

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2001

Second Reading

Resumed from 29 October.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [5.03 pm]: As was said in the second reading speech by the parliamentary secretary, this is the fifth in an ongoing series of statutes repeals and minor amendments Bills; in other words, it is an omnibus Bill. The concept of an omnibus Bill is a good vehicle for Parliaments. Minor changes can be made, redundant clauses or legislation can be disposed of, typographical errors in Acts can be amended and so on. It is a good mechanism. It is efficient and it saves the Parliament time. It means that many things that could and should be tidied up are tidied up, rather than being left undone for years because they do not warrant an individual Bill.

There are three types of amendments in the Bill, and that was made clear in the second reading speech. Some Acts will be repealed and others will be amended. There is also a series of amendments to the short title of various Acts. There are all sorts of quaint items of legislation in the Bill, such as the Imperial Acts Adopting Act 1839. The Bill also makes changes to the Street Collections (Regulation) Act 1940 and so on. There are many items in this Bill that should be either repealed or amended, and many typographical and clerical errors that should be corrected. Even removing the word “the” from the titles of Bills is sensible in a simple sense to allow the correct cataloguing of Bills in alphabetical order.

The Opposition supports the legislation. However, some of the changes in this omnibus Bill do not fit into the category of minor changes and amendments. Some changes are of a policy nature. The intent of omnibus Bills is that they be essentially apolitical and “apolitical” - if there were such a word. In other words, they are simply for machinery of government tidying up, for minor changes and for clearing up errors in Bills. However, several items in this Bill have a clear policy content. We agree with some of that policy content, but that is not the intention of omnibus Bills. Therefore, the Government has gone too far with some of the items it has included in the Bill. For that reason the Bill has been in the Parliament for a long time. It was introduced in the upper House in July 2001. It was referred to the Legislative Council Standing Committee on Legislation; in fact, it was twice referred to that committee. The first committee report was delivered in March 2002. The Government then sought to include further amendments in the Bill, so it was referred to the committee again, and that report was delivered in June 2003. The way in which the process has been handled has been a bit convoluted.

I will refer to some of the issues that I consider have a policy component and therefore should not be included in the omnibus Bill. For example, there are changes to the Tobacco Control Act. The Bill proposes to change the decision-making process for the Western Australian Health Promotion Foundation; that is, the quorum will be changed to just five out of 11 members. Obviously that will change the whole voting system and operation of that foundation. It is an important body. It controls large amounts of taxpayers’ funds. Although there has been some debate, the Government changed its original position after the upper House committee report was delivered. I think that all parties now broadly agree with what has been proposed. The point is that it was not simply a minor clerical amendment. It had a policy component. Whatever the merits or otherwise of changing the quorum arrangements of the Western Australian Health Promotion Foundation, it is not the sort of thing that should be in an omnibus Bill.

The Bill will also repeal the Timber Industry Regulation Act. The view of some members is that this is a little sinister. Because it will take away registration deals for timber mills, it will be very difficult to know how many timber mills operate in Western Australia and what they do. Given the failure of government policies for the timber industry, a Government might find it quite convenient not to know how many timber mills there are. The ability to accurately measure what has been to a large extent the demise of the industry will be disguised. There is also a change to the Fish Resources Management Act. This change will remove the rights of Aboriginal people to object directly to the state minister on matters affecting their traditional fishing rights. Again, that is a policy matter and is of concern to Aboriginal people. It is not the sort of thing that is a minor amendment; it has a policy component.

Another item that I believe is particularly important, and is one of the two most significant changes, relates to the Land Administration Act. It is an amendment that I regard as very significant. It will change a longstanding practice. Money from crown land sales traditionally has been directed to the consolidated fund and used to fund capital works in the budget. That money will now be treated as departmental revenue. That is a major policy change and has not been well thought through. We are talking about what was the Department of Land Administration. There is nothing wrong with a management fee accruing to the department for the services it provides in handling a subdivision or the sale of crown land. However, it is very wrong for the capital value of the land to simply accrue to the department. I do not think it should be up to the department to effectively control those revenues. It acts as a property agent or developer on behalf of government, not as the owner of that

land. That is a bad policy call. In that sense, it should be debated properly in a parliamentary sense, and not simply treated as part of an omnibus Bill. Clearly it is inappropriate for that change to be in an omnibus Bill.

There are also changes to the Parliamentary Commissioner Act. Given this Government's plans to merge the Ombudsman's office with the Office of the Information Commissioner, that also has a particular relevance. I know that the member for Hillarys will comment on that issue, so I will not go into that in detail. However, the change affecting the Ombudsman and the change to the proceeds of crown land sales under the Land Administration Act are two significant changes. They are of a degree of significance that makes it inappropriate for them to be included in an omnibus Bill. Most of the other changes are quite minor and fit properly within an omnibus Bill. Some issues will be raised in this debate, but the Opposition will support the legislation.

MR R.F. JOHNSON (Hillarys) [5.09 pm]: The Leader of the Opposition has covered some very pertinent points in his speech on this omnibus Bill that the Government should take note of. Today I am speaking predominantly on behalf of the member for Kingsley, who, unfortunately, is not able to be in the Parliament. She wants me to raise some issues on this Bill on her behalf.

As the Leader of the Opposition has said, I will deal now with clause 91 of the Bill - "*Parliamentary Commissioner Act 1971* amended, validation and savings". I wish to go into consideration in detail so that I can get some direct answers to some direct questions. The amendments in clause 91 deal with the ability of the Parliamentary Commissioner - or the Ombudsman as he or she is known - to second staff to and from the office. At the committee stage in the Legislative Council the Government moved to insert "validation" in the clause heading to confirm the longstanding practice of seconding staff to that office. That happens throughout many government agencies. Hon Norman Moore asked whether there had been any cases whereby validation would have corrected a secondment that was made that was not in accordance with the Act. I have to report - it is recorded in *Hansard* - that Hon Kim Chance advised that no particular incident led to the amendment. His understanding was that it was drawn to the Government's attention in generic terms and it would put beyond any legal doubt that people seconded to the office are covered by the protections provided to other staff - and so they should be. That is the Opposition's view.

This clause brings into question the matter of Chris Read, who worked in the Ombudsman's office. Those aspects are pertinent. I am sure that the parliamentary secretary will not be able to answer my questions in his response. The experts must be brought to the Table so that we can be given truly accurate responses and I can question them if necessary. That is the way it works in this House, which is fair enough. I want to know whether the validation amendment was inserted following the Read case. Another very pertinent question is: what impact would the amendment have had on the Read case? Aside from the direct amendments in this Bill, what are the protections and obligations that will apply to people who are seconded that did not apply before? Would this have assisted Mr Read?

I am asking these questions because the Opposition believes that Mr Read was treated unfairly. He did the right thing by the Government and, more importantly, by the people of Western Australia and this Parliament by whistleblowing on a matter that was occurring in that department that should not have been happening. We can go into more detail about that later. This Government sacked Mr Read for carrying out his duty by whistleblowing. That was the thanks he got for making public details about expenditure that was not approved and purchasing that was not conducted under the government guidelines and procurement policies. He was kicked out of the Ombudsman's office. That would not have happened if the provisions of this Bill had been in force. This Government brought in the whistleblower legislation and all the bells and whistles that went with it, but it has done nothing to protect whistleblowers. It has happened in other areas. Other people have spoken out; for example, Jean Thornton. What happened to her? That is another classic case. Would this omnibus Bill and this particular area of this legislation have protected Jean Thornton? It strikes me that anybody who blows the whistle on anything that happens under this Government will not be protected. That is a disgrace. They do a public service. They have a duty to blow the whistle on things that are going wrong and on things that are happening that should not be happening within government agencies.

The key aspects of the amendments are the changes to provide that the Ombudsman, rather than the Governor, is the employer of the staff in the Ombudsman's office. This Bill confirms the ability of the Ombudsman to second staff to and from other public sector agencies. That has been a longstanding practice of the Ombudsman's office since its inception some 30 years ago. Usually if someone is seconded, he can look forward to spending quite a bit of time in that office as the equivalent of a permanent employee and receiving the benefits of being promoted to a higher level, which, of course, means earning a higher income. These amendments attempt to provide the same obligations and protections to seconded staff as are provided to other staff in the office. I do not have a problem with that. I agree with it. It is as it should be. The member for Kingsley certainly believes that should be the case.

This Bill proposes to amend section 4 of the Parliamentary Commissioner Act by inserting a new definition for "staff", which will mean -

“staff”, in relation to the Commissioner, means officers of the Commissioner and persons whose services are used under section 9(2a);

That would ensure that officers seconded to the Ombudsman’s office would have the same protections and obligations of ordinary staff. The Ombudsman could delegate any function of the Ombudsman to the extent that those powers can be delegated. The Bill will alter section 9 of the Act, which is headed “Staff of the Commissioner”, to allow for the appointment of staff by the commissioner rather than the Governor, and to allow for the secondment of staff to the office. The remaining amendments involve the insertion of “deputy commissioner” and “a member of the Commissioner’s staff” into the following provisions: section 22A, “Consultation”; section 22B, “Disclosure of certain information”; section 23, “Secrecy”; and section 30, “Protection of Commissioner and officers”.

It is important for members to be aware of the problems that took place when Chris Read did the right thing and blew the whistle. It is pertinent to this legislation because this legislation tries to put right something that is wrong. It tries to put in place provisions that would have protected Chris Read if they had been in place then. He would not have lost his job.

Ms K. Hodson-Thomas: And he would not have been placed under all that stress.

Mr R.F. JOHNSON: As the Acting Whip, the member for Carine said that he would not have been put under enormous stress. I have been told that Chris Read has been placed under enormous stress because of the events that have taken place. He has received no protection or support from this Government.

I will give members a chronology of what happened. It is important for members to understand why we are dealing with this clause in this omnibus Bill. Chris Read was seconded to the Ombudsman’s office from June 1993 to June 2000. It was intended to be a permanent secondment, by rolling three-year secondments. That was the custom and practice within the Ombudsman’s office and in many other government departments. In 1997 Chris Read first voiced his concerns over the new OSCAR project - the Ombudsman’s Statistics and Complaints Automated Register. Chris Read took his concerns to the Office of the Public Sector Standards Commissioner and to the Auditor General. He did the right thing. He had concerns and he went to the appropriate people within the structure of government. His second three-year term ended in June 2000. The Ombudsman at the time, Murray Allen, refused to extend Mr Read’s employment due to his “unwarranted” criticism of the management of the OSCAR project. Because he came forward and did the right thing by going to the appropriate places within government and voicing his genuine and valid concerns, he paid the price. The Ombudsman kicked Chris Read out. He would not renew Chris Read’s ongoing secondment.

On 12 June 2001 Chris Read appeared on Liam Bartlett’s radio program and alleged that the Ombudsman had wasted more than \$500 000 on the OSCAR system. Half a million dollars is a lot of money. I do not think someone should be punished for such disclosure. We should congratulate him for coming forward and for having the guts to bring that to the attention of the appropriate people. On 12 June 2001 the Leader of the Opposition asked the Premier in Parliament whether these allegations had been investigated; and, if not, what the Premier would do to ensure a full investigation. The Premier replied -

I am advised that the issues raised by Mr Read about the review of the OSCAR computer system were investigated by the specialist officer within the Department of Contract and Management Services, and a report was completed in May 2000. . . . The deputy Auditor General reviewed the CAMS report and concluded that there were no significant audit issues.

He also replied that Chris Read’s concerns about employment arrangements and remuneration were investigated by the Office of the Public Sector Standards Commissioner and the Western Australian Industrial Relations Commission and that his arguments were not sustained. The Premier later corrected this statement, saying that Chris Read’s unfair dismissal claim had been withdrawn from the WAIRC and that he had sought independent arbitration through the Workplace Agreements Act. The Premier also said that the arbitrator had found that the Ombudsman had not breached Read’s contract. He had not.

On 13 June 2001 *The Australian* reported that the Auditor General had conceded that Read had a point. The Premier was reported as saying -

As far as we’re concerned, he used the opportunities that were rightly available to him and he didn’t have success,

Read made a government department aware of what was going on - that is, the unnecessary expenditure of \$500 000 - and he did not get anywhere. What should he be given for that? I do not think that is the case. On 13 June 2001 the Leader of the Opposition asked the Premier in Parliament -

Is it not the case that rather than independent agencies investigating the OSCAR contract, the only investigation carried out was completed by a public servant from the Department of Contract and Management Services dispatched by and reporting to the Ombudsman?

Another public servant did that job. The Leader of the Opposition also asked -

Is it not also the case that this investigation was completed and delivered to the Ombudsman in February 2000, before the OSCAR contract was finalised, rather than in May 2000 as the Premier told the House yesterday?

The Leader of the Opposition further asked whether the Premier agreed with the Auditor General's comments as reported in *The Australian*, despite his earlier statements that the deputy Auditor General had reviewed the report without finding significant audit issues. There is a bit of discrepancy. In response to the questions, the Premier said that the project was funded and undertaken by the coalition Government. He tried to shift the blame to the coalition Government. It had nothing to do with us. It may have been undertaken while we were in government, but it was undertaken by the Ombudsman's office. The Premier conceded that the report was published on 7 February 2000, but said that it was sent to the Auditor General's office in May 2000. The Premier also said the Government was happy for the Auditor General to investigate the matter if he considered it necessary.

In November 2001, the Auditor General published his third public sector performance report. It dealt with OSCAR and found -

In September 1997, the Office commenced development of a new computerised system titled the "Ombudsman's Statistics and Computerised Register" (OSCAR). However, the system did not go live until July 2000 and development has since continued. Cost to June 2001 is approximately \$390 000.

Audit of the management of the OSCAR project found:

- The OSCAR system meets the operational requirements of the Ombudsman's Office, though its development has been protracted and costly.
- The process by which staff and contractors were engaged to develop the OSCAR system did not comply with government procurement and recruitment policies aimed at ensuring open and effective competition and demonstrable value for money.

That is the crux of the problem. The Auditor General's report continued -

- Improvements can be made to the OSCAR system to provide greater assurance regarding authorised access and completeness and accuracy of stored data.

Chris Read argues that the basis of his termination was false and that he should be reinstated to an equivalent position. I agree with him. He was pilloried for doing what he should have done, and he got kicked out.

I will ask questions about the validation during consideration in detail. I said earlier that when this Bill was debated in the upper House Hon Norman Moore asked a question that Hon Kim Chance could not really answer. The response of Hon Kim Chance to questions about this particular amendment was -

I will crave the indulgence of the Deputy Chairman for a moment because honourable members will observe that a considerable number of amendments are proposed. Although at this stage I will move only amendment 15/90, I want to give an outline of the purpose of the general run of amendments to this clause because they are all related and sit around the question of the Parliamentary Commissioner Act. We can go through these amendments more easily in this way, rather than by dealing with each issue as each separate amendment arises.

...

It confirms the ability of the Ombudsman to second staff to and from other public service agencies. Hon Norman Moore, the Leader of the Opposition, raised this matter in debate during the second reading stage and indicated that he was concerned that the proposal to amalgamate the offices of the Information Commissioner and the Parliamentary Commissioner raised new issues in relation to these amendments.

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

Mr R.F. JOHNSON: The Leader of the Opposition touched on that to some extent. Later in that debate Hon Norman Moore stated -

Without seeking to be pedantic, we must understand that this amendment was added after somebody discovered that something needed to be validated. I am interested to know some time down the track

whether there have been any cases in which validation has been necessary because an appointment or secondment was made that was not in accordance with the Act.

Was the secondment to which I have referred made and dismissed in accordance with the Act? The member for Kingsley would also like to know the answer to that. There are many other issues, and it is probably better to raise them in consideration in detail when the parliamentary secretary's advisers will be present. I am pretty sure that, in all honesty, the parliamentary secretary does not have a clue about this Bill.

Mr M. McGowan interjected.

Mr R.F. JOHNSON: I know that he has not. Somebody overheard him saying that he does not have a clue what the Bill is about. I sympathise, because I also do not have a clue. I have homed in on this clause only because I have been asked to. It is not my area of responsibility. It also is not the parliamentary secretary's area of responsibility. I understand that. That is nothing to be ashamed of. The omnibus Bill was developed by his colleague. That is why I am happy to go into consideration in detail. When I ask questions, the parliamentary secretary can get the answer from the expert who will be in the House. She will relay the answer to the parliamentary secretary and he can relay it to me. In that way we will get the answers to the questions I need to ask on behalf of the member for Kingsley. If she were here, she would give the parliamentary secretary a much harder time than I will because she understands this Bill a lot better than I do. She also has a greater understanding than I of the significance of this clause. She has been dealing with this issue and talking with Chris Read for a long time. She has been involved with this ever since he was dismissed. I know for a fact that he has been suffering a lot of mental stress and strain. Anybody who lost a job in that situation would experience the same effects. I sympathise with Chris Read because he did the right thing. He blew the whistle on something that was going very wrong in a government department. The Ombudsman's office is a government department, albeit it has a fair bit of autonomy. The Ombudsman is answerable to this Parliament. The Ombudsman is appointed at the discretion of the Premier and Cabinet. In that respect, as I said, there are questions to ask, and I want those questions answered.

I do not want to delay the House any longer than I have to, because I know that we have all had a very long day. In fact, we have had a very long three-week sitting period in this House. This is the last sitting day, and I am trying to keep in a very positive frame of mind. I am not trying to have a go at anybody. I just commented earlier to the parliamentary secretary, in a gesture of goodwill - it is the truth - that he does not have a clue about the Bill. He does not. He knows that it is a big thick Bill and that there are loads of amendments. If I asked him a question about a part of the Bill, he would have a lot of trouble answering the question. However, I will not do that to the parliamentary secretary, because I am that sort of person. My friend and I just want to be good friends - that is my friend who is sitting in front of me today. He is my Christmas cow.

I will sit now. I will be very happy to listen to a half-hour speech by the parliamentary secretary about the second reading debate. I am sure he will thank us all for our contributions. When he has responded, we will move into consideration in detail. Hopefully, we will not be too long. We are looking at only one clause. Once we get the answers, we can finish consideration in detail and move on to the third reading. Hopefully, we can then deal with the other business of the House.

MR M. MCGOWAN (Rockingham - Parliamentary Secretary) [5.31 pm]: I thank members of the Opposition for their remarks on this Bill. They are correct. It is the fifth omnibus Bill to be brought into this Parliament. It is an opportunity for the Parliament to put in place minor amendments and repeals, and to correct drafting areas in a range of Acts that have been passed by the Parliament of Western Australia over more than 100 years. This omnibus Bill repeals, amends or changes the short title of various Acts - 149 separate pieces of legislation. I am not completely across every one of those Acts, which go back to 1886. However, I will try to answer the questions posed by the member for Hillarys on the issues about which he expressed some concern.

There is nothing sinister about this Bill. It was introduced to the upper House originally in June 2001, I think. It was in the process of being drafted for a considerable time before that. As we know, this Government assumed office in February 2001, and the drafting process straddled both Governments. Therefore, it is a bit of the original work of the Court Government. It may even go back to Governments before the Court Government, because these Bills are so rare. However, it has been an opportunity for agencies throughout the public sector to tidy up a range of Acts about which they were concerned

We are repealing a number of Acts that no longer have any relevance, and putting in place minor amendments to a range of Acts, which I believe is the area of concern of the member for Hillarys and the Leader of the Opposition. We are also amending the short title of a number of Acts to remove the word "The". Removing the word "The" will make it easier for these Acts to be referenced by people who are researching other law. An inordinate number of Acts commence with the word "The". That makes it very difficult for people to find something they are looking for. For example, "The Midland Railway Company of Western Australia Limited Acquisition Agreement Act 1963" commences with the word "The". Therefore, rather than people looking for

that Act under the letter “M”, they must look under the letter “T”, which does not always make a lot of sense to those who are trying to research certain things. That is what this Bill is about. It is nothing more sinister than that.

Because the Bill is so comprehensive, it was referred to the Standing Committee on Legislation of the upper House. That committee examined this Bill for a considerable time and made one significant recommendation to delete the provisions dealing with the Tobacco Control Act, and the Government complied with that recommendation. The committee that examined this Bill comprised Hon Jon Ford, Hon Giz Watson, Hon Kate Doust, Hon Paddy Embry, Hon Adele Farina, Hon Peter Foss and Hon Bill Stretch. As members will see, there were three members of the Government, one member of the Greens (WA), one member of One Nation and two members of the Liberal Party. It was a broad committee, with members who had a range of experience. Therefore, the advice the committee has given in its report on this Bill has fairly wide support across all the parties in the other place.

The committee made one recommendation, and the Government adopted it. The committee expressed concern about the fact that some of the amendments strayed a little outside the original parameters, which were to tidy up minor matters and make non-controversial amendments. As a consequence of the committee’s concern, the Premier issued a directive to all government agencies and departments to be cognisant of that in the future and to not bring forward any recommendations that should be dealt with by a substantial stand-alone Bill. Therefore, the Government is aware of the committee’s concern. Nevertheless, the upper House passed this Bill by agreement, and we moved that single amendment to delete the provisions relating to the Tobacco Control Act.

I will deal with the first concern raised by the Leader of the Opposition. He mentioned the WA Health Promotion Foundation quorum. I understand that that part of the Bill was deleted as a consequence of the recommendation of the upper House; therefore, we do not have any concerns about that. The Leader of the Opposition also mentioned that the Bill will repeal the Timber Industry Regulation Act 1926. He expressed concern about that. He said it would mean that the number of timber mills in Western Australia would no longer be counted. It was certainly strongly recommended to the Government by the agencies that that Act be repealed. The report of the upper House committee stated -

... the Committee recognises that the TIR Act is outdated and that reporting and recording requirements are addressed by the requirements set by the WorkSafe Western Australia Commission.

That was a bipartisan finding of the upper House committee.

The member for Hillarys expressed concern about the amendments to the Parliamentary Commissioner Act. The case of Chris Read has been pursued by the Opposition, particularly in the early months of the Gallop Government. I understand that when Chris Read concluded his service in the Ombudsman’s office he returned to take up a position in the public sector agency he came from at the same level he enjoyed in the Ombudsman’s office. I am not familiar with the exact details of that case but that is my understanding of it.

With this Bill the Government is simply seeking to ensure that officers who serve in the Ombudsman’s office can, at the conclusion of their service, return to positions in the public sector or whatever agency they came from with a ranking or status that is the same as that which they held prior to their appointment in the Ombudsman’s office. We are in effect guaranteeing that they will not be demoted in the public sector. Many officers come from and go to the Ombudsman’s office. The Bill seeks to provide greater protection for those officers than is the case now. I do not understand the concern expressed about it. There is nothing sinister about it; it provides protection for officers. Mr Read’s case is not relevant to that. I look forward to members’ support for the Bill.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 20 put and passed.

Clause 21: *Timber Industry Regulation Act 1926* repealed, and consequential amendments to other Acts -

Mr C.J. BARNETT: When this Bill was examined by the upper House Standing Committee on Legislation, concern was expressed that the various regulatory requirements of the Act would not be met by other regulations. One of those was the need to register timber mills. Why is it necessary to repeal that Act? Given the massive changes taking place within the timber industry, we are concerned about whether the timber industry will even survive in a meaningful way. If these regulations are removed, we will not be able to monitor the industry. I would appreciate an explanation and assurance that the Government will be able to accurately monitor the number of mills in operation, their locations and the volumes of timber they are processing.

Mr M. McGOWAN: Mr Acting Speaker (Mr A.P. O’Gorman) -

Mr C.J. Barnett: I have a photograph here of the member for Rockingham congratulating Kim Beazley on his forthcoming win as Leader of the Labor Party!

Mr M. McGOWAN: I am well known for my capacity to predict things! In the caucus they call me Nostradamus!

The principal purpose of the Timber Industry Regulation Act was to provide occupational health and safety guidance regulations and controls for people working in the industry. It has been surpassed for the past 19 years by the Occupational Safety and Health Act and its attendant regulations. It was a 1926 Act that was particularly out of date and no longer appropriate. As far as I am aware, registration of the timber mills has not been taken up by any other government agency. A code of practice has been developed by the Forest Industries Federation of Western Australia to deal with matters relevant to the industry. The idea of registering timber mills is a fairly outdated concept.

Mr C.J. Barnett: I accept that. We do not need to register timber mills for the sake of it. However, I seek some assurance that there will be a continuing statistical base of information on the number of mills, their location and the volumes of timber they produce. I hope there is an alternative through the Forest Products Commission or whatever else.

Mr M. McGOWAN: I am aware that Hon Kim Chance, the minister responsible, is very concerned to ensure that the Forest Products Commission keeps appropriate statistics and so forth. However, I cannot provide an assurance that saw mills will be registered in future. Statistics are kept on how much timber is obtained and produced by individual companies and how much is logged in the particular areas of the south west. There is much greater statistical analysis and control of those aspects of the industry these days than was the case historically. This is an issue of concern to many Western Australians, so the Government is making sure we are completely aware of the types of timber that are logged and how much is logged and where it comes from to ensure that the industry is sustainable. I do not think timber mills should face mandatory registration and I am sure that, as a matter of principle, the Liberal Party does not think so. We will not be seeking to do that in future.

Clause put and passed.

Clauses 22 to 55 put and passed

Clause 56: *Fish Resources Management Act 1994 amended* -

Mr C.J. BARNETT: This is a clause relating to the traditional fishing rights of Aboriginal people. They had an ability to go directly to the state minister if they felt aggrieved in any way. The upper House committee looked at this matter and appeared to be reasonably satisfied. I do not intend to delay the House, but one response that the Government has given is that this matter is covered by native title. If that is the Government's response, it is an enormous cop-out. Not every indigenous person will necessarily be successful in a native title claim. I do not think that is the way to go. If we are to allow traditional Aboriginal people to maintain traditional fishing as part of their culture, which I support provided that a species is not over-fished or abused in any way, then we need to retain a responsibility for that in its own right in this State, and not say that native title may grant them those traditional rights. I am curious to know why the Government has moved down this path.

Mr M. McGOWAN: There are certain provisions in the Fish Resources Management Act, as the Leader of the Opposition acknowledged, that cater for Aboriginal communities, particularly those in the north west of the State, who undertake traditional fishing activities, and have done so for tens of thousands of years. When the Act was passed it contained a definition of Aboriginal person that referred to the former Court Government's Land (Titles and Traditional Usage) Act 1993. That Act was passed by the Court Government to overturn the Mabo decision of the High Court.

Mr C.J. Barnett: It was not done for that reason; be honest. It was done to reflect traditional rights of Aboriginal people. Indeed, had that law survived, it may well have provided greater protection for traditional rights than those provided under the commonwealth Native Title Act.

Mr M. McGOWAN: In any event, it was overturned by the High Court.

Mr C.J. Barnett: Yes, it was.

Mr M. McGOWAN: Therefore, that definition under that Act was made redundant by that High Court decision. That Act is therefore no longer in effect and the definition is no longer applicable and has no legal force. We have therefore gone back to the former definition of Aboriginal person that was in effect prior to the passing of the traditional usage Act.

Mr C.J. BARNETT: It is a little more than that. I do not mind the change of definition, but the policy point in the Bill, as I understand it, is taking away the ability of Aboriginal people to go directly to the state minister on

matters affecting their traditional fishing rights. That is a policy decision and I do not see why any citizen of this State cannot go directly to the minister. That is what has happened.

Mr M. McGOWAN: I may have slightly misled the House before. The definition that we are putting into the Fish Resources Management Act in this clause is the definition taken from the Land (Titles and Traditional Usage) Act, which was put in that Act by the Court Government. We have to put it into this Bill because that former Act, which put it into the Fish Resources Management Act, is no longer in effect. I hope the Leader of the Opposition understands what I mean. The traditional usage Act has been overturned by the High Court and the definition no longer applies and there is now no definition in the Fish Resources Management Act because the earlier Act is no longer in existence; we are therefore transferring across the Court Government's definition.

Mr C.J. Barnett: I do not have a problem with that. That is not the point I am making. I do not have a problem with a change to the definition. The point is though, as I understand it, that Aboriginal people will no longer have the ability to go directly to the state minister if they feel aggrieved over an issue to do with traditional fishing rights. That is a policy change and one that I do not agree with.

Mr M. McGOWAN: The Leader of the Opposition should make that point and I will answer him.

Mr C.J. BARNETT: I can understand the need for consistency in definitions. If one Bill has disappeared because of a High Court decision and the definition needs to be reinstated, that is not a difficulty. However, I understand that these changes also have the effect of making a policy change in addition to a definitional change. That policy change is that, until this Bill was introduced, Aboriginal people had an ability to go to the state minister if they had an issue or a grievance about their traditional fishing rights. I think they should be able to go directly to the state minister. This clause seems to take away from them that right of access to a minister on an issue relating to their traditional fishing rights.

Mr M. McGOWAN: There are processes in place for Aboriginal groups to go to the minister under the Native Title Act. That means that there are significant opportunities for Aboriginal people to do that on these issues.

Clause put and passed.

Clauses 57 to 90 put and passed.

Clause 91: *Parliamentary Commissioner Act 1971* amended, validation and savings -

Mr R.F. JOHNSON: This is the clause to which I am trying to get answers, mainly for the member for Kingsley, who unfortunately is not able to be with us in the Chamber. I am raising this issue because I hope that a question that was not answered in the upper House can be answered in this House. Hon Norman Moore asked the Leader of the House in the other place -

If the Leader of the House should come across a case in which validation was necessary, he might be kind enough to advise me.

Hon Kim Chance, who was the minister in charge of the matter, responded by saying -

I undertake to check that issue today and in the event that we find something I will advise the Leader of the Opposition.

As far as I am aware, no information has come back to Hon Kim Chance and therefore to the Leader of the Opposition in the upper House. I wonder therefore whether the parliamentary secretary can inform me what has happened so far so that I can go on to the other few questions that I have.

Mr M. McGOWAN: This omnibus Bill, in relation to the Parliamentary Commissioner Act, confirms that permanent public service officers who were appointed to the Parliamentary Commissioner's office for a fixed term would retain a right of return to an office not lower in status than the office they occupied immediately prior to their appointment to the commissioner's office. I think all members would agree that public servants who were taken out of a department and put into the Ombudsman's office should have the right to return to a job not lower in status than the job they had previously at the end of secondment to the Ombudsman's office. This legislation backs up that right. The validation clause is designed to make this provision retrospective for those officers who are currently working there. Apparently, four staff members who are currently on secondment to the commissioner from public service agencies are affected by this provision. This provision means that they will have the right of return to an office in the broader public sector not lower in status than that which they left. It therefore does apply to some public servants and that is why it is a validation clause; it actually applies to people who are already in the Ombudsman's office. Apparently Hon Kim Chance could not give advice at that time on how many people it applied to. It applies to those four people and I expect they will all be quite happy with that provision that will allow them to go back to a position not lower than that which they left to go to the Ombudsman's office.

Mr R.F. JOHNSON: I am obliged to the parliamentary secretary for that response. However, I put the case of Chris Read to the parliamentary secretary, which is an important case that the Opposition took a great interest in because we believe he was dealt with very unfairly by the Government. Chris Read was in the public service at a level lower than level 7. He went to the Ombudsman's office on the normal understanding, custom and practice.

[Continued below.]

Sitting suspended from 6.00 to 7.00 pm