TAXATION ADMINISTRATION BILL 2001

Consideration, Motion

MR KOBELKE (Nollamara - Leader of the House) [7.23 pm]: I move -

That order of the day No 2 be now taken.

MR BARNETT (Cottesloe - Leader of the Opposition) [7.24 pm]: I am fascinated that the Government now wants to go to order of the day No 2 - the Taxation Administration Bill. We were in the midst of debating the Labour Relations Reform Bill. In absolute disregard of his small business constituency, the member for Rockingham moved to guillotine that debate. I will be interested in what the small business constituency of Rockingham has to say about the member for Rockingham, who moved to deny debate in this Chamber on right of entry and other issues that are critical to small business. That will be the issue. The Opposition does not want to debate the Taxation Administration Bill; it wishes to move back and debate the Labour Relations Reform Bill. For a start, that would give the member for Rockingham a chance to explain why he did not stand up for small business in Rockingham. The Opposition will ask why he did not stand up for his small business constituency when debate on that Bill resumes. I know many small business people in Rockingham and they will be in despair over the move by the member for Rockingham to guillotine that debate. He was the one who stood up to deny debate on provisions of absolute importance to small business. He is personally accountable to the seat of Rockingham. Members opposite laugh, but it was the member for Rockingham who came into this Parliament and denied debate on issues that affect his small business constituency. He is in the first line of accountability. The one thing that will come out of this is that he will learn not to be a patsy of the Premier or of the Leader of the House, who lacks honesty. The Leader of the House cannot tell the truth to members on this side or keep his word.

Withdrawal of Remark

The SPEAKER: Leader of the Opposition, I am sure that you accused the Leader of the House of being dishonest. I ask you to withdraw that comment.

Mr BARNETT: Which comment do you want me to withdraw?

The SPEAKER: The comment that the Leader of the House was dishonest.

Mr BARNETT: I do not think I said that. I said he lacked honesty. If you find that offensive, Mr Speaker, I will withdraw that comment.

Debate Resumed

Mr BARNETT: The truth is that the Leader of the House came across to this side of the House and offered an arrangement to debate industrial relations, which we accepted in good faith. We did not believe that he was coming over here to dupe the Opposition; we took him at face value. We thought he came across this Chamber to offer a way to progress the debate. It has been a good debate. Everyone in this Chamber recognises that it is contentious legislation that covers heartland issues. The member for Kingsley and, until now, the member for Nollamara, who is the Leader of the House, have debated this legislation properly. Only last week the Leader of the House complimented the member for Kingsley on the way in which she had handled this debate. What has changed? The thing that has changed is that he has had his riding instructions from the Premier to guillotine the Bill through Parliament today and tomorrow. I ask the Premier whether that is true? Did the Premier instruct the Leader of the House to come across here to offer a deal to the opposition Liberal Party, and to then go back and break his word? Did the Premier instruct the Leader of the House to mislead members of this Parliament? The Premier does not have the courage to admit that he instructed the Leader of the House to come over here and mislead us. We have been misled. You, Mr Speaker, are presiding over a Parliament in which all members witnessed the member opposite, who holds the privileged position of Leader of the House, walk across to this side and offer an arrangement, which we accepted in good faith.

Point of Order

Mr DEAN: The question is that the next order of the day be now taken. I question whether the contribution by the Leader of the Opposition is relevant.

The SPEAKER: The point of order is correct. The Leader of the Opposition has been talking for about three minutes on this motion. I am sure that the Leader of the Opposition knows his requirement to speak to the motion before the House; that is, that order of the day No 2 be now taken.

Debate Resumed

Mr BARNETT: I am explaining to the House why we should not move on to the Taxation Administration Bill. That legislation is not a priority of this Government. It was brought on for debate about three weeks ago and it was adjourned. We had got about a third of the way through the Bill, and it was being debated and was progressing normally. It is not a priority of this Government. Why are we going onto it? Have backbench members been told that debate on the Bill is being resumed to try to get the legislation through so that it can be sent to the upper House?

I do not agree with everything the member for South Perth said, but one thing I did agree with was his comment that if the Government had decided to guillotine legislation through, the very least it should do is either allow debate clause by clause for whatever period, or put in place a sessional order, which would give the Opposition some time - maybe a couple of days - to pick those issues which the Opposition and the community want debated.

The Government in this Chamber has applied the guillotine in a most arrogant, conceited and dishonest way. I do not resile from the fact that I applied the guillotine as Leader of the House in our first four years of government. However, the record will show that I did not do that in our second four years of government because I realised it was not in the best interests of the Parliament. A guillotine can be applied when there has been debate on clauses, or the Government can put in place a sessional order which at least allows the Opposition a reasonable time to consider and work through the Bill.

Apart from not being straight up and down with members, the Government came into the House, looked members in the eye, spoke to them and returned to the government benches and did the opposite to what it said it would do. Not only did the Leader of the House break his word, he deliberately contrived to do so. He worked out a strategy to vote on the Bill part by part, came over to the Opposition, put a proposal and then resiled from it an hour later. That is the only way that would allow him to guillotine whole clauses. It was a deliberate strategy. I cannot use words like “cheat” or “dishonest”. I can use the word “deceitful”. There are lots of words I would like to use but I cannot. However, members understand what I mean.

Members opposite may think that it is smart politics to come into the Chamber and talk to their fellow members of Parliament in that way. However, members have a sworn responsibility to represent their constituents and most put their hand on a Bible and swore to do that. This Premier, and no-one else, will wear this legislation. This Premier set up a contrivance in the House to dupe, mislead and deceive the Opposition to ensure that there would be no debate.

Members should look at the part of the Bill on which there will be no debate. It is about a union’s use of industrial agreements and good faith bargaining. That is an important aspect of the Bill. Members have seen what Labor Party members mean by good faith bargaining. They walk over to the Opposition, make a deal, walk back to the government bench and break it. If that is good faith bargaining, we have learnt a lot about this legislation tonight. We already knew about the Labor Party. We now know what it and its mates in the Construction, Forestry, Mining and Energy Union mean about good faith bargaining. It means make a deal, break it, use bribery, corruption and coercion and beat up people on building sites. Is that what the Premier stands for, apart from giving drugs to kids on the streets, which he will do under his cannabis law? That is what the Premier is on about. He is a disgrace as the Premier of this State.

Withdrawal of Remark

The SPEAKER: The Leader of the Opposition must withdraw the comments about the Premier giving drugs to kids on the streets. It is clearly an unparliamentary reference.

Mr BARNETT: I withdraw those comments. If I said what you said I did, Mr Speaker, I endorse your ruling. If I said what I believe I said, I would like to discuss it at a later stage.

Debate Resumed

Mr BARNETT: We know what good faith bargaining means for the Labor Party: there is a potential for demarcation disputes. Mr Speaker, do you remember the bad old days of industrial relations in the 1960s, 1970s and the early 1980s? They were dreadful days of demarcation disputes. Workers could not cross a line in the workhouse, could not pick up a tool or could not fix a piece of equipment because they were not in a particular union. It did not matter whether they had particular skills. Demarcation applied in every workplace, but in trades it prevented people from acquiring multiple skills and advancing in their careers. It is important to get rid of demarcation so that people can achieve multi-skilling. We and many Labor members talked about multi-skilling in the 1980s.

The SPEAKER: I have given the Leader of the Opposition reasonable leeway to address the motion before the House; it is simply that order of the day No 2 be taken. This is not an opportunity, as the Leader of the

Opposition knows, to debate a previous motion. I ask the Leader of the Opposition to bring his comments back to the motion before the House.

Point of Order

Mr JOHNSON: Mr Speaker, can you advise me whether it is acceptable under standing orders for a member not to give reasons in a motion for moving on to other business? That request might be wide-ranging. I am looking at you for direction, Mr Speaker. Is it acceptable for me to speak on the reason that we should not move on to the Taxation Administration Bill, which reason may be that the Opposition believes we should continue to debate the Labour Relations Reform Bill?

The SPEAKER: The question before the House, which is defined, is whether we move on to the next order of business. The debate should be directed specifically at whether the House should move to the next order of the day. I have allowed the Leader of the Opposition, because of his position, to refer to the debate on previous legislation. I ask him to confine his comments to the question before the House.

Debate Resumed

Mr BARNETT: There is another reason that we should not move on to the Taxation Administration Bill. We are ignoring not only industrial agreements, good faith bargaining and the potential for demarcation disputes, but also the whole issue of jurisdiction hopping. Members should understand that we will not debate at all the issue of jurisdiction hopping - for example, whether Rio Tinto workers should vote for state or federal administration. The issue of federal and state responsibility in industrial relations will not be debated by this State Parliament. When company after company and employee after employee opt to go to the federal jurisdiction, the minister will become the minister for nothing and the State will lose its ability to have any influence over working conditions, industrial matters, and safety and other issues in the workplace? How strong will any member in this Parliament be to stand up for the constitutional rights of Western Australia when we as a Parliament did not even bother to debate the issue? We did not have a word of debate about federal and state jurisdiction on this legislation, yet it will have a profound influence on whether companies and employees are registered under state or federal administration. This Government will not even allow a debate on whether the State will survive in the industrial arena. I suggest to this Premier and minister that in a few years there will be no state administration because they have simply walked away from it. They are putting through Parliament nonsensical legislation that they have refused to debate.

The Premier should not come into this place and grizzle about cuts to commonwealth grants, nor should he allow the Minister for Disability Services to talk about lack of funding for people with disabilities, when he is not prepared to allow even one minute of debate about federal and state jurisdictions in industrial relations.

Another reason for not dealing with the Taxation Administration Bill is the deplorable conduct of this Premier, who instructed the Leader of the House. The Leader of the House followed his instructions.

Dr Gallop: Come on!

Mr BARNETT: If the Premier did not instruct him, who made the decision to dupe the Opposition? Was it the Premier or the Leader of the House? One of them decided that the Leader of the House should go over to the Opposition, reach agreement with it and then break his word. Did the Premier or the Leader of the House make that decision? I will accept the Premier at his word; I will not accept the Leader of the House at his word any more. Did the Premier or the Leader of the House make the decision? This is the Premier's chance to answer; or is he going to look at his book? Will the Premier comment? Will he be decent enough to say that he was part of that subterfuge; or was it all the doing of the Leader of the House? Will the Premier do that or will he sit in his chair cowering away? Will he be man enough to stand and say, "I made that call. I told the Leader of the House to go over there and mislead the Opposition," or did the Leader of the House make the decision by himself? Who made the decision?

Mr Johnson: He asked for our cooperation.

Mr BARNETT: That is right. Who misled this Parliament? This is an issue, for you, Mr Speaker. When members of this Chamber make deliberate, conscious and premeditated arrangements in the Chamber and break them, it is a problem for the authority of the Chair now and into the future. You, Mr Speaker, have an interest in that matter. You cannot abide in the Parliament members and Premiers making contrived arrangements to deceive and dupe the Opposition. Without any doubt that is what happened. The Treasurer is looking a little stunned. For most of the time I was Leader of the House, the current Treasurer was the leader of opposition business. We had plenty of disagreements, but we never broke trust with each other. I never told the member for Belmont a lie and he never told me a lie. I respect him for that, but the respect that I had for the member for Nollamara has evaporated.

I return to the motion and why we should not move on to the Taxation Administration Bill tonight. There are no pairs tonight; we have called off pairs. The member for Nollamara is not paired. Why is he not here to debate this legislation? Why is he not here to debate what the Labor Party regards as its priority legislation? There are no pairs. He should be here. The member for Kingsley was going to go to the same function. However, to her great credit, she wants to be here to debate those items, to move amendments and to represent the points of view of constituents - not only our constituents but also those of members opposite, particularly those in the business sector. The member for Kingsley has given up her appointment to be here. The member for Nollamara is not paired. There is no reason we cannot proceed. If it is a matter of getting him back and getting his snout out of the trough, wherever he might be, so be it. Let us call him back and get on to the legislation.

Withdrawal of Remark

The SPEAKER: Sometimes the language in this Chamber gets a bit much and it is somewhat difficult to work out what is unparliamentary. However, referring to the Leader of the House as having his snout in the trough is inappropriate. A great deal of language is borderline. In my view, that implies that some sort of corruption is involved. I ask the Leader of the Opposition to withdraw that comment.

Mr BARNETT: I withdraw.

Debate Resumed

Mr BARNETT: I hope the member for Nollamara is enjoying his soup and that he does not trip and fall into it, because he has fallen into a mess in this Parliament.

Several members interjected.

Mr BARNETT: Members opposite say that it is embarrassing -

Mr Watson: You are an embarrassment.

Mr BARNETT: When I go to Albany next week and I speak to small business people, I will tell them that their member would not allow discussion on the key aspects of this legislation. I wonder who will be the embarrassment when I tell them that the member for Albany voted to guillotine legislation so that small businesses and their employees up and down the main street of Albany were not represented. We know their views. They have made representations. The member for Kingsley is going to Albany to meet them. I have no doubt that she will tell them that the member for Albany, like the member for Rockingham, did not - I do not expect Labor members to stand up - even raise their little fingers. They did nothing at all to allow the views of small businesses to be represented. The businesspeople and the wider community of Albany will see it as a disgrace that the member for Albany, as an individual - he should forget about being part of the Labor machine - who probably swore on the Bible to represent the people in this House, failed to represent his small business constituents tonight. Every government member in the Chamber has failed. Every member should be asked the question: was it the Premier who instructed the Leader of the House to dupe the Opposition or was it the Leader of the House who made that decision? Neither of them has the courage to say, "I set up this contrivance to have the Leader of the House dupe the member for Kingsley into an agreement that we would immediately use to put through legislation without debate."

The Premier sits there with his arms folded. A person worthy of that high office would make a decision right now to resume debate on the industrial relations legislation. If he decides that he wants to get this legislation through by, say, three o'clock on Thursday, he should move a guillotine motion and we will work to it. We will not like it, but we will work to it, so at least the member for Kingsley can raise the important issues on the important clauses. That is the minimum. I make the Premier this offer: let us have the member for Nollamara return - we can wait an hour or so - and resume debate on the industrial relations legislation. Then we can consult the Clerk and design a sessional order that will allow this legislation to go through by three o'clock on Thursday. We will sit some long hours, but at least there will be debate on the clauses in this Bill. The alternative is that we will argue standing orders day in, day out. What do members want to do? Do they want to debate the legislation? We are determined that these clauses, which affect thousands of small businesses in this State, will be debated in this Parliament one way or another. I do not run for cover. I do not run like the member for Nollamara, afraid to debate. Why was he here with Brian Burke and his mates the other night having lunch or drinks or whatever? Now they have appeared at the royal commission. How close are these links between the Labor Party and the Construction, Forestry, Mining and Energy Union?

We should not proceed to debate the Taxation Administration Bill. Again, I suggest that a wise thing for a Speaker to do would be to leave the Chair and give the Premier the opportunity to talk to the Clerk and come up with a simple sessional order that will allow this Bill to go through by three o'clock on Thursday. We would reluctantly accept it. We do not have much choice; we do not have the numbers, and we accept that. However,

at least then the member for Kingsley would have the opportunity to tailor the debate so that she could properly represent the views of businesses and employees in our constituencies, as well as those in the constituencies of members opposite. At least this Parliament would have the opportunity to debate issues. When people read the debate in *Hansard* in the future, they would understand the arguments for and against various clauses. That is not an unreasonable suggestion. Mr Speaker, I suggest you leave the Chair now. That would be a very prudent thing to do.

Several members interjected.

Mr BARNETT: I have another 42 minutes to go and I want to make the case -

Points of Order

Ms QUIRK: I believe that we are now on order of the day No 2, and I question the relevance of what is being said.

Mr JOHNSON: Mr Speaker, I am sure you know that the point of order is irrelevant. The motion before the House is to move to that order of the day, and the Leader of the Opposition is speaking about why we should not move to that item.

The SPEAKER: As I have said previously, a very restricted debate should occur on whether we should move to order of the day No 2. Even though the Leader of the Opposition is endeavouring to keep to that motion, he is drifting a fair way from it. We cannot spend the rest of the night debating this issue, especially when members drift away from the issue before the Chair. I ask the Leader of the Opposition to confine his comments to the motion.

Debate Resumed

Mr BARNETT: I think this will be a long debate, and I will tell you why, Mr Speaker, because I know you are interested in tax matters. The Taxation Administration Bill makes a number of changes to tax administration. Those changes have not been the creation of this Treasurer; they have been developed through a working group in the Office of State Revenue, which has operated for perhaps seven years. It was established during the previous Government. Changes to tax law need to be made carefully and with good thought. We are talking not only about the Taxation Administration Bill; there is also the Pay-roll Tax Assessment Bill, the Stamp Amendment Bill, the Land Tax Assessment Bill and the Land Tax Bill. I am sure that many members on this side would not want to see changes to payroll tax, tax administration, stamp duty or land tax unnecessarily rushed. I am sure that you, Mr Speaker, would not want to see that. They are significant areas - in fact, they are the prime areas - of state revenue collection. We had entered into consideration in detail on the Taxation Administration Bill and we had reached no arrangement with the Government. However, in broad terms, I support the work that has gone on within the tax office on this legislation. We have concerns with two or three points and we have been provided with a number of questions by professionals in the tax industry to which they seek answers and on which they need advice and guidance. That becomes important in terms of the advice they will give to their clients.

I indicated to the Treasurer that the Taxation Administration Bill 2001 could be dealt with, and debate finished within a couple of hours. This is not carved in stone, but I advised the Treasurer and his staff that that would happen. I said the Opposition possibly would not even go into consideration in detail on the associated Bills, which deal with payroll tax, stamp duty, land tax and debits tax. Those Bills do not simply deal with the modernisation of tax administration. The Taxation Administration Bill is about reforming and modernising the administration of all aspects of taxation. Much of it is good. It is not political in nature. It is sensible reform, and the industry has been largely consulted on it. There is a broad degree of support, apart from on a few key issues. However, when those new matters of tax administration are applied to the payroll tax, land tax and stamp duty Bills, it is not a matter of making amendments to those Bills. The existing Acts are all effectively repealed and replaced with an entirely new piece of legislation.

The Opposition has some options in this Chamber. It can, as I was prepared to do, go quite quickly through the payroll tax and stamp duty Bills. They may not even be considered in detail. If the Opposition were bloody-minded about this, it could debate the payroll tax, land tax and stamp duty legislation clause by clause, which would take several weeks in this Parliament, to re-enact the entire taxation legislation of this State. The Opposition acted in good faith, and I told the Treasurer and his staff that the House would spend a couple of hours on the taxation legislation. I would make a little speech about payroll tax, and perhaps a few other members might comment on it, but the House would move through it very quickly. If, however, the Government wants to go down this path, and deny the member for Kingsley the opportunity to debate the industrial relations legislation, I assure the Treasurer that I will exercise my right as a member of Parliament to debate every clause of every tax Bill. That will be a great disservice to those public servants in the back of the Chamber, who have

worked on this for seven years. If the Government wants to adopt that bloody-minded attitude, as the Leader of the House has done, then the Opposition can play at that game too. We will go through every aspect of every clause of every tax Bill. Is that what the Treasurer wants? I offer those choices to the Premier. He is paid much money to do the job. He is not paid money to come into this House and be involved in contrivances and actions to deceive the Opposition, and he would not enjoy the support of the public for doing so. That is what the Premier and the Leader of the House have done. That was a clear, premeditated and disgraceful attempt to deceive me, and the members for Kingsley and Hillarys.

It was also an attempt to deceive you, Mr Speaker, because you rightly expect integrity and honesty in this Chamber. You have the ultimate job of presiding over the proceedings that follow, which are not based on trust. You have a responsibility to ensure that there is trust across the Chamber. Members can disagree on policy and politics, but, in my experience, we have rarely before in this Chamber disagreed on matters of trust, and agreements across the Chamber on how legislation will be dealt with. The Premier has broken new ground, or he has broken the mirror. He has brought this House into disrepute. This is about good faith bargaining and, as the Government has failed in its good faith bargaining, it should let me try.

I suggest to the Premier that when the minister returns to the Chamber, the House resume the debate on the industrial relations legislation. A sessional order could be set up; I suggest 3.00 pm on Thursday. The Opposition does not like this, but it should be allowed to tailor the remaining debate on the Bill, through tonight, even if it goes all night, and through tomorrow, even if it goes all night again. That would give the Opposition an opportunity to raise issues on behalf of its constituents and to move amendments, many of which are constructive and well thought-out proposals to improve the operation of this legislation.

Alternatively, will the Premier be part of the deceit in this Chamber? Will he be a party to a deceitful act that happened on the floor of the House, when the Leader of the House put a proposal, which the Opposition accepted in good faith, and which he then, in a premeditated way, did not honour? He has taken any good faith, trust or mutual respect out of this Chamber. The Premier, as the leader of the Government, now has the opportunity to put some sense back into this issue. It would be a good idea for this debate to be adjourned for five minutes while the Premier gives the issue some consideration, and seeks some advice if he so wishes. If the Premier were to do that, he might just get his industrial relations legislation through this week and he might just get the tax reform package through. If he does not do that, he will get neither through. I guarantee that.

MRS EDWARDES (Kingsley) [7.56 pm]: As the lead speaker for the Opposition in the debate on the Labour Relations Reform Bill 2002, I similarly oppose moving to debate the Taxation Administration Bill 2001. I do so because the minister and I were both attending a function this evening, and there was to be a short break while we were attending that function to allow the Taxation Administration Bill 2001 to be debated. I understand the Treasurer was concerned that the tax legislation was running a very distant second to the industrial relations legislation. That discussion took place last week, and there was no indication then that the minister wanted to rush through this legislation. If that were the case, surely the debate should not have been suspended tonight so that we could debate the taxation legislation. If it were absolutely critical that the debate continue, and the legislation pass this week, why would three hours be taken out of that debate? There was no rationale for that, unless the Government was quite happy for the debate to continue in the orderly, consistent and logical fashion that it has over the past week and a half while the consideration in detail has been in progress. When the minister moved this afternoon to have the gag imposed by the member for Rockingham, obviously I thought it would be a serious enough issue for the debate on the Labour Relations Reform Bill 2002 to continue. There was obviously no time to take three hours out of the parliamentary session to go to a dinner. As important as the dinner might have been, Parliament is the minister's first priority. This is where members should be, and if there were a major issue brewing, which is the case in this instance, the minister should have been here. I am surprised that he persisted in going to the function.

The Labour Relations Reform Bill needs all the time it can get, and it will not get that time if the Government wants to suspend the debate and move to the taxation legislation. I implore the Government to continue with the Labour Relations Reform Bill, and to allow some time for the clauses to be debated properly and the amendments put. There are members of the Plymouth Brethren in the gallery tonight who have been here every day the legislation has been debated. They have been to see the Government and a number of members on a number of occasions. One of the amendments on the Notice Paper is in my name, but it is their amendment. Will the Government give them two fingers? Will the Government tell them not to worry about coming along and attending the debate because they will not see their amendment put? A similar amendment has been proposed by the member for South Perth. The Labour Relations Reform Bill is an important piece of legislation, which will affect people's lives and their livelihoods. Irrespective of what has happened in the past, this is the most complex piece of legislation that I, and others in the legal profession, have seen in more than 20 years. By pushing the debate aside and treating it in the way that it has, the Government has shown that it has no respect or

credibility. This is very important, particularly because people have suggested amendments to the Opposition and they want those amendments presented to Parliament. For some of those people, who have been in the gallery during the debate, it would be an absolute disgrace and travesty not to have their amendments moved.

MR BOARD (Murdoch) [8.01 pm]: Why would we move to order of the day No 2 when the Government has just guillotined debate on one of the most important Bills that has been considered by this House, not only this year, but also during the term of the Government? We are not even halfway through the first of the 13 clauses in part 6, yet the Government has guillotined debate. Further, the Government has decided that it wants to move on to other Bills. Where is the rationale for the guillotine? Why would the Opposition support moving to order of the day No 2 when the Government has shown that it is not concerned about the major legislation that is before the House? I remind members of the motion moved by the Minister for Consumer and Employment Protection. It reads -

> That so much of standing orders be suspended as is necessary to require by this motion the following be considered as one question each during the consideration in detail of the Labor Relations Reform Bill 2002 -
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> part 6; part 7; part 8; part 9; part 10; and part 11 and schedule 1.

That arrangement was made with the member for Kingsley. At the time it was made, I asked the member whether she was sure that the Opposition had enough time in which to debate all the clauses, as was done previously. The member told me that she had received the assurance of the Minister for Consumer and Employment Protection that that would be the case. She told me that we would be able to move around within that part of the Bill, and move our amendments. That was the member's understanding. She assured us that that arrangement was made in good faith with the minister. Hence, we supported the basis of that arrangement. There was no debate; the member for Kingsley stood up and made a few short comments about the need to explore the Bill, but stated that the Opposition would try to work with the minister.

Less than one hour later, we were not even halfway through the first clause of part 6, and two or three opposition members had the audacity to speak! That would have got up the minister's nose. Why should anyone else have the opportunity to speak? That was unpredictable. Why did the opposition Whip want to speak? Why did the member for Dawesville want to speak about this issue? What gave opposition members the right to have a say on behalf of their constituents and businesses in their electorates? That was too much for the minister to bear; therefore, halfway through clause 125 he decided to guillotine debate and break the arrangement that had been put in place in good faith. Here we are moving to order of the day No 2, and the Government does not give a damn about a major piece of legislation that is before the House. We have not even talked about promoting equal remuneration for men and women for work of equal value. That is a fundamental issue within the community. We have not debated the most important aspect of part 6, which will attempt to -

> promote collective bargaining and to establish the primacy of collective agreements over individual agreements;

That is the very core and essence of this legislation. We did not discuss fundamental rights or the rights of the individual - the core of the Liberal Party's values. The Government knows that that is what binds our members together. We value the right of individuals to pursue issues and wealth, and to be able to work hard and be rewarded. Such values are fundamental to the Liberal Party. We were denied the opportunity to discuss the major focus of this legislation. Now we are being asked to move to order of the day No 2, in response to a request that was agreed to in a spirit of goodwill with the Treasurer and Leader of the House. We agreed to move through the Bills, and to comment on the important aspects. I understand it has taken the Labor Party seven years to bring this legislation before Parliament. After seven years, what does it do? It chooses to put it through at this hour on a Tuesday night, having guillotined the other parts of the labour relations Bill in order that the Minister for Consumer and Employment Protection can attend his function, and so that government members can leave Parliament on time on Thursday night. That is not good enough.

I turn to the difference between a sessional order and the guillotining of debate. I remind members that the previous Government gave three days notice of how legislation would be dealt with; that is, it stated that by 5.00 pm on a Thursday evening - in the old days it was 7.00 pm - it expected that certain clauses of a Bill or a number of Bills, would be debated, and that the Bill or Bills would have moved through the House. A sessional order gave the Opposition the opportunity to organise its priorities. It could decide on which issues it wanted to spend the majority of its time. It could determine whether, during the three days of Parliament, it would proceed with private members' Bills or a matter of public importance. It could decide how it would utilise those three days. We have been denied the same opportunities. We agreed with the Minister for Consumer and Employment Protection in good faith. He made a deal with the member for Kingsley, she then passed on that information and within one hour that deal was betrayed. That is different from bringing in a sessional order that gives three days

notice of the Bills that the Government expects to progress. The Government cannot be proud of its actions. I want to know who is pulling the strings of the Minister for Consumer and Employment Protection, because, as a man of purported principle, I am not sure how he can approach the member for Kingsley, in good faith, to organise an arrangement, and then turn around and do the exact opposite of what was arranged. Someone is pushing his buttons; someone is on his back, and the Parliament has a right to know who that is.

What are the issues that we did not address? Why are we being asked to give priority to order of day No 2 rather than to industrial relations issues? The issues that were not addressed go to the heart of the legislation. The Opposition received many representations, not only from the Chamber of Commerce and Industry and major employer groups, but also from small employers. Over the past few weeks, at shopping centres and walking down the street, I have been confronted by employers wanting to talk about the legislation, especially as it applies to good faith bargaining, right of entry, individual agreements and employers' rights. The purpose of the consideration in detail stage is in fact that - consideration in detail. Why do we consider Bills in detail? We do that because it gives the relevant minister the opportunity to put on the record exactly what he or she means with regard to the definition of certain aspects of the Bill. Once passed, the legislation, as defined, is upheld by the courts. The Industrial Relations Commission has been denied the opportunity of determining the definition of some aspects of industrial agreements.

How can anybody make a determination based on the comments of the minister when he is not here to comment? There is a difference between expediting clauses of a Bill by moving quickly through the parts and the amendments and gagging all debate on those parts of the legislation, which is something new to this Parliament. None of the government members can be proud of that. We do not support moving to order of the day No 2. Why would we do that? The Government has moved the guillotine motion to deny us the opportunity to speak on behalf of the 45 000 people who live in our electorates. We speak for the thousands of businesses in our electorates and for the people who come to us every day of the week, whether they live in our electorates or not, who want their points of view considered. They want to read what the minister and government members have said in *Hansard*; they want to read it on the Internet and find out how members voted on particular clauses of the Bill. All that has been denied by this smart alec trick to sell the member for Kingsley the dump. In goodwill, she agreed that we would not debate this Bill clause by clause, but would move through each part and take a vote at the end of each part. She did not agree to deny the Opposition the opportunity to consider the clauses in detail.

Why would we support moving to order of the day No 2 when we have been denied the opportunity to discuss the most important part of this legislation tonight? It has been guillotined. Now we are being asked to consider other important pieces of legislation that have been seven years in the making. The Government wants us to rush that legislation through Parliament in a few hours so that the Leader of the House can attend a function and other members can disappear on Thursday. That is not good enough.

MR RIPPER (Belmont - Treasurer) [8.11 pm]: In my misspent youth, I used to read Superman comics. A series of Superman comics are based on the concept of Bizarro World in which there was a bizarro Superman. In Bizarro World, everything happened opposite to the way it would happen in the real world. Bizarro Superman did the opposite things to what the real Superman would have done. That is the Opposition's problem. The Opposition is in Bizarro World. Suddenly Labor is on the government benches, is running the House and has the numbers. It is a Bizarro World from the Opposition's point of view, because things are happening in reverse to how they should happen.

I have been fascinated to hear some of the arguments put forward by members of the opposition front bench. I think they have been re-reading my debates in *Hansard* from 1993 and the subsequent eight years. I recognise some of the arguments that they have put.

Ms Hodson-Thomas: They are obviously not plausible.

Mr RIPPER: I have the same view of those arguments as the Leader of the Opposition had of them when he was the Leader of the House.

Mr Barnett: Give me one example in which I was dishonest in this Parliament. Can you name an occasion?

Mr RIPPER: I can remember an occasion when I described the now Leader of the Opposition as a man without honour, but I cannot remember what was the cause of that utterance. I remember that we had some pretty fierce debates.

Mr Barnett: I do not come into this Chamber to mislead the place.

Mr RIPPER: I do not come into this chamber to do that either.

I will now deal with the arguments before us. The Opposition has argued that it does not want to debate the tax administration package because the industrial relations legislation is so important that it must be debated instead. That is not true; it is a pretext. The Opposition understood that we intended to debate the tax administration package from 7.00 until 10.00 pm tonight and then we would debate the industrial relations Bill. That is why officers of the Office of State Revenue, including the Commissioner of State Revenue, are here. They are here to listen to the debate on the tax administration package; they are not here by accident. They did not decide to just pop into Parliament for a spot of entertainment; they have better and more entertaining things to do. However, they are here by arrangement because we had an agreement with the Opposition that we would discuss the tax administration package between 7.00 and 10.00 pm.

The Opposition is not offering a genuine argument as to why it does not want to debate the tax administration package now. It is just angry that the Government has attempted to shorten the length of time that we spend debating the industrial relations Bill. Since the time we formed Government we have been through a number of these events. It seems that at any time the Government tries to speed up its legislative program, it faces a demonstration from the Opposition. We have witnessed repeated abuse of the points of order system, the Opposition has moved stunt motions in anger and so on. All of this leads us to an inevitable conclusion: if we are unable to achieve significant legislative progress through our preferred process - that is, by negotiation, agreement and goodwill - we will be driven to more draconian measures, which, frankly, are not our preferred policy position. The Government will pass its legislation. We are a Government, and we must govern, and that requires the passage of legislation.

The Opposition is upset because it has not been able to debate certain significant clauses. I can understand the Opposition's frustration. After all, when the Labor Party was in opposition, it had to sit by while the Workplace Agreements Bill was guillotined. Clauses 8 to 101 and three schedules were guillotined without debate and the third reading was also guillotined with no debate. The Minimum Conditions of Employment Bill had many important clauses. However, clauses nine to 47, one schedule and the third reading were guillotined without debate. The second reading debate, the whole consideration in detail stage - 31 clauses - and the third reading of the Industrial Relations Amendment Bill were guillotined. I can understand the Opposition's frustration with the lack of time it has had to debate clauses it regards as important. Welcome to the real world. This is not Bizarro World; it is the real world. Welcome to the world of opposition. Today's restriction on debate is modest compared with the record of the former Government. The three Bills to which I have referred were debated for 37.5 hours in the Assembly. We have spent more than 42 hours on this legislation already. There is a difference between the former Government and us. We want our legislation to pass but we are not as draconian as the former Government was when it was faced with the same imperative to get its legislation passed.

The Opposition has made its point. It is upset about the restriction of the debate on the industrial relations Bill and is threatening to go back on an agreement it had with the Government on the tax administration package. The Opposition is threatening to debate every clause of every tax Bill. I thought we had an understanding that we would spend no more than three days -

Mr Board: So did we. Talk to your Leader of the House.

Mr RIPPER: The Opposition says that the Government has broken an agreement. As Treasurer, I am responsible for the tax administration package. I thought that I had an agreement with the Opposition that we would debate the legislation between 7.00 and 10.00 pm. We have spent an hour and 20 minutes of the time that was to be allocated to the Taxation Administration Bill on this procedural debate about whether the time for the Opposition to debate the industrial legislation should be shortened. The Opposition has made its point. We should put the motion. We should get on with debating the Tax Administration Bill because, after all, the Leader of the Opposition and I have an agreement on the Tax Administration Bill.

Mr Barnett: We do not now. We require honesty and the Premier has ignored that standard.

Mr RIPPER: I thought that the agreement was unconditional. I did not hear the Leader of the Opposition say that he had an agreement with me provided that the member for Nollamara did not upset him, which is what he is saying. I see that I must get Crown Solicitor's advice before I reach an agreement with the Leader of the Opposition. We will have to have a "no termination of agreement because of the member for Nollamara's upsetting the Opposition" clause in any agreement that we reach. I have had the experience on a number of occasions. Every time I try to debate taxation legislation, the Opposition is upset at the member for Nollamara and we never get a chance to debate the legislation. I will have this out with the member for Nollamara, but I also want to have it out with the Leader of the Opposition. I am the innocent victim. The Leader of the Opposition and the member for Nollamara get into a brawl and somehow or other the only person who cops a punch is the Treasurer. I have legislation that I want to get through the House. The Leader of the Opposition

concedes that it is sensible legislation and a decent package. We are arguing over a few issues, but basically the package has bipartisan support.

Mr Barnett: You will have to debate payroll tax, land tax and stamp tax now. You will have to re-enact all those Bills.

Mr RIPPER: The Leader of the Opposition has been here long enough to understand this place. He knows that unless the Government brings in a guillotine, the Opposition can frustrate the passage of legislation.

Mr Barnett: You cannot guillotine tax Bills, because you will be challenged in the courts.

Mr RIPPER: The Leader of the Opposition should listen. He has two ears and one mouth, and it is about time he used them in the proportion in which he possesses them.

The Opposition can frustrate and delay the tax administration package. That is a given, and we understand that. However, the Opposition must accept some responsibility for its actions in this House. It is not the case that only the Government is responsible -

Mr Barnett: The Leader of the House could not keep his word for one hour. This is an issue of the integrity of the member for Nollamara, who has misled members on this side of the House.

The SPEAKER: Order! I think the Treasurer was trying to make a comment and finding it impossible with the interjections of the Leader of the Opposition.

Mr RIPPER: Thank you, Mr Speaker. The comment I was trying to make is that the Government is not the only party in this House that must bear some responsibility for the conduct of the House. The Opposition must also bear some responsibility. If it chooses to frustrate a piece of legislation that it acknowledges is a good piece of legislation by and large - apart from some minor points - because of some unrelated fight it has with the Government, it is being irresponsible. Members of the Opposition should think about how that presents them to the people who have elected them and the public generally.

I have made all the necessary comments. We have here a demonstration as a result of the Opposition being subjected to a very modest version of what the previous Government did to the Labor Party when it was in opposition. The Opposition has made its point. What is proposed by the Opposition is that legislation that the Opposition basically supports be held hostage.

Mr Johnson: Give me five minutes.

Mr RIPPER: I am being asked to refrain from asking one of my colleagues to move the gag because an opposition speaker needs five minutes. In a spirit of goodwill, let us give the Opposition another five minutes.

MR JOHNSON (Hillarys) [8.25 pm]: I appreciate the Treasurer's gesture of goodwill. The Treasurer knows that I have quite a bit of time for him because I think he is a man of integrity. I have always enjoyed dealing with him. I served with him on a very important committee of this House - the Standing Orders and Procedure Committee, which is now the Standing Committee on Procedure and Privileges. I wish that he were Leader of the House at the moment, because I could deal with him.

I will give a few reasons that we should not move on to debating the Taxation Administration Bill. In my heart of hearts I do not object to having that debate. However, the Leader of the House came to my office, sat down and said to me, "Rob, I just want your agreement on two things. Will you be happy if we go through the Labour Relations Reform Bill part by part because there are a lot of clauses? You will have the opportunity to debate all those clauses, but it makes it simpler and easier. Otherwise we will be going backwards and forwards through the Bill. If you agree to that, it will make it simpler. The other thing is, will you agree that between the hours of 7.00 and 9.00 pm we can debate the Taxation Administration Bill? The debate will be basically between the Treasurer and the Leader of the Opposition. I and the member for Kingsley are going to a WorkSafe dinner and we want to be out of the House. It would give us an opportunity to get on with the Taxation Administration Bill." That was one package the Leader of the House put to me. He was looking for cooperation from me as the opposition manager of business to agree to that package. I said that I did not have any problem with that but that I must check with the Leader of the Opposition to see that he was okay to deal with the Taxation Administration Bill tonight. I said that I assumed he was, and that if that were so, I would need to ensure that the member for Kingsley was aware of it. The Leader of the House said that he had spoken with the member for Kingsley and told her that that was how he wanted to deal with this part of the Bill. I took the view that if he had advised the Leader of the Opposition about the Taxation Administration Bill and if he had advised the member for Kingsley about the Labour Relations Reform Bill, on which she is the lead speaker, in a spirit of goodwill we would cooperate. This House can run only with cooperation on both sides. I know what it was like during the eight

years when some government members were on this side of the House when World War III almost broke out. It was normally to do with an industrial relations Bill or something over which they would man the trenches.

The reason I say that we should not move on to the Taxation Administration Bill is that if the Premier is to lead the Government in this blatant charge to ram this Labour Relations Reform Bill through the House, I do not want to move on to the Taxation Administration Bill. If the Government is to guillotine every part of the Labour Relations Reform Bill and we are to get about an hour or so to speak on the Bill and give it some consideration and put forward the amendments of the member for Kingsley, who has spent thousands of hours working on this -

Dr Gallop: We have put in thousands of hours of work as well.

Mr JOHNSON: I am not opposed to sessional orders; the Deputy Premier knows that because I have told him many times. He told me that I will feel differently when I am on his side of the House. I promised him that I would not. I am not opposed to sessional orders provided there is adequate time and notice to allow the Opposition to debate the clauses and parts of the Bill that it regards as the most important. The Government has not done that. We gave the Opposition enough warning when we were in government.

Mr Ripper: If we had a process of consultation and set generous time limits, would the Opposition support a sessional order?

Mr JOHNSON: In many areas, I would support a sessional order. The federal Parliament does it all the time, as does the House of Commons. Why can it not be done in Western Australia? The Premier does not like the term "sessional order". He did not like it when we did it. At least we gave the then Opposition the opportunity to debate clauses in a Bill that it regarded as the most relevant and important. This Bill contains many administrative clauses that will not change anyone's life. However, many of the clauses will affect people's lives. Those are the clauses we want to deal with. The Premier now has the opportunity to act like a statesman, because he has not yet done so on this Bill. In the eyes of the people in the gallery and the media, and in our eyes, the Premier has not acted like a statesman. The Premier will come out of this looking very black. People are watching their television; they know what is going on. The Premier will come out of this very badly. Is the Premier listening to me?

Dr Gallop: I am talking to my colleague.

Mr JOHNSON: The Premier is the only one who can make this decision. We cannot trust the Leader of the House to keep his word. He did not keep his word to me. He was not open and accountable and did not act with integrity towards me.

Withdrawal of Remark

The SPEAKER: The member implied that the Leader of the House has not been honest. It is possible that I misunderstood. If the member was implying something about the integrity of the Leader of the House I ask him to withdraw the comment. I thought I heard the member say that.

Mr JOHNSON: I will repeat what I said, as I believe the Speaker misheard me. I asked whether the Premier would stand up and make a commitment as I could not trust the Leader of the House because he has not been honest with me. I do not regard that as a comment that should be withdrawn. Should it be withdrawn?

The SPEAKER: No.

Mr JOHNSON: I do not believe the Leader of the House has been open and accountable in his dealings in this matter. I think those are the words I used. If I said anything else, I obviously withdraw. I do not remember saying anything else. I normally try to choose my words carefully so that I do not have to withdraw them. Is that all right?

The SPEAKER: Yes.

Debate Resumed

Mr JOHNSON: I ask the Premier to introduce a sessional order for three o'clock on Thursday afternoon, and the Opposition will abide by it. We have limited time to speak on the rest of the Bill because we have private members' business tomorrow and grievances on Thursday morning.

Mr Ripper: I thought we had grievances right now!

Mr JOHNSON: We do not have grievances now. This is a very important debate and I think the Deputy Premier understands it very clearly. I do not think the Deputy Premier is sitting comfortably with what has happened tonight. I do not think the Premier is either. The Premier should show some leadership and agree to a sessional order for three o'clock on Thursday afternoon. If he does, everyone can get home in time for Easter. We do not want to sit all night tonight or tomorrow night. It is a ludicrous situation, as it was last week. The

Minister for Police is telling everyone in Western Australia not to drive when they are tired otherwise they will kill themselves. The Leader of the House is forcing us to drive when we are tired.

Dr Gallop: Quite the opposite.

Mr JOHNSON: Of course he is. We were here until two o'clock in the morning last week.

Dr Gallop: I am interested in what the member has to say. How much more time does the Opposition need to debate the Labour Relations Reform Bill?

Mr JOHNSON: Ideally, we would like longer than three o'clock on Thursday to do it justice. I am aware that the Leader of the House wants it through before Easter and that is it; come hell or high water, it has to go through! It will go through one way or another. We may have enormous fights in this House in which the Opposition will object to everything the Government does between now and then.

Dr Gallop: What is the member saying?

Mr JOHNSON: The Leader of the House broke his word to me.

Dr Gallop: Is the member saying that between now and three o'clock on Thursday the Opposition wants time to focus on the issues of the Bill that matter to it?

Mr JOHNSON: We have been saying that for the past hour. The Premier was obviously not listening.

Dr Gallop: What are the issues?

Mr JOHNSON: The clauses in the Bill. Does the Premier want me to read them out? For goodness sake, it will take me all night to read them out. The Premier is being silly.

Dr Gallop: I am not being silly.

Mr JOHNSON: It is beneath the Premier.

Dr Gallop: I am not being silly, because a sessional order does the same thing. That is the point.

Mr JOHNSON: It does not.

Mr Barnett: A sessional order does not deal with individual clauses. It deals only with the stage of the Bill.

Mr JOHNSON: It gives the Opposition the opportunity to debate the clauses about which it has the most concern. The Opposition is concerned about a lot of the clauses. If the Premier introduces a sessional order for three o'clock on Thursday, the onus will be on the Opposition to make sure it debates the most important clauses. They are all so important that the Opposition will have to make a pecking order. That is what I am saying. The Opposition is not going to filibuster or dribble on.

Mr Kucera: It has for the past half hour.

Mr JOHNSON: The minister contributes nothing to this debate. I suggest he keeps quiet. I am trying to get commonsense to prevail. I know that the Deputy Premier is of a mind to reason. Even the Premier may be coming around to that way of thinking. I think we are making a very good offer to the Premier. I said I would speak for five minutes, and I apologise for taking longer. It was due to interjections. The Premier has a genuine offer, and he can make up some of the ground he has lost today. The Premier should not sneer. It is not like him to do that. It is beneath him.

Dr Gallop: The Opposition should be more open in its intentions about this issue.

Mr JOHNSON: How much more open can I be? The Premier should bring in a sessional order that the Bill shall go through by three o'clock on Thursday. That is it.

Dr Gallop: The Opposition does not need a sessional order for that; it can just agree to that.

Mr JOHNSON: The Premier should make a sessional order. The Opposition wants to speak more on the Bill. The Premier has two options. He should not try to pass the buck. He is controlling this legislation, not the Opposition. It is the Government's Bill; the Premier is controlling it.

Mr Ripper: I thought the member was going to speak for only five minutes. Is he not the person who supports time limits?

Mr JOHNSON: I apologise for that.

Several members interjected.

Mr JOHNSON: So many interjections, Mr Speaker!

Mr Ripper: The member's remarks were so entrancing that I did not notice he had spoken for 12 minutes instead of five.

Mr JOHNSON: I think the minister wandered a bit; he was involved in another discussion. The Premier has the option to bring in a sessional order, which is what the Opposition prefers -

Mr Kucera: You are wasting taxpayers' money.

Mr JOHNSON: For goodness sake - mumbling from the Minister for Health again! I do not know whether anyone heard what he said. He was talking into his chest again.

Ms Quirk interjected.

Mr JOHNSON: If the member stops interjecting I will be able to finish. One option is to bring in a sessional order for three o'clock on Thursday. The other option is for us to go through the Bill clause by clause. However, the Government will get very little cooperation from us, because we will want to speak on everything; and we will have no option but to try to speak on everything, because we will not know where the Government is coming from. That is the offer of the Opposition.

MS SUE WALKER (Nedlands) [8.39 pm]: I support the argument of the Leader of the Opposition that we should not be debating order of the day No 2, the Taxation Administration Bill. I have three reasons to support that argument. First, the member for Kingsley has, on the word of this Government, properly and fully prepared her response to the Labour Relations Reform Bill, as have other opposition members. She has been denied the right to continue to debate the legislation. Secondly, it is entirely inappropriate for the member for Nollamara to move onto another Bill so that he can attend a function tonight, when he did not have the time or energy to attend a small business function, which the member for Kingsley mentioned and which has been widely reported in the newspapers. I refer to the *Business News* of 21 March, 2002, which states -

> WA'S industrial relations system has come under the spotlight this week -

We have been debating the legislation for two weeks -

> with the State Government's controversial IR Reform Bill being debated in Parliament and the Royal Commission into Corruption in the Building Industry rolling into town.

Further it states -

> And while the Cole Commission was hearing evidence about union intimidation, small businesses fearing a bigger taste of that medicine tried to raise those fears with Employment and Consumer Protection Minister John Kobelke at a Stirling Business Association luncheon.

It continues -

> However, Mr Kobelke missed the golden opportunity to hear small business concerns.

He did not have the time to go and hear small business concerns, but he had time tonight to go to a function. He has not heard small business concerns because he stifled debate with the member for Kingsley. The article continues -

> He had asked to address the luncheon, which drew a near record number of SBA members, but begged off at the last minute, citing Parliamentary duties.
>
> Instead, his policy adviser Bob Horstman was sent to answer small business' concerns.

Point of Order

Mr DEAN: Under Standing Order No 94, I ask whether the member for Nedlands' argument is relevant. Reading from a newspaper is not debating this point.

The SPEAKER: I do not know whether the point of order is relevant. However, the member for Nedlands has been speaking for two minutes. I urge her to keep to the point of the debate. Whether referring to a newspaper is relevant to the question of whether we should move to the next order of business is on the borderline, to put it in its best light.

Debate Resumed

Ms SUE WALKER: Thank you, Mr Speaker. In relation to the relevance of my contribution, I did say that I supported the Leader of the Opposition's argument for three reasons, one of which was that it was inappropriate for the member for Nollamara to go to another function and not be here to debate the Bill. I referred to the concerns expressed in the media about his not attending a Stirling Business Association luncheon and was reading that into *Hansard*, because it is important that when people look back on the debate of this legislation,

they have an understanding of how the media and business community reported that incident. By reading it into *Hansard* - I do not think I am prohibited from doing that - I am addressing the motion.

The article continues -

> Small business owners were already angry because the Government had not studied how its proposed laws will impact on small business -

That was the concern of small business -

> something it promised to do with every piece of legislation it introduced - and the minister's non-appearance did nothing to settle their mood.

The third reason we should continue debate on the Labour Relations Reform Bill is because it is serious legislation that will have serious consequences in our community. It will affect the lives of people in our community. I refer to an article that appeared in the *North West Telegraph* last week. It points out that employees of Rio Tinto Ltd and other large employers are being urged to vote to switch to federal workplace agreements, merely to escape this legislation. The article states that for Rio Tinto to achieve that, it needs a 50 plus one vote from each of its operators in the north west. It involves 3 300 employees of Hamersley Iron Pty Ltd, Robe River Ltd, Dampier Salt Ltd and Argyle Diamonds. It was important enough for the unions to scuttle a contingent of Port Hedland and Perth-based representatives to Karratha and Dampier last week to urge workers to vote no. This legislation is so important to the lives of people that they are considering switching to federal workplace agreements legislation. That is causing concern to the unions, which underpin this Government. The article states -

> This has led to UnionsWA secretary Stephanie Mayman and Hamersley Iron's general manager (Dampier operations) Graeme Rowley both saying it's crucial all Rio Tinto workers vote, -

It had forced union representatives including Gary Wood from the Construction, Forestry, Mining and Energy Union, Tim Kucera, who is probably related to the minister over there - he looks very similar - Stephanie Mayman and Brett Davis to take off up north to try to get workers to vote against going onto the federal workplace agreement. It is for those reasons that I support the argument of the Leader of the Opposition that we should not debate order of the day No 2, the Taxation Administration Bill, but should be pursuing the Labour Relations Reform Bill.

Question put and passed.

Consideration in Detail

Resumed from 21 February.

Debate was interrupted after clause 33 had been agreed to.

Clause 34: Right to object -

Mr BARNETT: I guess we will now have to gather our thoughts on this Bill, because we are probably about halfway through it. I wish to raise two or three significant issues. Most other matters that I will raise will be by way of clarification. Clause 34 relates to the right to object to an assessment. I might be restating what was said last time, but we should go over it again. If a reassessment is issued to give effect to a determination of an objection, there cannot be an objection to that reassessment. An objection to the original assessment may be lodged. There may then be a reassessment that may still be wrong. This clause seems to suggest that if there is a reassessment that the taxpayer still considers may be in error, the taxpayer does not have any further right to object.

Mr Ripper: Sorry?

Mr BARNETT: How can I be expected to debate this clause if the Treasurer is not even listening to the point I am making? However, in goodwill, I shall make it again.

Mr Ripper: I am sorry, Leader of the Opposition. With some people, one has to say things twice.

Mr BARNETT: This clause relates to the right to object. The point I was making was that someone may receive an assessment and then object to that assessment. The Office of State Revenue will therefore issue a reassessment. If the taxpayer is still unhappy and believes that that reassessment is wrong, for whatever reason, it seems to me, if I am reading this clause correctly, that he has no further right of objection. I question whether that is the case and, indeed, whether that is fair, particularly in the case of a large or complex set of tax returns, which may involve many properties, for example, or many financial arrangements, and the taxpayer may have objections to a number of aspects. I am referring to clause 34(2)(b).

Mr RIPPER: I am advised that subclauses (2)(a) and (2)(b) should be read together. When an objection is determined, the outcome of the objection is, or can be, a reassessment. If a reassessment has been issued, that is the outcome of the objection process; therefore, it would not be logical to have another objection process. However, there is still the appeal process, which takes people to the courts. The reassessment is the culmination of the objection process. It should not give rise to a new objection process.

Mr BARNETT: I understand that we do not want frivolous objections and people frustrating the Office of State Revenue. However, at the same time, in the case of a company or, perhaps more realistically, a medium-size business in which a whole range of properties attract land tax, it may be complicated. This seems to be unnecessarily restrictive. For example, a person may make an objection to an assessment. The Office of State Revenue may say, "Let's finish this. We'll give him a reassessment and reduce his tax liability by a dollar." That is neither here nor there, and the mere act of doing that would be an inappropriate action by the Office of State Revenue - I am sure it would not deliberately do it. However, one can imagine a situation in which, to try to get rid of frivolous tax claims or objections, someone might get an almost nominal reassessment, which marginally lowered the taxation liability. The taxpayer may still regard that as wrong, according to his understanding of his tax obligations, yet he is essentially closed off. Maybe in practice, through the reassessment process, the tax officer concerned will work with the person who has made the objection. If that is the case, I would feel more comforted; that is, if an assessment is made and there is some dialogue and discussion about it. However, it could be quite harsh in a number of circumstances if a person puts in an objection, gets a reassessment, and whether or not he likes it, that is it.

Mr RIPPER: I have received advice to the effect that there is an ability for the taxpayer to discuss his or her objection with the Office of State Revenue. It depends on the type of tax that we are talking about and the complexity of the considerations that apply to the type of tax being considered. However, it is not out of the question for there to be discussions between taxpayers and the Office of State Revenue in the course of consideration of an objection.

Mr Barnett: I do not know to what extent that happens, but I hope that the relationship between the Office of State Revenue and the taxpayer, especially as we are talking about business taxpayers, is a constructive one. Most businesses hate paying tax, but they accept that responsibility. There should be a constructive dialogue. In my experience, most businesspeople are more concerned that they are not paying the right amount of tax - not that they want to pay more, but they do not want to get their tax wrong; they do not want to get into problems in that area. They often need guidance and assistance, and some flexibility from the Office of State Revenue is required too.

Mr RIPPER: I agree with the Leader of the Opposition that that is the case for the vast majority of businesses. However, the tougher provisions of the legislation are required to deal with some of them. On many occasions, the application of the tax law may not be clear to a business. Not all businesses are run by lawyers and accountants. People running a business may have more expertise in the service or product with which the business is involved than in the operations of the tax law. Therefore, like the Leader of the Opposition, I hope that in those cases there will be capacity for the taxpayer to talk with the Office of State Revenue to get a clearer understanding of his or her obligations.

The way the process will work is that someone will make an objection to an assessment. The commissioner can make a number of decisions. He might completely reject the objection, in which case the taxpayer has a right of appeal to the Supreme Court. The commissioner might allow the objection in whole or in part. If it is allowed in whole or in part, there will be a reassessment. I suppose if it is allowed in whole and there is a reassessment that completely deals with the taxpayer's complaint, there will be no question of someone objecting to that reassessment. Therefore, we are down to those circumstances in which the taxpayer wants the whole of the tax liability to be abrogated, and the resolution of the objection is that the commissioner says no, only 50 per cent of it is abrogated, in which case the taxpayer wants to continue to object to the remaining 50 per cent liability. The way the scheme will work is that that taxpayer will be required to go to the courts. I understand that there is essentially one chance at objection. People are then off to the courts.

Clause put and passed.

Clause 35 put and passed.

Clause 36: Time for lodging objection -

Mr BARNETT: I am enjoying this debate. I am sure it is attracting widespread media attention and I am surprised there is not a live broadcast of the proceedings. However, it is important to taxpayers and to the taxation commissioner. Clause 36 relates to the time for lodging an objection. I refer specifically to subclause (2), which states -

> An objection to a self-assessment must be lodged within 60 days after the due date for lodging the return related to the assessment.

That sounds okay, but there is an inconsistency in the obligations. For example, an objection to an assessment by a taxpayer must be lodged within 60 days of that assessment. However, the commissioner may reassess a document and take up to five years. The taxpayer puts in his tax return and receives his assessment. If he wants to object, he has 60 days. The taxation commissioner can make an assessment or a reassessment, and can then revisit that up to five years later. There is a lack of symmetry between the time constraints on the taxpayer and those on the Commissioner of State Revenue. I note that in the commonwealth Taxation Administration Act the time periods are equal, and they should be.

I am referring to the vast majority of responsible corporations or companies paying taxes. They may get into a situation in which there is a disagreement with the taxation office about their tax liability. It might not be about money; it might be about the way an asset is designated; or it might be about whether employees are subcontractors or employees. Large amounts of money may not be involved, but it may affect the way in which they develop their business in the future. For example, if a subcontractor is deemed to be an employee, that might be a minor financial decision at the time, but it might have vast ramifications for future employment and how that business will operate. Whatever the time period is - I am not wedded to five years or 60 days - as with commonwealth laws, the time periods applying to the taxpayer should be the same as those applying to the taxation commissioner. The Treasurer must recognise and accept that when the commissioner is dealing with companies, they are essentially in some sort of commercial negotiation. They are trying to reach agreement on what the tax is; a decision is reached on how much tax they have to pay, and that is it. Elements of judgment will exist for the taxpayer, his or her professional advisers and the professional people within the taxation office. It will not always be absolutely black and white. Therefore, once that process of objection, assessment and reassessment is finished, the taxpayer deserves to know that that is the end of the matter for that tax return. He should not be put in a position in which that return can be revisited up to five years later, except of course in cases of fraud or tax evasion. A genuine taxpayer trying to do the right thing should be able to get a ruling and it should be closed off, or the time for the taxation commissioner to come back and have another look at the matter should be limited to a similar period. The Treasurer may not agree to 60 days, but five years is a bit rough. That means a taxpayer has five years of tax returns rolling over, year after year, all of them able to be potentially reassessed. We have seen that recently with payroll tax and the like. Whatever the merits or otherwise of the ruling by the taxation commissioner, it is a huge source of uncertainty for business. I am referring to businesses that think they are doing the right thing and receive a tick from the commissioner but might then find that a return is revisited several years later. It is unfair to taxpayers.

Mr RIPPER: My advice is that a 60-day period within which to lodge an objection applies in all States. A lot of States have introduced tax administration Acts in recent years. We are in effect standardising with other States. In most States, except Victoria, the standard reassessment period is five years. In Victoria it is three years. What we are doing is not out of line with the other States, which have a 60-day period in which to lodge an objection and a five-year reassessment period. I can see the argument that the period should be the same for the taxpayer as for the Office of State Revenue. However, we must think about protection of the revenue. Circumstances may arise in which a High Court decision overturns an aspect of our taxation regime. That has happened before. If people had a four or five-year period during which they could lodge objections, immediately all people who had paid that tax over the previous five years could take advantage of the court decision and seek a refund, whereas at the moment that window of opportunity is open for only 60 days. All future taxpayers could take advantage of the High Court decision, but the State would be exposed to having to refund revenue collected over the previous five years. Our revenue base is more restricted than the Commonwealth's, and by the very nature of our taxation regime we are more exposed to that sort of court decision, which could place us as a community in a position in which we may have to refund taxes that have been paid over five years.

Mr Barnett: I hear what you say, but it is too far out of balance. If the Commonwealth can do it, I cannot see why there cannot be some symmetry, or at least closer symmetry. The Treasurer said that the period in Victoria is three years. In my view, the Commissioner of State Revenue should have up to only 12 months. Businesses put in a return each year. I do not object to the 60 days - 90 days might have been reasonable - but the taxation office should be constrained to a year.

Mr RIPPER: If the Leader of the Opposition were to rise to speak, I could take some advice on the implications of doing what he suggests.

Mr BARNETT: It is a matter of not only being fair to all parties in taxation matters but also having legislation that promotes a spirit of fairness and, we hope, cooperation. Businesses accept that they will pay tax; they should have a productive, cooperative and professional relationship with the taxation office. If businesses see

this as skewed - they have 60 days and the taxation office can come back any time over the next five years - that is not the sort of provision that builds trust and cooperation. The taxation office must strive to have a cooperative, close association with and respect for its taxpayers. I know that the officers in the taxation office try to do that. The legislation must be supportive of that relationship.

The ACTING SPEAKER (Mr Dean): I also note that the Treasurer has an amendment on the Notice Paper that he may wish to move.

Mr RIPPER: Thank you, Mr Acting Speaker.

Clause 18 (3) states -

> However, if an assessment was based on -
>
> (a) an interpretation of the applicable law; or
>
> (b) the Commissioner's practice,
>
> that was generally applied to instruments of that kind when the assessment was made, then the Commissioner cannot make a reassessment on the ground that the interpretation or practice is or was erroneous.

That means that just as a taxpayer cannot take advantage of a favourable court decision and claim a refund of all the tax that he has paid over the past five years, which was in his view invalidly paid because of the new court decision, so the commissioner cannot take advantage of a favourable court decision and say that he now has a court decision in his favour and he will go back five years and reassess everyone. Essentially, there is a quid pro quo in the legislative scheme, which prevents both taxpayers and the commissioner from taking advantage of favourable court rulings to go back and reassess tax or claim refunds for tax paid in the previous five years. The second point is that, with the resources of the Office of State Revenue, the Government must think about the audit cycle for compliance purposes. The Office of State Revenue needs more than 60 days, and often more than a year, to complete its program of audits and compliance activities.

Mr Barnett: How long does it need? Five years is very excessive. I take the Treasurer's point about the audit cycle. Why would an audit cycle be more than 24 months?

Mr RIPPER: I will find out.

Mr BARNETT: If someone has made a tax assessment, some policy change or audit processes may show some anomalies. If a tax return is submitted in 2002, the audit cycle may last into 2003. I do not see why the time provisions should go beyond the 12 to 24-month period. A 24-month period should perhaps be an outer limit, which provides some sense of balance between the taxpayer and the commissioner.

Mr RIPPER: I am advised, to give an example of the scale of the task, that there are 10 000 payers of payroll tax and rental duties, while the Office of State Revenue has between 40 and 50 people available for audit and compliance activities. It takes much longer than a year to go through an audit cycle during which those 10 000 could be audited. This period is really as a result of the resources available to the Office of State Revenue

Mr BARNETT: I refer to clause 36(7), which states -

> A decision under subsection (4) not to allow an extension of time to lodge an objection is non-reviewable.

The ACTING SPEAKER (Mr Dean): I point out to the Leader of the Opposition that, on the Notice Paper, that subclause is listed for deletion by the amendment to be moved by the Treasurer.

Mr BARNETT: I was referring to clause 36(7), and I was about to make a passionate and cogent objection to it, but the Treasurer is about to delete it. I know my argument is powerful.

Mr Ripper: The Government is moved by the intelligence of the Leader of the Opposition's argument.

Mr BARNETT: It is very rare for the Government to give in before I have even mounted a case, so I am feeling very flattered!

Mr RIPPER: The power and cogency of the Leader of the Opposition's argument has caused the Government to reconsider this matter. I am advised that the inclusion of clause 36(7) is an error, as the non-reviewable status of this subclause conflicts with the right of appeal granted in the same circumstances under clause 41. The Leader of the Opposition has picked up a problem that has also been picked up by the Office of State Revenue. I move -

> Page 20, lines 20 and 21 - To delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 37 put and passed.

Clause 38: Time limit for determining objections -

Mr BARNETT: I refer first to clause 38(2), which describes the decision period as being initially 90 days, and then continues with exceptions. This clause seems effectively to give the commissioner an almost indeterminate time for deciding an objection. I have a concern about this. A person is limited to lodging an objection within 60 days, and then the commissioner has what appears to be an indeterminate period to decide it. There should be some onus on the commissioner to determine the matter in a reasonable time. I know this debate has also been held in relation to federal taxation. The legislation was drafted by Crown Law on the instructions of the Office of State Revenue. One of the general criticisms I have of this Bill, although I support most of it, relates to these time limits, and some other provisions, by which the Bill is skewed in favour of the Office of State Revenue and against the taxpayer. If a taxpayer has a limited period in which to make an objection, there should be a similar requirement on the Office of State Revenue to deal with that objection within a set period of time. There may occasionally be extraordinary circumstances, and perhaps a provision is required to deal with those, but, in the normal course of events, a small business person has 60 days in which to lodge an objection to a land tax assessment. He is entitled to expect that to be dealt with within a specified period. Fairness would say 60 days but, if that is not possible, perhaps a longer period would be appropriate. This clause seems to leave the period indeterminate. I am not criticising the content of the Bill, but I am trying to give to business taxpayers the same certainty that the commissioner takes for himself in this Bill.

Mr RIPPER: The actual insertion of a time limit during which the commissioner is required to decide an objection did come about as a result of the consultation. The Leader of the Opposition is pointing to the addition of subsequent subclauses that allow the time for determination of an objection to be extended. If I understand the argument correctly, he is worried that the time could be continually extended, to the disadvantage of the taxpayer.

Mr Barnett: I am trying to get a bit of certainty into the process. Quite possibly the Office of State Revenue will want to deal with objections quickly. It should be an expectation of the taxpayer that the objection will be dealt with within a certain period, whatever that might be. This clause seems to make that period indefinite. Whatever the period is, I am trying to get some certainty about it.

Mr RIPPER: In a number of cases people have approached me and thus given permission for their tax circumstances to be discussed with me. I am aware of the complexity of some of these cases, and the need for additional information. For example, when a question arises about whether a company is land-rich or not, there is a need to obtain valuations and there may also be a need to obtain legal advice from the Crown Solicitor's Office. New legal advice may then be submitted by the taxpayer's lawyers, creating a need to get further advice. Some of these matters are outside the control of the commissioner.

Mr Barnett: I can accept that with complex cases. If we were dealing with those issues and a mining company, I would agree. However, it is the small businesses that I am thinking about in which the owner objects to his land tax assessment over his work shed, for example. Those reasonably common matters should be able to be resolved and dealt with. I do not have any difficulty with provisions that allow for the more complicated issues that may require, as the Treasurer says, evaluations, legal advice or whatever else. However, the run-of-the-mill objection should be dealt with within that time frame.

Mr RIPPER: The Leader of the Opposition makes a reasonable point. Perhaps this is not a matter to be dealt with in the legislation. I would be prepared to discuss with the Commissioner of State Revenue what benchmarks the Office of State Revenue has for its performance in this area. I would have no objection to the office reporting its performance against benchmarks for the resolution of the more standard objections. That is a matter I would be prepared to discuss with the commissioner as a result of the comments of the Leader of the Opposition. The important point is that there is a 90-day presumption in the legislation, which has not previously been the case. We need these provisions for complex cases. However, the Office of State Revenue should report on its performance with regard to these sorts of issues, and I will discuss whether and how that might be done.

Mr BARNETT: I make a similar point with clause 38(5) that relates to a case in which the commissioner has been unable to determine an objection and it is referred to the Supreme Court. In that situation, we would be dealing with complex cases or those that involve large amounts of money. The point I raise relates to time frames. The commissioner should be required to refer objections to the Supreme Court within a certain period, not as this subclause states; "as soon as practicable". It might be all right for the commissioner to refer issues to the Supreme Court as soon as practicable, but for the taxpayer and small to medium businesses it might be not

only an indeterminate situation, but also an expensive one. The taxpayer is also required to get legal counsel representation in the Supreme Court. If it is not provided for in this legislation, I would like to entertain some sort of administrative decision that there be a requirement that if something is to be referred to the Supreme Court, it must happen within a specified period so that the taxpayer is not left dangling, obtaining legal advice, paying bills to retain counsel and the rest of it. The taxpayer and the commissioner both deserve their day in court to resolve an issue, and they should both be able to get to that court on an equal basis.

Mr RIPPER: It needs to be recognised that the requirement in this subclause will arise only when the Commissioner of State Revenue has not determined an objection within 90 days or the further period allowed under clause 38(2). Such occasions are not likely to be common, and I imagine that the commissioner will do everything necessary to ensure that the objection is determined within the required period, even more so since the Office of State Revenue will be accountable for its performance with regard to a number of these administrative issues. In the event that an objection is not determined within the specified period, subclause (5) requires the commissioner to refer the objection to the Supreme Court by way of appeal as soon as practicable. This takes into account the necessary preparation time for all documentation that must accompany the matter. As the preparation of this documentation involves a review of the case by the Crown Solicitor's Office, no period is indicated to ensure that each case is given due consideration according to its complexity. These provisions have arisen from advice from the Crown Solicitor's Office, and I can see the prudence behind that advice. It might take more time to develop the documentation for a complex legal matter than that for a less complex matter. Both Crown Law and the Office of State Revenue have been prudent in not including a provision that may restrict the necessary review and consideration of a complex case.

Clause put and passed.

Clause 39: Reassessment on determination of objection -

Mr BARNETT: I refer to clause 39(2) that states -

> If, as a result of the reassessment, an amount is to be refunded or credited to the taxpayer, interest at the prescribed rate is payable on the amount from the date of payment -

That which was originally paid by the tax office -

> to the date of the determination of the objection.

Why does the interest not apply from the date the taxpayer overpaid his tax to the date the tax office refunds that amount? Why is interest paid up to the date of determination rather than to the date of actual refund?

Mr RIPPER: Does the Leader of the Opposition have any examples? What is the gap that he is worried about between the date of determination and the date of refund?

Mr BARNETT: To be honest, I do not know. It seems that interest is calculated to the date the determination is made when it should be to the date that the Commissioner of State Revenue pays the refund. I assume that the tax commissioner probably mails out refunds on a regular basis at the end of the month or the fortnight or whatever. If it is an automatic payment, it is not a problem. However, it may not be an automatic payment. If we are dealing with a large amount of money, the refund might be a significant amount. I might be in the position in which I had a large tax liability and had paid several thousands of dollars to the tax office. I might then have objected to that liability, won the process and been reassessed as liable at a lower tax rate. I would want my money back with interest, and I would think it reasonable that the interest be accrued from the time at which I originally paid the money to the time when I received the money back, not simply the time at which the tax office made the determination. It may be a significant period between the two dates. In the case of large assessments, it must be borne in mind that people invest money in the overnight money market, and for a small business running on an overdraft, the ability to get that money back and reduce the overdraft interest costs can be important. Although it may only be a few days or a couple of weeks, it can be a significant time to a small business, particularly one with a tight cash flow.

Mr RIPPER: The provision has been drafted to provide a definitive end date for the calculation of interest on successful objections. Under current provisions, the interest is calculated to the date of payment of the refund. That creates uncertainty because when is the payment made? If the payment is being mailed interstate, it obviously takes a little longer for the letter to arrive than if it is mailed within the State.

Mr Barnett: That does not worry me too much. What worries me is if there is a gap between the determination and the drawing of the cheque. I accept the mailing rules. I would be concerned if a determination was made and several days, weeks or even months passed before a cheque was mailed out. That can be handled administratively, but I want to be reassured that there is no delay.

Mr RIPPER: I am advised that taxpayers have argued, for example, that they did not receive the money until the cheque was cleared by their bank. It is a grey area. The Office of State Revenue is trying to get a definite date for the calculation of interest, which is the date of the determination. I am sure that, administratively, the Office of State Revenue would want to pay out without any delay, and I have received advice by way of a nod that that is the case. The Office of State Revenue transfers some funds by electronic funds transfer and intends to do more of that. The gap between the determination of a claim and the payment of the funds will be narrowed by the use of this technology. This will provide some certainty as to what payments will be made. We have a grey area at the moment. I agree that, administratively, especially with large sums of money, we should pay quickly.

Clause put and passed.

Clause 40: Right of appeal -

Mr BARNETT: I presume that, in the normal course of events, a person has gone through an objection process, the Commissioner of State Revenue has made his ruling and the taxpayer is still not happy, therefore, the taxpayer seeks to exercise a right of appeal. The legislation provides that a taxpayer, in exercising that right of appeal, is restricted in his appeal to the grounds of an objection unless he gets specific leave from the court. Taxpayers can appeal but only on the grounds of the original objection. The problem with that is that some taxpayers - again I am thinking about small business proprietors - might put in an objection without obtaining advice. They might think they have a watertight case and the Commissioner of State Revenue is wrong. When their objection does not succeed, they will put in an appeal. It is at that stage they wish to seek professional advice, as should be their entitlement. This clause seems to limit their ability as to the grounds upon which an appeal might be mounted. They might put in an objection as laypeople based on their knowledge of the tax law, and when they lose the objection, they bring in professional advice. The advice they receive may be that they need to strengthen their appeal and make further points. It seems that they are not free to do that unless the court gives them leave, because they have to stick to the original objection. That seems unreasonable. Correct me if I am wrong, but when the Commissioner of State Revenue knocks back an objection, and the taxpayer appeals, I will bet that the Commissioner of State Revenue does not stay with the same level 4 officer when the case goes to appeal. The case will go up the ranks in the Office of State Revenue, and they will seek legal advice if they require additional advice. The case will go up the hierarchy in the Office of State Revenue, yet the poor old taxpayer is restricted from accessing more sophisticated or professional advice. There should be more balance in this Bill to put some onus on the Commissioner of State Revenue for equity and symmetry in the way in which taxpayers can exercise their rights. The rights exist; it is the taxpayers' ability to access them that concerns me.

Mr RIPPER: The provision for a court or tribunal to consider whether in the interests of justice the taxpayer should be able to broaden the rights of appeal deals with the objection raised by the Leader of the Opposition. He has raised a valid point. Some people would fire off an objection by way of letter without going to a lawyer and may prejudice their case. The Leader of the Opposition has argued that in cases in which it is unreasonable for them not to be allowed to broaden their grounds of appeal, that is unfair. Of course, a court can make a judgment as to whether it is unfair or unreasonable to deny them the right to expand their grounds of appeal. We have discussed the matter with the Crown Solicitor's Office, because it is conceded that it will sometimes be appropriate for previously unconsidered grounds to be introduced at the appeal stage. However, it is considered that the court or tribunal is best placed to make a fair judgment on whether new grounds should be admitted. The approach included in this clause allows some flexibility and the outcome will be determined by the court or tribunal in each case. The introduction of new grounds has the potential to increase significantly everyone's costs. If a matter has been considered on the basis of one ground and then two or three more grounds are introduced, that will increase the legal costs of all involved. We would not want to allow an absolutely unfettered right to expand the grounds of appeal, but I can see there would be some circumstances in which people should be allowed to do that.

Clause put and passed.

Clause 41 put and passed.

Clause 42: Time for appeal -

Mr BARNETT: A lot of professionals are concerned about aspects of clause 42, particularly an application for an extension of time to make an appeal being limited to 12 months. Should taxpayers want to appeal against a ruling or reassessment, they are limited in seeking an extension of time to 12 months. One of the reasons for the concern about this limitation on time extensions is the simple fact that no such limitation exists in the current revenue laws, for example, in section 33(2) of the Stamp Act or section 33(1) of the Pay-roll Tax Assessment Act. No reasonable justification has been given for imposing a 12-month limitation. I suggest that whether or not a late appeal should be accepted or rejected is a matter for the tribunal or court in question. I cannot see why

tax law should limit that right of appeal by an extension of time. Surely that is up to the jurisdiction of the court or tribunal to which the appeal has been made. There might be all sorts of circumstances to consider. It is not reasonable for the Office of State Revenue to limit the time within which people can lodge appeals.

Mr RIPPER: This clause provides that an application for an extension of time to lodge an appeal must be made within 12 months from the date of the decision on the objection. An application for an extension of time to make an appeal is limited to 12 months to prevent retrospective refund claims in the objection and appeal process in circumstances in which, for example, a court changes the common law. An example of this occurred some years ago in the case of Yanchep Sun City v the Commissioner of State Taxation. That case related to the assessment of a lease in which the commission's interpretation of rent involved the inclusion of outgoings. The court found that rent did not include these amounts. As a result the taxpayer received a refund of duty charged on the outgoings. Other taxpayers may have objected to assessments on the same basis but had those objections disallowed. Without clause 42(3), each of those taxpayers could apply for an extension of time to appeal, and could lodge appeals after the court case had been decided, regardless of how long ago the objection had been disallowed. This did not occur with appeals in this case as the duty amount was reasonably small. The aim of this clause is to prevent retrospective refund claims being made as a result of another taxpayer's successful appeal. Introducing this clause into the Taxation Administration Bill provides consistency with the time limits available under section 37A of the Limitation Act, which restricts proceedings to recover tax to a 12-month period. The debate that is flowing back and forth between the Leader of the Opposition and me is about the appropriate balance between the rights of taxpayers and the protection of revenue. The Government and the Office of State Revenue are concerned about the State being exposed to the risks of having to refund taxes collected in the past as a result of court decisions. Given the tightness of the state budget, we cannot ignore that risk. This proposal is not unreasonable. We must move on from some of these matters. The State does not have the revenue base to allow it to take too many risks with this retrospective refund issue.

Mr BARNETT: Given that this time limitation is not in existing tax and revenue laws, on what basis is it being introduced now?

Mr RIPPER: I am advised that the situation in other States is different. Western Australia allows a person dissatisfied with the commission's decision on an objection or an application an extension of time to lodge an objection or an appeal against that decision. In the other States such a decision is non-reviewable. The situation in this State is an advance on that in the other States. The decision is reviewable, but it must be done within 12 months of notice of the decision. It is not in the existing administration provisions of the state taxation legislation. However, given the Yanchep Sun City v the Commissioner of State Taxation case, the Office of State Revenue has been alerted to the possibility of retrospective refunds posing a risk to revenue. In the management of that risk, the appeal period has been limited to 12 months. It is a reasonable balance, but it is a matter of judgment.

Mr BARNETT: The Treasurer said that the tax office sees it as a risk. He referred to the Yanchep case as one justification for imposing this time limitation. Taxpayers also face much risk. Many of these matters do not end up as a case of the baddies versus the goodies or enforcement agencies against recalcitrant taxpayers; they will essentially relate to commercial deals and what is the proper tax liability on a complex financial arrangement. The tax commissioner, the taxpayer and their advisers should be satisfied that it is a fair outcome. The Commissioner of State Revenue is protecting himself from any exposure, whether as a result of misjudgment or error, but the poor old taxpayer is having his rights limited. The balance always seems to be wrong. The most consistent comment I hear from the professionals in the area is that it is a good piece of legislation. They agree with the thrust of it, but from every angle the balance favours the tax commissioner rather than the taxpayer. I am not saying that the taxpayer should be favoured, but there seems to be one rule for the commissioner and a separate, more restrictive and demanding rule for the taxpayer.

Mr RIPPER: Although the tax legislation does not have a provision, I am advised that section 37A of the Limitation Act 1935 does. It is entitled "Limitation on proceeding for recovery of tax" and reads -

> Subject to subsection (2), a proceeding to recover, or in relation to the recovery of, money paid by way of tax or purported tax under a mistake (either of law or fact) must be commenced –
>
> (a) within 12 months after the date of payment; or
>
> (b) in the case of a proceeding under another Act that provides for the refund or recovery of the money within a longer period, within the longer period.

The Limitation Act has been operating with regard to the taxation administration provisions of the existing tax Acts because they did not have a longer period. Under the Limitation Act, action had to be taken within 12 months of the date of payment. I understand from the information given to me that section 37A of the Limitation

Act is not an old section. The 12-month limitation was inserted by the previous Government into the Limitation Act in 1997. I am advised that it is replicated in this legislation to give taxpayers information on their rights without requiring them to either have specialist legal advice or search through the entire statutes of the State. In essence, the taxpayer's legal position will not change; it will be available to the taxpayer by his simply reading the proposed Taxation Administration Act rather than also having to read the Limitation Act.

Clause put and passed.

Clause 43: Appeal hearings -

Mr BARNETT: This clause provides for refunds as a result of an appeal hearing in which presumably the taxpayer wins his case and the commissioner must pay up. Clause 43(3) reads -

> If the final reassessment of the taxpayer's liability indicates that tax has been overpaid -
>
> . . .
>
> (b) interest at the prescribed rate, calculated from the date that the tax was paid, is payable to the taxpayer on the amount of the overpayment.

That sounds okay, but I refer to the comments I made on clause 39(2), which contains a prescriptive description of the timing for the accrual of interest. We argued whether the period would be from the date of determination, the date of mailing or the date of electronically transferring the refund. However, this paragraph, which I thought was a similar provision, provides that once a decision of the court is made, a refund of tax should be paid. Interest is calculated from the day the taxpayer paid the money, but it does not make clear the date until which it is calculated. Should it be from the date it was paid to the date of determination by the tribunal or court? It is left unsaid. I do not know whether there is anything devious or sinister in that. Given that the period of interest from beginning to end is laid out in clause 39(2), and the Treasurer defended the importance of that, why is it indeterminate here? Surely it should be from the date the tax is paid to the date of the decision of the appeal body.

Mr RIPPER: Once again, I am moved by the power and cogency of the arguments of the Leader of the Opposition.

Mr Barnett: It must be an intimidating experience.

Mr RIPPER: It is very difficult; I dread these sessions!

This is somewhat different from the earlier clause. I am advised that the Office of State Revenue sometimes does not receive immediate advice of the outcome of an appeal. There may be some delay between the decision and when the payment is made. Some of the delay may not be within the control of the Office of State Revenue. On these occasions it is appropriate to pay interest until the amount is refunded or credited to the taxpayer. I have an amendment that deals with this point. I hope that it answers the point of the Leader of the Opposition. I move -

> Page 24, lines 21, 22 and 23 -To delete all words after "interest" and substitute -
>
> on the overpaid amount, calculated at the prescribed rate from the date on which the tax was paid to the date on which the overpaid amount is refunded or credited to the taxpayer, is payable to the taxpayer

That will take the interest payment to the date of the refund or credit.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 44 put and passed.

Clause 45: When tax is due for payment -

Mr BARNETT: The previous clauses relate to payments of taxes and refunds of taxes. This clause refers to when a tax is due for payment. Clause 45(3) states -

> If the tax is payable as a result of a reassessment, the tax is due for payment on the date specified in the assessment notice.

I assume that is the reassessment notice.

Mr Ripper: A reassessment is an assessment.

Mr BARNETT: If a tax is payable on the date specified in the assessment notice, that is acceptable to most taxpayers. However, if a taxpayer lives interstate or overseas, that may present a problem. I question whether the Bill should specify a period in which to pay the tax under reassessment. The commissioner usually allows about 10 days from the date of notification of the assessment notice. That is all right for local taxpayers but is difficult for interstate and overseas taxpayers. It may also be difficult if it involves a large amount of money. It may be better to specify a period for payment, possibly 30 days. If it is currently administratively 10 days, perhaps 30 days will be more reasonable. Why should it not be 30 days? How is the current 10-day period applied? Is it is laid down somewhere in legislation or is it just an administrative procedure in which the commissioner waits for 10 days after the assessment is sent out, and if no money is received, he then takes further action? It needs to be more formalised if that is the way it operates.

Mr RIPPER: Subclause (3) specifies -

> If the tax is payable as a result of a reassessment, the tax is due for payment on the date specified in the assessment notice.

The clause needs to be read in conjunction with clause 24(5), which provides that the due date for payment must be at least 14 days after the date of the assessment notice. A minimum 14-day period has been formulated for return-based systems, with payroll tax, debits tax and rental business duty in mind. These taxes usually require the lodgment of monthly returns. The 14-day requirement recognises that the taxpayer is notified of a reassessed amount when the regular return is sent to the taxpayer, and that the payment is made when the completed return is lodged. A return will commonly include reassessed liabilities, such as tax that has been incorrectly calculated, and any penalty assessment for late payment in the previous month. In the case of assessments of return-based taxes generated through audit activity, a separate notice in the form of a letter and schedule of details is sent showing the outcome of the audit or, when applicable, the amount payable. If the separate notice is sent prior to the returns being issued for the month, that notice also advises that the amount will appear on the next return.

Using payroll tax to illustrate how the reassessments work with return-based taxes, the returns are issued on the twenty-first day of the month and are due for payment on the seventh day of the following month. A return is considered to be an assessment notice to the extent that it includes details of reassessments. For all reassessments made up to the twenty-first of the month, the amount will be included in the return payable on the seventh of the following month. For all assessments made between the twenty-first and the seventh, the amount will not be payable until the seventh of the following month. The provision of at least 14 days in clause 24(5) also allows longer periods for the payment of instrument-based stamp duty and land tax reassessments. It is intended that recipients of stamp duty reassessments will have an additional one month in which to pay the reassessed amount, while the current land practice will continue with original assessments and reassessments having 49 days for payment.

I will deal with the objection raised by the Leader of the Opposition. With the return-based taxes, even travellers or foreign business people would expect the return and payment, because it would be on a regular schedule. The reassessment fits in with the regular schedule. With regard to more irregularly paid taxes such as stamp duty and land taxes, the administrative practice will be to provide longer than the 14-day period - one month in the case of stamp duty and 49 days in the case of land tax. It is important that taxpayers are aware of these policies. I will discuss with the Office of State Revenue whether it should publish the dates. If the dates are not in the legislation and are the subject of administrative practice, there should be -

Mr Barnett: I find that acceptable. Bulletins or whatever else should outline the administrative arrangement. It might not be met on occasion, for whatever reason, so I do not think that people should be able to take action. That should be what taxpayers should accept. As you will understand from my comments, it is just trying to get some certainty into the system and to redirect the balance a little.

Mr RIPPER: The question of certainty can partly be handled by making the administrative practice clear. The Commissioner of State Revenue is present. I am sure he is listening to the debate. We can take up those issues in our discussions.

Clause put and passed.

The ACTING SPEAKER (Mr Dean): The question is that clauses 46 to 55 be agreed to.

Mr BARNETT: I am happy for this section to be moved en bloc. It is essentially a group of procedural matters that relate to the payment and refund of taxes. My understanding is that it is essentially consistent with current legislation. There are also arrangements for special tax matters. The only comment I seek is on whether the clauses are consistent with existing legislation and whether that allows consistency across all areas of tax on these administrative matters, such as stamping documents and the like and lodging returns.

Clauses 46 to 55 put and passed.

Clause 56: Waiver of tax -

Mr BARNETT: I understand that we are about to return to debate on the Labour Relations Reform Bill. It would be a reasonably convenient time to do so. I do not have any major concerns about division 4 of this part, but a few issues will probably require a little more debate once we move on to part 6. Clause 56 relates to a waiver of taxation. Subclause (1) states -

> The Commissioner may waive the payment of tax . . . up to a prescribed limit.

I note that in subclause (3), the decision to waive the tax is non-reviewable. I would like some general comment from the minister on how frequently the commissioner finds himself in the position of waiving taxes, and the most common reason for taxes to be waived.

Mr RIPPER: I am interested in the advice I have received. The current limit on the waiving of tax is apparently the princely sum of $5. The waiver of that significant sum of tax normally occurs on small stamp duty assessments. Waivers rarely occur with other taxes, other than stamp duty. I am advised that consideration is being given to the extension of that prescribed limit from $5 to $20. I await advice on that matter with bated breath. I can hardly bear the excitement.

Mr BARNETT: Clause 56 relates to the writing off of tax liability. Is the waiving of tax currently an administrative arrangement, or is it laid down in a statutory sense? I understand that it is not worth anyone's trouble to try to collect $5. It is doubtful that it is worth trying to collect $20. Apart from the fact that the amount of tax liability might be trivial and, therefore, ignored, I am curious to know what other circumstances might arise in which tax is waived rather than written off.

Mr RIPPER: The Leader of the Opposition has raised an interesting question.

Mr Barnett: Do you have an interesting answer?

Mr RIPPER: That is in the eye of the beholder. I have an answer that I find interesting, but then I am a Treasurer and we have strange interests. The Commissioner of State Revenue acts within the legal power that he is given. He does not go outside the legal power that he is given and decide who will and will not pay taxes; he applies the law. Sometimes taxes will not be recoverable and will have to be written off. However, the commissioner will waive taxes only within the law. I am advised that the only provision within the law that allows him to waive tax is contained in section 31(7) of the Stamp Act 1921, which states -

> When the duty chargeable on an instrument amounts to $5 or less than $5, the Commissioner may waive that duty and the instrument shall be marked accordingly and shall thereupon be deemed to be duly stamped.

The $5 limit is a statutory limit that applies to stamp duty. There is no waiving of taxes outside that provision.

Mr BARNETT: Is there any provision either within the powers of the commissioner, or of the Treasurer or the minister responsible, to waive tax for, say, genuine compassionate reasons because pursuing it would create anguish? There may have been a family tragedy or some bizarre circumstance and the commissioner may decide to step back from it and let it go.

Mr RIPPER: I am advised that there is no provision for and no practice of waiving taxes in cases of hardship. However, the commissioner has discretion on permitting people to pay by instalment. The commissioner also has the power to remit penalties that might have been imposed for late payment. In the exercise of his discretion on those matters, the commissioner will take hardship into account.

Mr Barnett interjected.

Mr RIPPER: Human considerations are taken into account in the exercise of the discretion that is legally available to the commissioner. He does not have a discretion to waive tax except for the $5 stamp duty tax. However, he has discretion on the remission of penalties and providing for instalment payment arrangements. I am advised that the existing Stamp Act does not have an extension of time provision for the payment of tax except when an objection has been lodged. That deficiency will be remedied by the Taxation Administration Bill. There will be an improvement for those people paying stamp duty who might have a hardship case to argue.

Clause put and passed.

Clause 57: Writing off tax liability -

Mr BARNETT: I have a similar question on this clause. Clause 56 related to the waiver of taxes; this clause relates to the writing off of a tax liability. I can imagine some of the circumstances in which that might occur. Again, I seek information on how frequently the Commissioner of State Revenue might write off a tax liability

and what the total might amount to in different categories of taxes - I realise that the Treasurer may need to provide that information later. I also seek guidance on the circumstances in which the commissioner writes off a liability. Basically, I want to know why it happens, where it happens and what it adds up to.

Mr RIPPER: The annual report of the Office of State Revenue indicates that in 2000-01, write-offs totalled $465 032, and in 1999-2000, write-offs totalled $1 122 841. The Leader of the Opposition might like to know the number of separate instances in which there were write-offs. I do not have that information, but I could have it available the next time we debate these issues.

Mr Barnett: Is there an area of taxation in which it is more common? What are the most common reasons that the commissioner is forced to write off a tax liability?

Mr RIPPER: We could break on this clause and when we come back to debate it, I could have that information from the Office of State Revenue.

Mr Barnett: I do not expect numbers; I would like a guide on the approximate amounts, the main reasons and which categories of tax are most affected.

Mr RIPPER: I am advised that these write-offs largely relate to payroll tax and they occur when the amount is considered irrecoverable.

Mr Barnett: The main reason is that the company has failed.

Mr RIPPER: Yes. There is no point in the Office of State Revenue continuing to pursue the matter.

Clause put and passed.

Clause 58 put and passed.

Clause 59: No action to compel waiver or writing off -

Mr BARNETT: This clause says that no action can be brought in a court to compel the commissioner to waive payment. Is that a new provision, or is it in the existing tax laws?

Mr RIPPER: I am advised that this is not contained in the existing legislation and is a new provision. It corresponds to a debt between private parties. The party owing the money will not be able to use legal action to compel the other party to waive payment of the money or write off the liability. That is the advice I have been given for the insertion.

Mr Barnett: It is an odd thing to have in the legislation.

Mr RIPPER: I am prepared to have a break before we vote on this and get some further information.

Mr Barnett: I do not have a problem with it. It just seems odd. It is superfluous.

Clause put and passed.

Debate adjourned, on motion by Mr Ripper (Treasurer).