STATE ADMINISTRATIVE TRIBUNAL BILL 2003
STATE ADMINISTRATIVE TRIBUNAL (CONFERRAL OF JURISDICTION) AMENDMENT AND REPEAL BILL 2003

Cognate Debate

On motion by Mr J.C. Kobelke (Leader of the House), resolved -

> That leave be granted for the State Administrative Tribunal Bill 2003 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 to be considered cognately, and for the State Administrative Tribunal Bill to be the principal Bill.

Second Reading - Cognate Debate

Resumed from 24 June.

MRS C.L. EDWARDES (Kingsley) [4.38 pm]: We will debate two Bills, one of which is about three centimetres thick. I am sure I can say with an element of truth that not one member of Parliament has read this "book"!

Mr J.A. McGinty interjected.

Mrs C.L. EDWARDES: I am sure the Attorney General has read it. I have no doubt that when this Bill was returned to Cabinet for approval the ministers did not read it.

Mr J.C. Kobelke: It is very useful if you live in a house that is draughty.

Mrs C.L. EDWARDES: There were two cabinet minutes dealing with this legislation. This legislation was drafted following the Barker report. The Barker report, by an eminent Queen's Counsel, went to Cabinet in June or July last year. Some changes were made to the drafting instructions for the preparation of the legislation on the recommendation of the Barker report. What came out of that is this Bill, which deals with the conferral of jurisdiction and all the relevant Acts.

Mr J.A. McGinty: Is it getting heavy?

Mrs C.L. EDWARDES: I will sit on it after. The other Bill is the State Administrative Tribunal Bill 2003, which sets up the tribunal itself, its format and powers. Both are very important pieces of legislation. In the lead-up to the election in 1993, the Liberal Party, under its law and justice policy, supported the establishment of an administrative appeals tribunal. We believe, as does the current Government, that it is absolutely essential to ensure that there is greater access for members of the public when dealing with decision making by public servants, agencies and tribunals and that some consistency of opinion comes out of that decision making as well. We wanted to ensure that the cost of that access was reduced, that it would not be legalistic and that there was almost a one-stop shop, and that is what the Attorney General has put forward - a one-stop shop.

Real benefits can be gained from establishing an administrative appeals tribunal. A single tribunal with quick, easy access could be established. It could operate in a user-friendly manner and be simple and effective. It could coordinate the hundreds of separate laws, rules and regulations applying throughout every facet of government and give them a degree of uniformity. It could produce cost savings through the abolition of unnecessary, wasteful duplication and through the improved streamlining of procedures. The first thing I think of is walking through the door and office rent and accommodation costs. Streamlining all those processes could produce cost savings. It could also create an informal, flexible and responsive environment and improve the decision-making process. In some respects, some of the boards and tribunals already have ease of access, low costs and quick decision making. I am not saying that that is the case with every tribunal, board or committee that makes a decision under all the respective Acts that are referred to in the conferral of jurisdiction Bill; it is not the case. However, some bodies already do that. I spoke to a person at one body yesterday who said that if that body received a complaint today, it would take the complaint to the board meeting next Tuesday, when the board would tell the body to investigate the matter as it believed elements needed investigation. The investigation would occur and the matter would be raised at the next month's meeting, when a decision would be made on whether there was a case to answer and, if there was a case to answer, a hearing would be held within the month. A complainant could receive a quick decision in eight to 12 weeks at very low cost. By comparison, the proposed tribunal will never be able to achieve that. It may improve the decision-making process for other organisations that currently have two years worth of hearings outstanding. However, it will not improve the processes of those smaller bodies and committees that provide one-on-one support and quick justice in their decisions. People do not need to bring a lawyer. They can be heard on their own.

We are told that the present tribunal structure is based on the Victorian model, which established the Victorian Civil and Administrative Tribunal. The important point to remember about VCAT is that it was built on a system that was already in place. It did not do what we are doing. The one big fundamental point that the Government needs to understand in establishing a system based on the Victorian model is that a benchmark had already been established. VCAT also provides for divisions covering civil, administrative and human rights issues. There are also coordinated fees across the wide range of laws, regulations and departments. Again, it is a very simple process for anybody who wants to access it. However, it is not without its faults and problems, and I will come to those a little later.

I will summarise in four points what the Attorney General has proposed, as explained by him. The legislation will create a one-stop shop for the public and businesses to appeal against decisions by government and industry boards. It is a good theory. The question is, will it work in practice? The conferral Bill contains more than 1 400 clauses - that is the large document I held up - and there are another 171 clauses in the principal Bill, and the two Bills have a combined total of more than 700 pages. Members can understand why I can say with some authority that not all members of Cabinet read the document, and certainly not all members of this place have read the legislation. It amends 142 separate Acts of Parliament and repeals another two Acts. The tribunal is expected to be up and running within five months. The Attorney General has already indicated that he wants it up and running by 1 January next year and that he would like the support of this House and the other place to pass this legislation in a timely fashion. We are talking about more than 700 pages, more than 1 400 clauses and amendments to 142 Acts of Parliament, as well as the wide range of groups and people who will be affected by this legislation; yet the Attorney General wants this legislation passed within five months. More than that, the tribunal is expected to handle more than 10 000 cases a year. That is 40 cases a day for every one of the 250 working days in a year. That is an enormous proposal, and at the least there will be a backlog. At the moment, some tribunals, boards and committees are not listing matters because they know that when this legislation comes into operation on 1 January, unless a hearing is listed, all those matters will be taken over immediately by the tribunal. As I indicated, some bodies - for instance, the Medical Board of Western Australia - have in excess of 70 outstanding cases; that is, more than two years worth of matters. Does the Attorney General intend that all those matters will go straight to the tribunal? I mentioned only one body. There will be 10 000 cases a year before the new tribunal, which equates to at least 10 000 complainants. From 1 January, all will expect their matter to be heard. That definitely will not happen because the level of funding will not allow for that. The Attorney General has indicated that SAT will receive $6 million from the current tribunals as well as another $4 million from the Government. SAT will have $10 million for operational costs, but it still will not work. I mentioned the Victorian model. It is regarded by public policy practitioners and legal professionals as the Rolls Royce of administrative appeals tribunals. SAT will be based on it. The only difficulty with the Victorian model is that it is underfunded. When a tribunal is underfunded, matters do not get heard and people do not get quick access or receive timely decisions. That is the issue with the Victorian model. Members should remember that the one fundamental difference between this proposal and the Victorian model is that Victoria already had a strong base upon which to build. We do not. Members should remember the number of Acts I referred to and the number of boards and committees I mentioned for which jurisdiction will be transferred.

The Barker report was released for public consultation in May last year under the title "Western Australian Civil and Administrative Review Tribunal: Taskforce Report on the Establishment of the State Administrative Tribunal". It recommended a separate structure for administrative appeals so that the constitutional values inherent in the separation of judicial and executive powers were not compromised. It also recommended a single tribunal consisting of a general division and two specialist divisions, one for state tax and the other for environmental and planning control. It stated that the Western Australian Industrial Relations Commission said that the areas of industrial relations and WorkCover should be kept separate from any amalgamation of the functions of existing tribunals and boards.

According to the Barker report, the Commonwealth has been the leading Australian jurisdiction in the establishment of a system to review the merits of administrative decisions. That system has been operating since the 1970s. During the three years to May 2002, Victoria and New South Wales established tribunal structures for similar purposes, South Australia achieved reforms through a combination of mechanisms and Tasmania carried out some reforms but believed it was too small to establish a full tribunal.

A 1971 report on commonwealth administrative review listed the cumbersome and technical natures and cost of the then system as the key inhibiting factors to its success. The cost is one of the critical issues relating to the establishment of an administrative tribunal. According to the Barker report, the stated aims of the Victorian Civil and Administrative Tribunal include the improved use of technology such as video links and interactive terminals. I understand that SAT will also have access to portal linkages.

The Barker report noted that South Australia has in effect had an administrative appeals court since 1994, and that the commonwealth Administrative Appeals Tribunal was singled out by the United Kingdom as an excellent example of a general tribunal, containing many of the elements it regarded as desirable for such a system in the United Kingdom. The report further noted that experience elsewhere emphasised the constitutional and administrative importance of providing Western Australians with a well-structured, consolidated, flexible and accessible system of civil and administrative review of decision making. I point out that the Liberal Party supports the establishment of an effective, low-cost, easy-to-access administrative appeals tribunal. However, these Bills will not achieve that. This is a monolith. The Government is doing it all at once and jumping in with both feet, and as a result some of the important elements of the reason for establishing such a tribunal will be lost.

The Barker report stated that a state administrative tribunal should exist for the benefit of the people of the State; be structured and operated so as to advance, at every turn, the interests of those who use it; give people the right to be informed of decisions affecting them; and have a primary obligation to ensure consideration without delay and act fairly and according to the substantial merits of the case. Again, we support that proposition. I recognise that the State Administrative Tribunal Bill contains a time frame in which decisions must be handed down. However, the system will fall down because of the lengthy period that will occur between the lodgment of the application and the date of the hearing. The benefits of tribunal hearings, such as the one-on-one aspect and ability to mediate and listen to people about their particular issues, will be lost.

The Barker report stated that composition at the top of the tribunal would be drawn from the Supreme and District Courts. The question is whether it will be legally top heavy. Although there is a need for tribunal members to contain some broad legal experience and knowledge, the point of the process is that it is not legalistic. I will talk about representation in detail later. A complainant can represent himself or have a lawyer represent him. Many of the propositions for the lower-level tribunals and boards that have been put forward by this Labor Government and previous Governments have contained a tendency to cut solicitors out of the process. If the Government does not want to cut solicitors out of the SAT process - there are arguments for and against that - it could at least provide the opportunity for people to be represented by unions. Many professional tribunals will be incorporated into SAT. I asked yesterday whether somebody could be represented by his union, and was told that the answer was no. That is a serious problem with the legislation and again points to the legalistic approach that will be taken by SAT.

Strangely, the other issue of composition is the need for practical experience. SAT will have jurisdiction over 142 separate Acts of Parliament. There will not be several public servants who have at their fingertips full knowledge of the issues of hairdressing, building, mental health, psychiatric treatment, guardianship, local government and planning. Full knowledge of all those issues will not dwell in one or even three individuals. People working on tribunals need to have broad, basic and practical experience related to that particular area.

One of the biggest complaints the Opposition has heard about this Bill is that when a complaint is made about a particular occupation or issue, the tribunal will not know what the complainant is talking about. When dealing with such matters at law, boards and tribunals must hear about a person's shower tap that leaks and about water that does not drain away from where the tiles are fixed.

I understand that building appeals tribunals will have a two-year reprieve. That will lead to some uncertainty in the industry. Although the Government has supported the industry on that matter, there is some uncertainty about what will happen after the two years. Many boards and committees are uncertain about what will happen. Indeed, many of them do not know, for example, with the matters that come before them, whether their services will be used to prosecute matters before the State Administrative Tribunal.

Although the Barker report was released and some officers have attended some sites, the Government has not been consultative. Consultation means sitting down with the industries and discussing how the Acts that regulate them will change. Until last week, many industries had not seen the parts of the conferral legislation that amend Acts relevant to them. Many boards and committees do not understand what will happen. They have not heard about some of the advice that I have received. The consultation process has been limited in that regard, particularly when dealing with the larger boards and committees.

Indeed, last week I asked the Attorney General's department for a copy of the draft organisational chart. That is not even complete. I understand that there might not be all the boxes with the levels ones, twos and threes - I do not understand that because, if the Government were serious about putting this legislation in place, that should have been worked out long before it came to Parliament. How does the Government know that the appropriate people will be appointed to cover hairdressers, builders' registration, local government and other decisions involving the public sector if the Government does not yet know what the structure will be? I thank the Attorney General's staff for their information and support. They gave me a copy of a proposed team structure. The

tribunal is to be set up in four parts: the guardianship and mental health review; commercial planning; review and appeal; and disciplinary matters. There are no figures on how many range support staff, decision support staff or counter officers will be employed. Many organisations have asked why there is a need to rush this legislation through.

The Barker report was released last year. I was told that the Government promised to consult with the public about this legislation. It was introduced on the last day of the June sitting to enable that consultation to take place over the past six weeks. The consultation process should not be just a discussion between the Opposition and the Government, and nor should the Government tell industries what it will do. The Government should consult with industries and discuss how the legislation will affect the Acts that regulate those industries.

Another important issue is that many people believed that the boards and tribunals would deal with minor disciplinary matters. However, that will not be the case under the conferral Bill. The tribunal will deal with all disciplinary matters. Hearings for minor disciplinary matters for which the users of that board or tribunal paid will now be heard by SAT, for which all taxpayers will pay. The Government has moved away from a user-pays system to a universal system whereby the taxpayers will pay for the establishment and operation of the tribunal.

I refer to the Barker report. Strangely, the task force recommended that existing local government building control appeal mechanisms should be retained, with SAT as a second-tier right of appeal. The task force also suggested a mechanism for the Guardianship and Administration Board and the Mental Health Review Board whereby they be collocated with, but remain discrete from, the tribunal. That has not happened. They are not collocated; they are incorporated with the tribunal. As I indicated, there is a separate team, but it does not address the concerns that were raised with Michael Barker by those within the profession when he was writing his report. I refer in particular to the advice we have received from the Attorney General's office. For example, 70 per cent of the workers dealing with guardianship applications are social workers. Rather than a system which will operate very quickly and effectively with those people and which would speak to them in a language that they can understand, an incorporated body is to be established. What will its priorities be? Where in the bigger schemes of things will be the complaint that is heard by a little board within eight or 12 weeks, as opposed to a complaint against a medical practitioner? Currently, a complaint against an architect might be heard fairly quickly and a complaint against a medical practitioner might take some time. What will the balance be under the tribunal? Where will the priorities be set? Will the dates for hearing be set as the applications are brought into the tribunal? In that case, members will find that inequities will occur, as opposed to what currently happens for many people.

The Barker report also recommended that the appointment of a president of the tribunal be on the recommendation of the Chief Justice in consultation with the Attorney General and the Chief Judge of the District Court. That has not happened. A Supreme Court judge and two District Court judges will be appointed. As I understand, three new positions for the courts will be appointed to cover that.

The Barker report also recommended that SAT should be able to order that any evidence or document should, for good reason, not be made available to other parties or to the public. I will refer to that later.

This is not the first report that has been conducted into administrative appeals in this State. As I mentioned earlier, in 1993 when we came into Government, under our law and justice policy I made it very clear that we supported an administrative appeals tribunal. I subsequently appointed Judge Gotjamanos, who has since retired, to conduct a review. That report was presented to the then Attorney General, Hon Peter Foss, in August 1996.

Mr J.A. McGinty: It is a good report.

Mrs C.L. EDWARDES: It is a good report, and a good discussion paper was issued in 1994 while I was the Attorney General. The Gotjamanos report is titled "Report of Tribunals Review to the Attorney General". Anybody who is examining this area of law in the future should also obtain a copy of the 1994 report. As I understand it, neither of those reports is in the Parliamentary Library. The Attorney General might like to make them available to the Parliamentary Library so that they are documented there for the future.

Judge Gotjamanos made many recommendations. I will quickly go through some of the key recommendations as they pertain to the tribunal with which we are dealing currently. Obviously, the first recommendation was to establish a new administrative appeals tribunal. The tribunal would serve the immediate and longer-term needs of Western Australia and would replace the current diverse appeal and review provisions with respect to administrative decisions by the creation of a general administrative appeals tribunal. Such a tribunal would operate as an independent entity, quite separate and distinct from the courts. I believe that one of the key elements that will prove to be the downfall of the proposed tribunal is its legalistic nature. That is one reason that the Opposition will not support the legislation - not because it does not support the establishment of a new

administrative appeals tribunal, nor the principles behind its establishment that the Attorney has placed before this House.

Judge Gotjamanos further recommended that the tribunal should operate as a merits review tribunal of first instance and also as a second-tier review body to review decisions or orders by first-tier tribunals and tribunal-like bodies. That would have taken the review process away from the courts - the Magistrate's Court, the Local Court, the District Court and the Supreme Court - and given it to the tribunal, and would have provided an appeal mechanism from those bodies to the tribunal to review decisions made. It would not necessarily have transferred the whole jurisdiction of some of those bodies, as proposed in this Bill. The recommendation states that the tribunal's role as a merits review body should have the following characteristics -

. *the tribunal should not be bound by rules of evidence, legal technicalities or legal forms.*

To change the words - for example, from scheduling to listing - will not change what will happen. Listing is scheduling. The proposed tribunal will still operate in a very legalistic way. It continues -

> *It should be able to inform itself as it thinks fit, and act according to equity, good conscience and the substantial merits of the case.*

. *the tribunal should act with fairness, informality, -*

Again, that is a critical element that will be missing from the proposed tribunal -

> *flexibility and quickness, and should operate as far as is practicable in an inquisitorial rather than an adversarial manner.*

Earlier I mentioned legal representation. The proposed tribunal will not necessarily give people the ability to even have their union represent them when it is a professional matter, which will make it an adversarial tribunal. The recommendation continues -

. *the tribunal should be empowered to allow either party involved in a matter to tender fresh evidence at a hearing;*

That is very important. I understand that that is provided for in the proposed tribunal. Often when a complaint comes forward to one of the bodies, new information comes to light as the matter is being investigated. One of the critical points that have been raised with me is that changes should be able to be incorporated. It may well mean a change to the charge or the complaint. Under the practice rules, there must be the flexibility to do that as fresh evidence or new information comes forward. The Bill allows for that to occur.

Recommendation 2 was for the tribunals to remain independent. The tribunals that were to remain independent were the Guardianship and Administration Board, the Legal Practitioners Disciplinary Tribunal, the Equal Opportunity Tribunal and the Freedom of Information Commissioner. I understand that the Mental Health Review Board was established only in 1996. This report was presented in August 1996, and that board was obviously not included in that recommendation. However, I have no doubt that the recommendation would have been similar to that of Michael Barker, QC.

I commend to the House, to members who are interested in administrative law and to future students a number of other recommendations in the report. They should take the opportunity to read them. I thank Judge Gotjamanos, who is currently in the House, for his time, effort and commitment in carrying out his work over a period. I also thank Graeme Merton, a very committed public servant who put in many hours dealing with this matter. These documents set the background for the task force review and the current legislation. I am pleased that the Attorney General mentioned that it was a very good report, because I felt that the fact that he did not specifically refer to it in his second reading speech was an omission.

Mr J.A. McGinty: As it is, people complain that my second reading speeches are too long. You have made that complaint on more than one occasion.

Mrs C.L. EDWARDES: I am guilty of complaining previously about second reading speeches. When a minister has to table a second reading speech, members know that it is too long. However, it is a very good report.

Mr P.G. Pendal: It still should not have been done.

Mrs C.L. EDWARDES: No, it should not have been done.

Mr J.A. McGinty: It is a very good second reading speech.

Mr P.G. Pendal: Second reading speeches should be made in this place. The Attorney General has undone a very good piece of work by not doing that. However, I will deal with him later.

Mrs C.L. EDWARDES: I now refer to some of the bodies and organisations that oppose the legislation. People have recognised that there has been a rush to have this legislation passed. However, when contacted, it was found that not all of them had caught up with the legislation. Some of them even said that they were still waiting for a meeting. Indeed, one lady from the consumers association with whom I spoke last night is very anxious to have a briefing, given the great emphasis that the Attorney General has placed on consumers having a very important role in and receiving a great benefit under this legislation. I have been given three dates in the next week or two when people from the association will be available. I will pass that on to the Attorney General and I ask him to please organise a meeting with them. It is symptomatic of the fact that people who will be affected by or have an interest in this legislation are yet to be briefed or to have a second or third briefing to understand how their Act will be affected.

The list that I have of people who oppose the legislation is not comprehensive. In fact, I will place before this House only the broadest areas. I have contacted groups from those areas to get an idea of their support or otherwise for the establishment of a tribunal. The Western Australian Local Government Association supports the tribunal in principle, as does the Opposition. However, that support is contingent on the delivery of benefits, including access and affordability, retention of specialist membership in technical hearings and an assurance that local government will not be affected adversely. When these items cannot be achieved or when legislation or regulations are inconsistent with the objectives that are put forward, the Western Australian Local Government Association reserves its right to withdraw support. Under this legislation, the provision that enabled regional and remote communities to pursue compensation under the Land Administration Act through the Local Court would no longer be available, which would reduce accessibility and significantly disadvantage those communities. I ask the Attorney General to address that matter in his response. I understand that magistrates will be given jurisdiction to deal with tribunal matters. As such, they should have the same access that is presently available to regional and remote communities. Although the association supports the appropriateness of employing administrative rather than judicial review of a variety of matters, the overriding concern is the potential increase in cost, which would impact on the ability of local governments to defend matters. Similar concerns were raised with the Victorian system.

The association is also concerned at the ability of the State Administrative Tribunal to review decisions made under the Environmental Protection Act 1986, especially given the proposed land clearing provision. Again, I would like the Attorney to identify specifically in his response how that will be dealt with under the legislation. I understand that it has been incorporated, whereas the Barker report recommended that it not be included. I ask the Attorney General to address the reasons for that change.

When the achievement of benefits listed by the task force cannot be substantiated before embarking on change, the association seriously questions the rationale for reform of the magnitude proposed. This is what I describe as putting both feet in the water, rather than first putting in a toe to see how it works. The association supports alternative dispute resolution methods such as mediation and conciliation. However, it warns of potentially higher costs under the new system. The association has said that the independence of SAT, and the extension of that independence to the appointment of members, is very important.

The Motor Trade Association of Western Australia represents 1 700 businesses from all areas of the automotive industry, including retail sales, service and repairs. The annual turnover of the automotive industry is about $10 billion, and it employs about 40 000 people in Western Australia. This includes about 600 licensed motor vehicle dealers and about 750 automotive repairers. In its submission to the Gunning inquiry the Royal Automobile Club of Western Australia stated that the Motor Vehicle Dealers Licensing Board provided a valuable service to the community in regulating the motor vehicle sales industry, and that the composition of the board and its method of operation offered unique features that would be lost by a tribunal lacking a consumer and industry perspective. The advantages of SAT were considered to be that it would guarantee the separation between licensing and disciplinary functions and provide a common body of law for licensing various occupational groups. However, the disadvantages of SAT were considered to be that it was likely to be overly legalistic and bureaucratic, would not provide as timely a response in dealing with industry issues, and that the lack of knowledge in industry and technical matters could result in poor decisions and involve lengthy delays through appeals.

The MTA has stated that SAT will be a purely reactive disciplinary body rather than a proactive body such as the Motor Vehicle Dealers Licensing Board. One of the biggest issues raised by all boards and committees involves one-on-one contact - the ability to help a person who did not intend to make a mistake to learn from that mistake. That is one of the biggest losses that most boards and committees foresee with the tribunal. They consider that the tribunal will be reactive rather than proactive. As such, people will not necessarily walk away from a hearing and say, “Thank you, I wanted to be on the right track and needed to be put on the right track.” It is considered that the tribunal will be far more elaborate than is necessary for motor industry affairs. Again, that issue has

come through from some of the smaller boards and committees. They wonder where they will fit within the bigger scheme of things. If SAT has similar outcomes to the Victorian Civil and Administrative Tribunal, it will be overly legalistic, there will be delays, and decisions will be made that will not be acceptable to industry. The Motor Trade Association has said that if advisory bodies were regulated by the department, it would downgrade their status and make it more difficult to attract quality candidates, leave the minister with total control of industry regulation, and allow the minister or the bureaucracy to ignore advice. According to the MTA, merged boards might achieve some cost savings but would represent the worst possible scenario, as there would be the risk of people with no knowledge or skill of the motor industry making decisions on its regulation. Again, that comes through as a very significant point. If the Attorney says that the MTA is wrong, it highlights a lack of consultation and that people do not understand how the tribunal will operate.

The Real Estate Institute of Western Australia has voluntary membership and represents about 80 per cent of practising licensed real estate and business agents. REIWA accepts the broad principles of SAT. It is recommended by REIWA that if the role of the Real Estate and Business Agents Supervisory Board changes to become an advisory role only, the title of the board should reflect that change. REIWA has stated that the advisory board should comprise a majority of real estate practitioners to advise on all and any aspect of real estate practice or transactions, and that the four-year term for board members should be reduced to three years. When the Barker report was provided to the chief executive officers of departments and agencies, some CEOs sent the report to their boards, committees and regulatory bodies for their input; however, others did not. Therefore, there is an inconsistency in the knowledge base of many boards and committees. REIWA has stated that no staff member of the Department of Consumer and Employment Protection or any other section of permanent bureaucracy should have participatory or decision-making functions on the advisory board or SAT. I understand that the commissioner will lay the complaint of DOCEP for some of those regulatory bodies. Even though a board might carry out the prosecution function, it will not be the complainant. The commissioner will put the matter before the tribunal. REIWA has stated that objectivity, transparency and accountability would be better served if DOCEP were entitled to make recommendations to Treasury rather than Treasury being required to comply with DOCEP's decisions.

Some of the boards and bodies have highlighted issues concerning the establishment of SAT. I understand the Minister for Consumer and Employment Protection will bring forward proposed changes to DOCEP later this year in terms of those bodies arising out of the Gunning inquiry. This demonstrates that there is not a full knowledge base of what is occurring.

The Housing Industry Association is a national body of about 30 000 members, including about 2 800 members in Western Australia. It is the largest representative association within the building and construction industry. The housing industry contributes more than $8.7 billion a year to state growth, including $2 billion in new housing and $1.7 billion in renovation work. It employs 80 000 people. HIA does not support the recommendation for the departmental regulation model to move the roles and functions of the Builders Registration Board of Western Australia into DOCEP, with the Builders Registration Board to be retained as an advisory board. Those proposals are still to come from the Minister for Consumer and Employment Protection and are not covered by this legislation. HIA has stated that the Builders Registration Board has performed licensing and compliance functions properly and effectively since its creation in 1939 under Governments of all persuasions, and that there is no compelling reason to justify any action that would prevent its continued existence; that is, if it ain't broke, don't fix it. HIA has also said that the assessment of machinery of government objectives and guidelines from the Department of the Premier and Cabinet for review showed that the departmental model will not achieve either its objectives or guidelines. It states that the Builders Registration Board should be retained and excluded from any implementation of the departmental regulation model.

The Builders Registration Board is currently self-funded. As such, it is not a cost to the Government. That point has been made by many self-funded boards and committees. They currently involve a user-pays system and not a universal taxpayer system. HIA has outlined that there will be numerous additional costs for DOCEP in administering changes to the law, the establishment of new systems, and the recruitment and training of staff. Serious consultation must take place with HIA and many other bodies for which changes are proposed involving DOCEP before the legislation is introduced into the Parliament.

Another very important change from the Barker recommendations concerns mental health. The Barker recommendation of collocation is very different from the notion of incorporation that is proposed in the Bill. Neither the task force nor the Gotjamanos report recommended integration of the Mental Health Review Board and the Guardianship and Administration Board into SAT. The Government has made a fundamental change to that task force recommendation without even the slightest attempt at explanation or justification. That also raises the question of consultation with relevant authorities before the decision was made; and the question of whether

they had or have any concerns and, if so, how those concerns have been addressed. The people in the mental health area believe that the convoluted process for applications to be handled under SAT can result only in significant delays - the opposite of what the Attorney General has been claiming. They want to know how the proposed model will take into account the sophisticated case tracking system that is already in place to ensure that the board meets its statutory and other obligations. I understand from the briefing yesterday that that case tracking system is proposed to be incorporated into the new tribunal. The Mental Health Review Board has received significant support from the community. The question that must be asked is where is the recognition of the current high level of expertise of the board staff and how will this level be maintained under SAT. Another fundamental change is the requirement that reasons for final decisions must be prepared in all matters. The question that must be asked is how will this be achieved without a significant increase in resources and, therefore, funding. The other question in respect of guardianship and administration and mental health review is how will the provisions for privacy and confidentiality be retained under the Bill when all that will occur under the new structure is that there will be a separate team.

The State School Teachers Union also has some serious concerns about the Bill. It believes the Bill will grant excessive powers to the tribunal or its agents and may intrude unnecessarily on the legal rights of individuals who may have to front before the tribunal. The union is concerned also that the Bill provides only a limited right for persons to be represented by someone other than a legal practitioner. The union believes that it may be called upon to assist and represent its members yet its capacity to do so will be limited to the whim of the tribunal or to whether by chance the rules or the regulations will make provision for that. Although it was mentioned in the briefing yesterday that this could change under the regulations, I do not believe a broad interpretation of the Bill will allow that to occur; therefore, the Government will need to make substantive changes to that part of the Bill. The union is concerned also that there is no guarantee that a party before a tribunal will be able to be represented by other than a legal representative. The union believes strongly that rather than meeting the objects of speed and minimal cost, this limitation will serve only to complicate matters, and that the provision of the Bill that deals with representation needs to be changed. The union also raises the issue that the basic legal right to silence has been written out of SAT. To quote the union, to say that the removal of such a right beggars belief is to put it mildly. The union has serious concerns about that matter. We have debated in this House legislation for the establishment of a Corruption and Crime Commission and legislation to deal with bikies. Some very strong powers have been proposed to deal with people such as bikies. As the union says, we are not talking here about counter terrorism or corruption -

Mr J.A. McGinty: I do not think the State School Teachers Union is intended to be included.

Mrs C.L. EDWARDES: Then that again highlights a serious issue of lack of consultation, because this letter from the union has gone also to the Attorney General -

Mr J.A. McGinty: Yes.

Mrs C.L. EDWARDES: The union is concerned that unions will not be able to represent their members. SAT will be undertaking disciplinary action in respect of many boards and professional associations that may also have links to unions. The union is concerned about the removal of the right to silence.

Mr J.A. McGinty: My understanding is that it is not intended that a disciplinary or registration function for teachers be included. That may change further down the track, but I do not think it will.

Mrs C.L. EDWARDES: If that were to change down the track in respect of teachers, then that would still raise the issue that this administrative appeals tribunal will be dealing with low level matters, not high level criminal matters, yet unions will not be able to represent their members except at the whim of the tribunal.

Mr J.A. McGinty: You have now become a champion of the working classes, have you?

Mrs C.L. EDWARDES: We have always believed that if people want their unions to represent them they should be able to do so. It is a matter of choice.

Mr J.A. McGinty: That was a cheap shot on my part.

Mrs C.L. EDWARDES: The union believes that it is not good enough to suggest that the removal of the right to silence does not matter, because whatever will be said will not be admissible in evidence in criminal proceedings. The question that must be asked is what about civil proceedings. The union believes also that the search and seizure powers in the Bill are enormous and will extend to persons beyond the party or parties before the tribunal. It believes that these powers are excessive and unnecessary, represent an infringement of rights and may lead to organisations curtailing what should be vigorous representation of their members because of concerns about the effects of the legislation.

The reason we oppose the Bill is that there is a real risk that the Attorney General will create a monster that will achieve precisely the opposite of what is intended. The Attorney General is aiming at a Rolls Royce model like the Victorian Civil and Administrative Tribunal. However, VCAT is experiencing problems because of a lack of funding. The Government is aiming for a Rolls Royce model but is trying to achieve that with the money that would be needed for a Commodore model. A variety of organisations and associations have warned about the dangers of a structure that will become bogged down in bureaucracy, that will increase costs instead of reducing them, that will complicate rather than simplify procedures, that will deny ordinary people their basic rights, and that will impose excessive and unwarranted restrictions on people. Warnings have also been given about the departure from the recommendations of the task force in respect of guardianship and administration and mental health review without any explanation and with a lack of proper consultation. The assurances from the Attorney General are not sufficient. Many organisations have raised concerns about the Bill, yet there has been a total lack of consultation. The Attorney General needs to take note of that. We support the establishment of an administrative appeals tribunal and the principle of what the Attorney General is trying to achieve. However, we do not support this model. The need for an overhaul is obvious. However, it should be achieved gradually rather than by having one overpowering and massive operation that will tie everyone up in knots for ages trying to sort it out. There are already huge delays in some areas. The last thing we want or need is to have that process slowed down even further.

MR B.K. MASTERS (Vasse) [5.38 pm]: In many respects I regret having to support the Opposition in opposing the State Administrative Tribunal Bill 2003. In theory what the Bill is trying to achieve is highly desirable. However, I emphasise the words "in theory". The Bill aims to consolidate many of the existing tribunals, boards, authorities and other entities within government that have a legislatively-created role in making decisions about a huge range of issues. One has to look only at the three-centimetre thickness of the supporting Bill - the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 - to understand just how all-encompassing the State Administrative Tribunal will be. It makes a lot of sense to consolidate all those entities. Why do that? It should create savings in time by effectively providing a one-stop shop rather than leaving people to hunt around to find the appropriate entity to which to take a complaint about or with which to lodge an appeal against a government agency. Cost savings should also result from the time savings. A consolidated tribunal should lead to consistency in decisions so that over time a very good body of case law - I understand that is the legal term - is developed to ensure that it is easier to arrive at decisions.

According to the explanation I received, this legislation will not achieve many of those goals. First and foremost, to adopt the description used by the member for Kingsley, it will be a monolithic body. Given its sheer size and its many inherent complexities, it will be cumbersome and difficult to understand and navigate, and slow moving internally. I fear that the size of the organisation will lead to the periods in which decisions are made being extended rather than shortened. A number of factors could potentially lead to significantly increased costs. One of the greatest concerns I have about the State Administrative Tribunal is that it will be a legalistic entity, and the absence of lawyers will be the exception rather than the rule. The presence of lawyers will result in significantly increased costs. I will refer to the issue of costs in a minute.

Finally, the legalistic nature of the tribunal will make it difficult for ordinary members of the public to access and interpret many aspects of its activities and decisions. In fact, it could be argued that rather than being progressive, the State Administrative Tribunal will be something of a dinosaur. By that I mean it will be slow moving and a significant consumer of taxpayers' funds and other resources. I should be a little careful here because, by definition, dinosaurs have small brains. I do not wish to imply that the mental ability of the people involved with the tribunal will be in any way poor or less than average. However, a very large entity that involves many levels of activity is akin to a small brain in which neural messages must pass from one end of a very large body to another. It can take a very long time. Rather than being a new, beaut genetically modified organism that encompasses the best of everything, this new body may be a throwback to a dinosaur and combine the worst features rather than the best features. I believe those issues are serious and important.

Members will appreciate that I am not a lawyer. I do not have any legal training. However, to a limited degree I have been exposed to some of the existing tribunals that operate in this State. I once appeared as a witness for the former Department of Conservation and Environment in a case before the Town Planning Tribunal, of which David Malcolm, the current Chief Justice, was the chairman. It was very legalistic, complex and expensive. The people who sat on the tribunal did not have a great deal of expertise in environmental matters and I was less than satisfied with the outcome. Nonetheless, the tribunal was established for a particular purpose, and I understand it has performed that function very well over the years.

I have also had two experiences with the Small Claims Tribunal, which I understand is now called the small disputes section of the Local Court. Those two instances provided lessons that were important in determining my position regarding the State Administrative Tribunal. About seven or eight years ago when I was a

consultant I was involved in a dispute with a caravan park proponent who I believed owed me about $1 000 - not a large amount of money. I lodged a form with the Small Claims Tribunal, which cost me $24 or $26. The duplicate was then forwarded to the person with whom I had the dispute. To cut a long story short, that person told me that he took the piece of paper to his lawyer, who said, "For crying out loud, I will charge you a lot more money than the $1 000 or so that this person wants from you. You should pay the bill rather than waste our time." In that instance the tribunal ensured that the resolution was timely, cost effective and a very good outcome for me. Justice was not just seen to be done but was done, because at the end of the day I received most of my money.

The second example occurred earlier this year and involved the Busselton Holiday Village - I will refer to it by name because it is on the public record - in which the bulk of the people live in transportable park homes. A small portion of the village was a caravan park for tourists and other people who required short-term accommodation. The bulk of the village was occupied by retired people in well maintained park homes. A difficulty arose when the park owners decided to increase their rent by an average of about 35 per cent - a very significant increase, very much above the inflation rate. Not all 80 of the park home residents were affected by that increase; it was 20 or 22. They approached me because they were very upset with the prospect of having to pay the 30 or 35 per cent increase. One of my pieces of advice was to lodge a small disputes claim with the Local Court. The cost was about $32, and I understood that no lawyers would be involved and the residents could represent themselves under the Residential Tenancies Act and argue their case before the magistrate, and the owners of the village would have to do the same thing. Twenty couples from the Busselton Holiday Village lodged their small disputes form and paid their $30 or $32. To cut a long story short, a preliminary hearing was held. This is where the whole issue went pear shaped. The lawyer representing the Busselton Holiday Village made a preliminary submission to the Local Court and, on the basis of the complexity of the issues surrounding the case and that 20 people were acting against the owners of the holiday village, he sought legal representation for the defendants, the holiday village owners. Unfortunately, in my view, the magistrate said, "Yes, I agree with you. There are some complex issues here; therefore, you are allowed to be represented by a lawyer." Of course, the magistrate then turned to the person representing the 20 or so complainants and said that as he had allowed a lawyer to represent the owners of the holiday village, they also could either represent themselves, get someone else to represent them or hire a lawyer to do so. To cut a long story short, the mere fact that lawyers were involved from then on in that small dispute episode within the Local Court absolutely terrified every one of not just the 20 or 22 complainants, but also the entire 50 or 60 people who had gone to the preliminary hearing to find out exactly what would happen in the case. In their minds they had lost the opportunity to have their say in court; they had lost the opportunity to have a decision made expeditiously; they had lost the opportunity for the cost to be kept to a low and manageable amount - remembering that all these people were retirees and the vast bulk of them were pensioners; and they had lost the opportunity to listen to and make a contribution to what they thought would be a fairly simple, clear-cut, easy to explain and understand series of disputes that they had with the owners of the Busselton Holiday Village. Again, to cut a long story short, the scare tactics worked and every one of those 20 small disputes were withdrawn by leave of the court because the people who lodged them had come to the conclusion that they could not afford the risk of paying a very large sum of money for lawyers to have their day in court. I take this opportunity to thank Geoff Widdicombe, the lawyer who represented them largely on a pro bono basis. There was a very significant reduction in the bill from Shaddicks Lawyers, the Busselton-based law firm that assisted the retirees who were the complainants in the Busselton Holiday Village case, and I am grateful for the assistance it provided.

I repeat: my great fear is that the State Administrative Tribunal will be the complete opposite of what should be created by an amalgamation or a consolidation of all the existing bodies, tribunals and other entities into one tribunal. In my view it will be costly. I have given just one example from the small disputes section of the Local Court in which a case went from a very cheap to a potentially very expensive option, and it scared all those people away. The threat of a significantly large expense to have their day before the new State Administrative Tribunal will deter many people from bothering to even take the next step and lodge their complaints. It will be slow, primarily because we are creating such a large entity. Because of the way in which dinosaurs operate, it will be slow getting messages from one end of the animal to the other. Unfortunately, I believe it will be seriously legalistic, which means that the average person in the street will not be able to understand the vast bulk of the debate and the issues raised and conducted within the tribunal. It will be very complex, not just because it will be legalistic but also because it will be such a large organisation.

I believe there is a better solution. We could, for example, amalgamate the 150 or 250 existing bodies into just three or four specialist tribunals, each of which would have a community of interest - to borrow a term from the Electoral Commission. I understand that the current proposal is to have three or four internal administrative sections within the State Administrative Tribunal. To a certain degree, that mimics the sort of solution I am suggesting. However, the big difference is that those three or four internal administrative sections will have a

common tribunal head or entity sitting above them, there will be a significant number of managerial staff sitting above those three or four internal administrative sections, and it will be the job of those managerial staff to manage the 200 or so board members who will be appointed over time, as well as manage the three or four administrative sections that will be created. I see significant opportunity for complexity, duplication and anonymity, which is to be regretted because people need to be able to stand up and be accountable for their decisions. Also, as I mentioned earlier, the time and cost imposed by the new State Administrative Tribunal will be significant.

I have not read the Barker report, but I take the opportunity to point out that I went to school with Michael Barker. In those days he was known as "Choco". I do not know exactly what that nickname referred to, but Choco Barker has become a far more serious person than he was at school. However, I commend him for the report. It was a good summary of all the issues and it made some very strong recommendations. Even though there should be some strong ties between Michael Barker, QC and me because of our school affiliations, nonetheless I express my opposition to what the Government is trying to do in the State Administrative Tribunal Bill 2003.

MR R.A. AINSWORTH (Roe) [5.57 pm]: If I were to take at face value the basis of the Attorney General's second reading speech on the State Administrative Tribunal Bill and the benefits outlined in his speech, I could support the formation of the State Administrative Tribunal and certainly the idea behind that sort of body. However, one must look at some of the suggestions in the Attorney General's second reading speech about how this organisation will work. The first that comes to mind is that it will establish a more modern, efficient and accessible system. Modern it might be; however, one could certainly question whether it will be efficient. As other speakers have mentioned, a huge number of people will be involved in this whole process on either a permanent or part-time basis. Whether that sort of system will be efficient raises a lot of questions. I doubt it greatly. Whether it will be an accessible system also is open to question. Although the existing system has its flaws, at least it is accessible to people when they know which particular tribunal or body they must deal with to solve their problems, and that is the extent of the question. I am not sure that the same view of accessibility will be held by the ordinary person seeking some redress under the State Administrative Tribunal.

The Attorney General also suggested in his speech that the process will be less expensive. The same sentence suggests that the procedures will be more flexible than those used in traditional courts. A lot of the tribunal processes inherent in the existing Acts do not have a court attached to them. From the briefing I had on this Bill, and in concert with the comments of other members, I came to the conclusion that rather than reducing the level of interaction between someone bringing a case before the new tribunal system and the legal profession, this process will increase it. In other words, it will become more rather than less legalistic, and inherent in that is additional cost rather than less cost to the person seeking some redress under the tribunal. Although the claim made by the Attorney General is a fine one, I do not believe that that will translate into what will happen; in fact, it will be quite the opposite.

Sitting suspended from 6.00 to 7.00 pm

Mr R.A. AINSWORTH: Prior to the dinner break I was listing some of the areas in the minister's second reading speech in which he mentioned a range of positive benefits for the introduction of the State Administrative Tribunal. Although I agreed that they are laudable objectives, if they can be achieved, I was concerned that in many cases quite the opposite would occur, which would be most detrimental to individuals seeking to take an action under some procedure in this new process.

One matter that I do not think I mentioned is the more appropriate and timely means by which citizens can obtain administrative justice, and I do not see anything in this process that would achieve that. Certainly nothing sticks out as being the means by which that would be achieved. One would assume that provided the existing tribunals are constituted quickly under law and operate appropriately, if a citizen were to direct an appeal to one of the tribunals, if it were doing its job properly it would hear the case as quickly as is reasonable. A new process would certainly not operate better; in fact, because of the large size of the State Administrative Tribunal and the potential for it to hinder rather than help timeliness, I suggest that the opposite could occur. For those reasons, and many others that I will not take up the time of the House mentioning, I believe there is merit in the idea of a state administrative tribunal but not the model that is being suggested by the Attorney General.

The member for Kingsley listed a number of major organisations which, while supporting the general concept of an efficient and accessible system for appeal, were not happy on two fronts. The first related to the processes as outlined in the Bill and the second was the degree of consultation that had occurred with the organisations prior to the introduction of this Bill into the Parliament. I concur with the point of view that was put by the member for Kingsley about the lack of consultation with some of these organisations. For example, the Australian Medical Association, which by anyone's standards is a fairly large and important body, said that there was a lack

of consultation. It believes that the current system with the Medical Board of WA is preferable to the State Administrative Tribunal system. The association referred to previous reviews of the Medical Act; one in the 1990s by Professor Ralph Simmons, professor of law, and another more recently in 2001-02 by Professor Byant Stokes. In both cases the reports advocated a medical tribunal under the Medical Act as opposed to a body under the auspices of this legislation. The 2001 preliminary report suggested a tribunal of five members, comprising the chairperson and deputy chairperson who would be legal practitioners, two medical practitioners and a lay member. That model is similar to the tribunal that is in place in New Zealand, and it is supported by the Australian Medical Association.

The proposed State Administrative Tribunal model envisages a tribunal comprising three members: a chairperson who would be a legal practitioner, a medical practitioner and a lay member. The Australian Medical Association would certainly not accept that model. I can understand the association's reasoning, because in that group of three people only one person has medical expertise. The lay person could have some medical expertise, but that is not a requirement, and the same applies to the chairperson. A matter before the tribunal might involve an intricate medical procedure, yet only one person on the tribunal would have medical knowledge and he would have to advise the other two members. I believe that is less than desirable. When only one person has expertise, there is only one point of view. A medical tribunal might deal with many complicated issues. It would be desirable to have two medical practitioners with medical expertise as members of the tribunal.

That is an example of the Bill, based on the second reading speech, being laudable and workable, but when one gets into the detail and looks at the practical aspects of the various bodies that would be part of the State Administrative Tribunal, it becomes clear that the process may be flawed. Doubtless there are many other examples that members have yet to appreciate fully. The size of the document has been referred to. One member spoke of a three-centimetre thick document, and he is probably being conservative. It is clear from the list of organisations covered by the Bill that many organisations and Acts are encompassed in it. The general public would have no idea that all these organisations are included, but it would have been aware of the disturbing aspects of their inclusion had people been widely informed of the facts.

When one looks at some of the major organisations that were referred to earlier this evening by the member for Kingsley as well as what one might call the more minor organisations and smaller pieces of legislation that are encompassed in this Bill, it is clear that it is likely that many other areas of concern have not yet been raised because people have not woken up to the fact that they are included in this all-encompassing State Administrative Tribunal Bill. For those reasons and because there is considerable concern not only about the processes embodied in this Bill but also about the lack of consultation which people have mentioned as late as today, I am certainly opposed to the legislation as it stands.

One more matter of concern has been raised with me. I can only report it because I am not sure of its validity, but it was reported to me that even at this stage of the Bill being debated today, the Government has already made moves to lease or fit out new premises for the accommodation of the State Administrative Tribunal and all the associated office space it requires. That seems a little presumptuous. The Government is assuming that the legislation will pass. It is making those commitments prior to the legislation's passage through this House. I am not sure whether that information is accurate, and I would certainly welcome any information to the contrary. My source assures me that it is correct. If that is so, it is a worry, because the Government is presuming that something will happen before the legal processes in this place - in the true sense of the words - have even begun and has gone ahead on that basis. It concerns me and is more evidence of the rush in which this piece of legislation has been introduced into the House. I have mentioned that although there has been a lot of talk over many years about a process of this kind being put into place, the Government seems to have undertaken consultation with unseemly haste. Likewise, if my information is correct, the Government has also acted with unseemly haste in setting up a premises and structure for the accommodation of the State Administrative Tribunal.

On that basis, we will not support this legislation.

DR J.M. WOOLLARD (Alfred Cove) [7.10 pm]: I comment on this Bill or, rather, this dog's breakfast that has been dished up for us. I am disappointed that the Attorney General is not in the Chamber and that only four members of the Government are present. Like many people in the community, I agree with the principles behind this legislation. The Attorney General's second reading speech states -

> The benefits of a SAT . . . include a right to obtain reasons for decisions made by public servants; the removal of confusion in the public mind because one overarching tribunal is identified as the place where people can seek redress; less formal, less expensive and more flexible procedures

The second reading speech also states that the Government is putting aside $10 million from different sources for the running of SAT. It seems that a large empire will be developed through this legislation. This large empire is

likely to cost far more than $10 million. The Attorney General might say that it will cost less; however, during my briefing I asked if a cost-effective analysis had been conducted and was told that the answer was no, as it was rather difficult. I am not surprised that it would be difficult for the Government to conduct a cost-effective analysis.

I received some information from one of the professional groups that are unhappy with this Bill. I am informed that this legislation was one of the Labor Party's promises during the last election campaign and that the Attorney General appointed two committees to inquire into it. The members of those committees all had legal backgrounds and came from academia, the Attorney General's office and the judiciary. They submitted their reports to the Attorney General. The information from the professional group is also that the committees' proposals were based on the existing disciplinary system for solicitors.

The Attorney General's second reading speech also states -

> At the hearing of a proceeding before SAT a party to the proceeding may appear in person or may be represented by a legal practitioner. In certain circumstances someone who is not a legal practitioner may represent a party;

During debate on the Legal Practice Bill I asked the Attorney General about alternative dispute resolution. Some professional groups have told me that the tribunal will cost them more money, which means the cost of their services will increase, thereby costing the community more money. This Bill does not emphasise the desirability of alternative dispute resolution, although I acknowledge that part of the Bill relates to mediation.

I again refer to consultation. Over a week ago I asked for an emergency briefing, which I received some time yesterday. Some of the information I asked for still has not been provided. Yet, the Bill is on the Table and being debated. I can understand why the other members who have spoken are concerned about consultation.

The Government has no idea how much the tribunal will cost. No pilot study or cost analysis has been conducted. We do not know what it will cost. We know only that professional groups are saying that their expenses will increase because of the prosecution costs, and that those costs will be passed on to the community.

I mentioned that this tribunal was an election commitment of the Government. However, a professional group has advised me that no professional board or association was invited to contribute during the review process. I am sure that some groups were invited to contribute and that the group to which I have spoken is incorrect - I hope that is the case. I hope that the Attorney General will provide a list of all the professional groups he consulted. The professional group to which I spoke said that consultation on the SAT legislation was very rushed and that a meeting was held with representatives of many of the professional boards just a fortnight prior to the Bill being tabled. Maybe that is why the Government proposes a large number of amendments to this legislation. I think the volume of amendments is almost as thick as the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill.

The member for Roe spoke about the thickness of that Bill. Not only the Bill but also the volume of proposed amendments are thick. The Government should have taken the Bill off the Table, redrafted it to include those amendments and returned it to this place in a form that is easy to follow. During that time it could have sent it to a committee of both Houses for consideration. That committee could have sent it to professional organisations, unions and the many other groups that are affected by the 140-plus Acts this Bill will modify, and asked for their comments. Professional groups and the Parliament have not been consulted. As a member of Parliament, I do not believe I have been adequately consulted.

The groups believe that the timing for reviewing complaints will be delayed. The member for Kingsley mentioned the number of outstanding cases and grievances before the Medical Board of Western Australia. She said that there is a two-year waiting list. How will this Bill increase timeliness? We know that the system in New South Wales resulted in delays and longer periods before the resolution of complaints.

Instead of making it easier for people in the community who want to make complaints, this legislation could result in people having to wait longer for the resolution of those complaints. According to the Attorney General's second reading speech, the professional groups against which a complaint is made will have to take an adversarial approach to this tribunal. Obviously, many complaints will be adversarial, as professional groups are concerned they might be de-registered as a result of a complaint. The second reading speech referred to equality, but where is the equality in this Bill? I do not believe the Government has looked at the different Acts to be modified. Some boards affected by this legislation currently operate grievance committees. Those bodies with a grievance committee will still be able to take minor issues to that grievance committee; therefore, a lawyer may not be needed. I refer to the fortunate groups that currently have such an arrangement under their Act. Groups with no such arrangements under their Act will not be able to refer complaints to a grievance committee or another such body and instead will have to take all complaints straight to the State Administrative Tribunal. It

will be a very costly process. It is not equality, yet the Attorney General said this measure will provide more equality. The briefing I had yesterday made me wonder whether the Attorney General is aware of these matters. I would love it if he were to table a list of all professional groups and tradespeople to be affected showing which have grievance or other similar committees.

This Bill will be very costly. The way the Attorney General has worded this Bill means that lawyers will be needed to defend groups. Interestingly, I said initially that I agreed with the principle of this Bill. I know that some unions will be delighted to see powers taken away from certain boards. I appreciate the fact that any grievance going to a board will be tabled in Parliament. Therefore, the State Administrative Tribunal can look at the grievances to see what has and has not been referred to it. There is no conformity with the Bill. Although some unions are very happy to have an administrative tribunal, this to many people looks as though it is designed to create jobs for the boys, jobs for the girls and jobs for the lawyers.

Mr P.D. Omodei: Jobs for the Attorney General's mates.

Dr J.M. WOOLLARD: The member for Warren-Blackwood may say that. This Bill is being rushed through. When one looks at the number of people to be associated with this structure, one must wonder whether it is designed to create jobs for the boys and girls. Who are the lay people to be appointed in connection with the different Acts?

I am sorry, Mr Acting Speaker (Mr A.D. McRae), but I am having difficulty due to the debate taking place in the Chamber among other members - I bring that to your attention. Many jobs for lawyers will be created by this Bill. The Attorney General's second reading speech stated that SAT will comprise a judge and a lawyer, and that five members will constitute SAT in exceptional circumstances. Why is this measure being rushed through without consultation? Is it jobs for lawyers? Is it jobs for the girls and the boys?

Concerns expressed by professional groups include the fact that the Ombudsman will be prohibited from making inquiries on any matters referred to SAT. When an issue arose with a constituent and a council in my electorate, and I attempted to assist my constituent, the council referred the case to court, and the Ombudsman's powers were immediately stripped in relation to that matter. I wonder whether this Bill will do the same and strip the Ombudsman of such powers when matters are referred to SAT.

The SAT Bill will remove section 23 of the Veterinary Surgeons Act, and this will prevent the Veterinary Surgeons Board from conducting hearings. When I was provided a briefing yesterday by the Government, I was told that all professional groups that can currently conduct inquiries under their Acts will continue to be able to conduct inquiries under this Bill. However, this is not what I hear from veterinary surgeons, who are very unhappy at the moment because the Government appears to be listening to some professional groups but not others. This is where equality should apply. Some professional groups do not believe the Government is giving them a fair go with this Bill. I was told yesterday that all boards, if their Act allows them to hear complaints and investigate, will only have serious issues, such as nurses' deregistrations, going to SAT. Many nurses would probably be happy with such a measure if they felt they had fair representation on SAT.

The Government is considering excluding unions from representing their members. I hope an amendment will be put on the table in this regard. This is a very sad day for this Labor Government when it prevents unions from representing their members. When the member for Kingsley commented on unions, the Attorney General asked whether she was now representing unions. At that stage I felt like saying, "Well, someone needs to." Some unions are not happy with this Bill. They are not happy about the way in which this Government makes decisions without consulting them, particularly given the many Government documents which refer to consultation strategies. I believe there is a role for a Bill such as this, but not one that is rushed through the Parliament just because the Government has the numbers. I do not know whether this Bill is being rushed through the Parliament because the Attorney General now has the health portfolio and wants to get this Bill out of the way so that he can focus on health.

Mr J.A. McGinty: There's plenty more coming, don't worry about that.

Dr J.M. WOOLLARD: I am sorry, Attorney General, I missed that comment.

The way in which this Bill is being rushed through the Parliament, it may not have been such a good decision to include health in the Attorney General's responsibilities.

MS M.M. QUIRK (Girrawheen - Parliamentary Secretary) [7.30 pm]: I am somewhat ambivalent about speaking on the State Administrative Tribunal Bill this evening because I am reluctant to further delay its passage. We have been waiting four decades for decent administrative reform in this State and I therefore rise with reluctance because I am keen to see the legislation passed. I commend the Attorney General for these reforms, which are the most wide-ranging reforms of public administration in this State for many decades.

However, I rise because in my first years as a lawyer I read with some interest the Malcolm report - I am afraid that shows my age because it was published in 1982.

Mr P.D. Omodei: In 1908!

Ms M.M. QUIRK: I thank the member for Warren-Blackwood for being so gallant! It was published in 1982, of course.

At that time I had commenced work as a lawyer in the administrative review section of the then Department of Immigration and Ethnic Affairs in Canberra. For an administrative lawyer it was a very exciting time to work there. A number of Acts had been in operation for only a few years; we were, therefore, making precedents and establishing principles and a body of law in a range of areas relating to government decisions. For that reason, I stand tonight because it is important to stress the impact that this legislation will have on the mode of government decision making. It will definitely improve the decisions that are made across government agencies, the beneficiaries of which will be the public of Western Australia.

When I commenced work at immigration, a number of commonwealth Acts had been in force for some time: the Administrative Appeals Tribunal Act 1975, the Freedom of Information Act 1982, the Administrative Decisions (Judicial Review) Act 1977 and the Ombudsman Act 1976. There was, therefore, a package of legislation designed to complement each other and to ensure that all decision making was done in an objective, impartial and proper manner. When I joined the department in 1981 I was, in fact, interviewed for my position by Mr Wayne Martin, now a QC, who was also employed in that section at the time. As I said, a lot of the legislation was new and we were instrumental in ensuring the principles enshrined in the legislation were applied across all areas of administrative decision making and practices.

At immigration, I was employed in the Administrative Appeals Tribunal jurisdiction which, on any reading of this Bill, has helped me to become familiar with the similar principles set out in this legislation. Those principles include the provisions creating a tribunal rather than a court to resolve issues, which is an example of broadening access to forms of review. Another principle in this legislation is the need for the decision maker to provide a statement of reasons and for those reasons to canvass certain criteria and grounds. Finally, such legislation enables the hearing to be conducted in a relatively informal manner that does not rely on the rules of evidence. These are significant elements of the AAT jurisdiction, all of which are reflected in this Bill. It is an extraordinary statement for the member for Alfred Cove to say that she has been taken by surprise by this legislation when we have been waiting 40 years for it. Similar legislation has been operating at a commonwealth level for almost 30 years; its principles and impact are therefore in no way new.

In the Administrative Appeals Tribunal jurisdiction in which I acted, decisions of the minister to deport criminals who were aliens, or immigrants as they were then called under the Migration Act, were subject to review in the Administrative Appeals Tribunal, which was presided over by a Federal Court judge. Many leading decisions in the administrative law area were made at that time. I certainly discerned a radical change in the way in which decision makers in the department went about their task, bearing in mind that they knew their decisions were subject to review and they must articulate in writing the basis for those decisions.

At the time I joined immigration, many people working there recalled that migrants from different ethnic backgrounds were given different coloured cardboard files. For example, someone from Africa applying for migration into Australia was attributed a certain coloured cardboard file while an applicant from a European or Commonwealth country was given a different coloured file. As I understood the practice, the files of many people from countries less favourably considered by the department may never have been opened.

In my memory of the AAT legislation coming into play - certainly in Canberra - the department had previously operated under a regime of fairly active and endemic levels of discrimination against those people who could apply for migration to this country. By putting in an administrative review regime, the decision makers had to be impartial and objective and could exercise only certain criteria, which very much improved the level of decision making and gave everyone an equal chance. Although the AAT jurisdiction was limited to deportation of criminals, principles were laid down in the department that improved the level of vigilance and fairness, and radically altered - I believe favourably - the way in which decisions were made.

When the Administrative Decisions (Judicial Review) Act was enacted in 1977 it broadened the number of departmental decisions that could be subject to review, although that review was to the Federal Court rather than to the AAT. The Act set out a number of grounds for review, which included observing the rules of natural justice, not taking into account irrelevant considerations and so forth. Again, the department was aware that under the ADJR Act, as in the criminal deportation area, it must give a statement of reasons; that Act was expanded to include the range of decisions subject to review under the Migration Act. As I said, in the context of the AAT, I observed at first hand bureaucrats becoming fairer and much more objective in the way they went

about their business. To my way of thinking, that can only be a benefit to those people who are the subject of the decisions.

The member for Alfred Cove is somewhat suspicious of this legislation and does not think it will benefit the public. I am puzzled by that assertion because if decision making is improved and is based on only relevant considerations, it takes into -

Mr P.D. Omodei: The member for Alfred Cove is entitled to her view; this is a democratic process.

Ms M.M. QUIRK: I did not say otherwise, member for Warren-Blackwood. I said I was puzzled by that view because it appears to me that it is not in the public interest for bureaucrats to hide behind the decisions they make without the public having the right to a full and formal statement of reasons in appropriate circumstances. In short, I believe that decision making will be improved radically. The manner in which the tribunal will operate will mean that access to justice will be much enhanced. Natural justice will be afforded. People will feel that they have had their day in court without the expense of a formal court hearing. It will mean that irrelevant considerations and prejudice will be very much eliminated because a decision maker will be at risk of having to articulate formally the reasons for a decision. This is not an academic consideration. It is very important. When people's rights and interests are involved, it is absolutely crucial that a decision maker act in a proper and appropriate way. When I worked in the Department of Immigration and Ethnic Affairs I read the file of a person who had applied to enter this country. The person happened to be a dwarf. The decision maker had made a notation to the effect that the application was refused because the genetic pool of Australia should not be polluted any further! It was an extraordinary thing for someone to write on a file. If it had not been subject to a review, that decision and the basis of the decision would have stood. The applicant, who otherwise had many great claims to be admitted to this country, would not have known that the reason for the initial refusal was based on discrimination and ignorance. It is undesirable for that sort of decision making to be applied across the board. For that reason, it is ill-conceived to have anything less than a wholesale review of how decisions are made.

I commend the Attorney General for the most important reforms in administrative law that we have seen in this State for many years. We will reap the benefits of the reforms after a body of practice and law is established in the tribunal. I look forward to seeing much improved decision-making outcomes in the years to come as a result of the legislation.

MR P.D. OMODEI (Warren-Blackwood) [7.42 pm]: It is with some trepidation that I follow the member for Girrawheen, who is an experienced lawyer on matters relating to the federal jurisdiction of immigration. However, we are dealing with state legislation. The State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 and the State Administrative Tribunal Bill 2003 are significant and important pieces of legislation. It is important that we get them right. The scale and weight of the legislation gives the lie to the State Government's claim that it has stopped woodchipping old-growth forest! Collectively, the Bills amount to a large number of trees that have been turned into paper. The first Bill is voluminous; it consists of more than 1 400 clauses. The claim by the Government that the legislation will create a cohesive new jurisdiction to provide a clear and reliable framework for the resolution of a wide range of disputes and appeals that are currently undertaken by more than 40 boards and tribunals and a range of administrative and ministerial appeal processes is fairly ambitious. I argue that the legislation creates as many problems as it will solve. The two Bills will create the State Administrative Tribunal and amend 142 enabling Acts and repeal two other Acts. It will also consolidate more than 500 decision and appeal rights and place all jurisdiction within the State Administrative Tribunal. It is a worthy quest. If this State has legislation that can achieve that, it will be a good thing. However, this legislation is unwieldy. It will cost taxpayers, particularly low-income taxpayers, more than they can afford. We need legislation that is very clear and transparent to ensure that the processes put in place are accountable and affordable. Little players who appeal a minor issue should not have to employ legal counsel and be subject to all the associated costs. The legislation should be timely and flexible. Decisions should be made on the merit of law and uphold the principles of fairness and natural justice. If we have a Bill that achieves that, a State Administrative Tribunal is worth pursuing.

My experience with the Town Planning Appeal Tribunal does not bear that out. The previous system allowed appeals to the Minister for Planning and Infrastructure. In any given year there were approximately 800 appeals to the minister. They were dealt with by the minister's Town Planning Appeal Committee on a regular basis. At the same time, approximately 20 issues were referred to the Town Planning Appeal Tribunal each year. That was because the ministerial approach was much more timely and effective. The appeal tribunal, which was legalistic by nature, was more complex, costly and time-consuming. That is why there were 800 appeals versus 20 other cases each year.

Having examined the legislation to see which issues will be referred to the State Administrative Tribunal, I believe the legislation creates more complexity than simplicity in the process. For example, building controls are currently handled under section 15 of the Local Government Act. That section deals with the appeal

mechanism to the Minister for Local Government and Regional Development. The controls will be transferred to the State Administrative Tribunal. I understand there is some conflict within the Government about the view of the Minister for Local Government and Regional Development on that matter.

Another example is the Dog Act 1976, which has been amended several times. Sections 16A, 17 and 27 will be referred to the State Administrative Tribunal but the rest of the legislation will not. The remaining legislation will still be referred to the Magistrates Court or the Local Court. Section 16 of the Dog Act refers to the registration of a dog and the problem of dangerous dogs, which is a major issue in the community. Such a matter is appealable to the State Administrative Tribunal. Section 17 covers the seizure of dogs in relation to the registration of kennels. That matter will now be referred to the State Administrative Tribunal. Section 27, which relates to the licensing and approval of kennel establishments and the number of dogs somebody may keep, will also be referred to the State Administrative Tribunal. Section 26 is not being referred to the State Administrative Tribunal. Under section 26, if someone wants to own more than two dogs over the age of three months there is an appeal mechanism to the Minister for Local Government. That mechanism will continue. Sections 16A, 17 and 27 will be referred to the State Administrative Tribunal; however, the issue of whether a person is allowed to keep an extra dog or up to six dogs will still go to the Minister for Local Government. That will create confusion. It seems to be a very messy approach. Certain sections of the Dog Act will be referred to the State Administrative Tribunal whereas other sections will be referred to the Minister for Local Government.

There has always been an appeals mechanism on building regulations to the Department of Local Government and Regional Development. The intellectual knowledge about and expertise in building standards, the Australian Model Uniform Building Code and the different complexities of building regulations reside within the Department of Local Government and Regional Development. However, under this legislation, appeals on those issues will be sent to the State Administrative Tribunal. This tribunal will have to be the repository of all wisdom. I wonder how large that committee will be.

The most recent proposal by local government was to create a local government disciplinary tribunal to deal with allegations of misconduct and breaches of the Local Government Act. Those issues will now be sent to the State Administrative Tribunal. Having been a local government minister for eight years and having been involved in local government for more than 25 years, I believe that a tribunal to deal with the behaviour of councillors would be unworkable. I strongly supported the provisions in the Local Government Act that made councils responsible for behaviour, therefore imposing collective responsibility on a local government to create a code of conduct under which the local government could control councillors. That is preferable to an external force, which could create a situation in which allegations could be made about a councillor and that issue then be referred to a tribunal such as the proposed State Administrative Tribunal. An innocent party might have to seek legal counsel to represent him or her in a matter in which he or she has been set up for whatever reason. Members can imagine under our adversarial Westminster system a political party that did not like somebody on a council making vexatious complaints about that councillor. That councillor would be cleared in the long run, but he would have had to defend himself at great expense in court or before the State Administrative Tribunal.

I refer to the Town Planning Appeal Tribunal. Issues such as the clearing of land have normally come within the province of the Department of Agriculture under the Soil and Land Conservation Act, the Water and Rivers Commission under the Rights in Water and Irrigation Act, and the Environmental Protection Authority under the Environmental Protection Act. The Environmental Protection Amendment Bill proposes the imposition of huge penalties. Some local governments have chosen to require under their town planning schemes that development approval be obtained for land clearing. That approval will now be subject to appeal. It is my considered view that local government should not be involved with land clearing. I do not agree with the new legislation. The preferred option for me is for such matters to be dealt with under the Soil and Land Conservation Act and the Rights in Water and Irrigation Act. There is the possibility that permission may be required to clear a tree. In some local government areas, trees in paddocks have been considered to be part of the environment and farmers have been forced to apply for permission to clear single trees. If a local government considered that such a matter would require development approval and subsequently rejected the development application, the farmer would have the right to appeal that decision, obviously in this case to the State Administrative Tribunal. Not too many farmers are very wealthy at the moment. They may have to seek legal advice and representation in a lengthy and convoluted legal appeals system.

One concern is that the tribunal may be more cumbersome and bureaucratic, and lacking in efficiency and effectiveness, which will cause little people in the community a lot more pain than is necessary. Likewise, under the Land Administration Act, any compensation actions will be referred to either the State Administrative Tribunal or the Supreme Court. Land clearing, rights in relation to water ownership and a range of other matters could become subject to a long and drawn out legal process under the State Administrative Tribunal. I would like some assurances from the Attorney General on these matters. I would like to know that we will not be

putting in place something that is not more efficient and effective but is more costly, drawn out and convoluted than the fairly simple processes that are currently in place. Appeals under the Strata Titles Act to the District Court will also be referred to the State Administrative Tribunal. I referred to the relevant sections in the Dog Act. Rights of appeal will also be available under the Health Act and the Local Government Act, even in relation to the qualification of municipal officers. Those regulations will be removed from the Court of Petty Sessions and referred to the State Administrative Tribunal. People will not be able to pass wind without it being referred to the State Administrative Tribunal.

Mr J.A. McGinty: That might be a bit extreme.

Mr P.D. OMODEI: I would have to appeal from time to time. I hope that it is not too expensive. The report also proposes converting the right of appeal to the minister to a right of appeal to the State Administrative Tribunal on administrative decisions made under a heap of Acts relevant to local government, including the Environmental Protection Act 1986, except appeals on environmental impact assessment decisions under part 4, the Local Government Act, the Local Government (Miscellaneous Provisions) Act 1960, the Soil and Land Conservation Act 1945, the Strata Titles Act 1985, the Swan River Trust Act 1988, and the Town Planning and Development Act 1928, save for section 7B(8)(b), noting that it is proposed that the ministerial appeal right will be removed by the Planning Appeals Amendment Act 2001. There is also an appeal mechanism with the Water Services Coordination Act 1995 and the Waterways Conservation Act 1976. I could go on. A range of by-laws and local laws created under local government legislation could also be referred to the State Administrative Tribunal. Importantly, there are also concerns in relation to review decisions under the Environmental Protection Act 1986. I have already mentioned the Environmental Protection Amendment Bill, which seeks to impose a range of penalties for breaches to environmental law in relation to environmental harm and serious environmental harm. I understand that Bill, which passed through this House and was introduced in the Legislative Council, has been referred to a committee for review, and that the Government is proposing 130 amendments to that Bill.

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

Mr P.D. OMODEI: They are issues of real concern to the broader community, particularly the rural community in Western Australia. If a wealthy property developer seeks environmental clearances or planning approval, the cost of any appeal is built into the sale of the blocks, and in the end the consumer pays. However, if a small person appeals on a building issue, a local government issue or some minor issue, any issue that requires legal representation will be an expensive process. There would not be a member in this Chamber who would not acknowledge that once a lawyer is employed, he costs money. It is a serious issue.

A range of appeals are currently heard in the Supreme Court, the District Court, the Local Courts and the Court of Petty Sessions. A range of ministerial appeals with many exclusions from various bits of legislation - I previously mentioned the Dog Act and the Local Government Act - will create huge confusion in the community. Lay members of the community who do not have knowledge of legislation and how to read it are confused by the law unless it is straightforward, transparent and easily understood. Bearing in mind that unlike the member for Girrawheen or the Attorney General I am not a lawyer but a humble potato farmer who knows bugger all about the law -

Mr J.A. McGinty: I am only a bush lawyer.

Mr P.D. OMODEI: Yes; however, I am not concerned for myself, because if I have reason to appeal on an issue, which I have done from time to time, I will employ a lawyer. If I cannot afford a lawyer, I will not do it. When the livelihood of an individual relies on winning an appeal or getting certain approval for land clearing, a building or a range of other things, that person is often forced into debt to get proper representation to put his point of view.

Tribunals exist in a number of other States, including Victoria and New South Wales, but I am unable to say whether they work well in those jurisdictions. This is the type of legislation that the Government has brought into the Parliament with great fanfare. I suspect that the Attorney General knows full well that when the legislation gets to the Legislative Council, it will get a thorough review, and it would not surprise me if the legislation were referred to a standing committee of the Parliament. The legislation is voluminous and complex. It impacts on 142 other pieces of legislation and is heavy to hold, which is why I am putting it down. Actually, I could pick it up again and increase my muscle mass by using up some of those fat cells that I accumulated over dinner! The important thing is that although the Government is claiming that it is making real and serious progress with an appeals tribunal, I doubt the effectiveness and the workability of the legislation. It will get a thorough going over when it goes to a committee in the Legislative Council, and it would not surprise me if it took another year before it comes out the other end of the process.

I implore the Attorney General to ensure that there is a retention of specialists and community representation on the proposed appeals tribunal. There is a wealth of knowledge and information on all the little boards that currently exist, most of which are working very effectively, which begs the question: why create a monster with a legalistic background that will make a lot of lawyers wealthy? It is important that we retain the community representation and the knowledge base that already exists in the current tribunals. That will be almost impossible because there are so many boards with specific expertise. To put those representatives on one board would create something the size of the United Nations. Members can imagine that the appeals mechanism and the legalistic process would get even bigger. We need something that works effectively and efficiently.

A court-style system is not appropriate for hearing people's minor issues. There is talk about mediation and consultation at varying stages of dealing with a matter; however, the Town Planning Appeal Tribunal that was put in place last year has shown that that process does not work. It has already adopted a legalistic approach, and the number of appeals under the Town Planning and Development Act are building. It is a simple idea and good for the Minister for Planning and Infrastructure because she can handball the issues that were previously dealt with by the Minister for Planning to a tribunal and say, "Fair bump; play on." The reality of the situation is that under the present process, particularly over the past decade, although the system has had its critics over the ministerial planning process and the tribunal, it has put the runs on the board. The minister has dealt with 800 appeals compared with the 20 dealt with by the tribunal. There is no doubt that people have shown where the best process is by voting with their feet. As a former minister acting as Minister for Planning on a number of occasions, I found the ministerial advisory committee to be a most professional group. It took its job very seriously and was very professional in the way it delivered its advice to the minister. That system worked. Again I say, if it ain't broke, don't fix it.

The Attorney General must approach this issue with an open mind. Obviously, the Government of the day will get this legislation through; I am not so silly that I cannot count. I may be making the best speech I can, akin to something that might be said at a United Nations conference, but at the end of the day, if a person cannot count in this business, he is out of the game. Obviously, this legislation will be passed. However, I implore the Attorney General to keep an open mind with regard to dispute resolution, mediation and conciliation processes and to put in place a system whereby low-income people who cannot afford to employ a lawyer on $300-plus an hour can have their matter resolved in a sensible and commonsense way. The affordability of the tribunal process has the potential to greatly influence the quality of decision making within government. With regard to local government, smaller councils may not be able to defend appeals. When I was the Minister for Local Government, Hon Richard Lewis was the Minister for Planning. We had a number of developers who were prepared to use their financial muscle to outbid local councils. In one example, a developer put in a plan for a multistorey building that was refused by the local government. The developer then amended the plan, got approval for the building and then built it the way it wanted to in the first place. The council took the developer to court, but in the end the developer had the financial muscle to outplay the local government and create problems for it.

The approach that we adopt in Parliament and within the law must be workable. We must ensure that formal hearings are a last resort. In some cases, the best solution to minor issues may be a special tribunal comprising one, two or three people. The fees and costs should be of a nature that is affordable by the general community. If the matter is a complex issue that involves major ramifications for the environment and state or metropolitan planning, we should use the current process of an appeals tribunal that is legalistic by nature.

An issue that was brought to my attention - it was mentioned briefly by the member for Alfred Cove - relates to the Medical Board of Western Australia. As the shadow Minister for Agriculture, another issue of concern is the Veterinary Surgeons Act and the current Veterinary Surgeons Board of Western Australia, which has disciplinary powers in cases of minor breaches of professional conduct. Those matters will now be referred to the State Administrative Tribunal. That is a retrograde step. A body like the Australian Veterinary Association has the expertise to deal with cases of veterinary misconduct or breaches. The Veterinary Surgeons Board has served the State very well over many years. By taking away the powers of the Veterinary Surgeons Board and the Medical Board of Western Australia and referring them to an amorphous body, we are going backwards rather than forwards. The issue of a State Administrative Tribunal and its connection to 142 Acts is important. The Government's proposal will prove to be unworkable over time and I will stand corrected if that is not the case. However, given the evidence that has been put before me and this House, there is no way that this system will work effectively, efficiently or cost-effectively.

MR J.H.D. DAY (Darling Range) [8.14 pm]: As has been outlined by the member for Kingsley and other members of the Opposition, the Liberal Party does not support this legislation because it will set up a large and bureaucratic structure that will not have the desired effect of increasing access to justice and lowering the cost of providing justice and reviews of administrative decisions. We are very much in favour of streamlining the

existing system, rationalising the large number of boards and appeal bodies that currently exist and reducing the costs where that can be done reasonably. However, we are not at all convinced that this legislation will have that outcome. Indeed, the contrary appears to be the case. It appears that taxpayers will have to face the substantial increase in the cost of administering the system. In many cases, there will also be an increase in the costs to individual complainants.

I am mindful of the representations that were made to me by a constituent who raised concerns about the Government's proposal. I will not name him because, to the best of my knowledge, he is still a member of a tribunal within the state jurisdiction; however, he has a great deal of experience in this area. He previously served on a federal tribunal and also has a great deal of experience in the legal system generally. I understand that in relation to the Equal Opportunity Commission, for example, the cost to a complainant, even for a relatively simple matter, can be in the order of $8 000 a day. That is prohibitive for many people. In setting up this much more legalistic and expensive structure, it is most likely that many individuals who want to use the system in the future will face similar costs. That is counterproductive to the ideal of increasing access to justice. I am also mindful of the concerns that exist within the mental health arena. A good system was put in place when the Mental Health Act was enacted in 1996 and the Mental Health Review Board was established. We must remember that this area is very sensitive. It is extremely important for people to be able to get quick reviews and for decisions about involuntary hospitalisation or classification as an involuntary or community-based patient to be made quickly. There is a lot of concern that type of system will become legalistic, time consuming and expensive.

The Government has decided that the tribunal will be set up. However, I am not convinced that there has been adequate consultation with those who deal with these issues in the real world through the many boards that currently exist, whether it be through the Mental Health Review Board, or any of the other fields that are covered by the various review boards and disciplinary bodies. The Government has decided that the tribunal will be established come what may and it is forcing its decision upon the people of Western Australia regardless of the practicalities and realities of the outcome. The Attorney General has a grand plan and although there is no doubt that it will be of some interest and benefit to some members of the legal profession who support it for a variety of reasons, not all members of the legal profession are supportive. The Government should be giving a lot more thought to this issue and conducting a lot more consultation.

I am also aware of specific concerns that have been raised by the State School Teachers Union of WA, to which the member for Kingsley referred. I expect that the union has written to most, if not all members of Parliament. It is concerned that although it may be possible for somebody seeking an appeal to have representation, that representation can only be provided by a legal practitioner. If we are to have a reasonably informal system and one that is not excessively legalistic or bureaucratic in nature, people should be allowed to be represented by other individuals, such as a union representative, if they so choose. There is nothing wrong with that if the person is adequately skilled and qualified and acting in the interests of the person whom he represents. However, as I understand it, this legislation precludes people from being represented by anyone other than a legal practitioner. That will apply to teachers under the proposed teachers registration legislation that will be introduced into this Chamber in the next couple of days. The State School Teachers Union of WA also raised concern about the removal of the fundamental legal right to silence by this Bill. That is obviously a matter of concern to not only school teachers, but also a wide range of people in the community. Further, it is concerned that the entry and inspection powers contained in the legislation are excessive in their strength and scope. That is another issue that should be reviewed.

Some major concerns have been raised by a range of people and organisations in the community. Although it may be fine in theory to set up a body such as this, we must consider the likely practical and realistic outcomes, and it appears that they will not be as the Attorney General indicated. As a result of all those concerns, which we will outline in more detail during consideration in detail, I support the decision of the Opposition to oppose this legislation.

MR M.F. BOARD (Murdoch) [8.20 pm]: I would not wish the symptoms of bipolar disorder on anybody, but I am concerned that there may be a sudden occurrence with the Attorney General, as he tries to act as the Minister for Health in dealing with the ramifications of the Bill now before the House. As the new Minister for Health, he would not have had the opportunity in recent weeks to make sure that adequate consultation has taken place with the many and varied health organisations that will be affected by this legislation. That consultation has certainly not been adequate, and in some cases it has been zero. As a result, although this legislation seeks to achieve something important for the community, it is premature, not in its intent, but because of that lack of consultation, failure to think through the ramifications of the legislation and a lack of preparedness for its full consequences, particularly in the cost area.

I will deal first with the health aspects of this legislation. Setting up the tribunal will affect the Chiropractors Act 1964, the Dental Act 1939, the Dental Prosthetists Act 1985, the Health Act 1911, the Health Services (Conciliation and Review) Act 1995, the Hospital and Health Services Act 1927, the Human Reproductive Technology Act 1991, the Mental Health Act 1996, the Nurses Act 1992, the Occupational Therapists Registration Act 1980, the Optical Dispensers Act 1966, the Optometrists Act 1940, the Osteopaths Act 1997, the Pharmacy Act 1964, the Physiotherapists Act 1950, the Podiatrists Registration Act 1984 and the Radiation Safety Act 1975. Some other Acts affected have health outcomes, but are not listed as health Acts. I know from my consultations that many of these groups have not been consulted at all about the ramifications of this Bill. I remind members that many of those boards and disciplinary bodies have been run by volunteers. They are community members who are experts in their professions and who have been called upon to provide a level of expertise and decision making that enhances the credibility, community acceptance and standards in their occupations. Some of them do not even know what is transpiring tonight. This Bill is premature, and will not provide the outcome the Attorney General is seeking.

The Attorney General could be concerned about his position as Minister for Health, and the bipolar disorder will descend upon him as he tries to deal with the many groups that have not been consulted and will feel that they have been sold out. They have been gypped; their concerns about their occupations, particularly the disciplinary aspects, have not been adequately thought through. The Minister for Health should speak to the Attorney General, and try to come to some consensus about dealing with the difficulties arising from this Bill. If my mail is correct, the Minister for Health has a meeting with the Australian Medical Association tomorrow morning, to deal with the implications that have not been previously admitted. He must deal with the Medical Board, which will be greatly affected by this legislation. I understand that, as this legislation is debated, compromises will be made with the Australian Medical Association to get its consent. That is not the way to bring a very comprehensive and significant Bill into this Parliament. This Bill will affect virtually every citizen of this State in some way, especially the thousands who act on boards and disciplinary bodies within their own professions.

The Minister for Health may have to look at himself in the mirror this evening, and discuss with the Attorney General the ramifications for all the groups, particularly health bodies, with which he will have to consult further. We have seen very little consultation, although the minister may not be aware of that because of the short time he has been in the portfolio. He may have had some advice to the contrary, but the reality is that the bodies covered by the Acts I read out a moment ago have received very little, and in some cases no consultation. They feel as though they have been treated most unfairly and unprofessionally as a result of the speed with which this Bill is going through the Parliament.

The Australian Medical Association has great concerns about the make-up of the board and the way in which disciplinary matters will affect medical practitioners in this State. We have discussed on many occasions in this Parliament the need for a review of the Health Act. I have brought up in the Estimates Committee and this Parliament the need to review the Medical Board, which is not serving the interests of the community in either its transparency or the speed of its deliberations. The board is hamstrung by a lack of legislative support, and the Opposition urged the former Minister for Health to deal with that. I understand the Medical Board will stay, but the interaction between it and the State Administrative Tribunal is very unclear. This must be so, because a meeting is to be held tomorrow morning to discuss exactly how the board will operate, whether it will still have disciplinary powers of its own, and whether they will be enhanced by a trade-off of some of its other functions, to gain some kind of consistency across the State. There are many unresolved areas, and it is only because of the size of the Australian Medical Association, its investigative powers, and legal staff that it is even aware of the possible consequences of the passage of this Bill.

Those bodies are probably unaware as we speak tonight that they are being done in the eye, given their previous responsibilities. Although we largely agree that there is a need for some kind of administrative tribunal - because it was indeed our policy and we are not against transparency, removing confusion from tribunals or the expense - we recognise that there needs to be consistency across the State and certainly a greater degree of transparency and public accountability. The body that is being created by this legislation will not achieve all those things, certainly not in the way in which it is being put to us. It will certainly not carry with it all those bodies that are affected by it, because there is great confusion and a lack of consultation.

One of the issues which I am not sure the minister has fully addressed - although he may do so in his response when closing this debate - is the incredible range of expertise within the existing boards and disciplinary bodies. Literally thousands of the people involved have expertise in their field as a result of their experience in their working environment and the work they have done on the boards and in consultation with their own professional people; yet the State Administrative Tribunal will scale down the number of people involved to a small range of "experts" who will somehow bring with them an enormous wealth of knowledge and background. I predict that the Attorney General will not save too many costs, but he will incur fairly expensive probably contract and fee-

for-service advice, whereas currently a large number of volunteers support their profession. I will be surprised if at the end of the day the Attorney General is able to claim that the way in which the tribunal will be set up will be cost effective in comparison with what will have gone before it.

I also want to raise a number of issues outside the area of health. I am confused about the interaction of the State Administrative Tribunal with the work of the office of the Ombudsman, where it starts and finishes and whether the investigative powers of the Ombudsman will be curtailed in some way or other. I also have concerns about the Office of Health Review. I am not sure whether as a result of the State Administrative Tribunal there will be a need for the Office of Health Review and what role the office will play as a result of this legislation. That is unclear.

It is also unclear why the State Supply Commission or issues to do with contracting do not come within this legislation. The Attorney General might recall the great discussion some years ago about the need for a contracting ombudsman to replace the State Supply Commission, as it was the maker of the rules and there needed to be an umpire as well. At this stage it is unclear to me what will be the process of government bodies contracting out, who will be the umpire and, if there are concerns in the community, to whom people will go. This is a particular area of concern, because as recently as the past few weeks there have been incidents when an independent body may have been of great advantage to the community and indeed the Government.

These areas are unclear, and I am sure we would find many more if we were to work through the list. Although the legislation is intended to bring about consistency, transparency to the community, ease of access and a consensus in the community, it does in the eye a lot of voluntary expertise and gets rid of a lot of the goodwill that has been built up. At this stage there has not been adequate consultation on the full consequences of the changes. Whether the boards and their disciplinary nature remain is unclear to many people. We should slow down and take a bit of a breather on this legislation and consider its consequences. I know it has been a long time in coming and that our Government would probably have dealt with it had it been given enough time for the full consultation that needed to be undertaken. I am sure that the body that would have been put forward would have been different.

Mr J.A. McGinty: I do not think you could have organised it internally even though there was some support from some ministers.

Mr M.F. BOARD: The Attorney General has simply bulldozed ahead, which is the issue here. He will leave a few people in his wake, which might seem fine, but the reality is that those people have given great service to the community and their professions. The Attorney General is not in a position to guarantee to this Parliament that he will be putting in place a body that will deal adequately with all the needs of the bodies that it will replace or that it will not gazump some of their powers. Many of the people on those boards, even if they know about this legislation, are wondering where it leaves them and what they should do now.

MR J.A. McGINTY (Fremantle - Attorney General) [8.36 pm]: I thank members for their contributions to this debate. This legislation has been a long time in the coming. I guess the essence of being a conservative is that one does not like change. I believe that much of what we have heard tonight shows a fundamental inability of some to appreciate that we are living in a changing world and conservatives do not like it. They hark back to the days prior to 1964 when Justice John Wickham first recommended this very important reform. They cannot quite bring themselves to do it. When they were in government they could not quite bring themselves to do it. They put a toe in the water, set up a committee but then did not do anything about it, which seems to be their form. It is part of their policy, but as we have seen many times with the Opposition in this place - in the same way that they support the principle of equality but vote against it every time we put it before the Parliament in its concrete manifestations - although members opposite notionally support the principle of a state administrative tribunal, they vote against it when we bring the legislation forward in this House.

I would like to take the opportunity to comment in some detail on the matters that have been raised by members opposite. For that reason I would seek leave to continue my remarks on another occasion.

[Leave granted for the member's speech to be continued.]

Debate thus adjourned.