

STATE ADMINISTRATIVE TRIBUNAL BILL 2003

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 21: Statement of reasons for decision -

Debate was interrupted after the clause had been partly considered.

Mrs C.L. EDWARDES: Prior to 90-second statements and the lunch suspension, we were dealing with clause 21 and the statement of reasons for decision. The question I raised with the Attorney was, what will be the process? As I understand clause 21, the tribunal can give a decision maker 28 days in which to provide to the person concerned, who would obviously be the applicant, a written statement containing the details of the reasons for the decision. The question I asked the Attorney was, will a process be put in place to short-circuit this to a great extent, and probably reduce the number of applications to the tribunal? In the public sector, that would mean that those people whose decisions are reviewed by the State Administrative Tribunal would automatically, as part of their work, provide written reasons when they make a decision.

Mr J.A. McGINTY: Clause 21 is a major step forward for Western Australia in that in many cases, for the first time, a person who is the subject of a decision by government, a board or a tribunal will have the right to be provided with written reasons for the decision. It works in this way: under subclause (1), a person who wishes to challenge a decision may request a written statement of reasons for the decision. Under subclause (4), the decision maker who receives that request is to comply with the request in any case within the period of 28 days after the request is made. Therefore, there is that right.

The question the member for Kingsley asked goes one step beyond that; that is, she asked whether anything is being put in place to short-circuit that process and to effectively require decision makers, when a decision is reviewable, to put their reasons in writing. I hope that we evolve to that point. I see this as a first step. If people know that the decision they make is reviewable, I would expect them to think through the reasons and to commit those reasons to writing in advance rather than after the event. At this stage we have not taken it beyond the right to request and receive reasons for the decision that is made. However, I hope that it will start to affect the culture of the public service and will evolve over time.

Mrs C.L. EDWARDES: It may well be that the Attorney would like to bring clauses 21 and 22 to the attention of the Commissioner for Public Sector Standards. As such, she can issue a notice; or it could even be done through the Premier under an administrative instruction, so that reasons for decisions could be provided. It does not have to be done in legislation; it can be made part of the administrative process. A letter from the Attorney to the Premier requesting him to issue an administrative instruction, or to the Commissioner for Public Sector Standards bringing it to her attention, would short-circuit the process.

Mr J.A. McGinty: Yes, I agree with that.

Clause put and passed.

Clauses 22 to 33 put and passed.

Clause 34: Directions -

Mrs C.L. EDWARDES: This clause refers to a speedy and fair conduct of the proceeding. However, subclause (2) deviates from what might be a speedy and fair conduct of the proceeding. It states -

The tribunal's power to give directions is exercisable by -

- (a) a legally qualified member; or
- (b) the presiding member if the Tribunal as constituted for a hearing does not consist of or include a legally qualified member.

If a matter is being heard and a direction needs to be given, but no legally qualified person is sitting on the tribunal, what will happen? I would have thought that this would delay the process and therefore make one of the complaints about this process being legalistic more valid.

Mr J.A. McGINTY: The presiding member is the person who is presiding in a particular matter; it does not refer to the president of the tribunal. I believe that is the answer to the question.

Clause put and passed.

Clauses 35 and 36 put and passed.

Clause 37: Intervening in proceeding -

Mr J.A. McGINTY: I move -

Page 26, lines 7 and 8 - To delete "Consumer Affairs as defined in section 5(1) of the *Fair Trading Act 1987*" and substitute the following -

Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971*

This change is to reflect the current legislative nomenclature for the Commissioner for Fair Trading.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 38 put and passed.

Clause 39: Representation -

Mrs C.L. EDWARDES: I raised the matter of representation in the second reading debate, and the Attorney responded. Representation will be by a person on his or her own behalf, or a party can be represented by another person who is a legal practitioner. There are a few limitations on that. For example, a party cannot be represented by a person other than a legal practitioner unless the party is a body corporate and the person is a director, or unless the party is a public sector body etc. Clause 39(1)(e) states that a party cannot be represented by a person other than a legal practitioner unless the regulations or the rules authorise it. I take it that the Attorney General was suggesting that when unions or other organisations wish to represent an applicant, the rules or the regulations could authorise that. The Australian Medical Association may want to represent doctors, for instance, and similarly, other members of professional bodies may wish to be represented by an association or an organisation. An individual may want to be represented by a union representative in a case that has nothing to do with an employer-employee relationship. Paragraph (e) does not provide certainty for those organisations.

Given SAT will have a very strong disciplinary type function not along the lines of employer-employee disputes, it is important that the Attorney General consider an amendment to broaden the provision to include representation of persons appearing before the tribunal by their union or other associated body with more specific wording in the substantive part of clause 39, rather than leave it to the regulatory powers.

Mr J.A. McGINTY: I agree with the sentiments raised by the member for Kingsley. We prefer not to be totally prescriptive about who can appear as representatives. One could think of a raft of bodies that have a representative function on behalf of members, such as a veterinary association, a racing association or trade unions. Rather than specify each of them and run the risk of excluding some, the idea that underpins clause 39 is set out in subclause (1)(a), which reads -

the party is a body corporate and the person is a director, secretary, or other officer of the body corporate;

That would immediately apply to strata titles matters and things of that nature. If a representative body is available, a member should be able to be represented by an officer of that body. That is the concept that underpins that clause.

Paragraphs (d) and (e) make provision for somebody to appear on behalf of a body that represents a group of people. Paragraph (d) requires the tribunal to agree to that person representing the party, and (e) provides that the regulations or rules might authorise it in certain cases. We have not expressly listed them because of the point I made; namely, that some bodies might be left out and the difficulty of fully articulating whether they be trade unions on the one hand or professional associations on the other. A host of bodies might or might not fit within that provision. It is the policy intention of this clause to enable people to be represented by lay advocates on behalf of the organisation to which they belong.

Mrs C.L. Edwardes: Why not include a very simple phrase in clause 39? If it can be written in simple terms in the regulations, it should be included simply in clause 39.

Mr J.A. McGINTY: I do not disagree with the point the member is making. We thought it was covered by paragraphs (d) and (e) combined. It would enhance the nature of the legislation if it were an express provision. Representation is not excluded by (d) and (e) combined; we thought it was included. It is a matter of how far we are prepared to go to prescribe those situations. The intention is to allow the rules and regulations to pick up that concept.

Dr J.M. WOOLLARD: Under small claims, residential tenancies and other sections of the Victorian Civil and Administrative Tribunal legislation a person can be represented by a professional advocate. Why has this Government decided not to use that terminology, which leaves the situation open rather than specific as it is in this Bill? The need to seek approval from the tribunal and be assessed on individual cases will be more difficult.

Mr J.A. McGINTY: I have referred quickly to section 61 of the Victorian legislation to which the member for Alfred Cove referred. The provision in this Bill has been based significantly on the Victorian provisions. However, as a general practice in Western Australia, outside the legal profession, there is no concept of professional advocates. Some exist in the industrial relations arena. However, it is not a widespread practice. It seems as though it might be in Victoria; I am not sure. The potential to employ non-legal professional advocates appearing outside the industrial relations area is fairly limited. The Victorian legislation does not make provision for trade unions or the concept we were talking about with the member for Kingsley, of people who are officers of a representative body or a body that represents the professional or industrial interests of a group of people. That is not referred to in the Victorian legislation from which we have derived the concepts involved in this Bill. As I indicated, the concept of a significant body of people working as professional advocates is not our way of operating outside the industrial relations area. In relation to representation, as shown in clause 39(3) -

A person who has been struck off the roll of practitioners of the Supreme Court cannot represent a party.

Often in lay tribunals and occasionally in the industrial relations arena -

Mrs C.L. Edwardes: And workers compensation.

Mr J.A. McGINTY: Exactly. Often people who are struck off for dishonesty and incompetence appear in the lesser tribunals, as they perceive them, in which legal qualifications are not a prerequisite. There was initially some resistance to the concept of preventing struck-off legal practitioners from appearing. It seems to me to be a basic question of principle: if we want this tribunal to have integrity, struck-off lawyers should not be allowed to appear in it as lay advocates. I think this is a fairly important issue and one that I hope will flow into the workers compensation and industrial relations areas as a prohibition. The argument against that is that we would be punishing someone twice for being an incompetent or dishonest lawyer. I am a strong advocate of this provision being imported. If someone is struck off for any of those reasons we do not want them to have the conduct of someone else's affairs in their hands as an advocate before a court or a tribunal.

Dr J.M. WOOLLARD: I am not concerned with subclause (3) as much as I am with general representation. If the words "professional advocate" were included that would allow unions to represent their members and members of the community, from whatever area, to select the person they feel is most appropriate to represent them at the tribunal.

Clause put and passed.

Clauses 40 to 42 put and passed.

Clause 43: Fee for commencing proceeding -

Mrs C.L. EDWARDES: To follow on from the member for Nedlands' comment about fees, can the Attorney General confirm what process will be used by the tribunal to establish fees? I understood from what the Attorney General said earlier that it is proposed that all of the fees that are already in place for review decisions or for decisions by the original jurisdiction will remain, but no fees will be charged by the tribunal in those areas in which fees are currently not charged.

Mr J.A. McGINTY: I can reconfirm that in areas such as mental health review and guardianship and administration, which relate to vulnerable people and in which no fee is currently applicable, there is no intention to impose a fee. In other areas we may want to standardise the fees for administrative purposes; for example, there may be two comparable tribunals and a dollar or two difference in the fees that are charged. It is likely that at some time in the future there will be a review of the fees charged. However, I would strongly resist the imposition of fees in the areas to which I have just referred and like areas.

Mrs C.L. EDWARDES: Obviously when the tribunal is first set up there will not be a review of fees in order to standardise them, because that will mean that a lot of work will need to be done between now and the end of December. Other than the vulnerable areas of guardianship and administration and mental health review does the Attorney General propose to introduce a fee in any of the other areas in which currently no fee is provided for?

Mr J.A. McGINTY: I cannot answer that question with an unequivocal yes or no. There may be anomalies within the system that will need to be ironed out. I have not received a proposal on this question. I cannot take it much further than that.

Mrs C.L. Edwardes: Who would do that sort of work for you?

Mr J.A. McGINTY: I presume it would come through the Department of Justice rather than the Department of Treasury and Finance, in the same way that, as the member may recall, in the closing days of her Government the power to set court fees was changed from a court rule to a departmental regulation. As a consequence

Supreme and District Court fees were adjusted significantly. The proposal is that the fees will be prescribed in the rules, and that will be done by the president of the tribunal. Initially the fees will be what they are now. I am not in a position to say there will not be an adjustment in the future.

Mrs C.L. Edwardes: Treasury should have a full list of all of the fees that are applicable under the respective portfolios. That information might be a bit difficult to obtain. However, all of the agencies to which the referred legislation will apply should be able to give a list of their fees. It probably would not be that difficult to do a quick analysis of the fees. The information is readily available and it should be able to be done fairly quickly.

Mr J.A. McGINTY: That is possibly the case. I can take it no further than to say I have no proposition before me at the moment to deal with this matter.

Mrs C.L. Edwardes: Do you have any idea when this may occur?

Mr J.A. McGINTY: No.

Dr J.M. WOOLLARD: In the Victorian legislation waiver of fees comes under section 132. This legislation is a modification of the Victorian legislation, yet the Government appears to be rushing it through without doing any homework that is applicable to Western Australia. Although I misheard the Attorney General's comment the other day I did look through *Hansard* and I saw the comment that the Government has a lot more legislation to rush through.

Mr J.A. McGinty: I would not have said anything like that!

Dr J.M. WOOLLARD: I will find the quote for the Attorney General. The Attorney General promised us a lot more.

Mr J.A. McGinty: But not to rush it through. We all need a lot of time for debate and consideration on these matters.

Dr J.M. WOOLLARD: It has been almost six years yet no work has been done in Western Australia on what this may cost.

Mr J.A. McGINTY: If the suggestion in what I have just heard is that costings have not been done I would be very surprised, because I have already reported to the Parliament on what the costings of the tribunal will be.

Dr J.M. WOOLLARD: In that case would the Attorney General be happy to table the preliminary costings that have been done by the Government?

Mr J.A. McGINTY: They are in the second reading speech.

Dr J.M. WOOLLARD: The full costings.

Ms S.E. WALKER: I thought the Attorney General was about to give the member for Alfred Cove some costings so that we would all know what is going on. I want to raise a question about fees for the work that will be done by the Mental Health Review Board. I am concerned that the Attorney General has said that people who hope to access SAT about Mental Health Review Board matters will not be required to pay a fee. Why did the Attorney General not accept the Barker report recommendation that the board be colocated and aligned with SAT - a proposal that would contemplate that the board would continue to exist but under the auspices of SAT - and how will the Attorney General get away with not charging people a fee for accessing the board? As I understand the proposed organisational chart for SAT, which has been given out to various people, to try to get a matter heard by the board will be an extremely complex and difficult procedure. How will a person be able to access the board and how will an application be processed?

Mr J.A. McGINTY: This clause is about fees. I appreciate that the member for Nedlands is asking about how the registry will process an application in respect of a mental health matter. The person will lodge the application in the registry, and the registrar will refer it to the relevant grouping, which will then convene a hearing.

Ms S.E. WALKER: I understand that currently the board uses a sophisticated case tracking system - CTS. Will the tribunal take control of that system or will the board retain that system, with a separate system being set up under the State Administrative Tribunal?

Mr J.A. McGinty: This clause deals with fees.

Ms S.E. WALKER: What does this have to do with fees? Currently, if there is an application before the board, it has a sophisticated case tracking system. The board has that system in place to ensure that it meets its statutory and other obligations. I understand that it is obliged to undertake a large proportion of the matters it undertakes. A draft organisational structure for the Mental Health Review Board has been released. Is it true that instead of the board having just two full-time equivalents to follow the process, it will now have a very

dysfunctional model? Under that dysfunctional model, an application will pass through, first, the case management area, which is the Guardianship and Administration Board and the Mental Health Review Board area, then go to scheduling and then to the decision makers, before the decision is tracked back through the system. From what I can glean from the proposed team structure, the system will change from the current model, which is a very succinct, coordinated and prompt system, to one that is very cumbersome and fragmented. Given this situation, has an analysis been done of how long a review will take the Mental Health Review Board and the time it will take once the review tracks through this very complex and unwieldy proposed team structure?

Mr J.A. McGINTY: I am happy to answer the question posed by the member, but it has absolutely nothing to do with the clause before the House. We will be here until midnight or tomorrow morning, Mr Acting Speaker, if you allow debate to proceed on matters not currently before the House.

To answer the member's question, currently a provision in the Mental Health Act requires applications to be dealt with within eight weeks. That will continue. The procedures will be exactly the same. The tracking system and data will be moved from the existing provisions that apply to the Mental Health Review Board to the new system under the State Administrative Tribunal to ensure that best practice applies.

Ms S.E. WALKER: I apologise. I was relating my question back to fees. Given that there will be a complex team structure, there must inevitably and ultimately be a bigger cost. We are changing from a system with two full-time employees to this structure, under which the application must go into a registry, bypass one team and then another and then be scheduled and so on. My question did relate to fees. I will be very surprised if a person does not have to pay fees for this process. I am also concerned because I understand there was absolutely no consultation with the Mental Health Review Board prior to the drafting of this legislation, which is very disturbing. The Mental Health Review Board deals with very serious issues in which people's rights are forfeited. It makes very important decisions. I find it very disturbing that the Mental Health Review Board appears to have established a very succinct system, but it will be subsumed under this big structure, allegedly without imposing any fees and certainly without consultation.

The ACTING SPEAKER (Mr J.P.D. Edwards): I take the point the Attorney General made earlier. However, I have been listening to and trying to follow the line of argument of the member for Nedlands. She has kept her remarks relevant to fees. I understand that we could be here all afternoon, but obviously it is a matter of the member finding the question that will elicit the answer she wants.

Mr J.A. McGINTY: Currently, no fees apply to applications before the Mental Health Review Board or the Guardianship Administration Board, and nor will they. Other provisions that might flow from that have nothing to do with fees.

Clause put and passed.

Clauses 44 to 53 put and passed.

Clause 54: Mediation -

Mrs C.L. EDWARDES: Earlier I asked the Attorney General a question about mediation and he gave me a satisfactory answer that mediation can occur once an application is made. If a directions hearing or a compulsory conference has been held, the tribunal may at any later stage of the proceeding refer all or any part of the matter for mediation. Given the fact that this clause specifically deals with mediation, can the Attorney General confirm that mediation can occur at an earlier point if there is the ability and willingness to do so?

Mr J.A. McGINTY: A directions hearing can meld immediately into mediation, but nothing occurs before the directions hearing.

Mrs C.L. Edwardes: That was not exactly what you said earlier.

Mr J.A. McGINTY: If that is the case, I apologise.

Mrs C.L. Edwardes: You must have a directions hearing and then you can go to mediation?

Mr J.A. McGINTY: Yes, after the directions hearing. One could evolve straight into the other. The directions hearing is required because people need to know the subject matter and the peculiarities of the matter being dealt with. A matter cannot go to mediation until people know what it is, so the first hearing will be the directions hearing.

Dr J.M. WOOLLARD: Is the directions hearing not part of the proceedings?

Mr J.A. McGinty: Yes, it is.

Dr J.M. WOOLLARD: The Victorian legislation provides that if a member of the tribunal is a mediator in a proceeding, he or she cannot constitute the tribunal for the purpose of hearing the proceeding. Why are we not allowing mediation to occur before the directions hearing before the tribunal?

Mr J.A. McGINTY: The directions hearing or a compulsory conference, as prescribed in clause 54, identifies the real issues in dispute and the subject matter of the difference. It is just an essential requirement of natural justice. Clause 54(10) requires that if the mediator is a tribunal member, the member cannot take any further part in dealing with the proceeding after the mediation unless all parties agree. The intention is that people can be got together at fairly short notice for a directions hearing or a compulsory conference depending on the subject matter and that things will flow out of that once issues are identified. For those matters that are susceptible to mediation, I expect that will flow. It is a flexible procedure designed to be adapted to meet particular circumstances.

Dr J.M. WOOLLARD: In Victoria prior to a directions hearing a member of the tribunal can act as a mediator. The Attorney General is saying that cannot happen here. The Attorney General is saying that if, following the directions hearing, someone acts as a mediator, under subclause (10) the matter cannot proceed unless all parties agree. That is a very different position from that in Victoria. It seems that the alternative disputes resolution allows for an alternative process to occur before the matter becomes adversarial. Why has the Attorney General not followed the model that has been adopted in Victoria to allow mediation before an adversarial approach is taken?

Mr J.A. McGINTY: Some 87 per cent of the matters before the Victorian Civil and Administrative Tribunal are residential tenancy matters dealing with conditions of leases, which are in the vast bulk of cases immediately amenable to informal mediation proceedings by the staff. That is not the nature of SAT.

Clause put and passed.

Clauses 55 to 58 put and passed.

Clause 59 put and negatived.

New clause 59 -

Mr J.A. McGINTY: I move -

Page 37 - To insert the following new clause -

59. Deciding questions of law

(1) In this section -

“**question of law**” means a question of law arising in a proceeding for decision by the Tribunal and includes a question of mixed law and fact.

(2) Subject to subsection (10), a question of law is decided by the Tribunal according to the opinion of the presiding member if that member is a legally qualified member.

(3) If the presiding member is not a legally qualified member but there is at least one sitting member who is a legally qualified member, a question of law is decided by the Tribunal according to the opinion of that legally qualified member, or according to the unanimous opinion of those legally qualified members if there are 2 or more of them.

(4) The presiding member may choose to refer a question of law to the President whether or not the question has been decided under subsection (2) or (3).

(5) If subsection (3) applies to a question of law, the presiding member is to refer the question to the President if -

(a) the presiding member is requested to do so by a sitting member who is a legally qualified member (whether or not the question has been decided under subsection (3)); or

(b) for any reason the question has not been decided under subsection (3).

(6) Subsection (2) no longer applies to a question of law if the question is referred to the President under subsection (4).

- (7) Subsection (3) no longer applies to a question of law if the question is referred to the President under subsection (4) or (5).
- (8) If no sitting member is a legally qualified member, the presiding member is to refer a question of law to the President.
- (9) Subsection (10) applies to the resolution of a question of law if the presiding member is the President or the question is referred to the President under subsection (4), (5) or (8).
- (10) If this subsection applies to a question of law -
 - (a) the question is decided by the Tribunal according to the opinion of the President or, if the President gives the question to another legally qualified member of the Tribunal for resolution, according to the opinion of that other member; or
 - (b) the President may refer the question to the Supreme Court for decision by the Supreme Court as long as it is not a question of mixed law and fact.

This new provision replaces the previous draft on how the tribunal will deal with questions of law. The previous draft did not work particularly well, especially in a case in which the tribunal is constituted by one person. The new version is clearer, easier to read and more comprehensive.

Ms S.E. WALKER: Has an assessment been made of when this provision is likely to be used? Has an analysis been made of how many boards or tribunals will use a provision like this?

Mr J.A. McGINTY: I am told that significant discussions between officers were held when the Town Planning and Development Act was looked at to align it with the provisions here. The Town Planning and Development Act deals with many, what might be termed, low-level legal matters. This new framework was designed to fit in with the Town Planning and Development Act provisions.

Ms S.E. WALKER: Is it envisaged that in light of setting up the tribunal, a lot more questions of law and delays may be encountered?

Mr J.A. McGINTY: I am assured not.

Dr J.M. WOOLLARD: On occasions when the tribunal sits, will the presiding member be someone from a government department? Subclause (3) refers to a presiding member not being a legally qualified member. That person would presumably be the chairperson, would he?

Mr J.A. McGinty: Yes.

Dr J.M. WOOLLARD: Would it be someone from a government department when dealing with a particular issue?

Mr J.A. McGinty: Never. People from government departments are prohibited from constituting the tribunal because a conflict of interest would inevitably arise.

Dr J.M. WOOLLARD: Will the tribunal be electing the presiding member at each meeting of the tribunal?

Mr J.A. McGinty: The president will determine who is the presiding officer. For some matters it will be the lawyer or judicial member and in other matters it may be someone with expertise in a particular area; for example, if it is a town planning matter it might be a town planner.

Dr J.M. WOOLLARD: Will it be decided case by case?

Mr J.A. McGinty: Yes.

[Quorum formed.]

Ms S.E. WALKER: It is lovely to see some members of the Government present for what must be the biggest Bill that has ever been introduced into the House. Has any consideration been given to the fact that lawyers before the tribunal could use new clause 59 to stall matters?

The ACTING SPEAKER (Mr J.P.D. Edwards): I am aware that a quorum has just been formed and that people are still in the Chamber. However, if members wish to remain in the Chamber, would they please sit down? If they wish to have conversations, would they please do so outside? It is difficult for me to hear and it is difficult for Hansard.

Ms S.E. WALKER: Thank you, Mr Acting Speaker; you are a gentleman.

It is possible, through a series of boards and tribunals, for someone who wants to delay a matter to present an obscure question of law to a tribunal member who is not a lawyer or the Supreme Court judge. A matter could be delayed while it is sent to the Supreme Court. New clause 59(10)(b) could be applied. Has any consideration been given to the fact that these provisions may cause long delays? Currently, a point of law cannot arise. The Attorney General is opening a Pandora's box.

Mr J.A. MCGINTY: These provisions will make expeditious determinations possible on questions of law. It will be rare to have a reference from the tribunal. The tribunal will have the power to punish through a series of costs any lawyer who abuses the process by seeking to take, as the member has described them, artificial or remote questions of law.

Dr J.M. WOOLLARD: The Victorian legislation states in section 107 that if more than one legally qualified member is present, the senior member makes the decision. If there is not a unanimous opinion, nothing in new clause 59(3) states that the senior person will make the decision. Will it automatically go to the president, who will be pulled in to review the facts? Will it then be the president's decision? What will happen?

Mr J.A. MCGINTY: The answer is no. Section 107 of the Victorian Act requires that a question of law arising in a proceeding must be decided by a judicial member or a member who is a legal practitioner. In order to have expeditious determination of matters, the Western Australian Bill does not contain a provision of that nature. New clause 59(2) reads -

... a question of law is decided by the Tribunal according to the opinion of the presiding member if that member is a legally qualified member.

New clause 59(3) reads -

If the presiding member is not a legally qualified member but there is at least one sitting member who is a legally qualified member, a question of law is decided by the Tribunal according to the opinion of that legally qualified member, or according to the unanimous opinion of those legally qualified members if there are 2 or more of them.

New subclause (8) reads -

If no sitting member is a legally qualified member, the presiding member is to refer a question of law to the President.

Subclause (10) of new clause 59 reads -

If this subsection applies to a question of law -

- (a) the question is decided by the Tribunal according to the opinion of the President or, if the President gives the question to another legally qualified member of the Tribunal for resolution, according to the opinion of that other member; or
- (b) the President may refer the question to the Supreme Court for decision by the Supreme Court as long as it is not a question of mixed law and fact.

That spells out the hierarchy.

Dr J.M. WOOLLARD: If the presiding member is an independent professional, and two independent members make up the tribunal, or if the two legal members are not in agreement - that is, it is not a unanimous decision - what happens?

Mr J.A. McGinty: It will go to the president.

Ms S.E. WALKER: The president may be sitting on some other matter and cannot just be called in. I think the member for Alfred Cove referred to the time frame involved. It may be that the president is sitting in a hearing on another issue. Under the proposed system, the president might be called in on any one of 142 matters on a point of law. Am I right in assuming that the president will not sit in the wings waiting to be called in? Too many things will be taking place. I foreshadow that people will start asking questions about the Act and all types of issues will arise. If the point of law is not answered straight away, delays will occur in the system.

New clause put and passed.

Clauses 60 to 64 put and passed.

Clause 65: Special referees -

Mrs C.L. EDWARDES: This provision deals with cases in which the tribunal may refer any question arising in a proceeding to a special referee for that referee to decide the question or to give an opinion. One can envisage that occurring in many circumstances. Technical expertise may be needed, or a new matter could be presented

before a tribunal which may lead to an order for a party to contribute to or pay for the tribunal's cost of obtaining the services of a special referee. If one of the 200 or 300 tribunal members had such expertise, no cost would be attached. I take it that a special referee would be required in very special circumstances.

Mr J.A. McGINTY: I give two examples. A complex medical matter could be considered with a medical practitioner sitting on the panel, but it is considering an obscure area of medicine with few experts in Australia. It might be a particular speciality for which the advice of an expert is required. It may be a town planning matter with highly unusual engineering elements. I give those two examples in which the expertise may not exist on the tribunal. It would be rare. The experience with the Victorian Civil and Administrative Tribunal is that it is rare, and I understand that the comparable provision in New South Wales is rarely, if ever, used.

Ms S.E. WALKER: I have referred to the Mental Health Review Board before in this place. A constituent of mine has dealings with this board, and I am concerned about this provision because that board has a level of expertise. Can the Attorney General tell me, firstly, who comprises the current Mental Health Review Board, and, secondly, how will their level of expertise be used under this Bill - that is, will it be called upon? If not, does the Attorney General see special referees being used for the purposes of carrying out the review board functions?

Mr J.A. McGINTY: I am not in a position to recite the names of the 28 people on the Mental Health Review Board. However, I can tell the member that 16 members are doctors, the president is a lawyer and it contains a number of community representatives. Given the nature of the work of the Mental Health Review Board, I doubt whether clause 65 concerning special referees will apply.

Ms S.E. WALKER: Will the Attorney General use the current 28 people? Will that expertise on the review board be used?

Mr J.A. McGinty: That is the sort of expertise to be used.

Ms S.E. WALKER: Has the Attorney General told them that their expertise will be used?

Mr J.A. McGinty: Individually?

Ms S.E. WALKER: Yes, obviously they have built up an expertise.

Mr J.A. McGinty: No.

Ms S.E. WALKER: Will the Attorney General forget about that level of expertise?

Mr J.A. McGinty: No, we will make new appointments to coincide with the State Administrative Tribunal.

Clause put and passed.

Clauses 66 and 67 put and passed.

Clause 68: Privilege against self-incrimination -

Mrs C.L. EDWARDES: I raised a question about this clause in the second reading debate, to which the Attorney General responded. He indicated that the only privilege against self-incrimination is in criminal matters, not civil matters. Will the Attorney General confirm that the rights against self-incrimination under all the Acts that confer jurisdiction on the tribunal, and that are currently dealt with in the Supreme and District Courts, will not be removed as a result of this clause?

Mr J.A. McGINTY: I think the answer to the question is yes. I will get clarification on that because a simple answer on some of the obscure provisions in a technical sense may be misleading. This is a standard provision that appears in a lot of Western Australian Acts relating to disciplinary bodies. I am told that this clause was taken from those Acts, although there might be some Acts in which this provision does not currently appear. However, I understand that this general provision applies to these matters.

I responded in the way I did to the member's question because I thought it was raised in the context of a right to silence. I indicated that the right to silence arises only in a criminal context. The privilege against self-incrimination, to the best of my knowledge, is different from that criminal context. To the best of my knowledge, it is a standard provision that applies, generally speaking. There may be some exceptions in which it does not apply, such as in disciplinary bodies; however, I am unaware of any areas in which it does not apply.

Mrs C.L. EDWARDES: When we get to the third reading - which will not occur today - will the Attorney General identify where in the 200 Acts it applies or does not apply, whichever is the easier, so that people who currently have a review before the court will understand that this is a new provision that will apply to them? The provision will not be included in all of the Acts to be amended because they do not all have provision for a review.

Mr J.A. McGinty: It is relevant only to disciplinary matters. I do not think it will be relevant to most other matters.

Mrs C.L. EDWARDES: It may or may not. Not all of the Acts that confer jurisdiction on the tribunal have a right of review to the courts. Some Acts include a review process and some Acts do not.

Mr J.A. McGinty: Yes. I will undertake to address that matter in the third reading debate.

Clause put and passed.

Clause 69: Other claims of privilege -

Mrs C.L. EDWARDES: This clause deals with claims of privilege, except for subclause (2), which in its drafting appears to be out of context. Unless there is something in the clause that I am not reading, it should be dealt with separately under the clause on the production of documents rather than as another claim of privilege.

Mr J.A. McGINTY: Parliamentary counsel advised that it should be provided for in that way. I am not sure why.

Mrs C.L. Edwardes: Let us put it under clause 69.

Clause put and passed.

Clauses 70 to 83 put and passed.

Clause 84: Enforcement of monetary order -

Mrs C.L. EDWARDES: Clauses 84 and 85 deal with the enforcement of orders. One complaint that I receive from people consistently, and have received for years, is that when people are granted an order by a tribunal or court, they must take the order away with them and try to enforce it. In this clause they can be granted a monetary order or an order to rectify something, but they must personally enforce that order. Is there not a simpler system for carrying out an order within a number of days and, if it is not carried out, for the court rather than the individual to take action? I receive many complaints from people who get a copy of the order, for which they pay a fee, and they must then approach a court of competent jurisdiction to recover whatever is ordered to be reinstated, for which they pay another fee. People just give up because it costs them money every time they do something to get what they are due. Not only have those people been before a tribunal to get what they are due and received an order stating what they are due, but also, when the order is refused, they must pay a fee to serve the order to get what they are due. A much simpler, less complex system could have been incorporated in clauses 84 and 85 by giving the power to enforce the order to the tribunal, which would be something novel to the public.

Mr J.A. McGINTY: I agree that the member for Kingsley has identified the problem of enforcement. In a sense, this is a direct consequence of SAT not being a court. If it were a court, enforcement would be much more straightforward.

Mrs C.L. Edwardes: You could give it the powers.

Mr J.A. McGINTY: We could, but we would then invest it with the powers of a judicial body - a court. We have done our best to maintain that separation. It was essential to ensure that it was not a court and therefore did not have those trappings, apart from judicial leadership. That was the philosophical basis from which the clause came. Also, a view was expressed in the Department of Justice that SAT should not become a debt collection agency when facilities currently exist for that through the courts. The idea of having simplification in that area is admirable. Hopefully, when we get the next wave of reform after this reform, we can examine the civil recovery procedures in the Magistrate's Court package of Bills and they will be simpler than the current fairly archaic procedures.

Mrs C.L. EDWARDES: I await that with some interest, because if that system can be improved, the Attorney General will have the undying thanks of many people for whom it has been a problem for many years.

I return to the Gotjamanos report. One recommendation that the report addressed was the very point referred to by the Attorney General; that is, the administrative tribunal is not a judicial body. Therefore, which body will carry out the enforcement of an order? The report canvassed the notion that it could be the Ombudsman. I quote from the executive summary -

A significant matter considered by the review was the relationship between the proposed State AAT and the Ombudsman. The Review has proposed that there be a role established for the Ombudsman to investigate situations where a decision or order of the AAT, with respect to an application for review or appeal, is not acted upon . . .

Obviously, in those instances it was the government department and/or agency that was being addressed. After quoting Professor Disney, who made a number of recommendations, Judge Gotjamanos stated -

If the Ombudsman's role was to be expanded in the manner as suggested by the Review then there would be many practical advantages and benefits to persons who have obtained a decision or order in their favour from the administrative appeals tribunal. Some of these advantages and benefits we suggest are:

- an independent, quick and relatively informal means of follow-up is available to an aggrieved person;
- a person who has already gone through the appeal process is not put to further inconvenience and expense by having to pursue the matter in another jurisdiction;
- the matter can be pursued at no cost to the person affected.

I implore the Attorney to consider this. This area causes enormous discomfort and cost, and involves a great deal of time. The fact is that people who have an order from a tribunal must go to the Local Court to get it enforced. They must pay for the order itself, and also pay a filing fee. They must then serve the order. More than \$100 goes out of their pocket just to get the order enforced, apart from the fact that they would have made many phone calls about when things would be done etc. What if a government department or agency is involved? That is an appalling situation. If a government department or agency or a local government is not complying with the order, there should be some cost to it. This area is in serious need of review.

Mr J.A. MCGINTY: I could not agree more with the sentiments that have been expressed by the member for Kingsley. I hope that when the magistrates' package comes forward, it will provide at least part of the answer to that problem. I also draw members' attention to clause 94, which refers to a person who fails to comply with a decision of the tribunal. This legislation provides a penalty of \$10 000 for that offence. That applies to decisions of the tribunal, but it does not apply to a monetary order, which is picked up under the clause with which we are dealing.

Mrs C.L. EDWARDES: Clause 85 deals with the enforcement of a decision other than a monetary order. If that is not complied with, there is a \$10 000 penalty.

Mr J.A. MCGINTY: That is right. It is designed to deal with that part of it at least. However, I could not disagree with the broader sentiments the member has expressed. I receive those complaints regularly.

Ms S.E. WALKER: It seems that the failure to comply would be pointless if a person did not have any money anyway; that is, if it were a small matter. I wonder how it will ever be enforced.

Mr J.A. MCGINTY: Decisions of the tribunal can relate to a raft of matters. For example, someone may fail to produce a document that he is directed to produce, or it may relate to any other decision of the tribunal. With 142 conferral Acts, one can imagine the extensive range of jurisdiction that is contained in this legislation and the great variety of circumstances in which decisions will relate to matters that will be caught by clause 94.

Clause put and passed.

Clauses 85 to 91 put and passed.

Clause 92: Entry and inspection -

Mrs C.L. EDWARDES: This clause provides that if the presiding member of the tribunal - it is not the president - considers it desirable, the tribunal may enter and inspect any place, either in the presence of or without the parties. Subclause (2) states -

If land or a building is occupied by a person who is not a party, a power of entry ... cannot be exercised unless -

- (a) the occupier has consented to the entry;

It goes on. A third party is involved in the proceeding whereby the tribunal has powers of entry and inspection. I know that the Fish Resources Management Act and the Fishing and Related Industries Compensation (Marine Reserves) Act are a couple of the Acts that confer jurisdiction on the tribunal. They have always been identified as containing strong powers of entry and inspection. However, a number of other Acts that confer jurisdiction on the tribunal do not contain such powers. As I indicated in the second reading debate, we are not talking about bikies or people who essentially are being investigated for corruption. It is not the appropriate jurisdiction. I wonder why the Attorney considered it necessary to include the power of entry and inspection provided under clause 92.

Mr J.A. McGINTY: The power of entry and inspection is taken from section 129 of the Victorian legislation and appears in substantially similar terms, except that we have extended it to vehicles and vessels. They are not included in the Victorian provisions. There is provision for motor vehicle dealers and certain fisheries matters to come within the jurisdiction of the State Administrative Tribunal. I presume they do not come within the jurisdiction of the Victorian Civil and Administrative Tribunal. Essentially, that is where it has come from. Perhaps the best example I can give is the need from time to time in a strata titles matter to view the subject matter of the dispute first-hand to have a clear mental picture of the nature of the dispute and a better understanding of the subject matter of the dispute. This is simply a provision to enable the tribunal, if the tribunal considers it desirable for the purposes of the proceeding, to go and have a look.

Ms S.E. WALKER: Under the Mental Health Act 1996, is there provision for entry and inspection of people's personal medical records etc?

Mr J.A. McGinty: No.

Ms S.E. WALKER: The tribunal will have that power now. It will be able to go to any doctor's surgery anywhere and have the right of entry.

Mrs C.L. Edwardes: With or without the parties.

Mr J.A. McGinty: Yes, subject to the provisions of subclause (2).

Ms S.E. WALKER: Is that also the case under the Medical Act 1894? Is that a provision currently?

Mr J.A. McGinty: I am sorry, was the member's question about the Medical Act?

Ms S.E. WALKER: I am looking through the Bill to see which places officers of the tribunal will be able to enter under clause 92. What will happen when matters under the Psychologists Registration Act 1976 go before the tribunal? Can anybody go into a psychologist's or psychiatrist's office and look at records now? It seems to me that clause 92 is all about inspecting people's personal, private records, including medical, psychological and psychiatric records. If that is the case, does the Attorney General think that this clause goes too far?

Mr J.A. McGINTY: Each of the Acts that contain disciplinary conditions, for example, section 16 and in particular section 16B of the Veterinary Surgeons Act, provide the power to require and obtain information. Section 16B states -

. . . (1) For the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act, the Registrar or an inspector may -

- (a) require any person -
 - (i) to give him such information as he requires; and
 - (ii) to answer any question put to him,
in relation to any matter the subject of such investigation or inquiry;
- (b) require any person to produce any document relating to any such investigation or inquiry;
- (c) enter at all reasonable times and search any premises and inspect any documents that he finds thereon;
and
- (d) make a copy . . .

That type of power is a standard provision in relation to those disciplinary bodies. I refer the member to the Real Estate and Business Agents Act, which has more relevance, and has powers in almost directly comparable terms. Under section 15 of that Act titled "investigative powers of Registrar and inspectors" the registrar and inspectors have all the powers I read out under the Veterinary Surgeons Act to do those things. Section 15 of the Real Estate and Business Agents Act states that for the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act, the Registrar or an inspector may - I will paraphrase the Act - require any person to give information, to answer questions, produce any document, enter at all reasonable times and search any premises and inspect any documents he finds thereon and make a copy etc. It is a fairly standard provision.

Mrs C.L. Edwardes: We accept that in some of those Acts.

Ms S.E. Walker: We are talking about people's personal, sensitive information.

Mr J.A. McGINTY: That is why I referred to the Real Estate and Business Agents Act

Ms S.E. WALKER: We are talking about people's most personal and sensitive documents. Under this Bill, people will be put in the position whereby members on the Mental Health Review Board, for example, will have a special database full of people's very sensitive and personal information. The Government will not appoint people with expertise to the board. The Bill will allow any staff member of the tribunal to have the authority to go into a psychiatrist's office, a doctor's office, a psychologist's office or any specialist's office and access people's personal, private details. This Bill goes too far. The Attorney General has not considered people's privacy. He is not good on privacy. We know that from the Victims of Crime Amendment Bill. Even if it were in the legislation to amend the Mental Health Review Board, this Bill will allow people to access everybody's personal psychiatric, psychological, medical and taxation histories. The Attorney General referred to the Real Estate and Business Agents Supervisory Board. Members of the tribunal will have access to everyone's business dealings with the real estate board. The Bill will allow non-specialised people to be appointed to the tribunal, which is bad enough. The staff of the tribunal will be able to access people's personal, private details. There is nothing wrong with the staff of the tribunal, but it will be open slather under this clause to access people's personal, private information. I urge the Attorney General to have a good look at this clause and either eliminate it or tighten it.

Dr J.M. WOOLLARD: There is a similar clause in Victorian legislation. Under the Victorian legislation, an inspector can enter and inspect any land or building and is limited to inspecting only land or buildings; it does not go as far as allowing the inspectors to inspect records. It appears under this clause in the SAT Bill that an inspector can inspect any records within a building. Is it the Attorney General's intention for the inspectors of the tribunal to have the authority to look at all the records in a building?

Mr J.A. MCGINTY: As the member for Alfred Cove has indicated, this provision comes from the Victorian legislation to a certain degree. Because of the jurisdiction of the Victorian body, the Victorian Act is somewhat more limited in what can be viewed and inspected. With regard to sensitive matters such as the provisions of the Mental Health Act or the Guardianship and Administration Act, there will be a confidentiality order associated with anything done under the provisions of those Acts. It seems appropriate to make provision for a tribunal to be well informed when making decisions on a wide range of matters. The extent to which the tribunal would wish to view any place, building, vehicle, vessel, or other thing, would be very much controlled by the subject matter of the dispute that is before the tribunal. One can readily envisage the necessity to inspect a property if it were a planning matter. That is in the current provisions of the Town Planning and Development Act. I cannot think of circumstances whereby it would be necessary or desirable to do so in relation to personal, private matters.

Dr J.M. WOOLLARD: If the complaint taken to the tribunal was work-related - say, a needle-stick injury in a hospital - would that not mean the tribunal had the right to enter the hospital, look at all the patients' records, approach the patient or whoever was affected, talk to the staff member and examine any records at the general practice?

Mr J.A. MCGINTY: SAT will not deal with needle-stick injuries.

Dr J.M. WOOLLARD: That was an example.

Mr J.A. MCGINTY: The problem with giving examples of things that are not within the jurisdiction is that they can be misleading.

Dr J.M. WOOLLARD: What about another work-related injury?

Mr J.A. MCGINTY: I cannot think of how it would come within the jurisdiction of SAT. All workers compensation injuries are excluded.

Dr J.M. WOOLLARD: In which case, are there no powers within this Bill to examine patients' medical records?

Mrs C.L. EDWARDS: Yes.

Dr J.M. WOOLLARD: Is that a yes or no from the Attorney General?

Mr J.A. MCGINTY: Yes.

Dr J.M. WOOLLARD: There are powers for the tribunal to look at persons' private medical records?

Ms S.E. WALKER: If I am interpreting this clause as it reads, it is an outrageous infringement on the rights of people under the Mental Health Act. I am surprised that the Attorney General has come into this Chamber and does not know what rights this Bill will take away from people under the Mental Health Act. It is a relevant question. When I asked him the question, he could not put his finger on it. Part 7 of the Mental Health Act contains detailed provisions for the protection of patients' rights and their medical histories. What concerns me is that under this monolithic piece of legislation, entry and inspection by a staff member of the tribunal will be permitted. The Attorney General might say that a member of the tribunal must follow this legislation. The staff member will not have to follow it. I will be happy to be shown the clause in this Bill that will allow the Acts that

will be subsumed within this to dominate. I will be the first person to go on the radio after Parliament finishes or to release a press statement telling people about the dangers of this Bill to not only themselves, but also their friends and family members with medical issues. Under the Medical Act, the Psychologists Registration Act and, I presume, other Acts, people's private information is protected. I urge the Attorney General to have a really good look, between now and when we debate this Bill again, at the way this Bill affects people's privacy rights.

Mr J.A. McGinty: The member for Nedlands asked under which clause the primary Act overrode the SAT Act. Clause 5 achieves exactly the end that she is complaining about.

Dr J.M. WOOLLARD: I would like to hear the member for Nedlands continue with her line of questioning.

Ms S.E. WALKER: Will the Attorney General tell me where it is in the Bill?

Mr J.A. McGinty: Clause 5 of the SAT Bill.

Ms S.E. WALKER: Thank you.

Mrs C.L. EDWARDES: This is one of the issues that arises when we are trying to standardise and combine a lot of Acts. We are trying to link mental health, medical, psychiatrists' registration and equal opportunity legislation etc. Some sections in the present Acts will be transferred, some will not be in an Act that will be within the tribunal's powers and functions. The Opposition is saying that is not appropriate. Under this Bill, people's privacy can be breached. Unless the Attorney General can tell us that the relevant provision is in each of those 142 Acts - it is not - people who currently are not subject to the entry and inspection power will be affected. Given that privacy issues and the like are involved, the powers in this Bill are over the top. It will give people the power to go into any place whatsoever, whether it be workplaces, hospitals, surgeries or homes, and inspect with or without the parties present. Vulnerable people will be affected; therefore, in the areas of privacy and confidentiality, the Bill's powers should be limited.

The Attorney General said people entering places would be bound by a confidentiality clause. However, should those people have the right to enter a doctor's surgery or a psychiatrist's surgery and inspect patients' records? I do not believe so, particularly given that the presiding members of the tribunal will not be the only people who have that power. They can organise a staff member to enter and inspect. I accept that staff members are subject to all sorts of confidentiality, but should they have the powers provided in this Bill? Consent by the party involved is not required. The party does not have to be present when someone enters. I do not see why the powers cannot be limited in those instances.

Mr J.A. MCGINTY: The purpose of referring to clause 5 of this Bill is to point out that the scheme of the State Administrative Tribunal arrangement is to leave intact everything that applies to the existing boards and tribunals and in each of the conferral Acts. Clause 5 provides that -

If there is any inconsistency between this Act and an enabling Act, the enabling Act prevails.

I take that to mean that any rights of entry and inspection are to be read subject to rights of privacy, confidentiality arrangements and protections built into those other Acts. It should be borne in mind that the right of entry and inspection is a procedural provision to enable the tribunal, if it thinks it desirable for the purpose of proceedings, to enter and inspect. It is comparable to the Victorian provision on which our legislation is based. I am not aware of any issues being raised in Victoria. I think members opposite are trying to make more of this than appears.

Ms S.E. WALKER: The Attorney General is wrong. I am not sure whether the department has looked at the Psychologists Registration Act 1976. The Attorney General has not done so. I do not see anything in this Act that prevents persons on the board taking or looking at any of the documents in the office. That function will now be undertaken by a tribunal member. The tribunal member may be a non-legal person. The person making the complaint may also be a non-legal person. The non-legal tribunal member may say that under this Bill he has the right to send Jim Smith, a clerk, to a person's rooms and take all of that person's documents. Clause 5 will not protect people's rights. That is a fundamental flaw in the Bill. The Attorney General thinks we are trying to make something out of this. We are not. It is there in black and white. The Attorney General has told us that the expertise of the Mental Health Review Board will not necessarily be taken over to the tribunal. A non-legal person on the tribunal may be dealing with an issue under the Mental Health Act. How will he know how to read legislation? He will not know.

This is a very dangerous piece of legislation. I do not care what the Victorian legislation says. We do not know whether, when the Victorian Bill was prepared, it was highly organised or was all over the shop like this Bill. Nothing has been prepared to show us what work has been done on this Bill. I bet that if I were to ask the Attorney General whether he has consulted the experts on the Mental Health Review Board on how the Mental Health Act will coexist with the SAT Bill, the answer would be no. The Attorney General has not had the

decency to speak about the Bill to the stakeholders in any of the boards that are currently set up. He has not had the decency on behalf of the citizens of Western Australia to make sure that their rights will be protected.

Mr J.A. McGINTY: The problem with the point raised by the member for Nedlands is that the very powers she complains of in relation to psychologists are already contained in section 42(8) of the Psychologists Registration Act, which provides that the board may inspect documents or other exhibits before it and may retain them for a reasonable period. A range of powers already exist in that Act. If it makes it worse to retain an existing power, that highlights the futility of the exercise the member is engaged in.

Ms S.E. WALKER: We know it will make it worse, because the tribunal is to be given the power of the board. Section 43(8) of the Psychologists Registration Act refers to the board. The Bill provides that a staff member can become the board for the purpose of carrying out some of its responsibilities, otherwise what the Attorney General has said does not make sense. We should not be here today doing this. This should all have been done beforehand. I bet the Attorney General did not have a meeting with the psychologists registration body either to ask it how this Bill will affect it.

Mr J.A. McGinty: We have had two meetings.

Ms S.E. WALKER: Is that since the Bill has been prepared? Did the Attorney General discuss with the Mental Health Review Board the privacy rights of individuals in this State?

Mr J.A. McGinty: You started out by saying you bet we had not had any meetings. We have had two meetings.

Ms S.E. WALKER: I know the Attorney General has a silver tongue, but the truth is that the Attorney General did not have a comprehensive meeting with the Mental Health Review Board and other people in this State on the preparation of this Bill.

Mr J.A. McGinty: You said no meetings.

Ms S.E. WALKER: I said no meetings on the preparation of the Bill. The Attorney General went to them afterwards and said, "Here is the Bill." That was his community consultation. That is why he will have a major problem with this Bill. The Attorney General will now be giving people open slather to send staff to access a person's private medical records.

Mr J.A. McGinty: That is not true and you know it.

Ms S.E. WALKER: It is true.

Clause put and passed.

Clauses 93 to 98 put and passed.

Clause 99: Contempt -

Mr J.A. McGINTY: I move -

Page 57, line 9 - To delete "civil proceedings" and substitute "a proceeding".

The purpose of this amendment is as follows: the removal of the word civil when referring to contempt is in line with the imminent recommendations of the WA Law Reform Commission, and this has been amended in consultation with the commissioners.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 100 put and passed.

Clause 101: Arrest -

Ms S.E. WALKER: Is there any provision in the Bill for keeping a person in custody; and, if so, where is it?

Mr J.A. McGINTY: The provision is contained in subclause (2), which provides for the issue of a warrant. The warrant would be executed by the police, who would apprehend the person named in the warrant and bring that person before the tribunal. The tribunal would have the power for that purpose to detain the person named in the warrant in custody until released by order of the tribunal or on review by order of the Supreme Court. The person would be detained by the police in the manner in which the police detain any other citizen subject to an arrest warrant.

Mrs C.L. EDWARDES: Again, like other parts of the SAT Bill, this clause is a little excessive. I refer to the recent case of John Kizon and the federal body and the fact that he was overseas at a particular time. A summons may very well have been issued on him. He was aware of it; yet - I do not wish to comment on the decision that was made - he was able to recover costs against the Government for that action. In these types of

circumstances, the powers have been given to the tribunal. I note that clause 5 provides that the enabling Act will prevail if there is any inconsistency. How far will that go? At what point will that provision need to be changed? What does inconsistency mean? Does it apply to substantive issues, such as arrest powers and entering and inspection powers? How will that provision apply to an inconsistency in the standardisation of fees? To some extent I am not convinced that the enabling Act will apply when there is an inconsistency. These are new powers and functions. I have not had a chance to go over some law books that are available in the Parliament. Has the Attorney General received any legal advice on how clause 5 will be interpreted in light of the Opposition's concerns about what we see as excessive powers for those bodies that do not currently have such powers?

Mr J.A. McGINTY: Clause 5 is intended to ensure that when interpreting the interaction of the two Acts - I can readily envisage a number of occasions on which that will be necessary - the primary Act will be the substantive Act, not the State Administrative Tribunal Act, as it will be; it will be the enabling Act.

Mrs C.L. Edwardes: No. I am not convinced that that will be the case when dealing with the powers and functions of the tribunal. You are not dealing with the substance of the enabling Act.

Mr J.A. McGINTY: The intention of the policy is to ensure that the substantive Act will prevail.

Mrs C.L. Edwardes: By the substantive Act, do you mean the enabling Act?

Mr J.A. McGINTY: Yes. To the extent that there is any inconsistency, it will fall into the same category as issues provided for under section 109 of the Australian Constitution. To the extent that there is any inconsistency, the enabling Act will prevail.

Mrs C.L. Edwardes: However, that is only when it addresses or does not address an issue. In this instance, you are talking about the fact that the enabling Act does not address a power of arrest; therefore, you are saying that the enabling Act will apply. I don't think you're right in that interpretation.

Mr J.A. McGINTY: I also take the view that it deals with not only a situation in which one Act is silent and the other speaks on a matter, but also a situation in which the interaction of the provisions of the two Acts gives rise to an inconsistency. In those circumstances, the enabling Act will prevail. It might well be that if the privacy or confidentiality provisions that need to be interpreted together in the enabling Act are inconsistent with certain powers in the SAT legislation, the other provisions of the SAT legislation must be read to give effect to the provisions in the conferral legislation. That is what I understand this provision to mean.

Mrs C.L. EDWARDES: I can only hope that the Attorney General is right in his interpretation.

Mr J.A. McGinty: It is certainly the intention.

Mrs C.L. EDWARDES: It may well be the intention. We know that the courts usually read *Hansard* to find out what the intention was, but sometimes they do not.

Mr J.A. McGinty: I had an example of that just last week. The intention of a certain Bill to repeal another Act was manifestly clear and stated to be the case. We spent two days before the High Court arguing about what was intended and what its legal effect was.

Mrs C.L. EDWARDES: My opinion of the Attorney General's interpretation is totally different from what he believes his interpretation to be.

Mr J.A. McGinty: The difference is that it was my Bill.

Mrs C.L. EDWARDES: That is a point to be made.

Ms S.E. Walker interjected.

Mrs C.L. EDWARDES: The point that the member for Nedlands has made is that a judicial officer need not be involved, but even if a judicial officer is involved, there will always be differences of opinion in interpretation. We are saying that it is not sufficiently clear. At this point, when dealing with the powers and functions of the tribunal, not with the substance of the enabling Act, it may well be interpreted that the powers and functions of the tribunal will apply first and foremost. We believe that in some instances it is definitely over the top and is far more than many people deserve. For instance, the mental health and guardianship boards have been mentioned. What about the equal opportunity board? The people who are dealt with by those boards have already been regarded as victims, and may be further victimised under the powers that will be exercised by this tribunal. I strongly suggest that these powers be watered down so that they are limited and far more restrictive, particularly when dealing with vulnerable people. We are not dealing with people who catch 20 crayfish when they are allowed only five. We are dealing with people who are, in certain circumstances, vulnerable and we do not want to further victimise them.

Ms S.E. WALKER: In which of the 142 Acts that will be amended by this Bill does this provision already appear?

Mr J.A. McGINTY: It does not currently appear in the various enabling Acts.

Mrs C.L. Edwardes: In any of them?

Mr J.A. McGINTY: I cannot think of one in which it appears.

Ms S.E. Walker: What is the point?

Mr J.A. McGINTY: I will tell members the point.

Mrs C.L. Edwardes: Particularly clause 5 applies.

Ms S.E. Walker: That is my point exactly.

Mr J.A. McGINTY: The reason that these matters will now be dealt with by SAT is that the proceedings of a number of the boards that have had to deal with these matters can be frustrated by the failure of a person to attend.

Mrs C.L. Edwardes: Will it apply or not?

Mr J.A. McGINTY: Will the power to summon someone to appear apply? Yes.

Mrs C.L. Edwardes: No - the power to arrest.

Mr J.A. McGINTY: Only if the person has been summoned to appear.

Mrs C.L. Edwardes: If it is not in any of the 142 Acts -

Mr J.A. McGINTY: Yes, it will, subject to any qualification that is placed on that. I cannot think of one. Yes, there will be the power to arrest.

Mrs C.L. Edwardes: No.

Mr J.A. McGINTY: Sorry, I do not understand the question.

Mrs C.L. Edwardes: Is it in any of the 142 Acts?

Mr J.A. McGINTY: Not to the best of my knowledge.

Mrs C.L. Edwardes: Then, under clause 5, what is the value of it?

Mr J.A. McGINTY: Sorry, I do not understand the question.

Ms S.E. Walker: You said that if the Bill is inconsistent with the enabling Act, the enabling Act will prevail.

Mr J.A. McGINTY: It is an additional power; there is no inconsistency there.

Mrs C.L. Edwardes: We rest our case.

Mr J.A. McGINTY: I am not sure what the member's case was.

Mrs C.L. Edwardes: The case is that exceptional powers, which are not in current legislation and which give jurisdiction, have been put into this legislation. If clause 5 applies, why is the arrest provision in the Bill if it is not in any of the 142 Acts, because, if your interpretation is correct, it can never be used?

Mr J.A. McGINTY: No, not at all. There must be an inconsistency. The fact that one Act is silent and the other prevails does not give rise to an inconsistency; it gives rise to different provisions.

Mrs C.L. Edwardes: That is exactly what we are saying. If the entry and inspection power is not currently in an enabling Act, and it is silent on the fact, this Bill will apply.

Mr J.A. McGINTY: No, the member must have misunderstood what I said before. There must be an inconsistency. That inconsistency can be a direct repugnancy or it can be the operation of the two clauses; that is, both clauses cannot be satisfied and one needs to be read in the light of the other. In relation to the power to arrest, the provision has been taken from the Victorian provision and is supported by the experience in our own boards and tribunals, whereby someone can thumb his nose at the law by refusing to respond to a summons. We are making provision for an arrest power. I cannot think of how that could be inconsistent with the provisions of any of the basic Acts, unless provisions in those Acts refer to the way in which people are to be treated before those tribunals, which would then be an inconsistency. However, I cannot think of an example.

Mrs C.L. EDWARDES: I go back to the entry and inspection power. If it is silent in an enabling Act -

Mr J.A. McGinty: That is not an inconsistency in my view.

Mrs C.L. EDWARDES: Those enabling Acts do not contain the power of arrest but it is in this Bill. Why is that not an inconsistency?

Mr J.A. MCGINTY: They are different provisions but it does not mean they are inconsistent. When the two pieces of legislation are read together, one says that there is the power to arrest someone who does not comply with a summons. The only inconsistency could arise if some of the enabling Acts contained a provision which said that if someone does not turn up, he or she is to be given a slap over the wrist or is not to be arrested. That would be an inconsistency.

Mrs C.L. EDWARDES: An entry and inspection power is contained in the Bill but may not be in an enabling Act. Therefore, the only inconsistency that would apply is if it were said that people could enter but they must do so with permission and, therefore, one provision would apply and another would not. Where an Act is silent, the Attorney General is saying that it is not an inconsistency and the entry and inspection powers would apply. Therefore, entry and inspection powers now apply under the Mental Health Act, the Guardianship and Administration Act, the Equal Opportunity Act and all those other Acts to which the power currently does not apply.

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: None of the 142 Acts contains arrest provisions, according to the Attorney General, but now people will be arrested. What happened? If someone forgets to turn up for a Mental Health Review Board hearing, as people do, he or she will now be arrested. This is a very dangerous piece of legislation. I have said this before to the Attorney General when dealing with other Bills. He has pooh-poohed it, but next time we have dealt with the legislation it has been amended. It is outrageous that there can now be a provision that allows a staff member of a tribunal to access someone's psychological, psychiatric, medical, State Revenue Office or any other records. People without any legal experience have gone along to a tribunal and have managed to have a matter resolved. There will now be several problems. A person might go along to a tribunal and be dealt with by people who have no expertise. We do not know, because the people who do have expertise will not necessarily be drafted onto a tribunal. People with no experience will be able to make arrests and direct staff to access people's personal, private and confidential information. The Attorney General needs to have a really good look at this legislation.

Mrs C.L. EDWARDES: I reiterate that we have now reached a position in which the only inconsistency will be when an enabling Act would apply and two provisions can be read as applying to the same matter. If it is a new provision under the Bill, such as the entry, inspection and arrest power, it will apply when other legislation is silent. That is what we have been saying. It is excessive when compared with all the pieces of legislation that we are dealing with.

Clause put and passed.

Clause 102 to 144 put and passed.

Clause 145: President to advise Minister -

Mrs C.L. EDWARDES: What is the need for this clause and why is it included? I want to get to the president's role and that of the chief executive officer by virtue of the chief executive officer having powers under the Public Sector Management Act. Who will approach the Attorney General for the budget? Who will approach him to say that super-duper equipment is needed to enable the tribunal to function in an efficient way? Who will the Attorney General approach when he wants to ask how the listings are going and what the delay process is? What is the relationship between the Attorney General and the president? Who does the Attorney General approach to learn about the ordinary running of the administration?

Mr J.A. MCGINTY: The position is no different from when the member was the Attorney General of this State. One would generally discuss with the head of the jurisdiction matters relating to budget resourcing and structural changes in courts. One would not approach the executive officer, because the executive officer's responsibility would be for the day-to-day administration of the court. I am sure that things have not changed that dramatically.

Mrs C.L. EDWARDES: The president could approach the Attorney General and say that the tribunal needs an extra 20 staff, but if the Attorney General wished to ask questions appropriately of an individual staff member under the Public Sector Management Act, he would have to approach the chief executive officer, would he?

Mr J.A. MCGINTY: Yes, that would be the line of responsibility. I suspect that in a budgetary sense it would be most likely the CEO of the Department of Justice and the president - although specifically with SAT, as the member would have found during her time as Attorney General when dealing with the various heads of jurisdictions, the president will be a head of a jurisdiction.

Clause put and passed.

Clause 146: Executive officer and other staff of Tribunal -

Mrs C.L. EDWARDES: The Victorian Civil and Administrative Tribunal has a chief executive officer appointed under its Act. The Attorney General is providing for the Director General of the Department of Justice to operate essentially in the same way. Public servants may be in charge of each of the courts. However, at the end of the day they report up the line through the director general to the Attorney General. The same sort of situation is provided for in the tribunal as it presently operates under the Supreme Court.

Mr J.A. McGinty: Yes, that is right.

Clause put and passed.

Clause 147 put and passed.

Clause 148: Annual reports of the Tribunal -

Dr J.M. WOOLLARD: I had a very short briefing. I was under the impression that I would have another briefing before the Attorney General came to the Table, so I would have an opportunity to meet with the parliamentary draftsman. During the briefing I was told that the boards and bodies which currently have grievance or complaints committees were following the passage of this Bill and would be required to put forward a list of grievances or complaints which would be tabled in Parliament.

Mr J.A. McGinty: What complaints?

Dr J.M. WOOLLARD: These are general complaints. One of the concerns is that, for example, general complaints might go to the Nurses Board of Western Australia but matters such as deregistration and serious offences might go to the tribunal. Who will make decisions on those offences? As a result of the costs involved, many offences that professional groups would like to see go to the tribunal will stay with the professional boards. I was told at the briefing that information on the complaints and grievances considered by groups such as the Medical Board and Nurses Board will be tabled in Parliament. SAT will consider those tabled reports, and if matters being dealt with by grievance or complaints committees should be directed to the tribunal, the State Administrative Tribunal will have words and ensure that appropriate complaints are directed to SAT. I am not sure whether this fits under the annual reports provisions of the Bill. I am very concerned that I have not had time to ensure there is equality with the handling of grievances and complaints among various groups. What will happen to groups operating with such complaint bodies at the moment?

Mr J.A. McGINTY: Each of the many Acts that deal with disciplinary matters to which the member refers will have a provision included that is complementary to the provision we are now discussing concerning the annual report of SAT. As the member rightly identified, clause 148 will require the president to submit to the minister an annual report to include details on the number, nature and outcome of matters that come before the tribunal. Obviously, SAT will report only on matters before SAT. Each of the bodies that retain a disciplinary function will have a similar provision inserted in the legislation. Proposed section 18A of the Psychologists Registration Act - clause 1013 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill - refers to the annual report. The new provision to be inserted is similar to the provision established for SAT. Proposed section 18A of the Psychologists Registration Act reads -

The Board's annual report is to include details of -

- (a) the number, nature and outcome, of -
 - (i) investigations and inquiries undertaken by, or at the direction of, the Board; and
 - (ii) matters that have that have been brought before the State Administrative Tribunal by the Board;
- (b) the number and nature of matters referred to in paragraph (a) that are still outstanding;
- (c) any trends or special problems that may have emerged;
- (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
- (e) any proposals for improving the operation of the Board.

This will ensure that tribunals at both levels - those exercising the summary disciplinary jurisdiction and that exercising SAT's substantial jurisdiction - will be required to report to Parliament in each year with statistical information about what has taken place. There will be an overlap. The boards are required to report the number of matters they have been referred to SAT, and SAT must report on the number of matters received. A reconciliation of the two will occur. The scheme will ensure that Parliament is advised of matters that come before SAT. It applies to the disciplinary area as well as those before SAT.

Dr J.M. WOOLLARD: I am pleased to hear that those instances will be reported to Parliament. I assume that groups in the list provided today by the Attorney General will be required to provide an analysis of the complaints that come before them.

Mr J.A. McGinty: Yes.

Dr J.M. WOOLLARD: It still means that there will not be equality with the professional groups. Some professional bodies are currently undertaking to look into minor grievances, but that role is not written into their legislation. That applies with the veterinary surgeons and, no doubt, many others. If the Bill had stayed on the Table for another week, I would have had the opportunity to see whether a clause could have been drafted to allow those groups a certain timeframe to continue in that role while their Acts were updated. I am a little disappointed the Attorney General is pushing the Bill through so quickly today. If something can be drafted in the meantime, will the Attorney General consider bringing this Bill back to reconsider such a clause at a later stage of the Bill's progress?

Mr J.A. McGINTY: I think I covered that matter in my second reading speech and my reply to the second reading debate.

Clause put and passed.

Clauses 149 to 171 put and passed.

Title put and passed.