WESTERN AUSTRALIA

PARLIAMENTARY DEBATES

(HANSARD)

THIRTY-FOURTH PARLIAMENT
FOURTH SESSION
1996

LEGISLATIVE COUNCIL

Thursday, 22 August 1996

Legislative Council

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THE DEPUTY PRESIDENT (Hon Barry House) took the Chair at 2.30 pm, and read prayers.

JOINT STANDING COMMITTEE ON THE COMMISSION ON GOVERNMENT

Ninth and Tenth Reports, Tabling

Hon M.D. Nixon presented the ninth and tenth reports of the Joint Standing Committee on the Commission on Government, and on his motion it was resolved -

That the reports do lie upon the Table and be printed.

[See papers Nos 528 and 529.]

MOTION - URGENCY

Corporations Law Reform to Prevent Abuse of $2 Companies

THE DEPUTY PRESIDENT (Hon Barry House): I have received the following letter addressed to the President and dated 22 August 1996 -

Dear Mr President

At today's sitting, it is my intention to move under SO 72 that the House at its rising adjourn until 9.00 am on 25 December 1996 for the purpose of discussing the need for fundamental reform of corporation law to prevent abuse of $2 company structures, which are destroying the businesses of many small contractors and suppliers and to discuss the increasing difficulty of obtaining a remedy.

Yours sincerely

Alannah MacTiernan MLC
Member for East Metropolitan Region

In order to discuss this matter, it will be necessary for at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

HON A.J.G. MacTIERNAN (East Metropolitan) [2.34 pm]: I move -

That the House at its rising adjourn until 9.00 am on 25 December 1996.

From the outset I indicate that I raise this matter in this House in a bipartisan way. The general issue of corporation law is one with which we should all grapple, and I would not attempt to attribute blame to only one side of politics in this regard. I will comment on the role of the Builders Registration Board and be a little critical in that respect, but the general thrust of this debate is to again raise the issue and to see if we can move forward as a State Parliament and begin agitating for change in this area.

As many members know, incorporation for business operations started in the sixteenth century with the grants of royal charters to and special statutory incorporation of a variety of business operations. It flourished in the seventeenth century and some of the most famous companies were formed during that period through royal charter. I am sure most people have heard of the East India Company and the Hudson Bay Company. At that stage incorporation was very definitely a matter of privilege, and it was a matter of privilege that had to be argued for. It was considered that the capacity to incorporate, and thereby limit the liability of persons who had come together to form the company, was quite properly a privilege and one that had to be examined on the merits of the organisation and enterprise being considered. I am not saying this was always done in a terribly reputable way and, obviously, some wheeling and dealing went on. However, at least in principle it was a recognition that the Crown or Government was prepared to grant this protection of limited liability if the company would add to the overall level of commercial activity. At the end of the day it was seen as positive to the formation of commercial activity and the notion of investment. Until the nineteenth century it remained very much in that form and each company of traders and entrepreneurs had to argue its case.

In the nineteenth century the situation changed and incorporation by right was introduced. It became a matter of complying with formalities through generalised procedures set down in Statute. I believe, as do many people - certainly many small business people - that incorporation has developed so that it is not used simply to protect and limit the liability to a particular level of investment. It is not seen as allowing a person to indicate he is prepared to invest in a venture to a certain set amount but, rather, it has become a mechanism for many to avoid liability

altogether. We see this in particular with the $2 companies, where no investment has been made. It is not a question of, say, 20 or 200 people getting together and putting in $1 000 each, with their liability being limited to that amount, which in total becomes the capital of the company. Currently companies are routinely and predominantly formed with no capital to speak of, but with only a nominal capital. There are protections in the Corporations Law in relation to this, and supposedly the most powerful is the capacity to get at the directors. The legislation contains provisions whereby a director who allows a company to trade while insolvent or establish a debt which it is not able to pay as and when it falls due, theoretically can be sued. We know that in practice that avenue is not generally open to the small trader, firstly, because of the great expense involved in taking such an action. That expense will be even greater from this week as the filing fees in the federal court for such an action to commence will be increased from approximately $365 to $1 600, making even a notional strategic application more difficult.

Even if one were able to get together with the other victims of the directors, one would almost inevitably find that there had been set in place a variety of other devices. For example, all the assets of the director would be in a discretionary trust which means that they would be totally immune from any action taken against the directors - their assets flying around the world not legally vested in any individual. That is an absurd concept which should be unravelled. Even when perhaps there has not been a discretionary trust almost inevitably the directors' guarantees have been given to financial corporations which have the capacity to demand them, and any assets the individual directors may have had, would have been retrieved by banks and other financiers and certainly very little would be left for people such as contractors and suppliers.

That situation is reaching endemic proportions and the very great concern and cynicism that is being created in the business community is that these are not just examples of mismanagement or of incompetence but certainly in many instances what would appear to be either fraudulent conduct or conduct that shows reckless disregard for the people with whom they are doing business.

On several occasions I have brought the attention of this House to a sequence of companies that have shown how this particular little scam can be pulled. It is a series of companies the shareholdings of which have been owned by Mr and Mrs Romanos and Mrs Illiadis. I draw it again to the attention of the House because just last night they put into administration yet another company. It is a most extraordinary sequence of company formation and liquidation. At every stage, as each one of those companies bites the dust, down go with them many subcontractors and suppliers. These directors appear to be able to simply re-form these companies without missing a beat. First, they established a pair of companies operating simultaneously, Designer Log Homes Pty Ltd and Strand Developments Pty Ltd. Through Strand Developments, they registered as a builder and the two companies acting in tandem manufactured and constructed log homes. Their business started going off the rails some time in 1991 and approximately 20 writs were issued against one of those companies. At the same time the other company was in trouble. The two companies were abandoned and the operators simply moved on.

Romanos and Iliadis simply formed a new set of companies, Maywood Enterprises and Designer Log Homes. Without missing a beat the work they were previously doing under those defunct companies was transferred to the new companies. The Builders Registration Board condoned this activity, I believe, as I have raised in this House before, without proper regard for the circumstances. Their new principal vehicle became a company called Maywood Enterprises which they started actively operating around 1991, directly after they had wound down those other companies. That company survived until 1994 when it started getting into trouble. We see from the company searches that in 1994 writs were issued against that company. Always keen to be prepared, the directors then incorporated two further companies. They continued on with Maywood Enterprises until 12 January 1995 when it went into liquidation. Again - I have the names here - in each case taking down with them a number of suppliers and subbies. The company did not miss a beat. All the contracts Maywood Enterprises had were negotiated with the insurer and those contracts went into the hands of a company known as Creative Builders (WA) Pty Ltd.

By this stage we had been alerted to this mob and started making representations to the Builders Registration Board. For some reason this time when they made application to simply transfer registration under the Builders' Registration Act from Maywood Enterprises to Creative Builders, the Builders Registration Board said no, which was a positive thing. That did not stop Romanos and Iliadis. All they did was second an individual who had a building licence, listed him with the company as a director, and went about merrily building homes. I pointed out to the Builders Registration Board on several occasions that this company was effectively entering into building contracts and that it was building, notwithstanding the fact that we had pointed out the actual licences were being issued in the name of the director of the company who had a building licence in his own right. However, there was no doubt from looking at the contracts and the dealings that home buyers, subcontractors and suppliers reported that Creative Builders (WA) Pty Ltd was in fact doing the work. Indeed I have some accounts here that show that Creative Builders was engaging the subcontractors. Romanos and Iliadis have ground a fourth company into the dust. I know that they now have another company waiting in the wings.

When the very aggrieved subcontractors rang one of the associates of this company last night he said all the contracts that were being formed by Creative Builders have now been moved into the other company, Designer Homes, and Creative Builders had been wound up. When we checked the records last night, as of yesterday, an administrator of

this company was being appointed and once again, without missing a beat, they have simply used a corporate vehicle that they had ready and waiting, Designer Homes. In this I believe they are aided and abetted by the Builders Registration Board which has failed to examine the contracts to determine whether they are operating.

I have raised these people's actions with the Australian Securities Commission on a number of occasions and no action has been forthcoming. When people can get away with conduct of this nature it is a very clear indication that we must do something. We must seriously consider whether people who have liquidated companies need to go into the sin bin for a couple of years before they are unleashed again on the public. We must consider proper education for company directors and we must get the ASC to actively investigate and prosecute these players down the small end of town.

HON PETER FOSS (East Metropolitan - Attorney General) [2.49 pm]: I strongly support the motion that is before the House. The question of phoenix companies has concerned me for many years as a practitioner. It was raised recently in ministerial council. The Attorney General for Victoria, Hon Jan Wade, and I were vocal in saying to the Australian Securities Commission that it had to tackle this problem vigorously. One of the suggestions that came up, and was to some extent dismissed by the ASC, was that of identifying directors with an Australian directors number. In the same way as each company has a number, the idea was to identify the directors. The ASC said that was far too difficult to enforce because people might use different names or different spellings of names.

Hon A.J.G. MacTiernan: That is precisely why it is needed.

Hon PETER FOSS: Precisely. I thought that was one of the most feeble excuses I had heard. I will outline the regime I proposed to the ASC and asked that it take up. First, I believe there should be an Australian directors number. People who want to be a director of a company should obtain an ADN before becoming a director. Second, they must use that ADN whenever becoming a director of any company. Having once identified themselves with that number, that same number should be used in every company with which they are associated. Third, there should be a prohibition on their registering a second number or using any other number, even when they change their name. They are stuck with that number forever and it would be an offence to use any other number or a false number, or even to try to register another number.

Fourth, a director of a company that goes into liquidation may not act as a director of any other company without the leave of the ASC. That should be an administrative decision, and it is up to the directors to then get leave from the court if they wish to continue to practise as directors. As soon as they go into liquidation, if they want to continue, they must go to the ASC to get that permission. If they obtain that permission immediately, that is fine; if it is refused, the only remedy is to get leave from the court to continue to act as a director. Obviously I am talking about an involuntary liquidation rather than a voluntary liquidation when all matters of property are discharged.

Fifth, a person who acts without obtaining and using an ADN, or who uses a false or wrongly obtained ADN, or who without the required permission has lost his right under the previous measure to continue to act as a director, becomes personally liable for the debts of any company of which he is a director. Sixth, any director who knowingly allows a fellow director to do any of the things referred to in the previous measure also becomes personally liable. Seventh, "another director" includes a person who is deemed to be a director, even though he is not shown as such. It must also be taken into account that on many occasions, once people know they are not allowed to act as a director, they act without being on the register. If people in the company acknowledge that, and they allow those people to be directors, that measure should be extended to them.

Eighth, there should be a similar provision with variations for when a company goes into receivership or when it ceases to trade without honouring its contracts. That is something I propose also for builders. The essential aspect is that liquidation is often not the remedy. Frequently, as soon as these phoenix companies reach the situation outlined by Hon Alannah MacTiernan and are onto a new company, nobody bothers to put them into liquidation; that would be putting good money after bad.

Hon A.J.G. MacTiernan: Some of these companies have not been liquidated, but just abandoned.

Hon PETER FOSS: Why would it be done other than for the satisfaction of liquidating them?

Hon N.D. Griffiths: There is no satisfaction.

Hon PETER FOSS: Some satisfaction may be gained because once a liquidator is appointed certain action may be taken. Generally, the average person will not go to the expense of liquidation. Cabinet has approved that sort of sin bin regulation for people who are either directors of companies or builders. Under the Builders' Registration Act people are entitled to have a licence if a registered builder is in charge of the work. The one extra aspect in building companies is the person who holds the licence. That is an important matter because not only the directors but also the person whose registered number was used in order to allow the company to trade as a building company should be put in the sin bin.

There is some argument about what these companies are doing. Quite a few companies say that they build homes when in fact they sell built homes.

Hon A.J.G. MacTiernan: They describe themselves as project managers.

Hon PETER FOSS: That is right; not as builders. Probably under the strict interpretation of the Act that may be the case. The difficulty is that if they are not actually building, under present legislation little can be done.

Hon A.J.G. MacTiernan: But they are.

Hon PETER FOSS: Yes. There is a difficulty with that. The other legislation that will come forward will seek to raise greater fees. One of the problems the Builders Registration Board has encountered is that when it was given jurisdiction for the building disputes committee, it was given no further money. That has been a problem because it was a substantial increase in its jurisdiction and workload. A proposition has been approved by Cabinet to allow further fees to be levied so that drain can be met.

Hon A.J.G. MacTiernan: Are these fees to be paid by home buyers, not builders?

Hon PETER FOSS: It needs both, I think. We are looking for more fees from builders, but also for the building disputes committee to have a capacity to charge people for a hearing. Also the Government is introducing compulsory home building contracts insurance.

Although the principal benefit people have is the corporate veil, that still is not the end of the problem. Recurrent frauds do it even without the corporate veil. I remember my mother being defrauded many years ago by a man called Laurence George Patrick Gill. He was the owner of Gills Transport. He took many people's money. These were generally people who were widows, like my mother. I am pleased to say that he was gaoled for it. After getting out of gaol and having been disqualified from being a director of a company, he continued to do exactly the same thing by registering under numerous business names. The extraordinary thing is that he must have been in his late eighties or early nineties at that time. I used to walk to work along Royal Street in East Perth and I saw a building with about 10 business names on it. The names struck a bell with me: I thought they sounded just like Laurence George Patrick Gill. I looked in the door and there was a very old man, but unmistakably Laurence George Patrick Gill. A number of times in my legal career I came across this man doing exactly the same things. However, was it worth chasing him? Generally speaking, it was not. He did not have any money, except other people's. He was always finding new people whom he could persuade to give him some money. They usually lost their money. Perhaps it could have been proved that it was fraudulent, and he could have been put in gaol. However, the point was that he was one of those people who could not stop themselves.

Even when the corporate veil is removed some people will not be able to resist doing that. That is life. Many people take comfort from the corporate veil - the removal of personal liability. If we remove that, it will be much easier to stop those people and to ensure that they do not get the benefit of the corporate veil. Some of those people do profit. However, some people are hopeless: They take other people for a ride but never make any money themselves; they just lose everybody's money. They are incompetent as well as dishonest. The Government wants to at least stop those people who have made some money out of their dishonesty from getting the corporate veil so there is access to the money they have made.

This is a matter that must be dealt with. I have urged the ASC to get on with it. It is an area that I find irritating. It has been a problem for 20 or more years that I know of. It is about time our corporate law was changed to deal with those people.

HON P.R. LIGHTFOOT (North Metropolitan) [2.59 pm]: I do not disagree with this urgency motion, although I am not sure it is an urgency motion in the true sense of the word. Nor do I disagree with the comments of the Attorney General. However, I might reserve my right to disagree with both Hon Alannah MacTiernan and the Attorney General to some degree. Some people may ask why I, a non-lawyer, may have the temerity to disagree to that extent. I have some reservations -

Hon J.A. Cowdell interjected.

Hon P.R. LIGHTFOOT: Can the member repeat that so the Hansard reporter can be sure of what he said?

Hon A.J.G. MacTiernan: It referred to the company you keep.

Hon P.R. LIGHTFOOT: Touche.

The DEPUTY PRESIDENT (Hon Barry House): None of us has any option while in this place.

Hon P.R. LIGHTFOOT: I am not dead sure I have any choice in this place about the company I keep in relatively close, but not intimate, proximity to other members. Although lawyers, in the guise of politicians, invariably call for reform of this nature, they also keep shelf companies that provide for limited companies where anyone can wander in off the street and get such a company.

Hon Peter Foss: It is because accountants are beating them hollow.

Hon P.R. LIGHTFOOT: If that is the case, I am surprised I have not been petitioned. I must accept that interjection, because it comes from the Attorney General. However, it must be the only thing on which accountants can beat lawyers, let alone beating them hollow. I do not think accountants will ever beat lawyers on their fees.

I do think some reform is needed, but it must be tempered with the overall view of why limited liability companies are so structured in the first place. The vast amount of wealth in Australia is not created by the BHPs, the CRAs, the Western Minings or other limited liability companies that have a multitude of shareholders and board structures that are absolutely frightening, both in terms of their acumen and the cost of the boards. They are composed of companies that started as $2 enterprises; that is, the liability that was incurred by the company was limited to $2. If there were no other assets with which to liquidate the company, it was limited to that amount alone.

In this motion we are looking at removing or jeopardising entrepreneurs. That is not a particularly nice word in the 1990s. It used to be a fairly hefty word in the avaricious 1980s, but not so today. We have done a 180 degree turn on that. Irrespective of whether that word is acceptable in today's lingua franca, those entrepreneurs still create the wealth. That must be created from small business. We should not jeopardise assets such as homes, motor cars, money put aside for school fees, superannuation or insurance claims.

I do not give any credibility or credence to people about whom the Attorney General and Hon Alannah MacTiernan spoke. However, no matter whether it be the housing industry, a law practice or an accountancy practice - the latter categories are less inclined to be protected by limited liability, if at all - I do see there is a danger of throwing the baby out with the bath water. I do not want people, who generally wish under the most proper moral conditions to set up a proprietary limited company, that by its very nature is limited to $2 until further assets go into it, to be jeopardised by any legislation that will impinge upon the assets that were built up prior to that time. Even then, some assets are taken out during the life of that $2 company. Provided those assets are taken out in a proper way, they should not be jeopardised.

Hon Peter Foss: All they have to do is get a registered number.

Hon P.R. LIGHTFOOT: What the Attorney General has said is commendable. However, I am not one to think the Australian Securities Commission should be forced by the States to lead the way. At times we have variations of several major Acts that do not strictly comply, superimpose or shadow the legislation of other States. They are often loosely called uniform laws, but in a strict sense they are not uniform. Of course, we could introduce legislation in this House to cover those areas. They would not be entirely waterproof because of the federal Constitution covering trade between states, and other areas. However, we could take that lead. I do not want to jeopardise or thwart Western Australia because we lead the way in those commendable, and not so commendable, areas of entrepreneurship. By our very nature, people in Western Australia seem to produce more entrepreneurs than are produced in the other States on a per capita basis. I believe one reason we are able to do this -

Hon A.J.G. MacTiernan: It costs us more to imprison them in this State than in the others.

Hon P.R. LIGHTFOOT: I should refer the member to some statistical bottom line figures. No matter what it costs this State for entrepreneurs who go wrong - if I heard the member correctly - there is a net gain to this State in that philosophy. In effect, the mentality that prevails here is comparable to that which existed at the turn of the century on the west coast of the United States. I do not think tightening the laws for $2 companies, which will abolish the reason for which these companies were set up in the first place, will be an addition to the area in Western Australia that has been so successful and has made this State the leading developer in terms of export income and other areas.

There are onerous conditions for directors of any companies today, and perhaps they should be looked at. We might consider the taxation structure that forces people into limited liability companies. Why is it that provisional tax, which was introduced during the Second World War as an emergency war time measure, is still prevailing upon people? Why do $2 companies not attract provisional tax? That is one area that forces people into $2 companies that sometimes go very wrong. I would not be a director of a company today unless I were thoroughly rewarded and I could see the way ahead clearly. People do not have to be directors of a company. They can be deemed to be a director of a company if they carry out certain functions within that company; for example, an accountant who is not necessarily a director. People can be deemed to be a director and can be charged with the same responsibilities with which other directors are charged.

Hon A.J.G. MacTiernan: You need $50 000 to take it to the Supreme Court to prove it.

Hon P.R. LIGHTFOOT: Does the member mean with the rise in fees?

Hon A.J.G. MacTiernan: The substantial cost is running a case in the Supreme Court or the Federal Court.

Hon P.R. LIGHTFOOT: It is, but it always has been. Hon Alannah MacTiernan should talk to some of her colleagues and get them to drop their fees of $300 or $400 an hour to represent people. That is not within the structure of the Federal Court; it is within the structure of the Law Society of WA that allows fees of between $300 and $400. The emminent barrister, Tom Hughes, QC, commands fees of between $10 000 and $12 000 a day and other not so prominent high flyers also command fees of $10 000 a day. In an entrepreneurial sense that seems to

me to be somewhat obscene. It is not the court structures we need to look at. We need to look at not just the $2 companies or the reformation of the ASC or of the companies or corporations Acts, but at a whole raft of things. We should look at the Australian Stock Exchange Ltd and the conditions imposed by it that cause such hardship for directors. We should look at other areas including the legal side that imposes such onerous monetary imposts on people who wish to develop companies. However, as I say, we should not throw the baby out with the bath water in this matter. I endorse the thrust of what Hon Alannah MacTiernan has said, but I do not believe we should necessarily kill the $2 company altogether.

HON N.D. GRIFFITHS (East Metropolitan) [3.08 pm]: I agree with the constructive comments made by the Attorney General. I also agree with the comments made by Hon Alannah MacTiernan, who has given us the opportunity to discuss this very important issue. Some of the points raised by Hon P.R. Lightfoot, I regret to say, I disagree with.

Hon P.R. Lightfoot: About the fee structure for lawyers, perhaps.

Hon N.D. GRIFFITHS: I will not dwell on his comments about members of the legal profession, as that is not necessary.

Hon Mark Nevill: He gave a one-sided view.

Hon N.D. GRIFFITHS: It is appropriate that the member bears in mind the existing regulatory regimes. The Attorney General pointed out what he regarded as some deficiencies of the Australian Securities Commission. It follows from what the Attorney General said that we must be watchful of the ASC so that it does not fall into the trap into which its predecessor fell.

This motion is concerned with the $2 company; namely, the proprietary company, not the public companies which attract the headlines with fraud or the misuse of shareholders' funds involving hundreds of millions of dollars. These companies, at the worst end of the scale, defraud people of relatively small amounts of money, although they are large to the people concerned. At the other end of the scale is inappropriate or negligent business practice which causes reasonable business people to lose money. It has a very bad effect on the function of the economy overall.

There is some value in Hon Ross Lightfoot's comments as he raised the relevance of the proprietary limited company, which can be a very efficient vehicle for the conduct of proper business transactions. However, it is often abused. Therefore, it requires stronger and more effective regulation than we unfortunately have at the moment. Some consideration should be given to why people enter into arrangements which involve proprietary limited companies and consider whether and to what extent there is public benefit in those arrangements.

Hon Ross Lightfoot referred to taxation considerations. I query whether public benefit arises from people entering into arrangements with proprietary limited companies for the purpose of reducing the tax they would otherwise pay. There is certainly a private benefit, but I question whether it amounts to a public benefit. I do not say we must not tax the rich, otherwise they would not work. The reality is that under Sir Robert Menzies the top rate of income tax was 75¢ in the dollar. The top rate is currently much less than that. When the current Prime Minister was Treasurer, the top tax rate was 60¢ in the dollar, and not so many years before that that rate was 66⅔¢ in the dollar. We overplay the incentive argument at times.

I am concerned about the public benefit in the extent to which we allow perpetual succession, which is part of our history including that of the United Kingdom. It has been an important consideration of many Governments to minimise the degree to which perpetual succession exists. It has a difficult effect on the revenue base. For example, that is why we have a capital gains tax regime.

Corporations do not die; they carry on. What is the effect of this? They minimise the amount of tax paid. Raising tax is for a public benefit, and minimising tax is for a private benefit. It is a question of balance. The primary reason given for entering into an arrangement which involves a corporation is the limitation on liability. Hon Alannah MacTiernan raised instances in which liability should be limited, and the Attorney General I think would agree that liability should not be limited in those circumstances. When one examines substantive law, there is a reasonable likelihood that liability would not be so limited. The difficulty we have is that the procedure of the enforcement of the substantive law, whether on the part of individuals or the ASC, is time-consuming, expensive and overall somewhat inadequate.

The further reason given for people entering into arrangements with corporations is the raising of capital. Of course, by its very nature the $2 company does not involve capital raising. Overall, we are concerned about the question of limiting when considering liability companies. In that case creditors are usually secured by the liability of directors. The big end of town, the banks, makes sure that it is looked after, and other major contractors, not just restricted to those providing finance, are looked after. It is the small player, the person who runs a small business, who is at risk through this abuse of corporate law. I query whether we have gone too far. Permitting the wholesale use of proprietary companies which pervade the lives of those who conduct business is something we must put up with. On balance, it is doing more harm that good at present.

I trust that the measure which the Attorney General has put forward to his ministerial colleagues from other States will come into play soon, and that we will give further consideration to how far we should go in regulating this economic destructive regime of the overuse of a proprietary company.

HON B.K. DONALDSON (Agricultural) [3.18 pm]: I bring a sense of balance into this debate. We have heard from three honourable members from the law profession. I agree with Hon Alannah MacTiernan in her key words about the need to prevent the abuse, not to get rid of the $2 shelf companies. If one looks deeper, one finds she has opened Pandora's box.

Regarding $2 shelf companies, during the 1980s - I am not trying to denigrate the professions of law or accountancy in this sense - there was a money trail going off-shore which still goes on today, aided and abetted by lawyers and accountants acting on behalf of their clients. To this day, if one wants to put money off-shore which a money trail cannot find, one can do it - believe me. I have not tried it, but I know people who have. There is a great way of sending assets off-shore very easily. I am sure the learned professionals in this House would not disagree with what I am saying.

It is sad to see an abuse of the system which has helped many small businesses develop. Importantly, over time, the $2 shelf company has become a dirty word, and this is unfortunate. It is important to recognise that point.

Also, during that time we saw a lot of the stamping of agreements conducted interstate, especially in the Northern Territory. There was a weekly flight out of Perth by law firms to stamp agreements so they did not attract stamp duty in this State. I was dealing with a limited company of my own at the time, and I thought I might be smart: I said to my accountant, "How about we go on the weekly flight and get it stamped?"

Hon A.J.G. MacTiernan: The Darwin shuffle.

Hon B.K. DONALDSON: Exactly right. Unfortunately he pointed out to me that I was a small fry and it would have to be sited in this State. I thought that if these other people were doing it, why should I not be able to enjoy these immense benefits? I did the right thing, being an honest person, and had it dutifully stamped in Perth as an agreement.

Some very large agreements in dollar terms are being stamped interstate and people are getting away with it. The $2 shelf companies that have been used to hide many of the activities that were taking place during a period - it has been going on longer than I know because I am not a professional person - intrigued me. I was also intrigued about how people were able to get away with the things they were getting away with. Two dollar companies were headlines almost every day. Many people rorted and abused the system that was set up to assist them. As Hon Ross Lightfoot pointed out, they were set up to assist small businesses to develop. The tax rate has been very attractive for propriety limited companies.

Hon Mark Nevill: I thought he would be lamenting the passing of the no liability company, which the Federal Government is looking at.

Hon B.K. DONALDSON: There is a duty of care as a director that he was talking about. The laws are being tightened up in that area also. Therefore, I guess that is being addressed. I do not know how we can prevent abuse of $2 companies. I would be most intrigued to learn from the learned professionals how that could be achieved.

Hon A.J.G. MacTiernan: We gave suggestions.

Hon B.K. DONALDSON: I know. However, it is all very well to give suggestions. Seeing them in practice is the difficult thing.

Hon P.R. Lightfoot: Before you ask for that advice you had better see if the clock is on. You might end up being charged.

Hon B.K. DONALDSON: Unfortunately, that is quite true these days. One does not ring for advice without the clock being started.

I wanted to introduce a sense of balance into this debate. It is interesting to hear three lawyers talking about this so-called abuse. This has been going on for a long time with the support of a number of accountants and lawyers.

Hon Peter Foss: The big problem is that Parliament has not acted.

Hon B.K. DONALDSON: The loopholes are there. Does that excuse the conduct?

Hon Peter Foss: Those people do not normally rely on accountants and lawyers. They do it on their own in a fraudulent way.

Hon B.K. DONALDSON: I had a discussion recently with a group of people and one person told another person that if he wanted to set up things in the future, that could be done by moving assets and money offshore. My curiosity was aroused and I asked the person what would happen if he and his partner were killed suddenly. He then told me

about the system that then operates. He said it goes from one lawyer to another and eventually the family would benefit from the transfer of assets offshore.

Hon Peter Foss: That is not limited liability.

Hon B.K. DONALDSON: I realise that. However, this debate has opened up more than just the abuse of $2 shelf companies.

Hon A.J.G. MacTiernan: We are trying to focus on this issue.

Hon B.K. DONALDSON: Fine. I thought I would throw that lot in to assist my colleague Hon Ross Lightfoot who, like me, does not enjoy the profession of law. I support the motion although I do not believe it is a matter of urgency. I am glad it has been raised. It may be a subject for the adjournment debate.

Hon Mark Nevill: It is the fourth time this company has collapsed. I support Hon Alannah MacTiernan's intention.

HON J.A. SCOTT (South Metropolitan) [3.24 pm]: I support the motion also. I wonder whether the Government has any arrangements in place do something about this. I know there are a number of companies with which the Government deals which are $2 off the shelf companies. Are policies in place to ensure that this issues is resolved in the future?

HON A.J.G. MacTIERNAN (East Metropolitan) [3.25 pm] I want to recap on some of the issues. I am very glad that there is support for the Attorney General for dealing with these serial liquidators. We are not attempting here to completely eliminate the $2 company. The sorts of measures that the Attorney General and I are promotingwill ensure a greater transparency and also are measures that will see those people who, either through incompetence, reckless disregard, or outright fraud, are in the habit of leading companies into involuntary liquidation and then, without missing a beat, regenerating new companies through which to take over the same business. I raised this in an urgency debate because last night we became aware of this group of companies, which I have been following for some time, moving into liquidation and bringing down with it yet again more contractors and suppliers. Such a level of concern has been developing in small business that I thought it was important that we got moving on this issue.

I support the Attorney General's suggestion of an Australian directors' number. I have spoken to the Australian Securities Commission about the way it allows people to change the way their names are styled from company to company. The problem with that is that it makes it difficult to find via a search of a director the full extent of his operations. However, although I support that measure, I do not think it gets to the guts of the problem. Each of the companies in the sequence of companies had the same directors. There was no attempt to conceal.

Hon Peter Foss: The idea is, once one goes bust, they cannot continue to be directors.

Hon A.J.G. MacTIERNAN: The crucial issue is the sin-bin, not the number. The number is a mechanism for ensuring the sin-bin is properly operated. We have to put that in place. In some instances the liquidation of some of these companies will be caused by incompetence.

Hon Peter Foss: My proposal is the sin-bin.

Hon A.J.G. MacTIERNAN: If the person believes there are exceptional circumstances he can go to the court.

Hon Peter Foss: The other thing is there is an incentive for having the number because you go in the sin bin if you do not use the number.

Hon A.J.G. MacTIERNAN: That is right. We have to ensure that these directors before they get the grant of incorporation are required to make is clear to the ASC that they understand the nature of the grant of incorporation and the nature of the duties which they are about to take on. It is my proposal for those people who do not have relevant professional qualifications to complete some short course with the ASC.

This would make people more cautious about entering into directorships. At the end of the day, unless the ASC is involved in some strategic prosecutions, this situation will continue because these people know they will get away with it and that the contractors and suppliers will never have the funds to take legal action against them.

[The motion lapsed, pursuant to Standing Order No 72.]

GOVERNMENT RAILWAYS AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon E.J. Charlton (Minister for Transport), and read a first time.

Second Reading

HON E.J. CHARLTON (Agricultural - Minister for Transport) [3.31 pm]: I move -

That the Bill be now read a second time.

The purpose of this legislation is to allow third parties to operate their own trains, using their own train crews on the government railway network. A 'third party' means any person who proposes to enter into a contract or arrangement with the Railways Commission for the right to operate trains over Westrail's tracks.

Currently the Government Railways Act does not contain explicit provisions which would allow a grant of access, and legal advice obtained by Westrail suggests that some current provisions would inhibit the grant of access. There is also a need to ensure that Westrail has the capability of meeting its responsibility under the Competitive Principles Agreement. It means that Westrail will be potentially exposed to competition for the provision of services on its network from other operators. However, I believe that with the reform that is taking place in Westrail, it will be able to compete effectively.

The Bill provides for the Railways Commission to enter into agreements with third parties to use a railway or portion of a railway for the purpose of operating a railway service using its own rolling stock and train crews. Such agreements will require the approval of the Minister for the Western Australian Government Railways, will be commercially based and third party operators will be required to comply with all normal Westrail safety and operating standards under the Railway By-laws. The agreements will be for periods up to 21 years but can be terminated in the public interest. The agreements will include the payment of moneys for use of the railway and any improvements that are necessary to improve the railway to meet third party operators' needs. The amendment will benefit tourist train operators, such as the Hotham Valley Tourist Railway, as it will provide them autonomy in operating their own services. Also, efficiencies will result for Westrail as it will not be required to provide train crews for tourist train services.

This Bill also provides for the sale, lease or the right to use real or personal property of the Railways Commission that the third party operator wishes to use for the service and to which the Railways Commission agrees to sell, lease or grant the right to use. Existing provisions of the Government Railways Act that may prohibit or inhibit the operation of such an agreement will not apply, and this is consistent with the legislation that was passed to allow the National Rail Corporation access to the Westrail network.

The Bill is an important piece of legislation which will see Westrail operate in a totally commercial environment and allow for the most efficient provision of transport services to Western Australia. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

CRIMINAL CODE AMENDMENT BILL (No 2)

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Attorney General) [3.34 pm]: I move -

> That the Bill be now read a second time.

The Government shares the community's concern about the prevalence of home invasion offences and acknowledges the devastating effect which such offences can have on the lives of victims. Home burglary is a predatory crime which touches the lives of many people. It not only involves the expense of damage to or loss of property and the risk of serious personal injury, but also leaves victims with the sense that the sanctity of their homes has been violated. Police statistics and surveys of crime victimisation show that home burglary is all too common. Recently published findings of a study of community perceptions of the risk of crime victimisation confirm that people in Western Australia, like those in other States, are fearful of being a victim of such an offence. A manifestation of this concern is that home owners have sought clarity in respect of their rights to protect their property, and, in particular, the circumstances in which they may use force to defend themselves and their family. These issues are addressed by the Criminal Law Amendment Bill 1996 which is currently before the House. That Bill -

> makes it lawful for a person to use such force as is reasonably necessary to prevent the commission of any offence - not only an 'arrestable' offence as at present;
>
> enables a person to defend his or her house against entry by a person thought to be attempting to commit any offence - not only an indictable offence; and
>
> replaces the definition of 'dwelling house' with a broader definition which encompasses any place used for human habitation.

The aim of the present Bill is to deter burglars and incapacitate those who commit such offences by providing for much tougher penalties. The existing provisions relating to burglary are contained in section 401 of the Criminal Code. Section 401 was amended in 1991, eliminating the concept of 'breaking and entering' and replacing it with the offences of entering or being in the place of another person without that person's consent with intent to commit

an offence therein; and committing an offence in the place of another person, when in that place without that other person's consent. Both offences carry a penalty of 14 years' imprisonment when dealt with on indictment.

Prior to 1991, a distinction as to penalty was made between committing an offence in relation to a dwelling house and in relation to some other type of building, the former carrying a greater penalty. In addition, because of the greater likelihood that the occupants would be present, a greater penalty was available when a dwelling was broken into at night. When the Criminal Code was amended in 1991, the distinction between types of buildings was retained for purposes of summary conviction only. The effect is that when an offence is dealt with on indictment, the statutory penalty for home burglary is no different from that for other forms of burglary. At the same time, the overall maximum penalty for burglary at night time was reduced from 20 years to 14 years. The Murray review's recommendation that the code be amended to provide for graduated penalties for offences with aggravating circumstances was not implemented.

The purpose of this Bill is to -

(1) reflect the gravity of home invasion offences by creating a new offence of home burglary distinct from burglary in any other place with a more severe penalty;

(2) give effect to the Murray review's recommendation that a higher maximum penalty should apply to the offence of burglary committed in circumstances of aggravation; and,

(3) address the problem of recidivist home burglars by providing for the imposition of a mandatory minimum sentence where the offence forms part of a pattern of such offending behaviour.

Specifically, the Bill -

(1) differentiates between burglary in a place ordinarily used for human habitation and burglary in any other place by creating a new offence of burglary in a place ordinarily used for human habitation with a more severe maximum penalty of 18 years;

(2) increases the penalty for burglary committed in circumstances of aggravation to 20 years' imprisonment in order to reflect the extreme seriousness of the offence; and,

(3) provides that if a person convicted of an offence of home burglary has two or more previous convictions for such an offence, the court must sentence the offender to a minimum of 12 months' imprisonment or, if the person is a juvenile, to at least 12 months' imprisonment or 12 months' detention.

The scheme for the determination of whether a person convicted of an offence of home burglary is a repeat offender is simple and avoids the difficulties presented by the Crime (Serious and Repeat Offenders) Sentencing Act 1992. A person becomes a repeat offender if, prior to being convicted of the commission of the present offence, he or she committed and was convicted of a relevant offence and, subsequent to that, committed and was convicted of another relevant offence.

Circumstances of aggravation are defined to include circumstances in which, at the time of the commission of the offence, the offender either was or pretended to be armed; was or pretended to be in possession of an explosive; was in the company of another offender; caused bodily harm to another person; threatened to kill or injure another person; deprived any person of his or her liberty; or knew or should have known that there was another person, other than a co-offender, in the place being burgled. These elements are consistent with the definition of the circumstances of aggravation which applies in other parts of the Criminal Code.

The Bill also provides that burglary committed in circumstances of aggravation may be dealt with only on indictment. Similarly, if the offence involves any property to the value of more than $10 000, the offence is not to be dealt with summarily.

This Bill complements the amendments to the Criminal Code contained in the Criminal Law Amendment Bill 1996 relating to the protection of person and property. The Bill targets the unacceptable prevalence of home invasion offences and burglary involving circumstances of aggravation; reflects the views of the community and the legislature that current penalties are manifestly inadequate to deter offenders and fail to give due weight to the distressing effect of these offences on victims; and responds with far tougher penalties where the burglary involves home invasion, involves circumstances of aggravation, or is part of a pattern of repeat offending. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

ACTS AMENDMENT (ICWA) BILL

Introduction and First Reading

Bill introduced, on motion by Hon Max Evans (Minister for Finance), and read a first time.

[Thursday, 22 August 1996]

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [3.40 pm]: I move -

That the Bill be now read a second time.

The Acts Amendment (ICWA) Bill 1996 amends the State Government Insurance Commission Act 1986. That Act, enacted by the previous Government, merged the operations of the Motor Vehicle Insurance Trust with those of the State Government Insurance Office by creating the State Government Insurance Commission and the State Government Insurance Corporation. The State Government Insurance Commission was established to provide third party insurance, insurance of certain industrial diseases, and special risks and to handle the public sector's insurance arrangements.

The State Government Insurance Corporation was established as a trading corporation to carry on commercial insurance business pursuant to the SGIO Privatisation Act 1992, the majority of the assets, rights and liability of the SGIO business were vested in a new company, SGIO Insurance Ltd. This new company was privatised by public float in 1994. After nearly 10 years of operation it is timely to make some changes to the original SGIC Act 1986, none of which are considered contentious. The Bill contains four broad categories of amendments -

(a) to facilitate the management of the whole of government exposure to risk with the introduction of the managed fund concept. This was approved by Cabinet on 17 June 1996 with a targeted commencement date of 1 July 1997 and subsequently named riskcover;

(b) to eliminate uncertainties, inefficiencies and shortcomings in the existing Act which affect the day to day operations of the SGIC;

(c) to allow for the dissolution of the State Government Insurance Corporation; and

(d) the desirability for the SGIC to change its name to the Insurance Commission of Western Australia (ICWA).

Expanded Powers to facilitate Managed Fund Concept in Public Sector: A new section 7(4) is introduced by clause 11(7) of the Bill which provides the Insurance Commission with additional powers in respect of its function of managing public sector insurance matters. These powers are -

(a) to arrange the reinsurance of risks;

(b) to establish a fund or funds for the management of risks;

(c) to arrange insurance of risks for public authorities; and

(d) to act as trustee of any trust.

These provisions are inserted to give the Government and the Insurance Commission maximum flexibility regarding the type of self-insurance and insurance arrangements which may be established from time to time for public sector agencies to manage their risks. The Insurance Commission will continue to have no power to act as insurer of the public sector. It is also important to understand that these amendments do not mandate the participation by any public sector agency in insurance arrangements managed by the Insurance Commission. The provisions merely provide the Insurance Commission with the necessary power to respond to changes in government policy from time to time.

The Government presently believes that there are substantial savings to be made by the public sector participating in self insurance arrangements which apply broadly across all public sector agencies with a few exceptions. The new powers in section 7(4) will allow the Insurance Commission to establish more flexible arrangements consistent with such policy. For example, subject to Government policy from time to time, the Insurance Commission will be able to -

(a) establish a managed fund into which participating public sector agencies contribute and to manage that fund for the benefit of those agencies. A managed fund is a form of self insurance which provides participating members with direct involvement in determining the level of risk they retain and the reserve of money which is set aside to pay for future financial losses;

(b) in effect, act as insurance agent or broker to arrange insurance of risks on behalf of public sector agencies with private sector insurers;

(c) establish a trust or trusts on behalf of public sector authorities for the management of insurance risks; and

(d) arrange for reinsurance cover either directly for an agency or through a managed fund or trust.

Expanded functions to enhance day-to-day operations: Following the dissolution of the corporation, the principal functions of the Insurance Commission will be -

(a) to continue to undertake liability under policies of insurance as required by the Motor Vehicle (Third Party) Insurance Act 1943;

(b) to continue to undertake liability under policies of insurance in respect of certain industrial diseases and special risks under the Workers' Compensation and Rehabilitation Act 1981; and

(c) to manage and administer the insurance arrangements of the public sector and provide advice to the Government on insurance matters.

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon MAX EVANS: The Insurance Commission's first two functions remain unaffected by the Bill: The Insurance Commission's function of managing and administering public sector insurance and advising the Government on public sector insurance matters will be expanded in a number of important respects. They are -

(a) Clause 10 of the Bill amends sections 6(c) and 6(f) of the Act, to expand the Insurance Commission's functions to include risk management. The Insurance Commission's public sector insurance functions are presently limited to insurance matters. Insurance and self-insurance are about coping with the financial consequences of perceived risk. Risk management is about taking steps to reduce risk. For example, in the area of workers' compensation, insurance is about insuring the employer against liability to compensate an injured employee. Risk management is about reducing the risk of an employee being injured. The Insurance Commission will be the principal focus of the Government's risk management activities and will be looked to by the Government as the principal source of risk management advice to the public sector.

(b) Clause 10 of the Bill also amends sections 6(d) and 6(f) of the Act, to expand the Insurance Commission's functions to include the provisions of services and advice to public authorities for the management of claims against them. This will, for example, permit the Insurance Commission, in the exercise of its functions, to manage public liability claims against other government entities.

(b) Clause 6(c) of the Bill will also insert a definition of "public authority" to clarify which parts of the public sector the Insurance Commission may be involved in. This definition covers all public sector agencies, including local authorities. Although amendments have recently been made to the Local Government Act to allow local authorities to participate in their own self-insurance arrangements, the Government's intention is that the Insurance Commission should be able to manage any uninsured risks of local authorities. For example, the Insurance Commission will be able to manage risks in respect of volunteer fire fighters.

Workers' Compensation: Under section 160 of the Workers' Compensation and Rehabilitation Act, all employers are required to effect workers' compensation insurance in respect of the liability they have under that Act to compensate workers who are injured during the course of their employment. An exception to this requirement is that certain employers and groups of employers can be exempted by the Treasurer as self-insurers.

There is presently conflicting legal opinion as to which public sector employers section 160 of the Workers' Compensation and Rehabilitation Act 1981 applies. Presently, most public sector employers - as the term "public sector" is defined in the Public sector Management Act 1994 - do not affect workers' compensation insurance. Rather, they participate in self-insurance arrangements managed by the Insurance Commission. Accordingly, clause 23 of the Bill will amend section 44 to clarify that public sector agencies for whom self-insurance arrangements are managed and administered by the Insurance Commission are groups of employers exempt from the obligation to insure.

It is important to understand that these amendments do not, in any way, affect the liability of public sector employers to compensate their employees in accordance with the provisions of the Workers' Compensation and Rehabilitation Act. The amendments merely clarify that the arrangements they have in place through the Insurance Commission comply with the requirements of the Workers' Compensation and Rehabilitation Act to have insurance arrangements in respect of that liability.

Research Functions: Presently, under section 7(2)(o) of the Act, the Insurance Commission can sponsor programs for the prevention of accidental death and personal injury. While this is a useful power in connection with the Insurance Commission's function of insurer under the Motor Vehicle (Third Party) Insurance Act 1943, it does not allow the Insurance Commission to promote programs for the prevention of disease. Accordingly, the Insurance Commission's functions will be expanded by the new section 6(e) to participate in programs for research into the treatment of industrial diseases and injury and the promotion of public awareness relating to industrial disease, personal injury and accidental death.

As the Insurance Commission is the sole insurer for motor vehicle third party personal injury and the sole insurer for certain industrial diseases and special risks, such as asbestosis, it is important to protect the State from undue financial burden by allowing the Insurance Commission to participate in programs designed to reduce the incidence of disease and risk associated with these other functions.

Investments: As at 31 July 1996, the Insurance Commission had $756m in funds to invest. It is important that the Insurance Commission has wide powers of investment in order for it to make a sufficient return on these moneys so as to reduce the cost to the State of the Insurance Commission's functions. For example, most private sector insurance companies do not make their profit out of selling insurance products. Rather, profit is made from investing premium income. In the same way, a substantial portion of the Insurance Commission's income is derived from the successful investment of moneys under its control. As most insurance companies are corporations established under the Corporations Law, there is no legal limit on the type of investments in which they can invest. However, the doctrine of ultra vires still applies to statutory bodies corporate, such as the Insurance Commission. Courts have successively held that a statutory body corporate's investment powers can be read down by reference to its functions.

Accordingly, it is possible for a statutory body corporate like the Insurance Commission to enter into an investment transaction in good faith, only to find subsequently that that transaction was ultra vires. The risk of ultra vires applying to investments is thought by the Government to be undesirable. If the Insurance Commission is to be charged with getting an acceptable return from its investments, it must have wide investment powers. Accordingly -

(a) clause 10 of the Bill introduces a new section 6(g), which provides that the investment of moneys will become a function of the Insurance Commission in its own right; and

(b) clause 11(8) of the Bill introduces a new section 7(5), which will give the Insurance Commission wide powers of investment, including the power to use derivatives and synthetic financial instruments for the purposes of managing risk.

It is the Government's intention that these amendments will effectively remove the doctrine of ultra vires as it may otherwise limit the powers of the Insurance Commission to invest. The Government has made a policy decision that it is inappropriate for the power of the commission to invest to be limited by reference to its other functions.

Of course, the desire to give the Insurance Commission wide powers needs to be weighed up against the need to ensure proper accountability. In response to any concern raised about accountability, I make three points -

(a) First, the Insurance Commission was able, under its existing provisions, to engage in a number of deals in the 1980s which were clearly inappropriate for it. The fact is that the doctrine of ultra vires may not as a practical matter afford protection to the State from inappropriate decisions being made by a statutory body corporate.

(b) Rather than rely on the doctrine of ultra vires, section 19, as amended by clause 17 of the Bill will oblige the Insurance Commission, in pursuing investments, to follow prudential guidelines determined by the Treasurer from time to time.

(c) The Insurance Commission has presently contracted out a large part of its investment function to five private sector fund managers. They and the Insurance Commission are investing the Insurance Commission's moneys subject to the prudential guidelines determined by the Treasurer.

Clause 11(9) of the Bill provides, in effect, that the Insurance Commission's wide powers in section 7 are to have applied from when the Insurance Commission came into existence on 1 January 1987. For example, if prior to this Bill becoming law, the Insurance Commission has entered into a transaction beyond its powers, but the transaction would be within its new powers, it is deemed to have had the power at the time. This amendment is consistent with the change to section 6(g) which made the investment of moneys a function in its own right. The Government is of the opinion that the investment of moneys has always been a function of the Insurance Commission and, accordingly, clause 11(9) of the Bill regularises this situation.

Dissolution of the Corporation: From a practical and cost effective point of view, it would be desirable to be in a position to wind up the State Government Insurance Corporation on 30 June 1997. The bulk of the assets, rights and liabilities of the State Government Insurance Corporation were transferred to SGIO Insurance Limited, which was privatised. The corporation remains in existence and has some residuary assets and liabilities - mainly the runoff of certain inwards reinsurance business written by the corporation which was not transferred to SGIO Insurance Limited.

Following enactment of the Bill, certain provisions of the Bill, when proclaimed, will -

(a) Dissolve the State Government Insurance Corporation; and

(b) Provide for its residuary assets, rights and liabilities to vest in the State Government Insurance Commission and to be held in the Insurance Commission general fund. It is intended, to the extent that the corporation has assets, rights and liabilities, that they become assets, rights and liabilities of the State Government

Insurance Commission. For example, a third party which has rights which it can enforce against the State Government Insurance Corporation will, following the dissolution of the corporation, be able to enforce those rights against the Insurance Commission.

Therefore, the effect of these amendments will be only to remove a statutory body corporate which is no longer needed. These amendments are principally contained in clause 6(a), and clauses 20, 21, 22, 23, 24, 25, 27, 28, 31, 32, 33, 34, 35 and 37.

Name Change: The name "State Government Insurance Commission" was created under the 1986 Act. There are State Government insurance bodies and insurance companies in other States with names the same as or substantially similar to SGIC. The new name, "Insurance Commission of Western Australia", will distinguish the Insurance Commission from those bodies and will avoid confusion between the Insurance Commission and those other bodies, particularly with regard to the Insurance Commission's investment activities. Further, the name "State Government Insurance Commission" and the acronym "SGIC" are associated in the minds of many people with 1980s transactions.

Accordingly, this Government, like the previous Government, has felt for some time that it is desirable for the Insurance Commission to change its name. Under the Bill, the commission's name will be changed from the "State Government Insurance Commission" to the "Insurance Commission of Western Australia". The amendments effecting the change of name are found in clauses 4, 5, 6(b), 7, 8 and 30. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

TRANSFER OF LAND AMENDMENT BILL

Report

Report of Committee adopted.

Third Reading

Leave granted to proceed forthwith to the third reading.

Bill read a third time, on motion by Hon N.F. Moore (Leader of the House), and transmitted to the Assembly.

CONSUMER CREDIT (WESTERN AUSTRALIA) BILL

Assembly's Amendments

Amendments made by the Assembly now considered.

Committee

The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

The amendments made by the Assembly were as follows -

No 1

Page 2, lines 6 to 10 - To delete the lines and substitute the following -

2. This Act comes into operation on 1 November 1996.

No 2

Page 67, lines 27 and 28 - To delete the words "may apply to the Court to change the terms of the credit contract." and substitute the following -

may either apply to the Court to change the terms of the credit contract or may apply to the Commissioner for assistance in negotiating changing the terms of the credit contract.

No 3

Page 92, after line 20 - To insert the following -

(3) Where there is a dispute between the credit provider and the debtor, mortgagor or guarantor in relation to the amount of enforcement expenses, the Tribunal on application by any of the above parties may determine the amount of that liability.

Hon MAX EVANS: I move -

That the amendments made by the Assembly be agreed to.

Hon A.J.G. MacTIERNAN: The Opposition is happy to support these amendments. The first amendment is a procedural one which has been necessitated by the fact that the Bill did not complete its passage in the Legislative Assembly in time to fall into line with the initial operational date that had been set down in the legislation. The two subsequent substantive amendments will provide greater powers to protect the interests of consumers who are in dispute with financial providers. These amendments were moved by Mrs Henderson, who was at the time the Opposition spokesperson for consumer affairs, and who has been a great advocate of consumer affairs in this State and performed very well in that portfolio as a Minister. Both of the amendments were designed to restore protections that had previously been contained in the legislation but which for one reason or other did not make it into the uniform model. I understand from reading *Hansard* that the Government has agreed to these amendments because they do not unduly affect the uniformity of the legislation, but indeed will improve its operation, so the Opposition is heartened to be able to support this message.

Question put and passed; the Assembly's amendments agreed to.

Report

Resolution reported, the report adopted, and a message accordingly returned to the Assembly**.**

MOTION - STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Establishment

HON BARRY HOUSE (South West) [4. 48 pm]: I move -

That -

1. Schedule 2 of standing orders is amended by inserting after the part relating to the *Legislation Committee*, the following part -

Standing Committee on Public Administration

1. A Standing Committee on Public Administration is established.

2. The committee consists of 6 members.

3. The functions of the committee are -

(1) to inquire into and report to the House on the means of establishing State agencies, the roles, functions, efficiency, effectiveness, and accountability of State agencies and, generally, the conduct of public administration by or through State agencies, including the relevance and effectiveness of applicable law and administrative practises;

(2) notwithstanding any rule or order to the contrary, to consider and report to the House on any bill providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization.

4. In this order -

"Agency" means -

(a) an agent or instrumentality of the State Government, established for the purpose of developing, implementing or administering any program or policy with a public purpose or any such program or policy that relies substantially for its development, implementation or administration on public monies or revenue;

(b) any person empowered by a written law to make a decision enforceable at law whether by that person or otherwise,

and, where appropriate, includes any agency officer or employee acting, or having ostensible authority to act, as the agent or delegate of the agency, but does not include -

(c) a House of the Parliament, or any committee or member of either House, or any officer or employee of a department of the Parliament;

(d) a court of law or a court of record, or a judge or other member of either court;

(e) any person whose functions are solely of an advisory nature and the failure to obtain or act in accordance with advice given by that person does not invalidate or make voidable a decision made by another person;

(f) a police officer or other person in the course of exercizing a power conferred by a written law to arrest or charge a person with the commission of an offence, or to enter premises and seize or detain any object or thing;

(g) a local authority subject to the *Local Government Act 1995;*

2. Standing orders 310-337 are consequentially repealed.

This motion refers to the change to schedule 2 at page 164 of the standing orders to change the name of the Standing Committee on Government Agencies to the Standing Committee on Public Administration. That committee will comprise six members, as it does currently. I believe we may have to alter that a little to establish what will constitute a quorum, because if we do not do that, the quorum of the committee will be three, although from my reading of the standing order with regard to standing committees generally, that may mean it will be two, and I do not think that would be appropriate for a committee comprising six members, so we may have to investigate that matter further.

The motion outlines the functions of the committee, which will be to inquire into and report to the House on a means of establishing state agencies. That is a slight change in terminology from government agencies to state agencies. We found that different jurisdictions have different names. I remember that when we were in New Zealand, we heard continually about State-owned enterprises, or SOEs. I thought for a while that they were flying saucers, but they were really state agencies. We envisage that the role of the committee will be to establish the roles, functions, efficiency, effectiveness and accountability of these state agencies and generally the conduct of public administration, and that is the key term.

The second function of the committee is to consider and report to the House on any Bill providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatisation. We have already engaged in that function to some extent by providing a report to the House recently on a green Bill referred to us by the Minister for Employment and Training relating to the Hairdressers Registration Bill. We envisage something along those lines.

The fourth part of this motion relates to the definition of "agency" and the body itself. It means an agent or instrumentality of the State Government established for the purpose of developing, implementing or administering any program or policy with a public purpose - I guess that is the key word - or any such program or policy that relies substantially for its development, implementation or administration on public moneys or revenue. The definition includes any person empowered by a written law to make a decision enforceable at law. There are some exceptions. It does not include a House of the Parliament, or any committee or member of either House, or any officer or employee of a department of the Parliament. It does not include a court of law or a court of record or a judge. It does not include any person whose functions are solely of an advisory nature.

We undertook a lot of work putting together our thirty-sixth report outlining the different functions of the different types of agencies. They are broadly grouped into advisory, operational or regulatory agencies. The definition of agency does not include a police officer or other person in the course of exercising a power conferred by written law. Nor does it include local authorities which are subject to the Local Government Act, which was passed in this House last year.

The motion will repeal Standing Orders Nos 310 to 337. I think that relates to pages 107 to 113 of the standing orders. When reading this motion last night I realised that there is another schedule in our standing orders which will be repealed because it contains a list of exclusions from our present committee. We may have overlooked that.

Hon Tom Stephens: That would apply only to the Standing Committee on Government Agencies as opposed to the Standing Committee on Public Administration.

Hon BARRY HOUSE: I believe the intention is to virtually repeal the name -

Hon Tom Stephens: And the schedule should be repealed.

Hon BARRY HOUSE: Yes. The acceptance of this motion will complete a process of self-analysis in which this committee has been engaged for a number of years. The process began about 1990; it may even have been before that. It is my privilege as the current Chairman of the Standing Committee on Government Agencies to move this motion. However, over the years many people have been involved including many members of this House, past and present. I think perhaps Hon Tom Stephens and I are the only two members who were present for the duration of the inquiry. Hon Tom Stephens was chairman for one year. Those who have played a significant role throughout our inquiry into the role, nature and future of the Standing Committee on Government Agencies have included Hon Norman Moore, who was the chairman of the committee during the bulk of the work leading up to the presentation of our thirty-sixth report and this motion. Hon John Halden was a member of the committee for quite some time, as was Hon George Cash during the vital time of putting together the framework for this motion. Hon Doug Wenn and Hon Mark Nevill were also involved. I am not sure whether Hon Mark Nevill was there during the analysis of the major inquiry but he chaired the committee for some time prior to 1989 when I first became associated with it. Hon Murray Montgomery and, in recent days, Hon Kim Chance, Hon Murray Criddle, Hon Barbara Scott and Hon Tom

Helm have all played a very significant role in the operations of the committee. Therefore, we have benefited from the expertise, input and knowledge of a wide range of members in this Chamber over a number of years.

The committee has operated in a bipartisan way. It has operated very effectively and constructively to consider our system of public administration and to find a better way for Parliament to analyse and make the public administration of Western Australia a little more accountable through Parliament. The executive support for the committee throughout the bulk of our major inquiry, and the lead-up to this motion, has been provided by the Clerk, Laurie Marquet. As always, his contribution has been very valuable. All those people deserve congratulations and thanks for their efforts over the years.

One might ask, why a review? Why have we navel-gazed for about six years to consider our own role and function and to suggest some proposals for change? The committee was established in 1982. I believe that Hon Norman Moore was an inaugural member -

Hon N.F. Moore: I think I may be the only one still alive.

Hon BARRY HOUSE: I think the committee structure was established largely on the instigation of the late Bob Pike. At the time there was a lot of confusion in the minds of members of Parliament and the public about quangos. The word was thrown around widely at the time. I remember as a reader and observer of events the word quango was raised very often. I think the committee was established largely as a response, because valid questions were being asked about how many quangos existed, who ran them, what was their role and function, and to whom did they answer. That was part of the original purpose of this committee. During my early days on the committee much work was done to literally count the committees and identify them. I do not think the structure is quite right yet even though we have done a lot of work and some state agencies now are compiling registers of their members and functions.

Hon Tom Stephens: We wiped out thousands of agencies but when they set up the land conservation committees we lost interest.

Hon BARRY HOUSE: It was impossible to pin them down. If we did pin them down it was academic anyway because they changed the next day. It was a movable feast.

It became increasingly clear to members leading up to the launch of the major inquiry that our standing orders were unnecessarily restrictive; they created some artificial distinctions between different aspects of public administration. Therefore, the government agencies committee was increasingly unsuited to recent past and certainly current changes in public administration. We needed to update ourselves. That is what we are about today. We needed to close the gaps in our jurisdictions. They have been identified at times by the reports by the Ombudsman and Auditor General; and by the Commission on Government.

In the past couple of years with outsourcing and contracting out of a lot of public work, the distinctions became very blurred between what was a public function and what was a private function. We have had a couple of examples before the committee in recent years where it has been a little difficult to know where to draw the line. There is a slight difference of opinion. For a lot of people the contract is sufficient identification of where that line is. Some people do not fully agree with that and believe the line continues as long as public moneys are spent. I guess the real impact is how far we go in an accountability sense into private firms that are performing a public function and how far they are responsible to the people through the Parliament.

One example that comes to mind is the metropolitan public transport situation which has arisen in recent days, literally. The public transport needs of the metropolitan area are catered for by a combination of MetroBus, which is a public company, and a variety of private companies. The service required is identifiable. Part of our thirty-sixth report stated that where public moneys are to be spent the community service obligations need to be identified and transparent. In that way the moneys spent on achieving a public service obligation can be easily identified. This raises the question of the ability to trace those public moneys with the new private contractors fulfilling public transport functions in the metropolitan area.

I have mentioned the thirty-sixth report a couple of times, and this motion complements that report. It is the part we could have added at the time we introduced the report to the Parliament in April 1994. However, we elected not to do that, but to wait a short time after that - nearly two and a half years have passed - to move to the change in our structure. We think the thirty-sixth report is a very significant document. It gave voice to our work as a committee in the previous four years in analysing the role of public administration and the structure of a parliamentary committee to oversee public administration. The report provides a framework for a lot of the recent changes in public administration that have taken place in Western Australia. Legislation that has passed through this place in the past two years includes many examples of some of the principles that were espoused back in 1994 in the thirty-sixth report. It is pleasing to us, as a committee, that although the report has not been adopted in its entirety, some of those major principles associated with it have been adopted by the Government in its legislation.

That report started from the point of analysing what exactly is an agency. We looked at all sorts of definitions but the best grouping we could come up with was that agencies are of an advisory, operational or regulatory nature. The report recommended a structure for administrative policy making and also administrative and judicial review. The establishment of the proposed Standing Committee on Public Administration has been recognised by the Commission on Government and recommended in its reports. Although I do not necessarily agree with everything the Commission on Government has proposed, in this case I believe it has taken account of a lot of work that has been done and a lot of thought that has been put into this part of our committee structure. I think it is on the right track.

Hon J.A. Cowdell: Faint praise, faint praise!

Hon BARRY HOUSE: The motion to revamp the Government Agencies Committee deals with updating its structure and it takes account of the modernisation of the public service and recent changes in public administration. There will be continual changes in public administration. It takes account of gaps we felt existed in the jurisdiction of the committee, and it will plug some of the gaps. It will make us better able to cater for the complexity of the public administration as it is now and the continual changes that are occurring. On that basis, I commend the motion to the House.

HON KIM CHANCE (Agricultural) [5.06 pm]: I am delighted to second the motion. The Opposition has exactly the same feelings about this motion as does the Government. I guess that is a reflection of the unanimity that the Standing Committee on Government Agencies has brought to this issue. Although it preceded the recommendations of the royal commission in 1992 and the later recommendations of the Commission on Government arising from those recommendations, it has been able to act in that very sensitive area - Hon Barry House indicated that the committee goes to the very sharp edge on some of the sensitive areas in issues, such as contracting out - without ever bringing to the issue the results of conflicts that one might expect. Instead the government agencies committee has approached the issues as it saw the problems and dealt with those issues, one by one, to come to a - I was going to say ultimate conclusion; but it is not - significant conclusion, with the presentation of this motion to the House.

It is certainly true that this motion represents the first formal recognition of action on matters arising from the thirty-sixth report of the Legislative Council Standing Committee on Government Agencies; however, it is certainly not the first matter on which that report has had effect. As Hon Barry House indicated, it has already had legislative effect in that legislation brought before this House has taken in substantially the principles recommended in that report. Indeed, I seem to recall the very first Bill that came into this place that recognised those principles. Although I have forgotten the name of the Bill, it was introduced by the Minister for Transport representing the Minister for Primary Industry, about six weeks after the delivery of the thirty-sixth report to this place - a remarkably quick uptake - and I remember that in the second reading debate I complimented the Minister on the manner in which he and his draftsperson had recognised those principles.

A huge amount of work has been done in compiling this report and in drafting the principles expressed in this motion. I feel privileged to be asked to speak on the matter on the Opposition's behalf. As the Chairman of Committees indicated, some of the most senior members of this place have for a long time been closely involved with this process. Membership has included the Chairman of Committees, the current Leader of the House, the former Leader of the House, the current Leader of the Opposition, the current Deputy Leader of the Opposition, and Hon Tom Stephens, the Opposition's most senior member of that committee and, indeed, of the Legislative Council. It is almost presumptuous of me to take the position of seconding the motion.

The motion seeks to establish a committee with the charter of inquiring into and reporting to the House on, among other things, how the various arms - staying away from technical terminology - of government agencies function. It is a fundamental proposition. The most fundamental change is in the definition of an agency. The motion defines an agency, and I paraphrase here, as a body established for a function which has a public purpose and relies on public funds to some extent to achieve that purpose. Certain exceptions exist, which were outlined by the Chairman of Committees. Apart from the exceptions, what will be included in the definition that is not currently included? Fundamentally, they are government departments.

As far as I understand it, it was not the government agencies committee's intention to arrive at that point. I refer here to the history of the committee before my membership. I understand that it came about simply because when the need to define agencies for the purpose of determining the monitoring of their function and creation was considered, it became clear that the line dividing agencies and departments was so blurred that it was not possible to identify the number of agencies we had.

I was talking to the Deputy Leader of the Opposition a few moments ago about when he was a member the committee. He said it reached the stage of eliminating a large number of bodies from the list, until the land district committees came along added another 138! We never reached the stage of establishing how many agencies we have. I illustrate the difficulty: Within departments are agencies, and departments sometimes have roles which cover all three of the defining functions; that is, regulatory, advisory and operational functions. A big department like Agriculture, for example, has agencies within it which have different functions, some of which might be regulatory, advisory or operational, and sometimes all three. The lines are blurred.

We must separate ourselves from the current situation. Parliament should not be deterred from its power to inquire into the creation of those agencies and their performance simply because we cannot define on which side of the line they fall because the line is blurred and multicoloured. This reform had to happen. I do not hide from the fact that it is fundamental reform. For the first time the Legislative Council, a House which our electors expect to have a reviewing role, will have the ability to review the functions of government departments. I mention our electors not as a token acknowledgment of their role and expectations, but because it is the public and what they expect of us which is the main reason that we had to consider this significant change. It would be dishonest to pretend otherwise.

Departments, like agencies, are an integral part of the system of public administration, and this proposal takes account of the Parliament's proper interest in the effectiveness and integrity of the public administration system. Like any other shift in public administration, it causes some reserve, if not nervousness, among people. The system of public administration is probably the most conservative of all professions. I do not demean that reserve and nervousness, as that concern is natural and beneficial.

Whenever we propose a significant change to the way we structure public administration, we must be able to demonstrate that we are absolutely certain of two things: That the change is, first, beneficial and, second, warranted. It is my view, and that of all my colleagues on the government agencies committee, that those requirements are satisfied; that is, that the new charter is beneficial and warranted. The change is perhaps 100 years overdue.

I spoke earlier about the public. Over my four and a half years of membership of this place I have spoken to thousands of Western Australians individually. Those four and a half years have been an era in which accountability, integrity and openness in public administration has been prominent in the public consciousness. It does not take long in talking to people one to one for these issues to arise. Much of the existing public administration system is not open to inquiry by the Parliament, apart from the somewhat limited avenue, by ability, not charter, of the Legislative Council Standing Committee on Estimates and Financial Operations. The same could be said of the Public Accounts and Expenditure Review Committee in the other place.

When people are told of that situation, at first they disbelieve it. They then become deeply disturbed that such an important function of public life is beyond parliamentary scrutiny. Other members would probably have the same experience in discussions with constituents. When an interesting question is raised by a constituent, and he or she is told that the only person who has access to answer the question is the Minister, and that even then the Minister's role is somewhat prescribed, the constituent generally does not believe it. People can become angry upon hearing the facts. They say, "Well, it is no wonder we have such problems." This motion proposes a first but significant step towards addressing that point.

Finally, I want to pay tribute to the government agencies committee and those members who are no longer part of the committee but who played such an important role in its early stage. I joined the committee about three years ago, shortly after we came back in opposition, and a lot of the work had already been done by that stage, although it took a fair amount of sorting out from there. It has a long history. I reiterate that this is not a response to the royal commission or the Commission on Government recommendations, although it is in line with and sympathetic to the Commission on Government recommendations. However, it is not a response to that. It has come from the Parliament. It has been driven by the Parliament and by members who have recognised something out there in the public which has called for improved accountability. In a sense it is something we can be very proud of. In that instance, I am not referring only to the members and past members of the government agencies committee. Every member of Parliament can take pride in the fact that this was something we were going to do anyway and is something that will be of great significance to openness and accountability in public administration in the future.

HON TOM STEPHENS (Mining and Pastoral) [5.22 pm]: I support the motion moved by the Chairman of the government agencies committee and seconded by my colleague, Hon Kim Chance. As members of the House know, I am not by nature a patient person. I was anxious to see this motion before the House well before now. I would be disappointed if, in its dealing with it, the House delayed it. I hope that, because this initiative has been worked up over an extended period by both sides of the House, and by the senior people to whom Hon Kim Chance referred, with the support of all those in the committee, there will be no further delay. I would be delighted if the motion were passed tonight.

Hon Barry House referred to the difficulties associated with a quorum. If he looked closely at the standing orders he would find that Standing Order No 343 applies, and, as a result, the majority of the committee would be four for the purposes of a quorum. That, however, draws my attention to another matter.

The only reason I am right on that question is because I have had good advice from the Clerk. I did not hear all of the contributions of members opposite and if a comment was made I may have been out of the Chamber and missed it. However, it would be remiss of the members of this House if, in our dealings with this initiative before the House, we did not pay particular tribute to the work of our Clerk, Laurie Marquet. We all joke from time to time that this place is made up of several parties, including the Clerks' party led by Laurie Marquet, which regularly guides us to seeing the wisdom of many initiatives. In many ways, while this initiative is not all that he may have liked,

nevertheless, the flesh that has been put on the proposal results from the expertise he has brought to this House and to the work of that committee in working through these issues. Clerks of all Parliaments sit quietly and watch members talk about everything except the Clerks' roles in these matters. That is the nature of the job. Their function is a selfless one. In fact, it is bad form for someone like me to attempt to highlight the work that the Clerk has done on this initiative. He is not supposed to exist. These things just happen mysteriously through the work of the committee! That is not the case in this regard. A lot of the work of the committee has been done for us and we have been like horses led to water by the work that the Clerk has done for us. We have embraced that work as he has helped us understand the issues found within the terms of reference of our inquiry.

By virtue of his and the committee's work, the document on which the motion is based has become a real milestone in parliamentary democracies, particularly in the Westminster parliamentary democracies around the world where people are regularly drawing on the definitions and the work of the report. It would be a pity if our response to our own work were more sluggish than has been the approach of some other Parliaments that have incorporated some of the recommendations and strategies outlined in the report of which the motion is a part. The definition of state agency has been embraced and is widely utilised, not only in our jurisdiction but in other jurisdictions around the Westminster world and beyond. I remember well the definition being drafted. I remember the dialogue that went on between the Clerk and Hon Norman Moore as the issue became more precisely refined as we tried to find where we were going in our efforts to try to shape public administration in a more practical and efficient way.

In that strategy we were not always supported by the whole panoply of government. Government departments and agencies and a range of people commented on the strategies we outlined, sometimes adversely. We have not included everything we have in mind for the reform of the public administration processes in this State. This is one important step along the way. I hope that with the consensus of so many senior people in this Chamber, we will get on and implement it.

When moving the motion, the Chairman of Committees, who is also the Chairman of the government agencies committee, referred to the oversight of the schedule. That can be resolved by including the schedule in the text of the motion in Committee. I think there is little else that begs amendment. In that process I hope we will not take too long. I thought we would have it over and done with in five minutes. If the chairman of the committee takes the Chair as Chairman of Committees we could quickly resolve the matter in a very satisfactory manner. I commend that course of action to the House. However, if that is not embraced, I hope that the long and tortuous process involved in getting to this point will be quickly rewarded by the transformation of the committee in the way outlined and supported by the lead speakers for the Government and the Opposition.

Debate adjourned on motion by Hon B.K. Donaldson.

ELECTORAL LEGISLATION AMENDMENT BILL

Second Reading

Resumed from 10 July.

HON J.A. COWDELL (South West) [5.30 pm]: The Australian Labor Party supports this legislation, albeit in an amended form. After all, the case for this legislation was put succinctly in debates in 1991 and 1992, particularly by Hon Joe Berinson. This Bill is significantly based on the Electoral Amendment (Political Finance) Bill of 1992, which was introduced and enacted by Labor but not proclaimed by either the previous Labor Government or the current coalition Government. The Labor Party supports disclosure of political donations and pioneered such legislation in Australia, certainly in New South Wales and the Commonwealth.

The Opposition does not support the Bill unreservedly. It certainly does not support government backsliding on limitations on government travel or limitations on government advertising. The Opposition does not support the Government's antidemocratic move, as it initially was, to increase the deposit for candidates for parliamentary office from $100 to $500. The Opposition does not support a one-sided donor policy, a policy that allows for some restrictions on certain classes of donors - through industrial legislation previously passed by this Government - but makes no effort to address other classes of donors that may be of concern. I refer to matters raised by members opposite, who were then in opposition, with respect to overseas sources of donations and I raise the question of donations from government contractors.

We have eventually arrived at this Bill. It has been a long and tortuous course. The first effort to introduce disclosure legislation into Western Australia was made by the previous Labor Administration in 1991 and then in 1992. Now of course, some five or so years later, it looks as though we may be nearer to enactment, particularly on disclosure provisions. The Government now looks for credit for the introduction of this legislation as the party that will put this on the Statute books, but the situation is very similar to the exercise of abolishing the property franchise of this Chamber and bringing a more democratic system into play by virtue of the 1963-64 amendments. Of course, technically a coalition Government did introduce a more democratic regime in this Chamber and did abolish the property franchise. However, no credit can be given for that particular legislation, given that the same parties had held up that initiative for 50 years prior to the passage of the 1964 legislation. Similarly, in this situation no credit

can be given to the current Administration for passing state disclosure laws at this stage, given that it has been the principal cause of delay in the passage of the legislation.

In 1991-92 the coalition parties vehemently opposed disclosure and voted against the 1992 Bill in both the Legislative Assembly and in this Chamber. It is not surprising, given that the coalition parties in a similar fashion bitterly opposed the introduction of disclosure legislation at the commonwealth level in 1984. Of course, the coalition parties were at least being consistent in that regard. I acquainted myself with some of the points of view expressed in the 1992 debate, from which one can see why the coalition parties were opposed to disclosure legislation. Hon George Cash said on that occasion -

> On a close reading of the Bill it is clear that there are substantial loopholes that will allow interested persons to drive a truck through it.

Of course, Hon George Cash will no doubt be voting for much the same loopholes in this legislation. He further stated in that debate -

> It is said that one can bypass the provisions of the Bill by the use of trusts or of interstate or overseas funding arrangements.

This Government's legislation does not close the loopholes with regard to overseas funding arrangements. Hon George Cash at that stage said -

> It is also fair to say that of all the political parties which may be disadvantaged the Liberal Party and the National Party will be disadvantaged to a greater degree than the current government; that is, the Australian Labor Party.

Therefore, the Liberal Party and the National Party opposed this legislation because disclosure would disadvantage them in collecting money. That is fair enough, the views of the then Opposition in respect of disclosure are on the record. Hon George Cash stated -

> If this Bill is agreed to in its present form it is likely to frighten off the smaller donors to all political parties.

He pointed out the problems of tracking down donors and of compliance and said -

> Even though the Federal Act was passed in only 1991, it is already evident that a bureaucratic burden is being imposed on the Australian Electoral Commissioner because of the need to scrutinise various submissions regarding donations to political parties and political branches.

The arguments continued -

> . . . it will be possible - and I am sure the Australian Labor Party has worked it out - to organise $500 a head dinners, because given that there will be a $1 500 limit on donations before it is necessary to disclose them, it will not be difficult for the Australian Labor Party to invite various business identities from around the town to attend a $500 a head dinner.

I note that of course the current Government's legislation before us has the same $1 500 threshold before one must disclose the name and address of the donor. It has obviously become a more surmountable difficulty with the effluxion of time in the minds of members opposite.

Hon George Cash: You would have been one of the principal backroom advisers when the Bill was drafted some years ago for the Labor Party.

Hon J.A. COWDELL: What is Hon George Cash's point?

Hon George Cash: That you were one of the principal advisers to the former Government.

Hon J.A. COWDELL: I was not formally an adviser to the former Government.

Hon George Cash: Perhaps not formally, but certainly with your position you exerted a tremendous influence on the former Labor Government.

Hon Tom Helm: If there was influence it would not be the former; it would be the Government.

Hon J.A. COWDELL: Hon George Cash digresses yet again from the key comments he made in 1992. No doubt he does not wish to be reminded of them, now that he is embracing this legislation, which stands in almost identical terms. He stated in 1992 -

> As indicated by Hon Phillip Pendal, the Liberal Party does not accept the Bill in its present form and intends to vote against it.

Hon George Cash said earlier -

> This Bill is nothing more than window dressing by a government that has refined the handling of political donations into one of the finest art forms that the country has seen.

It was window dressing then, but of course it is not window dressing now.

Hon Kim Chance: It is better management, I suppose.

Hon J.A. COWDELL: Of course, better management, more jobs.

Hon N.F. Moore: Definitely more jobs.

Hon J.A. COWDELL: Hon Peter Foss, on a previous occasion, was not in favour of disclosure either, but of course he was more than prepared to lecture the Australian Labor Party. He said -

> We are dealing with political financing because we hope to improve the purity of the political process.

It was one of the very high minded lectures we have heard on previous occasions and indeed still hear from the Attorney General. He made a particular contribution, which I will refer to later, about the use of government resources. He said -

> The fact is that this Government is blatant in its misuse of Government money in trying to get itself re-elected. The seniors campaign was a classic example of that.

He went on to move his amendments to the 1992 Bill. He stated -

> In fact, I propose that this Bill be amended to insert a new part 6A. Firstly, the amendment would prevent the Government from advertising new or modified services during what is the prescribed period. The prescribed period is one of three things: Either commencing from three and a half years after the last election and ending on the night of the poll; or, if it is before that time, commencing on the time of the issue of writs for a general election; or, in the case of a by-election, commencing at the time writs are issued for a by-election. During that prescribed period Government members should not advertise services or any policy or party to which the Government belongs . . .
>
> Another of these amendments would not allow a member of the Government to travel at the expense of the State within an electorate in which an election or by-election is being held, except to the extent that such travel would, without the exercise of any discretion or granting of any commission by the Government, be available to any member of the Parliament. In other words, that would put us on the well known level playing field. Government members would not be able to use all of the money available to them to fly wherever they liked.

It was only a month or so ago that the Leader of the House, with the concurrence of Minister Foss, announced that that was the section of the 1992 Act which would not be activated by the Government through its 1996 Bill. In other words, all the high minded utterances of Hon Peter Foss and his success in moving these amendments in 1992 were not worthy of being actually enshrined in legislation or more particularly being proclaimed by this Government.

Hon N.F. Moore: Your Government did not proclaim it.

Hon J.A. COWDELL: This Administration certainly has a record of opposing disclosure at the commonwealth and state levels, voting in the Legislative Assembly and the Legislative Council against state disclosure legislation in 1991 and 1992, amending that legislation in a way that it would be no longer committed to disclosure and delaying the proclamation of that legislation, to concede to the Minister, for five years. The Government has a record of procrastination on this legislation since 1992.

Hon N.F. Moore: You did not proclaim it when you were in government; you should not forget that, so do not blame us for not proclaiming it when you did not do it either.

Hon J.A. COWDELL: The Minister knows why.

Hon N.F. Moore interjected.

Hon J.A. COWDELL: Yes, but the Government has had three and a half years to amend and proclaim this Bill, which it chose not to do.

Hon N.F. Moore: We are doing it now.

Hon J.A. COWDELL: That is not so. Only a month ago, the Minister said in his second reading speech that he will not proclaim this and he will not proclaim that, even now, so he has promised us further non-proclamation.

Hon N.F. Moore: I have given you a new piece of legislation. You are almost as impatient as Hon Tom Stephens.

Hon J.A. COWDELL: The Government will now amend the legislation and proclaim a bit of it, but it will not proclaim the Foss bits of it. That is what the Minister said in his second reading speech.

Hon N.F. Moore: That is right, for the same reasons as you did not. The reasons have not changed.

Hon J.A. COWDELL: The Foss amendments were bad then and they are bad now.

Hon George Cash: When you masterminded the Bill for the previous Labor Government, why did you not consider the travel aspect? Is that something that slipped your mind at the time?

Hon J.A. COWDELL: The travel aspect?

Hon Kim Chance: He did not write the Foss amendments.

Hon J.A. COWDELL: It was accepted by the Government in this Chamber, and it was, on the advice of that Government, signed by the Governor, so it was put in, but we accepted the superior wisdom offered by Hon George Cash and Hon Peter Foss at the time. They had more integrity in those days because they were uncorrupted by ministerial office! Over the last five years, following opposition to this piece of Labor legislation, we have had an ongoing saga. In September 1993, the Minister for Electoral Affairs, Hon Cheryl Edwardes, set up a committee to consider the problems arising primarily from the Foss amendments - that is, proposed 191B and 191C - and on that committee were representatives of the State Electoral Commission, the Crown Solicitor's office, the Premier's office and the Minister for Parliamentary and Electoral Affairs. The Minister stated at that time that this issue needed fairly urgent attention and the Government was dealing with it as a matter of urgency. That was three years ago. Just as well the Government got the urgency right!

Hon N.F. Moore: It is a very slow process, as you well know.

Hon J.A. COWDELL: A formula was set out in the event of a by-election. We then had questioning by the Opposition in September 1993 about what government action was proposed, and a further offer of delay. In 1994, we had Hon Jim Scott's urgency motion in this Chamber about this legislation; I am sure he will remind us of the key points that he made on that occasion. Later in 1994 we had the answer of Premier Court in the Legislative Assembly, when he said that some of the issues to be examined were contained in the Electoral Amendment (Political Finance) Bill and he did not believe it would be appropriate to proceed with that Bill while there were issues subject to review by the Commission on Government. He said also the Commonwealth's Joint Standing Committee on Electoral Matters has recently called for submissions relating to the operation of the electoral funding and financial disclosure provisions of the Commonwealth Electoral Office.

Therefore, we go from delay on the basis of technical problems and advice from the Crown Solicitor's office to delay because the Commonwealth Parliament might be thinking about doing something - excellent calls for delay, particularly as adopted by this Government -

Hon George Cash interjected.

Hon J.A. COWDELL: Yes, but how often has this Administration used as an excuse that it has to act before the Commonwealth does anything?

Hon George Cash: Were you the mastermind for the Federal Labor Government too?

Hon J.A. COWDELL: I am the mastermind for everything, of course - the whole previous Administration, state and federal!

Hon George Cash: I understood that to be the case. As I said, you had tremendous influence, and you have just confirmed it!

Hon J.A. COWDELL: In September 1994 we had a no confidence motion in the Attorney General in another place on the basis of her failure to proclaim the 1992 Act. We had further urgency motions in 1995 in this Chamber, amendments to the Address-in-Reply, and so on. We have had a history of procrastination, opposition to disclosure, and then further procrastination.

We finally arrive in 1996 at the Electoral Legislation Amendment Bill. It looks like a whole Bill, it feels like a whole Bill, but it is only half a Bill, because the Minister in charge has promised us that if we vote for the Government's 1996 Bill, only part of it will be proclaimed. In particular, proposed sections 191B and 191C will not be acted upon or proclaimed. The Foss amendments that Minister Foss said were so essential in 1992 have now become expendable. Far be it from me to attribute to this Government any base motives with regard to the particular moves it has made on this legislation. Far be it from me to suggest that the only reason we have this legislation now is that all the disclosures required by this state legislation are already provided for in the commonwealth legislation, so in fact nothing additional is being provided. Now the window dressing can be performed because nothing much extra will be required and it is quite safe to go ahead.

Hon J.A. Scott interjected.

Hon J.A. COWDELL: They are the ones that affect the Government.

Hon N.F. Moore: The same bits that your Government did not proclaim.

Hon J.A. COWDELL: Indeed, but following amendment we would have.

Hon N.F. Moore: It was anticipated by Hon Joe Berinson. The Foss amendments were amended again by Hon Joe Berinson.

Hon J.A. COWDELL: The Minister is aware of the advice that was received about the form of that amendment. I refer also to the Liberal Party's hankering after its old ways of non-disclosure. We need look only at its current submission to the Joint Standing Committee of the Commonwealth Parliament. I notice that that submission is in the name of the Federal Secretary of the Liberal Party, for and on behalf of the state branches of the Liberal Party, and it proposes to blow away most of the limits contained in this legislation - no $1 500 threshold for disclosure, but $10 000.

[Debate adjourned, pursuant to Standing Order No 61(b).]

ADJOURNMENT OF THE HOUSE - ORDINARY

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [6.00 pm]: I move -

> That the House do now adjourn.

Adjournment Debate - Halliwell, Garry, Senior Industrial Relations Commissioner, Retirement

HON TOM HELM (Mining and Pastoral) [6.00 pm]: I seek the indulgence of the House to note the retirement of Senior Industrial Relations Commissioner Garry Halliwell. An article in *The West Australian* last Saturday marked 22 years' service by Commissioner Halliwell with the Industrial Relations Commission. He had responsibility for the iron ore industry. He was a very responsible commissioner in that he went to great lengths to arbitrate rather than set down his ideas about how matters should be resolved. He worked tirelessly for both sides in any dispute by encouraging the parties to discuss matters at length in order to come to a decision with which both parties could live. He went to great lengths to explain to the workers and the unions - especially the industrial relations workers inside the iron ore companies - the reasons he did or did not do certain things and his importance as a commissioner.

I make these comments because I know many people would not be aware of the work of Commissioner Halliwell. His retirement is worth noting because he was an important person, particularly for one of our major resource industries in this State. Commissioner Halliwell came from an engineering background. I could not establish by which section of the economy - that is, by the Government or the employers - he was appointed. However, I am sure he would not have been appointed by the trade union movement because he was a member of the Institute of Engineers. With his background, he would not be called a red ragger. He did not have a reputation in the industrial relations field as a militant, on either side of the fence. I think that most iron ore industry companies accepted his ruling - perhaps with the exception of Robe River Iron Associates which challenged every decision. I believe also that Robe River lost every appeal against his decisions.

The newspaper article records Commissioner Halliwell as saying -

> I never display anger at a conference . . . there are already two angry groups, it would not help to add a third.

It is interesting to note that comment, because we should all be aware that it appears we are returning to the nasty 1960s in the industrial relations arena. We appear to have a mind set of industrial relations militancy by both employers and employees. The unions are gearing up to do what unions do reasonably well. They act in a militant way, and cooperation by either the Federal or State Government has been withdrawn; the unions will have to adopt a more militant stance if they are to maintain, retain and expand their membership.

At his farewell Commissioner Halliwell said that the Industrial Relations Commission played an important role. Most people involved in the industrial relations arena would agree. Without the commission we would have almost anarchy in the iron ore industry. The commission plays an important role by bringing sense into negotiations and any situation that is breaking down. It appears that the Federal and State Governments consider there is no further need for the commission. I suggest, as does Commissioner Halliwell, that the commission will retain its function and its importance, because we all know that the wheel continues to turn. On the one hand we have capitalism and the employers have the upper hand and behave in a militant way, but on the other hand the unions have a job to do. We have heard Hon Ross Lightfoot talk about what they should do; that is, go on strike and cause disruption to prove their point and increase membership.

During his 22 years' service Commissioner Halliwell had an important role to play because of the breakdown in cooperation between the unions and employers. He played a major role in settling disputes. Commissioner Halliwell said a number of things on his retirement. I had intended to quote his comments, but perhaps that is better left for

another debate at another time. However, it is important to note his retirement. I am sure that he will continue to play an active part in our community. I express my regret about his retirement, and my thanks for the role he played. With the help of Commissioner Halliwell in the first two or three years of my employment in the iron ore industry I received a decent fortnightly wage on a regular basis, rather than going to work and not knowing if I would remain at work that day. With those few remarks, I pass on my regards and wish Commissioner Halliwell the best of luck in his retirement.

Question put and passed.

House adjourned at 6.06 pm

QUESTIONS ON NOTICE

ABATTOIRS - CLOSURES, MEAT PROCESSING INDUSTRY, FUTURE

545. Hon KIM CHANCE to the Minister for Transport representing the Minister for Primary Industry:

Since the release of the report on abattoir capacity in the northern agricultural area, and recognising that a number of export works around Australia are to close , what action has the Minister for Primary Industry taken to ensure that Western Australia will retain a viable meat processing sector in the face of increasing competition from the live shipping trade?

Hon E.J. CHARLTON replied:

The Minister for Primary Industry has provided the following response:

In the last 18 months, export licences have been granted to an additional three abattoirs in the State. A new export abattoir is proposed for construction at Narrikup.

LIVE SHEEP TRADE - LAMBS, INCREASE; IMPACT ON LOCAL INDUSTRY

546. Hon KIM CHANCE to the Minister for Transport representing the Minister for Primary Industry:

(1) Has the number of lambs exported live increased since the deregulation of the domestic market for lamb?

(2) Has the effect of this change in marketing trend been to effectively deny the local meat processing industry access to premium lambs?

Hon E.J. CHARLTON replied:

The Minister for Primary Industry has provided the following response:

(1)-(2) There has been a progressive increase in exports of live lambs; however, this development is not related to the deregulation of the domestic lamb market in July 1994, as exports of live lambs were not subject to regulation.

Live lamb exports

1991-92	203,000
1992-93	574,000
1993-94	715,000
1994-95	866,000
1995-96	1,048,000 (11 months)

FISHERIES - SOUTHERN BLUEFIN TUNA QUOTAS, BREACHES

Fish Processors, Under Commonwealth Jurisdiction

550. Hon MARK NEVILL to the Minister for Transport representing the Minister for Fisheries:

Further to question 2094 of May 10, 1995, in respect of breaches of Southern Bluefin Tuna quotas -

(1) Why do fish processors based in Western Australia fall with the Commonwealth jurisdiction?

(2) As Her Majesty's Government continues no matter what party is in power, will the Minister now answer question 2094?

(3) If not, why not?

Hon E.J. CHARLTON replied:

The Minister for Fisheries has provided the following response:

(1) Under an Offshore Constitutional Settlement arrangement between the State and the Commonwealth, the management of Southern Bluefin is subject to Commonwealth jurisdiction. Commonwealth legislation requires permits to be held by processors receiving Southern Bluefin Tuna.

(2)-(3) With respect to question 2094 of May 10, 1995 parts (1) - (3) are matters which fall within Commonwealth jurisdiction. Questions should be directed to the appropriate Commonwealth authorities.

In relation to part (4) of question 2094 the decision to sell the Government quota was made by the previous government.

FISHERIES DEPARTMENT - LITTLE, E.J., RETIREMENT, CONSULTING WORK

585. Hon MARK NEVILL to the Minister for Transport representing the Minister for Fisheries:

(1) On what date did Mr E J Little retire from the Department of Fisheries?

(2) Has Mr E J Little undertaken consulting work for the Department of Fisheries since his retirement?

(3) If yes, what was the nature of the consulting work?

(4) What expertise has Mr E J Little in respect of the tasks he has been given?

(5) What fees and allowances has he been paid for work done since his retirement?

(6) What further consultancy work is planned for Mr E Little and what is the expected cost?

Hon E.J. CHARLTON replied:

The Minister for Fisheries has provided the following response:

(1) 16 November 1995.

(2) Yes, as a principal of Boating Management Services.

(3) The development of a Marine Operations Safety Manual.

(4) Mr Little has 30 years experience with the Fisheries Department and in particular, the operation and management of the Department's marine assets and their operation.

(5) $7250.

(6) None.

QUESTIONS WITHOUT NOTICE

WESTRAIL

Forrestfield Locomotive Depot Employees, Future Work

626. Hon A.J.G. MacTIERNAN to the Minister for Transport:

(1) Is the Minister aware that, while last night a wagon was finally located and shunted into the Forrestfield wagon depot, the 16 Westrail employees at the depot cannot work on the wagon because the depot has been gutted of all equipment, contrary to the media claims by Ross Drabble that the depot was fully equipped?

(2) When will some tools and equipment be restored to the Forrestfield depot so the men can commence work on this wagon, which was so difficult to locate?

Hon E.J. CHARLTON replied:

(1)-(2) As I understand it, equipment will be provided for those people who intend to remain there. However, I again remind the member that 10 of these people are booked to go to an outsourcing company on Monday and two have been offered positions at country depots. Until such time as we know how many will make the decision to stay or to participate in other options we cannot go ahead. The important issue is that people must make a decision about what they want to do. There is a number of options but, in the end, they have to make a decision. However, yes, equipment will be provided, but I cannot say exactly when. If it is not there it is intended to be there.

WESTRAIL

Forrestfield Locomotive Depot Employees, Future Work

627. Hon A.J.G. MacTIERNAN to the Minister for Transport:

Is the Minister aware that although Westrail has now popped a wagon in there, these workers are still unable to do any work?

Hon E.J. CHARLTON replied:

I am aware of that because I am taking what the member has told me to be accurate. I know that it was the intention to have some very minor maintenance work done while these people are still making the decision that they ultimately must make.

Hon A.J.G. MacTiernan: Without tools?

Hon E.J. CHARLTON: I have already answered that question.

GUILDERTON REGIONAL PARK

Wilbinga Regional Park Proposals

628. Hon J.A. SCOTT to the Minister for the Environment:

(1) Does the Minister support the proposal for a Guilderton regional park?

(2) If not, why not?

(3) Does the Minister support the proposed Wilbinga regional park?

(4) If not, why not?

(5) If yes, when will it be established?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) No.

(2) The Friends of Moore River have proposed that a Guilderton regional park be created as a means of thwarting urban development south of Moore River. The Government has indicated in the past that development should be able to proceed subject to planning and environmental processes and, through those processes, I support the allocation of appropriate levels of public open space.

Hon Tom Stephens: That is a disgraceful answer.

Hon PETER FOSS: It is not a disgraceful answer. It is proper planning.

(3) Yes. Wilbinga was identified by the then Industrial Lands Development Authority as a possible site for the development of a steel mill. However, I support its consideration as a regional park in light of the fact that the land will not be used for the purpose for which it was originally acquired.

(4) Not applicable.

(5) Any proposal will need to be put before Cabinet and receive government approval. If that approval were forthcoming I would expect that the Government will then need to institute necessary planning procedures to enable the creation of a park. The park may then be established upon completion of those procedures.

FAMILY COURT

Mediation Service Cessation

629. Hon N.D. GRIFFITHS to the Attorney General:

With respect to the ceased mediation service of the Family Court of Western Australia -

(1) When did it run out of funding?

(2) Will it recommence?

(3) If so, when? If not, why not?

Hon PETER FOSS replied:

(1)-(3) My recollection is that it was the end of June or July. The preparation of the report on the mediation service has continued. The reason it ceased was that it ran out of funding. A request was made of the Federal Government to extend that funding and that request was denied. The only way in which it would resume would be if it were supported by federal funding. As the member knows, the Family Court budget is met by the Federal Government.

WESTRAIL

Kewdale Depot Employee

630. Hon A.J.G. MacTIERNAN to the Minister for Transport:

(1) Is the Minister aware that the worker confined to the canteen at the Westrail Kewdale depot was until 8 March 1996, when he was declared surplus to requirements, not on workers' compensation as alleged by the Minister yesterday but working full time as a courier-cum-truck driver?

(2) Does Westrail intend to allow this man to remain in isolation or will it transfer him to a site where, at the very least, he can have some companionship?

Hon E.J. CHARLTON replied:

(1) I am not aware of the specific dates to which the honourable member referred.

(2) I am advised by Westrail that this person has continually complained about health problems as a consequence of any work he does. I acknowledge, given the terms of the question, that the member considers that if he is to remain in Westrail employment, even though he cannot participate in any worthwhile work program -

Hon A.J.G. MacTiernan interjected.

Hon E.J. CHARLTON: As I said the other day, I am greatly concerned to ensure that people who want to remain in Westrail can be retrained by participating in a retraining program either inside or outside Westrail. In order to provide the answer, I had preliminary discussions yesterday with the Commissioner of Westrail and I will next week give the member an update on all those people, including this person.

SUPERANNUATION

Changes, Government Employees Scheme

631. Hon MARK NEVILL to the Minister for Finance:

I refer to the changes announced to superannuation in the federal Budget -

(1) Will the changes made to the administration of the State Government superannuation scheme make it significantly more complex and expensive?

(2) Does the State Government intend to change the state government superannuation scheme from defined benefits funds to accumulated funds?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(2) The *Financial Review* gives a whole new dimension to the problem that was not even around yesterday. We are looking at defined benefit funds in the private sector. There are many of those funds where one knows exactly what one will get - there is not an accumulation of money. There is also the government defined benefit fund for government employees. There are 33 000 members in that scheme, which was closed in December 12 months ago.

As I said yesterday in another debate, the State Government has had a fight with the Federal Tax Office about its not being able to tax these funds or the money coming in at a rate of 15 per cent. The Tax Office has formed a committee to see how it can get around that. It is trying to get an extra tax rate of 15 per cent. One does that by having employees contribute 5 per cent and the Government puts in an IOU. The statutory authorities pay the 12.5 per cent but the Government does not. It is not clear how one pays the other 15 per cent. One of the newspapers stated yesterday that for anyone retiring in the foreseeable future a calculation will be done and an amount may have to be withheld until the situation is resolved. This 15 per cent affects only those earning over $75 000. It is not very much, but it will grow as time goes on.

At present we do not know how government employees will be affected. The income of everybody in the parliamentary superannuation fund is over that $75 000 threshold. I hope to know more about the position there. I have called a meeting with the Parliamentary Superannuation Board for next week. I want to get some top advice from actuaries, both here and in the east, and from the tax office, to try to find out the real position so that we can notify our members and also members of the government contributive fund. The member asked if it would be better to go to a defined benefit or accumulative fund. I think most people these days would prefer to keep with a defined benefit fund, because most of the funds have a consumer price index factor, whereas an accumulative fund is dependent on the vagaries of the market, which can go up or down, and there has not been the rate of inflation on property and shares that we saw many years ago. That is probably one of the reasons it closed down. At present the situation is uncertain, but I hope next week to have more information for the member.

REGIONAL PARKS - SYSTEM ESTABLISHMENT; MANAGEMENT FUNDING

632. Hon J.A. SCOTT to the Minister for the Environment:

(1) Does the Government intend to honour its promises to create a system of regional parks?

(2) If no, why not?

(3) If yes, when?

(4) How does the Government intend to fund the management of regional parks?

(5) What regional parks are already operating?

(6) What other regional parks are planned or proposed?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Yes; in fact it has already commenced doing so.

(2) Not applicable.

(3) The Government has through the Western Australian Planning Commission had a program under way since coming into office for the planning and acquisition of land for a system of regional parks and has recently introduced metropolitan regional scheme amendments to give effect to it.

(4) The management of regional parks will be funded according to future arrangements which may include expenditure from both the consolidated fund and the metropolitan regional improvement fund. I intend to introduce legislation to amend the Department of Conservation and Land Management Act to create a new class of land known as regional park.

(5) A draft management plan has been prepared and released for Canning River Regional Park. Similar management plans will be prepared for other regional parks; however, all regional parks are open to the public, including Yellagonga, Herdsman Lake, Darling Range, Beelair, Woodman Point, Rockingham Lakes and Jandakot Botanic.

(6) I will refer the member's question to the Minister for Planning to seek a response which I will table in the House.

PRISONS - PRIVATISATION PROPOSAL

633. Hon MARK NEVILL to the Attorney General:

(1) Has the Minister been involved in the consideration of proposals to privatise part of the Western Australian prison system?

(2) Is the Minister aware of such proposals?

Hon PETER FOSS replied:

(1)-(2) There is no plan to privatise the Western Australian prison system. We are looking at a consultancy to see how we can provide new prisons and whether they should be private or public. There is no plan to privatise our current prison system. I think there has been a misunderstanding of what is being proposed.

Hon Mark Nevill: I asked if you were involved in the consideration of the proposal.

Hon PETER FOSS: We have had no proposals to privatise the Western Australian prison system. What is being proposed is a consultancy on new prison capacity in order to see the best and cheapest way of providing it. Part of that consideration must be whether it will be private or public. I emphasise and say again, there has been no consideration of privatising the Western Australian prison system. We are looking at new accommodation and capacity. We are letting out a consultancy to see the best way to do it. That will include consideration of whether it should be privately provided. Again I say, not only have I not participated in the consideration of proposals but also there has been no consideration of privatising our current prison system. I have been part of the consideration of looking at new capacity.

SUPERANNUATION - CHANGES; SURCHARGE ON MONEY WITHDRAWN

634. Hon MARK NEVILL to the Minister for Finance:

I refer to changes to superannuation which have been announced in the federal Budget . Will employees and members have to pay the tax surcharge when money is withdrawn or will the Government Employees Superannuation Board and the Parliamentary Superannuation Board deduct the surcharge?

Hon MAX EVANS replied:

The newspaper report yesterday was written on the basis that people may have to pay tax when they take the money out. That applies virtually only to members whose amount of superannuation involves $4 000 above $75 000, which is a very small part. The Government cannot be made to pay the surcharge. Both the State and Federal Government legislation would have to change for the Government to pay it. Money can be charged against only outgoing

members. The position is not clear. At present as a result of a High Court ruling the Government cannot be made to pay the surcharge.

WESTRAIL - FORMER EMPLOYEES, RE-EMPLOYED FOR TRACK MAINTENANCE

635. Hon A.J.G. MacTIERNAN to the Minister for Transport:

(1) Does the Minister stand by the comments attributed to Mr Ross Drabble in *The West Australian* that only 30 former Westrail staff were re-engaged through labour hire firms to undertake track maintenance?

(2) If not, what is the number of ex-rail staff re-engaged for track maintenance since May 1995?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) The comments attributed to Mr Drabble in *The West Australian* of 19 August 1996 are inconsistent with the information provided by Mr Drabble to the journalist. Mr Drabble did not say that 30 former staff were recruited through labour hire firms.

(2) Westrail has not re-employed any past employees who exited Westrail with a severance package.

PRISONS - NEW SITE, NOWERGUP CONSIDERATION

636. Hon GRAHAM EDWARDS to the Minister representing the Minister assisting the Minister for Justice:

Has Nowergup in the northern suburbs been ruled out as the site for the new prison?

Hon PETER FOSS replied:

No sites in the northern suburbs are being considered.

WESTRAIL - TRACK FORCE WA PTY LTD, CONTRACT

637. Hon A.J.G. MacTIERNAN to the Minister for Transport:

(1) On 20 August 1996 the Minister listed Track Force WA Pty Ltd as a firm that had been engaged by Westrail to provide temporary track maintenance personnel. On 21 August 1996 the Minister advised that Westrail began contracting with Track Force on 28 September 1995. Given that Track Force WA Pty Ltd was formed on only 1 March 1996, what was the entity that Westrail contracted with between 28 September 1995 and 1 March 1996?

(2) Who were the proprietors of that entity?

Hon E.J. CHARLTON replied:

The member may have been aware that I did not have notice of this question. I have just been given a copy of the question. I ask the member either to put the question on notice or to let me obtain the answer for her next week or as soon as possible.

EXMOUTH MARINA - SIVICON CONTRACT, PROBLEMS

638. Hon TOM STEPHENS to the Minister for Transport:

In reference to the construction of the Exmouth marina which I understand has ground to a halt because of difficulties experienced with the private contractor, Civicon, I ask -

(1) Is it true that Civicon has not only been unable to pay its employees but also owes a substantial amount of money to local businesses in Exmouth?

(2) Are any of the principals of Civicon former employees of the Department of Transport?

(3) Did that influence the department in awarding the contract to Civicon?

(4) If not, on what basis was it awarded?

(5) What checks were made as to the company's liquidity or capacity to carry out the contract at Exmouth?

Hon E.J. CHARLTON replied:

(1)-(5) The member gave me that question just prior to question time. I have sent it off to obtain a specific response for the member. If it comes during question time I will make it available. However, I can tell the member that there are current problems with the contract. Things have come to a standstill, but negotiations

are taking place between the contractor and the Department of Transport. I will certainly give detailed responses as soon as I have specific details.

STIRLING CITY COUNCIL - HOTEL ON WHITE SANDS SITE, SCARBOROUGH, APPLICATION DISAPPROVED; APPEAL

639. Hon GRAHAM EDWARDS to the Attorney General representing the Minister for Planning:

Has an appeal been lodged with the Minister which in any way relates to the decision taken by the City of Stirling in July this year not to approve an application for a 12 storey hotel on the White Sands site in Scarborough?

Hon PETER FOSS replied:

I thank the member for some notice of this question. No.

LAND CLEARING - OF REMNANT BUSHLAND, UNAUTHORISED; PROSECUTION DIFFICULTIES

640. Hon J.A. COWDELL to the Minister for the Environment:

With reference to the article "Law fails to stop clearing" which appeared in *The West Australian* on 17 August -

(1) Has a two year Statute of limitations hindered the protection of the State's remnant bushland by making prosecution for illegal clearing difficult?

(2) Does the Environmental Protection Authority refer some clearing application notices back to Agriculture Western Australia's land conservation officers for assessment, thereby failing to ensure that proposed clearing does not damage either or both significant bushland and water resources?

(3) What action does the Government propose to take to address the problem of illegal clearing of Western Australia's remnant bushland?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Yes, a small number of possible prosecutions for clearing land without notifying the Commissioner for Soil and Land Conservation, as required under the present soil and land conservation regulations, has been hindered because of the two year limitation under section 44 of the Soil and Land Conservation Act.

(2) The EPA often asks the commissioner to provide more information on notices of intention to clear in order to set an appropriate level of assessment. I regret that the member took the opportunity to say that it failed to ensure; in fact, it must ensure that they are properly assessed.

(3) This is a matter for the Minister for Primary Industry; however, current policy is that the commissioner investigate all clearing without notice that comes to his attention. Proposed amendments to the Environmental Protection Authority Act will deal with unauthorised environmental damage and will address the problems of the Palos-Verdes case.

PRISONS - CANNING VALE

Mobile Phone and Battery Charger Incident

641. Hon GRAHAM EDWARDS to the Minister for Justice:

(1) Were a mobile phone and battery charger found in a maximum security prisoner's cell at Canning Vale Prison around the beginning of August?

(2) If so, is an inquiry into the incident being conducted?

(3) Will the findings of that inquiry be made public?

(4) If so, when will the findings be made public?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(2) Yes.

(3)-(4) Following the completion of the inquiry the Director General of the Ministry of Justice will make a decision on the appropriateness of making the finding public. I am sure the member recognises that the Government does not want to tell everybody else how to do it, if that is what is the result.

EMERGENCY SERVICES - FIRE AND AMBULANCE, INJURED PERSONS REMOVED FROM FIRE OR ACCIDENT SCENE, RESPONSIBILITY

642. Hon KIM CHANCE to the Attorney General representing the Minister for Police:

Will the Minister advise the House of the correct administrative procedure that should be followed by emergency personnel - fire and ambulance services - in cases where an injured person may be deceased and a determination must be made as to whether that person should be removed from the fire or accident scene, or should be left at the scene pending the attendance of the coroner or the coroner's representative for the purpose of photographing the scene? In particular -

(a) Is it the emergency officer's principal responsibility to remove the injured person from the accident scene to enable medical attention - including a declaration of death, if necessary?

(b) Are emergency officers required to leave the injured person at the accident scene awaiting the coroner's attendance if police at the scene determine the person might be dead, but no declaration of death has been made by a doctor?

(c) In general, who is responsible - the coroner, the police or emergency officers - for the determination of whether a person should or should not be moved from the accident scene in cases where -

(i) no pronouncement of death has been made;

(ii) the injured person has been pronounced dead by a doctor; or

(iii) police at the scene believe that the person is dead, but no such declaration has been made by a qualified person?

Hon PETER FOSS replied:

I thank the member for some notice of this question. I think the answer I have covers all the possibilities, but I am a little puzzled by it. If it is not adequate, I ask the member to let me know.

(a) No. The Western Australian Fire Brigade Board has no authority to remove the injured person from the accident scene. However, the Fire Brigade Board will remove a person from a fire scene when there is a possibility that the person's life may be saved or where debris or fire may destroy the body.

(b) Yes.

(c) The police.

MT LESUEUR NATIONAL PARK - CRA MINING LEASES, EXPIRY DATE

643. Hon J.A. SCOTT to the Leader of the House representing the Minister for Mines:

(1) When do CRA's mining leases of Mt Lesueur National Park expire?

(2) Will CRA be allowed to renew the leases?

(3) Can the Minister assure the House that no excision, exploration or mining will be allowed at Mt Lesueur National Park by the Government now and beyond the next election?

(4) Have CRA and joint venturers, Hill River, made plans to either explore or mine on their leases at Mt Lesueur National Park?

(5) If yes, what are they?

(6) Do these companies have exploration or mining leases in any other national parks; if so, where?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. The Minister for Mines has indicated that it will take some time to collate the information requested by the member. Accordingly, I ask that the question be placed on notice.

DAIRY INDUSTRY - MILK QUOTAS, RESPONSE TO NATIONAL COMPETITION AGREEMENT

644. Hon KIM CHANCE to the Minister representing the Minister for Primary Industry:

(1) Has the Minister for Primary Industry determined the Government's response to the national competition agreement in the context of wholemilk quotas?

(2) If so, is the Minister now able to give an undertaking that the Government will not legislate to abolish either the farm gate price mechanism for market milk or the negotiable whole milk quota system?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. The Minister for Primary Industry has provided the following response -

(1)-(2) No. The intergovernmental competition principles agreement requires a review of state legislation to ensure it does not restrict competition. Under the agreement, a review timetable had to be set by 30 June 1996 and all reviews carried out by the year 2000. The review of the Dairy Industry Act 1973 is scheduled to commence in 1997-98.

WORKSAFE WESTERN AUSTRALIA - TURNER, PHILLIP, DEATH AT STATEWIDE DEMOLITION AND SALVAGE INQUIRY

645. A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:

(1) Has the Department of Occupational Health, Safety and Welfare identified breaches of the safety regulations in its investigation of the death of Phillip Turner at Statewide Demolition and Salvage?

(2) If yes, what regulations were alleged to have been breached?

(3) Does the department intend to commence proceedings against Statewide Demolition and Salvage over Mr Turner's death?

(4) If not, why not?

(5) If yes, when will charges be laid and what will they be?

Hon MAX EVANS replied:

I thank the member for some notice of this question. The Minister for Labour Relations has provided the following reply -

(1) WorkSafe Western Australia has identified breaches of the Occupational Safety and Health Act in its investigations.

(2) Section 19(1)(a) and section 55 of the Act.

(3) Yes, subject to advice from the Crown Solicitor's office.

(4) Not applicable.

(5) The Crown Solicitor's office is considering all aspects of the case prior to charges being laid.

WESTERN AUSTRALIAN FIRE BRIGADE BOARD - RESTRUCTURE, VOLUNTEER FIREFIGHTERS REPRESENTATION

645. Hon KIM CHANCE to the Attorney General representing the Minister for Emergency Services:

(1) Is it the Minister's intention to remove from urban volunteer firefighters the "as of right" representation of the Western Australian Fire Brigade Board?

(2) If so, will the Minister reconsider this decision in consideration of the value of the volunteers' contribution to public safety and also of their relative lack of resources and independent lobbying power by comparison with other interested groups, such as insurance companies?

(3) If the Minister is unwilling to reverse this decision, will he give an undertaking that he will make every endeavour to ensure that nominees who have been democratically endorsed by volunteer firefighters will be appointed to the board?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(3) When Hon Bob Wiese became Minister for Emergency Services, a number of concerns were expressed to him in respect of the operation and size of the board. One of the early identified priorities was to bring about changes to the structure and composition of the board so it could more effectively carry out its role of providing policy and direction to the Western Australian Fire Brigade Board - that is, organisational support for the career and volunteer firefighters who protect our community.

In October 1995 the Minister wrote to every urban volunteer fire brigade in the State advising of his intention to restructure the WAFBB. It is anticipated that the new board will consist of seven members selected for their individual expertise and experience in various areas such as senior management strategic focus, emergency services, financial, community education and relations and voluntarism. All volunteers

have been advised that when expressions of interest are called for during 1996, the Minister will invite nominations with the required skills and experience from all brigade members. Volunteers have always and will continue to be an essential part of Western Australia's fire protection network. Our volunteers have an enormous amount of experience and expertise to offer, and this relates to much more than just their contribution as firefighters.

The experience of the Government has been that a representative board tends to end up fighting for interests. If we have appointments where people contribute their expertise and skills, but not as representatives of any particular interests, we may have exactly the same people on the board but get a different result.

Hon Kim Chance: I included part (3) of the question to give the Minister an option.

Hon PETER FOSS: I do not think the Minister will necessarily ensure that. It may not be a democratically elected representative. If we have an elected version they will see themselves more as a representative than otherwise. The essential thing is that it will be a board appointed for its capacity and skill. It is apparent from the Minister's answer that he would expect nominees from among the volunteers, and that he would expect the volunteers to have such skills and contributions that they would be on the board; however, not as representatives, but as people contributing in their individual capacities.
