(1) Yes.

(2) He is aware that the Minister for State Development has provided some funding to the Gascoyne Regional Development Advisory Committee - GRDAC - to undertake a study on the potential of Learmonth airstrip to become an exit point for the export of primary produce.

(3) Depending upon the outcome of the study, the Minister for State Development has indicated that he will then determine what further action is required and if consultation with his Federal colleagues is appropriate.

LOCAL GOVERNMENT - SHARK BAY SHIRE COUNCIL
Inquiry Request

696. Hon P.H. LOCKYER to the Minister for Education representing the Minister for Local Government:

(1) Has the Government received a request from the Shark Bay Shire Council to investigate matters pertaining to that shire?

(2) If so, what are the matters involved?

(3) What steps is the Government taking with regards to this request?

Hon KAY HALLAHAN replied:

The Minister for Local Government has provided the following reply -

(1) Yes.

(2) Gazettal of water ski area
Election of Shire President

(3) I have requested the Department of Local Government to inquire into the former issue, however I do not propose to take any action with regard to the election of the shire president as I consider this to be an internal council matter.

HOLIDAY INN - EXMOUTH INTEREST

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

(1) Is the firm Holiday Inn still indicating interest in the Exmouth area?

(2) If so, is the Government continuing to allow it exclusive option to any marina development?

(3) If not, when did Holiday Inn relinquish the previous undertaking given to it by the Government?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1) Holiday Inn may still be interested if a commercially viable resort development could be sustained in the Exmouth area.

(2) Not applicable.

(3) Holiday Inn had until March 1992 to decide if it would participate in a marina resort complex proposed by the Department of Marine and Harbours. It did not express a desire to continue with this development and relinquished the right to the undertakings given to it by the Government.

BUNBURY FOOTBALL CLUB - LUNCHEON WITH PREMIER, TUESDAY, 8 SEPTEMBER

699. Hon BARRY HOUSE to the Minister for Police representing the Minister for South-West:

Further to question on notice 631 of 1992 referring to the lunch with the Premier held at the Bunbury Football Club rooms on Tuesday, 8 September 1992 -

(1) Were any costs associated with the function met by -

(a) the South West Development Authority;

(b) the office of the Minister for South-West;

(c) the private resources of the member for Mitchell and the member for Bunbury; and

(d) the Australian Labor Party?

(2) If the answer to the above is (a) or (b), what was the total cost of the function?

Hon GRAHAM EDWARDS replied:

The Minister for South-West has provided the following reply -

Why the member thinks the matter important or within my ministerial portfolio I do not know, but the answers are as follows -

(1) (a) No.

(b) No.

(c) Yes.

(d) No.

(2) Not applicable.

LAND - REPATRIATION GENERAL HOSPITAL, HOLLYWOOD SITE

Ownership

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

(1) Who owns the site currently occupied by the Repatriation General Hospital, Hollywood?

(2) What is the area of the land?

(3) What is the local authority zoning of the land and the metropolitan region planning zoning of the land?

(4) Who was the previous owner of the land and when was the land transferred to the current owner?

(5) Are there any encumbrances registered against the relevant certificate of title and, if so, will the Minister advise of the nature of the encumbrances?

Hon KAY HALLAHAN replied:

The Minister for Lands has provided the following reply -

(1) Repatriation Commission.

(2) 11.7258 hectares.

(3) The metropolitan region scheme and City of Nedlands town planning scheme No 2 both show the land in question as reserved for "public purposes: Commonwealth Government".

(4) The Commonwealth of Australia transferred the land to the Repatriation Commission on 15 May 1951.

(5) The land has never been encumbered.

CRAYFISH, MARINE - MAXIMUM SIZE
Fisheries Department Research Team Advice

712. Hon GEORGE CASH to Hon Mark Nevill representing the Minister for Fisheries:

(1) What advice, if any, has the Minister received from the research team at the Department of Fisheries in respect of relevant maximum size of male and female lobsters able to be taken in the forthcoming season?

(2) Was this advice qualified and, if so, to what extent?

(3) Will the Minister table the advice and, if not, why not?

Hon MARK NEVILL replied:

The Minister for Fisheries has provided the following reply -

(1) The research team at the Fisheries Department has provided information on the effect of the rock lobster catch rates with the imposition of several maximum sizes.

(2) No.

(3) The information is contained in advice from the Rock Lobster Industry Advisory Committee of February 1992 and will be tabled when the Minister has made his final decision.

NATIONAL PARKS AND NATURE CONSERVATION AUTHORITY - MEMBERSHIP

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

(1) Who are the members of the National Parks and Nature Conservation Authority?

(2) What position is each person appointed to the NPNCA representative of as specified under section 23 of the Conservation and Land Management Act 1984 as amended 1991?

(3) What is the term of appointment of each person currently a member of the NPNCA?

(4) Is there an intent behind the composition of representatives on the NPNCA as specified under section 23 of the Conservation and Land Management Act 1984 as amended 1991 and, if so, what is the intent?

(5) What specific marine and estuarine ecosystem management or research expertise or practical skill does each person currently appointed to the NPNCA possess?

(6) Who are the CALM researchers working on marine and estuarine systems and species, and what specifically are their research programs?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(3)

Members	Section of CALM Act Appointed Under	Term of Appointment (years)	Appointment Expires
Prof Arthur McComb Prof of Environmental Science, Murdoch Uni (Chairman)	23(1)(b)(iii) representative of tertiary institutions	2	1/8/93
Dr Elizabeth Mattiske Environmental Consultant (Deputy Chairman)	23(1)(b)(iv) representative of conservation professionals	2	1/8/93
Mr Malcolm Trudgen Consultant Botanist	23(1)(b)(i) representative of voluntary conservation organisations	1	1/8/93
Vacant	23(1)(b)(i) representative of voluntary conservation organisations		
Mrs Marion Blackwell Landscape Architect	23(1)(b)(ii) representative of recreation interests	1	1/8/93
Mr Stephen Wilke President 4 Wheel Drive Association	23(1)(b)(ii) representative of recreation interests	1	1/8/93
Cr Douglas Bathgate Councillor Exmouth Shire Council	23(1)(b)(v) representative of local government	2	1/8/93
Cr Michael Greenup President Murray Shire Council	23(1)(b)(v) representative of local government	1	1/5/93
Mr Angus Horwood Pres WA Recreational & Sport Fishing Council	23(1)(b)(vi) representative of fishing interests	2	1/8/93
Mr Rory Neal National Park Ranger	23(1)(b)(vii) CALM employee with duties relating to management of land vested in the authority	2	1/8/93
Mr Michael Hill Manager Lake Jasper Project	23(1)(b)(viii) representative of Aboriginal interests	1	9/8/93

The CALM Act provides for four ex-officio members to hold appointment by virtue of their positions. These are -

Dr Syd Shea, Executive Director, CALM
Mr Keiran McNamara, Director Nature Conservation, CALM
Mr Chris Haynes, Director National Parks, CALM
Mr Don Keene, Director Forests, CALM.

(4) The intent behind the composition of the authority is to provide an appropriate representation of community interests for the authority to carry out its conservation functions, particularly as the vesting body for national parks, conservation parks, nature reserves, marine parks and marine nature reserves.

(5) A complete answer would necessitate contacting each member. The authority is assisted in its functions by the Department of Conservation and Land

Management, and the full range of skills and expertise of the department are made available to the authority.

(6) CALM research scientists working on marine and estuarine systems and species are Dr R. Prince (marine turtles and dugong), Dr S. Turner (*Drupella cornus*, the coral eating marine snail affecting Ningaloo Reef), Dr A. Burbridge (seabirds), Mr J. Lane and Dr S. Halse (estuarine and intertidal systems, especially waders and waterbirds), and Mr N. McKenzie and Dr A. Start (bat communities in mangroves). In addition, regional and wildlife branch staff are involved in a range of programs in marine parks and covering particular species (softwater crocodiles, whales, dolphins, seals and sea lions).

WATER AUTHORITY OF WESTERN AUSTRALIA - GILLAM PLACE, DIANELLA

Main Sewer Connection

717. Hon GEORGE CASH to the Minister for Police representing the Minister for Water Resources:

(1) Is the Minister aware of the extreme concern of residents of Gillam Place, Dianella who are anxious to have the main sewer connected to their properties?

(2) Which are the nearest streets to Gillam Place which are connected to the main sewer?

(3) How many metres of sewer line are required to service Gillam Place?

(4) Does the existing sewer main have the capacity to service Gillam Place?

(5) When was Gillam Place last reviewed in respect of the Government backlog sewer program?

(6) What is the estimated cost of providing a sewer line to service Gillam Place?

Hon GRAHAM EDWARDS replied:

The Minister for Water Resources has provided the following reply -

(1) No.

(2) Cornwall Street, Dianella, however connection of Gillam Place to this main is not possible due to levels.

(3) Approximately 1 200 metres would connect Gillam Place to the most suitable sewer main in Cresswell Road.

(4) See (2) above.

(5) The Water Authority's Infill Sewerage Program is continually under review based on availability of funding and established priorities. Gillam Place has a low priority.

(6) Detailed design is not presently available. Estimated cost is approximately $500 000.

TREES - HERDSMAN LAKE PLANTINGS

718. Hon MAX EVANS to the Minister for Education representing the Minister for the Environment:

(1) Are the 100 trees and replacement trees planted at Herdsman Lake still growing?

(2) If not, how many trees still exist?

(3) What arrangements, if any, have been made to replace such losses?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(2)

95 trees are still growing.

(3) The Department of Conservation and Land Management will periodically replace dead trees and maintain 100 commemorative trees.

STATE GOVERNMENT INSURANCE OFFICE - ANNUAL REPORT
Assets in Name of State Government Insurance Commission, Ministerial Direction Date and Reference

720. Hon MAX EVANS to the Leader of the House representing the Treasurer:

On what date and where is the ministerial direction to be found in the annual report of the SGIO that is mentioned in the report of the Auditor General dated 15 September 1992 regarding the assets in the name of the SGIC?

Hon J.M. BERINSON replied:

The Minister assisting the Treasurer has provided the following reply -

The Minister does not have the power to direct the SGIO under the State Government Insurance Commission Act 1986. The Auditor General states in the opinion given on 15 September 1992 -

> In accordance with the ministerial approval given under the State Government Insurance Commission regulations, investments beneficially owned by the corporation but registered in the name of the State Government Insurance Commission have been included as part of the corporation's investments when calculating the solvency margin.

WORLD HERITAGE LISTING - NULLARBOR PLAIN

764. Hon P.H. LOCKYER to the Minister for Education representing the Minister for the Environment:

(1) What steps are being taken for the Minister to meet with people involved in a possible World Heritage Listing of the Nullarbor Plain?

(2) Has the Minister sought assistance to set up a meeting with affected people?

(3) Is it correct that the South Australian Minister responsible has urged the Western Australian Government to proceed with the listing?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(2) I have asked Hon Julian Grill, MLA to arrange a meeting between the leaders of the local communities and me to discuss the way in which the consultations I have promised will be organised.

(3) Yes.

QUESTIONS WITHOUT NOTICE

SCHOOLS - BALGA PRIMARY
Roof Tests by Independent Laboratory

485. Hon GEORGE CASH to the Minister for Education:

(1) Is the Minister aware of certain tests that are being carried out on the roof of Balga Primary School by an independent laboratory?

(2) If those tests confirm that there is a threat to the health of students and teaching staff at Balga Primary School, will the Minister commission an investigation to confirm the findings of the independent laboratory; or, if not, will the Government act upon the findings of the independent laboratory?

Hon KAY HALLAHAN replied:

(1)-(2) The outcome of any tests would, and should, be referred to the Ministry of

Education so that it could take appropriate action. There is no way that the ministry would be negligent about the wellbeing of students. I assure the member that a lot of attention will be given to the matter.

MOTOR VEHICLES - NUMBER PLATES

486. Hon PETER FOSS to the Minister for Police:

Will the Minister consider restoring to Western Australian number plates the words "Wildflower State" in view of the importance of wildflowers to Western Australia but their diminishing impact on tourism?

Hon GRAHAM EDWARDS replied:

I really had not given the matter any recent consideration, although I guess many people would agree with Hon Peter Foss that Western Australia is an absolutely beautiful State and is probably the prettiest State in the nation when it comes to wildflowers. However, other people are of the view that Western Australia should have some sporting identity, given its most recent successes with football - and I certainly have my fingers crossed that we will be even more successful this Saturday; with tennis, in staging the Hopman Cup; with its winning the America's Cup; with its holding the Sheffield Shield; with its winning the national basketball and baseball titles; and also with its being the home of the most successful women's hockey team. Other people believe that we should adopt a more cultural or recreational attitude.

What we are endeavouring to do, and what I am working on, is to make available to people a broader range of number plates. That way, people can make their own choice. Hon Peter Foss would be aware that we have the Eagles number plates. That has been a successful innovation, where 50 per cent of the money that is raised from those number plates goes into community policing initiatives. I agree with Hon Peter Foss, as shadow spokesman for tourism, that we have many opportunities to promote what is the best State in this nation. I guess the difficulty is trying to satisfy all of the people who want to promote the State in different ways.

STATE EMERGENCY SERVICE - INQUIRY

487. Hon P.H. LOCKYER to the Minister for Police:

I must say that the Minister is starting to sound more like Sir Humphrey every day! I ask -

(1) Is an inquiry presently being conducted into the State Emergency Service?

(2) If so, when does the Minister anticipate that a decision will be made in respect of a draft copy of the report of the inquiry, and when will a report be made to the Parliament?

Hon GRAHAM EDWARDS replied:

(1)-(2) I will ignore that rather cruel personal jibe and will refrain from responding in a like manner. I would have thought Hon Phil Lockyer would be in better form, given the recent success of his football team.

There is no inquiry as such into the State Emergency Service. We have set out to get a good measure of the training requirements of the SES because, as members would be aware, the training requirements vary from one part of the State to the other, according to the geography and other characteristics. I was reassured as recently as yesterday that all of the training requirements of the SES will be met. I have actually met with an advisory body, and I met with about a dozen members of the SES some weeks ago. They raised with me then some concerns about training, although their concerns relate more to next year. I suggested to them that I would be happy to work with them to identify what are their training needs and to endeavour to put in place a long term plan that meets their needs. The work that has been going on has centred largely around the training requirements.

TAFE - SOUTH WEST COLLEGE, BUNBURY
Library Extensions $170 000 Funds Withdrawal

488. Hon BARRY HOUSE to the Minister for Education:

Why has the Government withdrawn $170 000 from the South West Regional College of TAFE in Bunbury, which was earmarked for library extensions, in order to put that money towards the current TAFE advertising campaign?

Hon KAY HALLAHAN replied:

The member must be quite misinformed. There has been no withdrawal of funds from any particular area in order to fund that promotion of technical and further education.

Hon Barry House: That is not what I hear.

Hon KAY HALLAHAN: The member might like to be more specific about that, but if he were concerned about funding for the South West Regional College of TAFE, that would be another matter, and I would be prepared to look at that. I am sure members would endorse the current campaign on television and radio to promote TAFE. The advertisements have come over very well. Significant community leaders have associated themselves with the benefits of TAFE qualifications, and I must say that I was happy with the finished product when I saw the advertisements. I have received a lot of complimentary comments about the advertisements, and I think it would be in everybody's interests to ensure that a greater profile, image and status were given to TAFE and to the benefits of TAFE training and qualifications.

TAFE - SOUTH WEST COLLEGE, BUNBURY
Library Extensions $170 000 Funds Withdrawal

489. Hon BARRY HOUSE to the Minister for Education:

I ask a supplementary question: Does the Minister state categorically that that $170 000, which was set aside for library extension purposes, was not withdrawn from the South West Regional College of TAFE and used for other purposes?

Hon KAY HALLAHAN replied:

I have to take on trust to some extent what the member is saying, but if he is saying that that money was allocated for library extensions, that sounds to me like it is a capital work, and it is highly unlikely that there has been a shift of that funding to some other area. I am happy to investigate this matter.

Hon George Cash interjected.

Hon KAY HALLAHAN: I would prefer it if the member kept his silly or snide comments to himself. I do not know whether they came from the member or from his front bench.

Hon George Cash: They came from me, and they were not silly or snide.

The PRESIDENT: Order! They were out of order.

Hon KAY HALLAHAN: I have said previously that if members have specific concerns, I am happy to follow them up for them. I am not in a position to shed any more light on the subject than I have so far today.

SCHOOLS - SWIMMING CLASSES
Funding Discontinuance

490. Hon E.J. CHARLTON to the Minister for Education:

Is it correct that the funding for school swimming lessons past stage 9 has been discontinued?

Hon KAY HALLAHAN replied:

I dealt with this matter recently, but perhaps the member was absent. Perhaps the answer could be picked up in *Hansard*. I do not want to incur the

President's wrath but I am happy to run the gauntlet.

The PRESIDENT: You will not invoke my wrath if at the second time you do it a bit quicker.

Hon KAY HALLAHAN: Last time I was very precise, I remember. For the information of the member, the in-term swimming classes are run at 12 levels. The last three levels relate to the lifesaving certificate. Students gain the certificate of proficiency at the ninth level. To that stage, students receive basic lifesaving instruction. It is a fact that, because of the minimum age from which students can take part, primary students cannot participate at the higher level anyway; however, the Ministry of Education believes it provides a significant level of qualification and proficiency in swimming with the continuation of the instruction to level 9.

ROYAL COMMISSION INTO COMMERCIAL ACTIVITIES OF GOVERNMENT BILL No 2 - AMENDMENTS

Tabling Date - New Bill Intention

491. Hon MAX EVANS to the Attorney General:

(1) Will the amendments to the Royal Commission into the Activities of Government Bill No 2 be tabled this week?

(2) Does the Minister intend to amend my legislation or to introduce a new Bill?

(3) Will the Attorney's second reading speech for any new Bill acknowledge that my Bill started this debate?

(4) Will the Attorney confirm his Press release after my Bill in May that he had considered the Bill since March and to have legislation introduced in this House by August?

(5) The Attorney has had the advice of Kevin Parker QC so why has it taken so long?

(6) Is the Attorney serious about this legislation?

Hon J.M. BERINSON replied:

(1)-(6)

To answer the last question first, yes. Going to the first question about whether the legislation will be tabled this week, the answer is no - largely for the reasons I indicated yesterday. I expect that notice of intention to present a Bill will be given tomorrow but the two weeks of the forthcoming recess will be required to both finalise the drafting and consult with Mr Evans on behalf of the Opposition with a view to ensuring that the legislation, when it is debated on our return after the recess, can go through promptly. It will be a new Bill. From memory, the Bill that has been moved by Mr Evans only had about one page and a half and three or four clauses. That had the virtue of simplicity, and as further drafts of the Government's own Bill have emerged I have been more and more attracted to that virtue but unable to achieve it.

I have also indicated before the reasons for the delay. It is a fact that the need for some special arrangements in regard to the Royal Commission material was recognised and being considered in advance of Mr Evans' motion, and if I remember correctly that was on the initiative of the Director of Public Prosecutions. It was really quite late in the day that the Government became aware of serious reservations being expressed by the Royal Commissioners as to the way in which the proposed legislation was shaping up. Since that time, the Government has been attempting in the best way possible to meet the requirements and preferences of the Director of Public Prosecutions on the one hand, but at the same time to accommodate what are recognised as legitimate requirements by the Royal Commissioners on the other hand. I believe we are very close to that point but I indicated yesterday that so far as I was aware the commission had not responded to the recent draft. My understanding of the position, certainly this morning, was that we still do not

have that response. I am not sure about that but in any event I am very certain that a Bill will be available for consultation with Mr Evans next week, and that it will be ready for debate immediately the Houses resume after the recess. To avoid any misunderstanding on the matter I should indicate that, as I understand it, the new Bill will be introduced in the Assembly because the Premier is the Minister responsible for the Royal Commission and for the Royal Commission Act.

PRISONS - CASUARINA
Razor Wire Purchase - Proper Testing Failure

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

(1) Is the Minister aware that at the time he approved the purchase of razor wire for Casuarina Prison the wire had not been properly tested?

(2) If so, why did the Minister not satisfy himself that the product was of the highest standard, having regard to its substantial cost?

Hon J.M. BERINSON replied:

(1)-(2) At my request, the Leader of the Opposition put a question on notice to do with the razor ribbon wire. On the assumption that the answer has not reached today's Supplementary Notice Paper, it will be there tomorrow.

Hon George Cash: This is quite different.

Hon J.M. BERINSON: No, it is not different. I think it would be better if the Leader of the Opposition raised this question in the context of my answer to his question on notice. I will be in a position, in that event, to provide a more comprehensive response than I am able to at the moment.

FIRE BRIGADE BOARD - THREE NEW TRUCKS PURCHASE

493. Hon BARRY HOUSE to the Minister for Emergency Services:

(1) Has the Fire Brigade Board of Western Australia recently purchased three new trucks?

(2) If so, were the purchases put to tender?

(3) From whom were the trucks purchased?

Hon GRAHAM EDWARDS replied:

That question should be put on notice.

FIRE BRIGADE - VOLUNTEER FIRE BRIGADE
Guildford, Bayswater, Bassendean Support

494. Hon P.H. LOCKYER to the Minister for Emergency Services:

(1) Does the Minister support the volunteer fire brigade at Guildford and, in particular, at Bayswater and Bassendean?

(2) Is he aware that the Fire Brigade Board is trying to have the volunteer services disbanded and have the areas covered by the trained professionals of the board?

Hon GRAHAM EDWARDS replied:

I ask that the question be put on notice. The way it is phrased is not correct. It needs a detailed answer because a number of matters need to be considered.

GYPSUM - LAKE CHINOCUP DEPOSIT
Mining Application

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

Some notice has been given of this question.

(1) Is the Minister's department aware of the applications to mine gypsum at Lake Chinocup in the Shire of Kent?

(2) Is the area in question part of an A class reserve under this department's control?

(3) Does the reserve comprise 19 000 hectares, within which is the gypsum deposit of about 50 hectares?

(4) What is the department's attitude to the mining of this deposit?

Hon KAY HALLAHAN replied:

I have four questions, and five answers.

Hon P.G. Pendal: This will be the first time you have over-answered anything.

Hon KAY HALLAHAN: The Minister for the Environment has provided the following reply -

(1) Yes.

(2) The reserve is vested in the National Parks and Nature Conservation Authority and managed by the Department of Conservation and Land Management.

(3) Yes, 19 820 hectares. The area of the gypsum deposit has not been defined. The application permits geoscientific surveys to be carried out on the reserve. The obligations on the applicant with respect to Government policy, the Mining Act, the Environmental Protection Authority Act and parliamentary approval have been clearly explained by CALM staff.

(4) To date, no formal application for a mining tenement has been received by the Department of Minerals and Energy.

SCHOOL BUSES - BULLSBROOK-PEARCE SERVICE EXTENSION REQUEST
Catering for Bindoon Students

496. Hon E.J. CHARLTON to the Minister for Education:

Is the Minister aware of any application or request for an extension of the bus service from Bullsbrook-Pearce to cater for parents with children in the Bindoon area?

Hon KAY HALLAHAN replied:

It is an operational matter; it may well have come through my office but then again it may not. If it is something the member has an interest in, he can put the question on notice and I will get the information for him.

PERMANENT BUILDING SOCIETY - WITHDRAWABLE SHAREHOLDERS
Impact of Supreme Court Decision

497. Hon JOHN HALDEN to the Attorney General:

Can the Minister indicate the practical effect of today's decision by the Supreme Court in respect of the withdrawable shareholders in the Permanent Building Society?

Hon J.M. BERINSON replied:

I have had the opportunity so far for only a preliminary report on the decision in the Supreme Court. That appears to indicate that further work will be necessary before the final position of all the withdrawable shareholders is known. Nonetheless, the extent to which the position has already been clarified is very significant and will be of great assistance to a large number of withdrawable shareholders. Again, I am unable to say how many out of the 12 000 will be assisted, but certainly most of them will be. It is clear that at least 40 per cent of them - that is, about 3 800 - have been reclassified in a way which places them in the same position as other depositors. I emphasise that, on the basis of a preliminary report only, a very substantial further number will be added to those 3 800 and the end result will be, on current indications, that withdrawable shareholders should get back somewhere between 70¢ and 80¢ in the dollar of their deposit.

From the point of view of withdrawable shareholders who are assisted in this way, it is obviously a good result, and it is only unfortunate that they have had to wait almost a year to obtain that result. As members will know, it was the view of the Government - and legislation was introduced in November of last year - that for a whole range of reasons withdrawable shareholders should in fairness be treated as ordinary depositors. This House rejected that proposal and the result has been a delay of about one year, and also significant costs were associated with the liquidator's approach to the Supreme Court. I believe that it will still take some time for the position to be finally clarified for all of the 12 000 withdrawable shareholders, but I will ensure that when some finality is reached the report by the liquidator is made available to the House.

POLICE - BROPHO, FRANK
Ankles Broken with Heavy Baton Report

498. Hon DERRICK TOMLINSON to the Minister for Police:

(1) Is the Minister aware of an article in *The West Australian* of today in which Mr Frank Bropho claims that a policeman broke the back of both his ankles with a heavy baton while he was lying face down with his hands handcuffed behind his back.

(2) Is the Minister correctly quoted as saying that Mr Bropho should lodge an official claim with either the Commissioner of Police, Mr Bull or, if he wishes, through the Aboriginal Legal Service?

(3) Will the Minister initiate his own inquiry even if Mr Bropho does not make an official complaint?

Hon GRAHAM EDWARDS replied:

(1)-(3)

I am aware of the article. The brief that I received from the police is not quite the same as reported in the article.

Hon Derrick Tomlinson: In what way does it differ?

Hon GRAHAM EDWARDS: I do not want to go into that at this stage because it is the subject of an investigation that was initiated, I am pleased to say, by the police. It is always difficult to respond to a reporter when allegations like that are put to one as Minister. I took the view that anyone with serious allegations such as those made by Mr Bropho to the media, if he considered them important enough to go to the media, would ensure that a complaint were lodged. My understanding is that an officer of the Aboriginal Legal Service spent some time at the hospital with the individual. I am not in a position to know whether the ALS has lodged a request for an investigation on his behalf. Upon investigation, accusations or allegations made often turn out to be quite different in substance.

The most serious part of the allegation from my point of view as Minister is the individual's claim that he was left in a cell without any medical attention for five hours. It is my understanding that within about 40 minutes of his being taken to the East Perth lockup, on a police initiative because they were concerned about his wellbeing, a doctor was called. It took about 40 minutes for the doctor to arrive and after examining the individual the doctor came to the conclusion that the man was not in serious medical distress. It is my understanding that when the individual woke in the morning he complained of further soreness, there was some swelling, and he was conveyed to the Royal Perth Hospital. I was most concerned about that aspect because of the deaths in custody, because a duty of care should be undertaken by police officers and because orders have been put in place to ensure that certain functions are carried out by the police. I was concerned by the allegations that those procedures may have broken down.

I am not in a position to respond, except in a brief way.

Several members interjected.

Hon P.G. Pendal: I would hate to think what you would do if you were briefed on something!

Hon GRAHAM EDWARDS: It is concerning for a Minister when allegations like these are made and carried in the media. I have a responsibility to endeavour to address these issues. I requested a briefing from the Commissioner of Police first thing this morning and he advised me that an investigation had been initiated by the police as it should have been because these are serious allegations. I hope that some way down the track we will know the result of those investigations.

PRISONS - PRISONERS RELEASED, CRITERIA AND CONDITIONS
Prerelease Program; Work Release Program; Parole

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

Some notice of the question has been given. What are the criteria and conditions attaching to persons who are released from prison on -

(a) a prerelease program;

(b) a work release program; and,

(c) parole?

Hon J.M. BERINSON replied:

I acknowledge that prior notice was given of this question, but the department was not able to provide me with an adequate response in time for today's sitting. The reply will be available tomorrow.