PLANNING AND DEVELOPMENT BILL 2005

Assembly's Further Message

Further message from the Assembly now considered.

Committee

The Deputy Chairman of Committees (Hon Graham Giffard) in the Chair; Hon Adele Farina (Parliamentary Secretary) in charge of the bill.

The Assembly's message was as follows -

> The Legislative Assembly acquaints the Legislative Council that in response to Legislative Council Message No. 34 regarding the *Planning and Development Bill 2005*, the Legislative Assembly -
>
> (a) advises that it has not agreed to Legislative Council Amendment No. 6 forwarded by Legislative Council Message No. 28, because it contravened section 46(3) of the *Constitution Acts Amendment Act 1899*;
>
> (b) notes that the amendment which contravenes section 46(3) cannot be insisted upon, although it is open to the Legislative Council to propose an alternative amendment; and
>
> (c) returns the *Planning and Development Bill 2005* herewith for the concurrence of the Legislative Council in its amended form.

Hon KIM CHANCE: I move without notice -

> That the Legislative Council acquaints the Legislative Assembly that in response to Legislative Assembly message 84 regarding the Planning and Development Bill 2005, the Legislative Council has resolved that -
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> (a) amendment 6 contained in Legislative Council message 28 does not contravene section 46(3) of the Constitution Acts Amendment Act 1899;
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> (b) accordingly, it is within the Council's powers to insist on its amendment 6; and
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> (c) notwithstanding its undoubted rights and privileges to insist on its amendments, the Council has agreed on this occasion not to insist on its amendment 6.

This is another chapter in the ever-unfolding issue of tension that exists between the houses, not only in this Parliament but also in the Westminster system generally. Although it can be somewhat tedious to be caught up in that process, the tension that exists is valuable and, historically, it goes to the function of lower and upper houses in the Westminster system. If the limits of the rights of each house are not tested from time to time, it is always possible that incremental change may occur without such testing and may in the long term diminish the rights of either house, which is obviously not in the best interests of a constitutional democracy. This is a reasonable resolution to the situation in which we find ourselves, although on this occasion the issue arose somewhat unlike the way in which the same issue has arisen on previous occasions. That has occurred - I have already used the word "incremental" - as a result of incremental changes in the style of wording that has been used in messages between the houses. I am not allowed to be more precise than that, but honourable members will recall that when we last considered this matter, there was some analysis of the history of the manner of that wording. As I have said, historical changes to the style of that wording have given rise to the tension and, ultimately, this resolution of the tension. Essentially, my motion proposes that the Council has asserted that its actions did not contravene the Constitution Acts Amendment Act 1899, and asserts the Council's rights and privileges in that regard in part (b). However, having asserted those rights and privileges, part (c) goes on to state that the Council has agreed on this occasion not to insist on the amendment that was sought, which we now know as amendment 6. I urge members to support the motion.

Hon DONNA TAYLOR: As the opposition's lead speaker on the Planning and Development Bill 2005, I will make a few brief comments on message 84. The opposition is clearly disappointed that the Assembly has not agreed to Council amendment 6 forwarded by Council message 28 on the basis that it contravened section 46(3) of the Constitution Acts Amendment Act 1899, which states -

> The Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people.

I remind the chamber that amendment 6 sought to include in clause 173(1) of the bill the words "on just terms" in reference to the entitlement for compensation when land is injuriously affected by a planning scheme. It is

indeed disappointing that an argument that the inclusion of the words "on just terms" would increase the level of compensation payable by the responsible authority was not put by the government during debate on the bill in this chamber during the committee stage. I also remind the government that the parliamentary secretary handling the bill stated that compensation is already considered on a just terms basis. In *Hansard* of 18 October the parliamentary secretary is reported as saying -

> Finally, the Department for Planning and Infrastructure already operates under the principle of just terms, in that the operations and principles it applies in these circumstances are based on the Spencer case. The High Court decision in that case had regard to the provisions of the commonwealth Constitution, specifically section 51(xxxi), which makes reference to just terms. We are already incorporating those provisions.

On behalf of the opposition, I moved an amendment in good faith. All that the opposition was seeking to achieve was simply to confirm the practice outlined by the parliamentary secretary and enshrine it in legislation. In message 84, it is clear that the Assembly has determined that the inclusion of the words "on just terms" would increase the level of compensation payable and therefore impose a financial burden on the people. If that is the case, the opposition can presume only that the department does not always operate under the principles of just terms compensation as outlined by the parliamentary secretary, and this is of serious concern to the opposition. I acknowledge that paragraph (b) of the message states that "the amendment which contravenes section 46(3) cannot be insisted upon, although it is open to the Legislative Council to propose an alternative amendment". I place on the record that the opposition maintains that the notion of compensation on just terms is an important principle when dealing with land acquisition. We believe that compensation on just terms should be defined in legislation, as it is in some other jurisdictions, such as in the New South Wales Land Acquisition (Just Terms Compensation) Act 1991 and the commonwealth Constitution. If it is not defined, the opposition maintains that compensation on just terms cannot be guaranteed. The opposition is certainly cognisant of the importance of this issue. It is an issue that affects a large number of people in the Western Australian community. I say to those people that the opposition will continue to pursue this matter and will look at other opportunities to achieve what it sought to do within the confines of the Planning and Development Bill 2005. It may be along the lines of the New South Wales Land Acquisition (Just Terms Compensation) Act 1991 that I just referred to or through an amendment to the Western Australian constitutional legislation, as was recommended by the report of the Standing Committee on Public Administration and Finance on the impact of state government actions on the use and enjoyment of freehold and leasehold land in Western Australia. I confirm that I will encourage my colleagues to pursue this matter in one of those forms early in the new year to achieve the goal we sought from this bill.

Hon GEORGE CASH: I concur with the comments of Hon Donna Taylor about the motion before us. She has pointed out very clearly that the Liberal Party, as a matter of first principle, supports the principle of fair and just compensation or compensation on just terms - there are a number of ways in which it is expressed - for any land or interest in land that is taken or suffers some detriment as a result of the actions of the Crown or a government agency. Hon Donna Taylor has also pointed out that, notwithstanding the fact that the government does not accept the amendment as moved by her during the committee stage of the bill, she will work with her colleagues to see that a private member's bill is introduced into the Parliament. My recommendation is that it should amend the Constitution Act - so that it is an overarching amendment within the act - to include a just terms compensation provision and so that there is never a question that someone will receive less than just terms compensation for land that may be taken or affected by the actions of a government or a government agency.

Having said that, we have been very clear about where we come from concerning the notion of just terms compensation. However, this argument is far bigger than the Planning and Development Bill 2005. I say that because, if we put to one side the argument about just terms compensation - which we believe can be addressed in another manner; that is, through an amendment to the Constitution in due course - we now have to look at whether the Legislative Assembly was correct in stating that the amendment carried by the Legislative Council and sent by message to the Legislative Assembly was a breach of section 46(3) of the Constitution Acts Amendment Act. Section 46 contains nine subsections. I accept that today is not the day that we should argue the Legislative Council's rights in respect of its ability to make amendments to bills versus the Legislative Assembly's interpretation of amendments made in this house. I say that because, firstly, I am conscious of the time that we have available to discuss a number of bills that the government has nominated as priority bills. Secondly, this is a very significant area of conflict between the two houses that needs to be addressed. This conflict has not developed just because the government has refused to accept amendment 6 to the Planning and Development Bill. This conflict has existed for some time. The reason for this conflict is the interpretation that the Legislative Assembly has applied over many years, but more particularly in recent years, to section 46 of the Constitution Acts Amendment Act. That is why I say this argument is about more than just amendment 6 to the

Planning and Development Bill. However, today is not the time to have that argument, because it is a very serious argument that needs to be addressed in very concise and proper terms, and that will take some time.

I am pleased that the Leader of the House has moved the motion in the words that he has, because in the motion he is asserting the right of the Legislative Council to make amendments. That is what the Legislative Council did in the previous message that we sent to the Legislative Assembly. The original message from the Legislative Assembly - message 77 - said that the Legislative Assembly did not agree to amendment 6 and had ruled that out of order. However, it did not provide reasons. As we discussed at the time, that caused the bill to be placed in limbo, because the bill had not been agreed in identical form between the two houses. Therefore, the Legislative Council needed the bill to be returned to this house so that we could complete our part of the legislative program. In due course, the Legislative Assembly sent another message - message 84 - in which it returned the Planning and Development Bill 2005 to the Legislative Council and advised that it was not prepared to accept amendment 6. That procedure was correct, because it now gives us the opportunity to discuss this matter.

I have said that I will not go into the broader question of the conflict between the two houses about their respective interpretations of clause 46 of the Constitution Acts Amendment Act. However, there is considerable evidence to show that the Legislative Assembly is not consistent in its rulings on this matter. That compounds the conflict that exists between the two houses. The Leader of the House said - if I may paraphrase what he said, without trying to remember the exact words - that it is important that tension exist between the two houses. I do not think it is important that tension exist between the two houses. I think it is important that a proper interpretation be placed on section 46 of the Constitution Acts Amendment Act. This is not a matter that has not been considered in the past. I am aware that the Clerks at the table of the Legislative Council have files of considerable volume on this matter. There is also evidence that in about 2001, in answer to a question about an amendment to the Land Administration Act, parliamentary counsel advised that they knew of at least 19 bills on which the Legislative Assembly had not raised the issue of whether an appropriation was being made or a burden was being imposed on the people in contravention of section 46. This inconsistency in interpretation needs to be resolved. However, this is not the appropriate time to resolve it, as I have said. It has been suggested in this place in the past, and I suggest it to the Leader of the House again today, that a motion be moved in this place that states the position of the Legislative Council and expresses the desire that the house meet with the Legislative Assembly so that we can discuss how this matter can be progressed. If that does not occur, I can foresee us getting into significant areas of conflict in the future. As a Legislative Council, we have an unquestionable right to amend bills. There is a need to recognise the provisions of sections 46(1) and 46(3), because section 46 states that the Legislative Council may not amend bills that appropriate revenue or moneys. We can, however, amend bills. In the Planning and Development Bill, only two clauses relate to the appropriation of revenue; that is, clauses 201 and 207. The opposition's amendment was to clause 173, and its effect would not have placed a burden on the people or impacted upon clauses 201 or 207. However, again, because that would be a debate of some significance and substance, it must be left to another day.

Having said that, I also concur with Hon Donna Taylor that the parliamentary secretary handling the Planning and Development Bill in this house made a clear statement that there was no need for the just terms compensation amendment, on the basis that the Department for Planning and Infrastructure already carried through the principles of just terms compensation when it was considering compensation in land matters. That was a clear statement. As Hon Donna Taylor said, if the government now argues that it does not carry through with just terms compensation principles, clearly the parliamentary secretary is, firstly, in error; and, secondly, it strengthens the argument that we must amend the Constitution to provide for just terms compensation in the future. I would argue strongly that our amendment at no time imposed a burden on the people. It did not attempt to appropriate money, which was certainly confirmed by the parliamentary secretary in her comments during the committee stage.

However, in respect of today's issue, Hon Donna Taylor has clearly indicated why the opposition is prepared to agree to this motion. Our agreement is contingent upon some other issues that we, as a Liberal Party, will have to take up in the future, and the most important of them is the amendment to the Constitution to insert a just terms compensation clause. However, the other issue that I want placed clearly on the record is the need to address the conflict between the two houses on the question of the interpretation of section 46 of the Constitution Acts Amendment Act 1899. Perhaps the management committee of this place or the Standing Committee on Procedure and Privileges can consider that at some time and come back to the house with a recommendation, because if this conflict is not resolved it could have significant ramifications for the comity between the two houses and our ability to discharge our obligations under the Constitution.

Hon BARRY HOUSE: I want to express my disappointment in this chain of events that apparently will result in rejection of the amendment on the basis of a constitutional argument and not on the merits of the case. I guess I am partly pleased that the Leader of the House has framed the motion in these terms. I am dismayed at the

hypocrisy, quite frankly, of the Legislative Assembly. Although we are not allowed to refer to the other house in those terms, it must be said that the government is hypocritical in its interpretation of messages sent from this house. A few months ago the Electoral Amendment and Repeal Bill sought to make changes to the structure of membership in this house. An amendment to the bill moved in this place was deemed by the government not to be a funding issue because it was convenient at the time for the government to take that view. The government has deemed amendment 6 to this bill moved in the Legislative Council to be a funding issue, even though, according to the parliamentary secretary's words, it is not. The two approaches indicate classic hypocrisy. It seems as though there is little we can do about it today. I am personally disappointed because the issue is not only symbolic but also real for many people who have dealt with the government over a range of issues in which compensation has been sought. I have taken it up as something of a cause through an inquiry of the Standing Committee on Public Administration held in recent years, and personally, with a view to seeking fairness for a range of people who have been disadvantaged by government, particularly in property dealings. The Liberal Party holds very strongly to the principle that fair and just compensation should be paid to individuals involved in dealings with government. It seems that the most appropriate way to do that is to put the principle into the Constitution Acts Amendment Act, as it is in other states, and in the federal Constitution, and thereby allow it to flow on through all legislation. The Liberal Party is committed to that in opposition. All we can do in opposition is introduce a private member's bill that will foreshadow what we will do in government. The principle of just and fair terms is reasonable, and it is a principle that is fundamental to the Liberal Party. I am pleased to note that at some stage it has been important to other members of this house.

Since the initial debate on this bill, a letter has been brought to my attention. It was written on 8 March 1999 by Hon Kim Chance to Mr Brian Burns, PO Box 321, Albany, who has been in touch with a few of us over the years. I am sure the Leader of the House will recall the letter.

Hon Kim Chance: I do.

Hon BARRY HOUSE: He will also recall the circumstances that led to it. Mr Burns is a farmer who, as a result of clearing regulations, was severely restricted in his wish to clear a lot of his land.

Hon Kim Chance: It is a very sad case.

Hon BARRY HOUSE: It is a terrible case and it highlights the unfairness of his situation. The letter is a good one. I do not need Hon Kim Chance's permission, but I will quote it because it is very well written. It reads -

> Thank you for sending me a copy of your letter of 11/02/99 in which you drew my attention to the position of rural landholders who are not permitted to clear land or keep down regrowth on their properties but are not offered compensation as a result of their loss of use of their land.
>
> It is clear that in your case, as in others, you are suffering from financial damage as a result of a decision of the Commissioner for Soil and Land Conservation to deny you the right to use the land for its designated purpose, agriculture. The Commissioner makes this decision within the authority granted to him by the Minister for Primary Industries on behalf of the Parliament of Western Australia, and in theory at least, this authority is exercised in the "public interest".
>
> While that may seem to be a statement of the obvious, it is an important point. Put another way, it means that the state is conserving bushland in the interests of the public but the cost of that conservation is being forced on you as an individual and is not being borne by the beneficiaries. There is a point at which it is reasonable to expect a landowner to retain a percentage of the property in its natural state and that is the level at which it could be deemed to be of benefit to the good management of the farm. The precise level of the desired ratio of uncleared to cleared land for the purposes of good management is debatable but is generally accepted to be between 10% and 20%. Beyond that level there is no question in my mind that the imposition of a clearing ban is wholly for the public's benefit.

Those are very good words.

Hon Kim Chance: I still believe them.

Hon BARRY HOUSE: Good; I am pleased to hear that. The letter continues -

> This matter has been discussed by the Australian Labor Party and I have enclosed a copy of page 267 of the State Platform which contains item 45 of the Rural and Regional Affairs Policy in which the particular issue that you have raised is directly addressed.
>
> In using the term "inequitable" compensation arrangements, the policy is referring to the different legislative arrangements that exist for compensation in the case of clearing bans. Land which is within a declared catchment area for example, is fully compensable under the Country Areas Water Supply Act while land which is outside a declared area and which is preserved under the Soil and Land

> Conservation Act cannot trigger compensation under that Act. We are aware of an instance where, on the same farm, both Acts have applied which meant that some of the preserved bushland was compensable and some was not, depending on which side of the watershed the bushland was located. In our view that is an absurd outcome.

I agree; it is an absurd outcome. The letter continues -

> In 1994 Labor attempted to standardise these two Acts in respect of the ability to compensate by moving an amendment to the Soil and Land Conservation Act which effectively transplanted the compensation section of the Country Areas Water Supply Act into the S&L C Act.

Hon Kim Chance: Are you sure you want to read the next bit? It might embarrass you rather than me.

Hon BARRY HOUSE: I will read the whole lot; it is fair. It states -

> Our amendment in the Legislative Council was defeated by the combined votes of the Liberal and National Party members.

I do not recall that.

Hon Kim Chance: Oh, I do. That is why when Hon George Cash said that this has always been a first principle of the Liberal Party, I thought, "Well, it wasn't in 1994!"

Hon George Cash: I will have to look into that.

Hon BARRY HOUSE: I think I will go back to *Hansard* to revive my memory of that, too. If I was a party to that, it must have slipped by me at the time.

Hon Kim Chance: I attempted a cut and paste of section 111 of the Country Areas Water Supply Act into the Soil and Land Conservation Act, and that was refused.

Hon BARRY HOUSE: I am prepared to stand here now and admit that it appears that we made a mistake. The letter continues -

> Your letter has also raised question about both the inadequacy of the funding commitment to the Natural Resource Adjustment Scheme and also the commitment of the Court Government to addressing salinity in WA. I can only agree with your comments. While Labor is solidly in support of the State Salinity Plan, the real failure has been in its execution and in the government's inability to match the vision of the plan with sufficient funds.

This next paragraph is the really critical one. It states -

> From a legal perspective the state is not required to provide for compensation to you even though it has caused you damage. In the Commonwealth constitution at Section 51xxxi the Federal government is required to provide "just terms" if it removes property or a property right from an individual. The state constitution contains no similar requirement and the only way in which compensation can be assured is by legislative provision.

Hear, hear! I agree with Hon Kim Chance.

His letter continues -

> Thank you for drawing my attention to this important issue which has an adverse impact on many of WA's farmers. Labor has taken a close interest in the matter over a period of years and we will continue to press the government for a fair resolution.
>
> With best wishes
>
> . . .
>
> Kim Chance MLC

As I said, that is a very well written letter, which I endorse. I will investigate that apparent slip on the part of the Liberal and National Parties regarding that legislation that was dealt with in this chamber some time ago. However, the commitment, unfortunately, is not really a rock-solid commitment. As we know, in 2001 the world changed a little, and Hon Kim Chance found himself a minister in the government. The minister calling the shots on this matter in Hon Kim Chance's government, the Minister for the Environment, does not appear to share Hon Kim Chance's sentiments and his view that it is an unfair situation that should be addressed.

Hon Kim Chance: It is really a broader question than that, though. I am not trying to evade responsibility, but I do not think you can put the responsibility on the shoulders of the Minister for the Environment either. It is a

whole-of-government issue. I think Hon George Cash probably put it well when he said that the only way to solve this is through the state's Constitution.

Hon BARRY HOUSE: Yes. I will quote briefly from an article in the *Countryman* of 18 July 2002 in which the Western Australian environment minister, Judy Edwards, is quoted as saying -

> . . . compensation should not be part of any deal for farmers prevented from clearing for environmental reasons.

I simply assume that she was expressing the government's point of view on that issue at the time. I wish the government would listen more closely to Hon Kim Chance.

Hon Kim Chance: I have sometimes had that view as well.

Hon BARRY HOUSE: I foresee a time in this place when Hon George Cash, Hon Donna Taylor, Hon Kim Chance, Hon Paul Llewellyn and I all vote in support of the inclusion in our Constitution of compensation on just and fair terms, because that appears to be the only way in which we will get a reasonable and fair outcome.

Hon Kim Chance: As Hon Barry House will recall from his time on the Standing Committee on Public Administration and Finance, as it was then called, in Canada that is the case. Provincial governments have the just terms provisions, but the national government does not. It is actually the Australian situation, but reversed.

Hon BARRY HOUSE: Yes. We are a federation. In this case, although it is galling to admit it, I believe the commonwealth has it right and we have not. That is something that not only the Liberal Party but also the Parliament must try to address, so that when we come across situations such as this, the merits of the case will be considered and we will not be frustrated and sidetracked from the real intention of this chamber by a constitutional argument or constitutional interpretation by the other place in the Parliament of Western Australia. The issue is a very important one to us. The principle is very important. It appears as though this will not be the day on which the war is won. However, the war will continue. With the committed support of people such as Hon Kim Chance, I am sure that the opposition and the government will be able to achieve what we want some time down the track.

Hon MURRAY CRIDDLE: It was interesting that Hon Barry House left out the National Party when he was talking about representation on this matter.

Hon Barry House: I am sorry.

Hon MURRAY CRIDDLE: I reflect on the fact that in Assembly message 77, amendment 6 has been ruled out of order. From my point of view, that is a very interesting removal in that message. Along with Hon Barry House, the Chairman of the then Standing Committee on Public Administration and Finance, I spent a lot of time talking about compensation on just terms. Serious consideration was given to this matter and it took a number of meetings to reach a resolution on the actual wording. I am more than interested to see that included in this bill, which was debated in this place some time ago. Now it can be done only if we agree with this message. The words certainly reflect the fact that this chamber is concerned about removing amendment 6.

I reflect on the so-called one vote, one value bill that was debated in this chamber and as a result of which we ended up with a similar number of representatives in the upper and lower houses. I was the first member to raise a concern that a cost could be involved. The outcome was that debate on the bill was delayed because it might cost more to have members in the country than in the city. Subsequently, a ruling came back that it would not cost more.

Hon Norman Moore: And we would take a pay cut.

Hon MURRAY CRIDDLE: Yes, and one way or another the bill would proceed through the other place. The problem lies with section 46 of the Constitution Acts Amendment Act 1899. This problem needs to be resolved, because it leaves a bad taste in everyone's mouth when a precedent which reflects on the decision has been set over a number of years. I put on the record my concerns about the process that we have gone through. No reasons were given in Assembly message 77 when it first came back to this chamber. To put it bluntly, that displayed a lack of respect for this chamber. Members need to understand that both chambers serve a purpose in this state. It has become more evident in the past few months that this chamber is becoming more responsible in the way it deals with legislation that comes before it.

I will vote for this motion, but the National Party will participate in future discussions on section 46 of the Constitution Acts Amendment Act 1899 and the obvious difference in the way the two chambers deal with messages.

Hon PAUL LLEWELLYN: In this debate we are collapsing parliamentary democracy, just terms and the merits of the amendment that was moved by Hon Donna Taylor. We now have before us a face-saving motion for this chamber. I am staggered at how easily we can stand on a principle of just terms, then go cold on it and bleat about it.

There has been a systematic erosion of parliamentary oversights and parliamentary democracy in the way this whole issue has arisen. I am not very familiar with the processes of Parliament and government, but I can see that in this case this chamber amended a piece of legislation, which was returned to the lower house. The lower house did not agree with the amendments and sent a message to that effect to this chamber, without any reasons. When this chamber insisted on reasons, it found that it had contravened a section of law. It has not been demonstrated that Hon Donna Taylor's successful amendment to the Planning and Development Bill constituted an appropriation. That case was not made and I will go through that. We are debating the Planning and Development Bill and dealing with the systematic erosion of parliamentary oversight and the rights of this house to make amendments and for those to be taken seriously and given proper consideration in the other place. That is a serious matter which we will have to deal with. I would have been quite happy for this to have gone to a conference of managers, if that would have resolved the matter. However, we stand on high principles and then fall over.

The right to amend the bill and insert the just terms principle is quite clear. I will deal with the amendment and with the message that we have received that it constitutes an appropriation. That simply cannot be sustained by the discourse in this house. I reiterate the line of thinking with which the parliamentary secretary tries to assure us that the principle of just terms is already securely embedded in administrative procedures. That being the case, there is no possible way that if the principle were incorporated in this bill, it could constitute some additional burden on the state, because we are told that it is already incorporated in the administrative procedures. There should be no reason that we should not incorporate the just terms principle in the bill. Not only that, if there was a short period during which there was some uncertainty about the amendment to incorporate the just terms principle in the bill, there would have been a mechanism for limiting the impact of that by simply amending the bill. That would have given the government quite a lot of incentive to continue with its proposed amendment of the Land Administration Act and incorporate the just terms principle in it.

The opposition is now saying that it will introduce the just terms principle into the Constitution by a private member's bill, but that would need the agreement of every member of this house. It would make no sense if the divisiveness that was expressed in this house is the context in which we try to negotiate a just terms principle for the Constitution. It would make absolutely no sense because we would be unable to reach a reasonable consensus, given the context of the debate I witnessed in this house a few weeks ago. In order to have the just terms principle securely embedded in the Constitution we would definitely need bipartisan support, but I do not know that we have any real assurance from the government that it intends to do it and that it will support it.

The motion before the house is a face-saving motion. Far from standing on the principle of just terms, the opposition has now backed down a little and had a change of heart about the merits of inserting it into the bill. Perhaps the amendment was poorly conceived and constructed, but that is okay; the opposition should simply admit it.

Hon George Cash: This denial by the government to accept the proposition has strengthened our hand.

Hon Ken Travers: You do it so well!

Several members interjected.

Hon George Cash: It will probably become a crusade.

Hon PAUL LLEWELLYN: If it is not already a crusade. If there were a crusade, the opposition would be dying for the principle, but it is not; it is folding. The principle on which we need to stand is that there should be some inalienable just terms and provisions in the Constitution that will flow through to all acts of Parliament and all areas of life. Although that has its merits to some extent, it will not get a consensus in the context of the debate that I heard a few weeks ago. I have said that we are collapsing parliamentary oversight and democracy, and we are collapsing arguments about just terms and the merits of the original proposition. If the original proposition had its weaknesses, so be it. I believe those weaknesses could have been overcome by good administrative procedure; that is, if we had got on with the job of incorporating the principles of just terms in the appropriate legislation, which could well have included the Land Administration Act. On this matter the Greens (WA) will be silent on the motion. However, it would be better if government members in the other place respectfully dealt with the business of this house and provided fair and defensible reasons for its decisions rather than sent back indefensible motions and propositions that must be covered up by a motion. That is why we respect our rights to do this. We acknowledge that if we want to have a debate on just terms, it must be consensus based. We must reach agreement among the parties before conducting a vitriolic debate about

property rights and arguing about who is right and who is wrong. In spite of the fact that the amendment was hastily constructed and presented some difficulties, we probably could live with the amendment and work through it.

Hon NORMAN MOORE: I must confess to being provoked. I will be provoked for a moment but will not take a lot of time. I explain to the honourable member who has just resumed his seat that Parliament - regrettably at times - consists of two houses. The passage of legislation requires it to be considered by both houses. On this occasion the Legislative Assembly rejected an amendment that was initiated by the Liberal Party in this chamber and was passed by this house. If there can be no agreement between the houses, the process of Parliament is for the matter to be referred to a conference of managers. If one member of the conference of managers insists on the amendment and there is no agreement, the bill is set aside. That is the end of the legislation. The Speaker originally ruled the amendment out of order, and ruled that it transgressed section 46(3) of the Constitution Acts Amendment Act. We do not agree with that ruling, but it is not our job to judge that. Because that has happened in the Assembly, we have a choice either to not insist on our amendment or to hold a conference of managers and see the bill set aside. The Liberal Party took the view that on this occasion the legislation is important enough for us to forgo that opportunity, so that the legislation can be passed and put into operation. I hope that we have demonstrated to the honourable member that a very fundamental belief of our party is to support the notion of fair and just terms for compensation. We have discussed this matter among ourselves for some time, and a committee chaired by Hon Barry House has looked into this matter in a great deal of detail. We have concluded that the Constitution is the best place in which to insert this clause so that it will apply to all legislation, rather than just this planning legislation. That is the simple reality of the facts of life in Parliament. One of these days we will have the majority in both houses and this type of legislation will be passed very quickly.

We will not have the argument we are having now. Hopefully, when the time comes, the rulings of the Assembly will be consistent and will take into account the undoubted rights of this house to amend legislation. Those are the simple facts of the matter, and to suggest that somehow or other the Liberal Party is backing off on this simply ignores the reality of the case; that is, that we are unable to prosecute our cause and have it accepted. If we were to seek to do that, the legislation would be set aside, which is in nobody's interest to my knowledge. We look forward to the support of the Greens (WA) when we introduce legislation to amend the Constitution. Indeed, we will be looking for support from the government, because we will need that to get a Governor's message in order to bring the legislation into Parliament. One would hope that there would be bipartisan support for an amendment providing for fair and just terms for compensation, and that it would be part of the Constitution of the state, which is the best place for it. Any talk about backing off is simply nonsense, and if the member wants to provoke me some more, he should keep saying things like that.

Hon RAY HALLIGAN: I will take a couple of minutes of the time of the committee to place on record my recollection of what occurred during the debate on clause 6. We were told that there was no need for the additional words; that fair and just compensation, by whatever name, was paid anyway. We were told there was no need to alter the wording at all, even though members on this side, and the Greens (WA) - because we won the day on that occasion - believed that there was such a need. If I have that wrong, I am sure that members on the government side of the chamber will let me know. We need to be reminded that this is not just an issue about the rights of each house. To me, it also comes down to something mentioned by Hon Barry House earlier; that is, the hypocrisy of the government. Through this message from the Legislative Assembly, we recognise that the Speaker has suggested that there was a contravention of section 46(3) of the Constitution Acts Amendment Act 1899, which states -

> The Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people.

When the opposition's amendment went to the other place, it was considered that we were increasing that burden. If we were increasing the burden, that makes a laughing stock of the government's argument in this place that there was no need for the additional words because they were synonymous; that people were already receiving a just amount. However, in the Assembly it was ruled that adding those words would mean that people would have to be paid more; it would create a burden. The government cannot have it both ways. The Assembly has proven the case of members on this side of the chamber and the Greens that we were right; that is, there was a need for the addition of the words because that would provide the maximum amount of compensation that people caught up in this property rights situation thoroughly deserved. Because it controls the lower house, the government is now saying, not in so many words but by its actions and what it placed in this message, that it is not paying fair and just compensation at the moment and it has no wish to.

Hon ADELE FARINA: I do not intend talking for long, but I need to cover a couple of matters. In relation to the comments I made when we were considering the bill, I need to state very clearly my position about the application of the just terms provision. I quote from *Hansard* of 13 November 2005, when I said -

> . . . the processes used and the considerations made by the Department for Planning and Infrastructure under the Town Planning and Development Act and the Land Administration Act apply the principles of the Spencer case, in which the High Court talked about the assessment of market value. In bringing down its determination, the High Court had regard to the just terms provision of the commonwealth Constitution, as it is required to do in making a determination. I am arguing that it is through that process that the intent of a just terms provision is already in play in the determinations that are being made by the Department for Planning and Infrastructure on these matters.

By "these matters", I was referring to the determination of market value. It is correct that I later used a bit of shorthand when referring to this matter and, quite fairly and rightly, Hon Donna Taylor picked up on that and has used it to illustrate her case. I have certainly learnt a valuable lesson to not use shorthand-speak in this chamber and that I need to articulate exactly what I mean, even if it means taking a little longer to do so. I make it very clear that my reference to the use of the just terms provision already applying relates to the department and other government agencies using the Spencer case to determine just terms for market value determinations.

I also put on the record that the government is not opposed to the consideration of just terms legislation; it is just that it does not believe it is appropriate to incorporate such an amendment on the run. The effect of the amendment moved by Hon Donna Taylor to what is an injurious affection clause could be to change the intent of that clause and effectively make it a compulsory acquisition clause. As that is the only place in which the injurious affection clause is provided for, with the introduction of that amendment we could in effect possibly lose the opportunity to make injurious affection payments. I am sure that is not the honourable member's intention. The government's concern was that it had gone through a very extensive consultation process on the Planning and Development Bill, and the issue of just terms compensation was not canvassed during the course of those extensive consultations. The government believes that it needs to ensure that it consults with all relevant stakeholders before introducing such terms. To that end, I will read from a letter from the Western Australian Local Government Association to the Minister for Planning and Infrastructure dated 9 November 2005, which states -

> I am writing to express my concern regarding a proposed amendment to the *Planning and Development Bill 2005*.
>
> I understand that the Hon Donna Taylor recently moved an amendment to Clause 173 of the Bill, to insert the words "on just terms" after "compensation". I wish to advise that while the Western Australian Local Government Association supports fair compensation for any person that is injuriously affected by the actions of Government, it does not support legislative amendment without extensive consultation with affected stakeholders, detailed analysis of the full implications of the proposal and discussion amongst the Western Australian community of the consequences of those implications.
>
> I am particularly concerned that the proposed amendments would provide avenues for extensive legal challenge resulting increased costs for government agencies without necessarily benefiting claimants for compensation.
>
> As you are no doubt aware, the Western Australian Legislative Council Standing Committee on Public Administration and Finance has recommended particular action be taken in relation to compensation for injurious affection and acquisition of land by the State government for public purposes (refer Recommendations 12 and 16). I strongly recommend that the approach proposed by the Standing Committee should be adopted as it will ensure that comprehensive assessment of any legislative amendments for such purposes can be conducted.
>
> *Recommendations 12 and 16 of the Standing Committee follow:*
>
> > ***Recommendation 12**: . . . that the Attorney General, . . . refer the broad issue of compensation for injurious affection to land in Western Australia to the Law Reform Commission of Western Australia for review.*
> >
> > ***Recommendation 16**: . . . that any future review by the State Government of the Western Australian constitutional legislation should include detailed consideration as to whether a "just terms" or "fair" compensation provision needs to be incorporated into the legislation with respect to the acquisition by the State Government for public purposes of privately-held property.*

> As such, the WA Local Government Association, at this time, does not support the proposed amendment to the Bill and requests that the original provision be retained.
>
> In anticipation, thank you for your assistance in ensuring that the proposed amendment is withdrawn and the matter is referred to the Law Reform Commission of Western Australia for review.
>
> Yours sincerely
>
> **Cr Bill Mitchell**
>
> **President**

I hope that letter helps illustrate the importance of consulting with all stakeholders and not making such amendments on the run. I will also read into the record a communication from the Attorney General. It states -

> I, JIM McGINTY, Attorney General for the State of Western Australia, hereby refer the following matter to the Law Reform Commission of Western Australia.
>
> The Law Reform Commission of Western Australia is to inquire into and Report upon whether, and if so in what manner, the principles, practices and procedures pertaining to the issue of compensation for injurious affection to land in Western Australia require reform, and in particular, and without detracting from the generality of this reference:
>
> (a) the provisions of s.241(7) of the Land Administration Act 1997, including particularly the rights affected thereby of persons whose land is, or is proposed to be, acquired by compulsory process by the State or by an instrumentality of the State or by any other instrumentality otherwise authorised or directed by statute to acquire interests in land compulsorily, and the extent to which the adjacent land of such persons is affected by such acts and resulting works;
>
> (b) the law and practices in relation to compensation payable or other accommodations capable of being extended to owners and other persons with interests in alienated land where such land is to be regarded as injuriously affected under the terms of those statutes set out in Schedule 1 regulating land for public purposes or the implementation of works of a public character;
>
> (c) the continued use and application of the expression 'injurious affection'; and
>
> (d) any related matter
>
> AND TO REPORT on the adequacy thereof and on any desirable changes to the existing law and practices in relation thereto.
>
> The Commission is requested to deliver its report and recommendations not later than July 2007 or such later date as I might direct.

I seek leave to table both the Attorney General's direction to the Law Reform Commission of Western Australia and the letter from Councillor Bill Mitchell, President of the Western Australian Local Government Association, to the Minister for Planning and Infrastructure.

Leave granted. [See papers 1113 and 1114.]

Hon ADELE FARINA: It is also important that I quickly canvass why the insertion of the words "on just terms" in the bill would create some uncertainty. Clearly, one view is that the term simply reflects the existing practice for compensating landowners based on market value, to which I have referred. However, it could also be argued that the inclusion of "on just terms" in a consolidation bill reflects an intention of Parliament to depart from the current regime of compensation, as set out chiefly in section 11 of the Town Planning and Development Act 1928. Indeed, in this regard, during the debate on the amendment we heard various members say what in their view was meant by compensation on just terms. One of the more generous positions was that proposed by Hon Barbara Scott. She was of the view that a small amount of money can in no way be represented as compensation for the inconvenience of those who have had to suffer, who have had to move, who have lost their homes, whose families have been disturbed and who have experienced the heartache associated with that. She felt that some payment should be made that takes into consideration the disruption factor, the heartache and any aspirations that a person may have had for his property. Certainly, we heard the opposite view from Hon Paul Llewellyn.

Debate interrupted, pursuant to sessional orders.

[Continued on page 7916.]

Sitting suspended from 4.15 to 4.30 pm