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

Suspension of Standing Orders

MR J.C. KOBELKE (Nollamara - Leader of the House) [2.56 pm]: I move, without notice -

> That so much of the standing orders be suspended as is necessary to allow the third reading of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 to be moved forthwith.

It is not normal to move straight to the third reading of a Bill following consideration in detail, but we must reconfigure the way the Chamber handles business this week. A number of members have not been particularly well with the flu. The Government appreciates the Opposition's cooperation in working through the business. I believe members opposite will support dealing with the third reading today. It is hoped, even though the clerical work involved is considerable, that the Bill can be transmitted to the other place this week. The upper House sits tomorrow, but not next week. The Government appreciates the Opposition's support so the Bill can be read for a third time today.

MR R.F. JOHNSON (Hillarys) [2.57 pm]: I assure the House that I do not intend to take my full 60 minutes in responding to the Leader of the House.

Mr P.B. Watson: Hear, hear!

Mr R.F. JOHNSON: That is disorderly, Mr Speaker.

The SPEAKER: It was quite appropriate, I thought.

Mr R.F. JOHNSON: I will take a point of order against the Speaker in a moment.

I place on record once again that the cooperation of members on this side of the House has been forthcoming in expediting government business. The Government has the right to get measures through this House if that is its choosing. Once again, the Opposition is helping out the Government.

Mr J.A. McGinty: It is much appreciated, too.

Mr R.F. JOHNSON: I know that the Attorney General appreciates our support, but I want to ensure that the Leader of the House really appreciates it. I want him to log this into his memory; therefore, when opposition members ask for cooperation, he will remember such occasions. The Opposition has no problem with the suspension of standing orders as moved by the Leader of the House. I am sure he will have an absolute majority - opposition members are being kept back in the Chamber to ensure he has an absolute majority - although he does not have that majority opposite at the moment. The Opposition will do its part to ensure that legislation passes through at the appropriate time in this House. I could go on longer, but I will allow the motion to be put so the business of the House can proceed to the benefit of the people of Western Australia and certainly to the benefit of this Parliament.

Question put and passed with an absolute majority.

Third Reading

MR J.A. McGINTY (Fremantle - Attorney General) [2.59 pm]: I move -

> That the Bill be now read a third time.

I place on record my appreciation for the way that members opposite, particularly the member for Kingsley, have assisted in the passage of this Bill, the largest ever presented to this Parliament. Dealing with it in such an expeditious manner is appreciated by the Government. This is a historic piece of legislation, not simply because it is the largest presented, but because of what it will achieve. It will create a new jurisdiction in Western Australia to enhance the right of citizens to challenge government decisions that affect them in their daily lives.

In future, decisions will be either made or reviewed by the State Administrative Tribunal under 142 Acts of this Parliament. They range from very important original decisions, affecting issues such as guardianship and administration, through to what have traditionally been regarded as appeals, such as local government appeals, and disciplinary functions. This will become a vitally important part of the way in which citizens in Western Australia interact with their Government in the future.

This legislation has been debated in Western Australia since the 1960s, and I am delighted to be the Attorney General responsible for bringing it before the Parliament to achieve that which has applied in the federal area since the time of Gough Whitlam in 1975 - with the Administrative Appeals Tribunal - and which in recent times has become a feature of each other State Government. Examples include the Victorian Civil and Administrative

Tribunal, VCAT, which although not as extensive as the legislation before the House today, nonetheless covers somewhat similar subject matter by providing appeal rights to the citizens in that State.

This legislation is long overdue and I hope that during the consideration in detail stage members gained a better appreciation of the extent to which we have tried to honour the objective of seeking to achieve a non-legalistic tribunal - not a court - in which ordinary citizens will have their right to challenge government decisions enhanced. That was recommended in the report prepared by Michael Barker, QC, now Mr Justice Barker of the Supreme Court. I place on record my appreciation of the work he did, and the committee that worked with him, in providing us with the framework that has been substantially followed with this legislation as a way to significantly enhance this area of administrative law.

The Government intends that administrative law be substantially overhauled during this term of government. This is the first of many initiatives we will be taking in this area. We will be bringing in legislation, either late this year or early next year, to implement the second leg of that reform, which is the judicial review of administrative decisions legislation, that will hopefully significantly simplify these historic prerogative writs that are usually used as the means of effecting judicial review. We also have approved legislation in relation to privacy, which will be a first for this State, and as part of that we will also be overhauling the freedom of information laws. Each of those areas go together with the position of the Ombudsman - we are not proposing to make significant changes to that area - and constitute the five pillars upon which administrative law in this State is erected. Four of those five pillars will be either established or substantially reformed by legislation that we propose to introduce. This is the largest and arguably the most significant reform of those four areas to be reformed.

During the course of debate a couple of matters were raised on which I would like to comment. First, the member for Kingsley raised the question of the Equal Opportunity Tribunal and the blow-out in the waiting list or the list of unresolved matters. At the end of the financial year 2001-02, 66 matters were awaiting determination by the tribunal. The tribunal, of course, will be subsumed into SAT. The following year in 2003-03, that number had blown out to 99. I am advised that since 1 July this year a further seven matters have been referred to the tribunal. We clearly need to address this issue. The appointment of Justice Johnson to the Supreme Court has obviously made this issue somewhat more pressing, but we have moved immediately to appoint Jane Crisford, SC, to be president of the tribunal. I hope that prior to the commencement of SAT, significant headway will have been made in dealing with the outstanding matters that have been referred to the tribunal.

I would like to comment on two other matters. The first relates to the power of entry and inspection, which is contained in clause 92 of the Bill and about which there was some debate during the consideration in detail stage, as well as the second reading debate. It is important to remember that clause 92 is a procedural provision only. In my view it is a necessary provision for the proper functioning of SAT. SAT is not an investigative body, and the powers in clause 92 need to be seen in that context. They facilitate the proceedings before the tribunal and they are what could be referred to as a standard court viewing provision; in other words, they simply enable the tribunal to have a look at the subject matter of the dispute or the matter before the tribunal. The Barker report, at page 156, paragraph 100, recommended inclusion of these powers. In fact, the report recommended more extensive powers than have been included, in that it said that SAT should be able to order an occupier to give "a person who is to give evidence in the proceedings" access to a building or premises. We have not gone that far, but it is certainly not designed to be an investigative tool; it is simply a viewing tool, a procedural provision, to enable that to occur.

I simply make those points in relation to the power of entry and inspection. It is not a power designed to be an investigative tool, as, for instance, it would be under the Corruption and Crime Commission legislation or under legislation dealing with criminal matters. The power exists to some degree under a number of the enabling Acts. For example, section 14X(e) of the Fisheries Adjustment Schemes Act gives a compensation tribunal power to inspect anything. Some other examples are in the Health Act and the Hospitals and Health Services Act 1927. The power could be limited in the vulnerable persons jurisdiction, although I would have thought that where there is an issue about treatment in a mental health facility, the parties may wish SAT to inspect that facility. That is the context in which that should be viewed. Currently under the Mental Health Act the chief psychiatrist has powers of inspection. Section 13 of that Act details those powers. A person conducting an inquiry appointed by the minister has those powers, as set out at section 208; and the board has limited powers under clause 4, schedule 2, to inspect documents. Clause 7, schedule 1, of the Guardianship and Administration Act allows the usual inspection of documents and summoning of witnesses. In summary, SAT would use these powers only where necessary as a procedural tool, as it is not an investigative body. The debate focusing on aspects of demanding medical records misses the fact that these boards currently have the power to require the production of those records. Clause 92 is not for that purpose.

The other matter I wanted to touch on relates to clause 68 of the Bill, dealing with the rule against self-incrimination. The member for Kingsley requested that she be provided with a list of the Acts in the conferral Bill in which the rule against self-incrimination is removed. To date I have identified only two Acts in the review jurisdiction in which the rule is mentioned. Section 159(2) and (3) of the Fish Resources Management Act precludes the operation of the rule against self-incrimination in matters before the tribunals established under section 152 of that Act. Those tribunals deal with objections referred to them under the Act. This is not currently a straightforward review jurisdiction, and the SAT conferral Bill creates a decision for review in place of the current process of referral of objections.

Section 14Y(2) and (3) of the Fisheries Adjustment Schemes Act 1987 removes the rule against self-incrimination in matters referred to the Fisheries Adjustment Compensation Tribunal for review under section 14L of that Act. In disciplinary matters the majority of Acts preserve the rule in matters before the boards. The rule does not apply in the investigation stage. Arguably the rule is removed in jurisdictions that cover veterinary surgeons under which the board's procedures are governed by the Royal Commissions Act.

Under the common law the rule against self-incrimination applies unless specifically excluded. Clause 68 excludes it before the State Administrative Tribunal. It appears that as a matter of practicality, despite the reference I have given to the Fisheries Adjustment Schemes Act, the provision would never arise or apply in the review jurisdiction of the State Administrative Tribunal. As a rule people would not give evidence that would incriminate themselves. However, it is necessary and appropriate in the original and disciplinary jurisdictions. One way to approach the matter would be to amend the principal Bill so that clause 68 would not apply in the review jurisdiction.

I note that there is an equivalent provision in respect of proceedings before the relevant board in schedule 2, clause 5 of the Mental Health Act and part B, schedule 1, clause 8 of the Guardianship and Administration Act. I conclude by thanking members opposite for their assistance in what could have been a very difficult and time-consuming task, for getting straight to the point and for dealing expeditiously with this matter. I commend the Bill to the House.

MRS C.L. EDWARDES (Kingsley) [3.11 pm]: I thank the Attorney General for his responses to the questions that were raised. I again make the comment that the Opposition supports the establishment of an administrative tribunal in principle. It is something that I as Attorney General sought when I commissioned Judge Gotjamanos, as he then was, to carry out a review and report back to me, which report ultimately went to Hon Peter Foss as Attorney General.

I and other members on this side of the House are concerned about the framework of the Bill brought into the House by the Attorney General. More importantly, the constituent bodies and committees that will use the State Administrative Tribunal fear that it will not work in the same way in which they currently operate; that is, quick access to a hearing, quick access to a decision and quick access to advice about what they should be doing. Cost is another important issue. Currently it is very inexpensive for people to appear before many tribunals, boards and committees. Because the framework that has been established for the State Administrative Tribunal will create a very large body, the constituent bodies are concerned that it will become a very expensive exercise for people to appear before it. Many of those bodies believe the extra expense will then flow into increased registration fees which in turn will flow to the consumer.

The third issue is whether the State Administrative Tribunal will work. It will be a minefield for the many pieces of legislation that must come together into one body to operate from 1 January 2004. The legislation itself is a minefield and has proved to be so for the Attorney General in that numerous amendments have been made to it. The Attorney General has alerted the House to more amendments that will be made in the upper House. The Opposition supports those amendments.

The Attorney General has also foreshadowed a separate Bill to deal with the Local Government Act and the review process. He has indicated further amendments to be made to the jurisdictions that will be referred to SAT in the next year or two. That indicates that the Attorney General has now established a tribunal with jurisdiction conferred on it in the cheapest and quickest way. If it is created in a cheap and nasty way it will end up being cheap and nasty and the Attorney General will not get the result that every member in this place would wish for.

I pointed out to the Attorney General that if I had been handling the legislation - far be it from me to hand out gratuitous advice, but I will - and I wanted it to work, which we all do, I would slowly implement sections of the conferral of jurisdiction Bill. I would graduate the introduction of those jurisdictions to SAT. That could be done in a number of ways but two ways come readily to mind. The Attorney General has said that he will establish four teams. It could be done team by team or a base could be set for each team and we could build slowly on that base conferring jurisdiction on SAT. Therefore, on 1 January the body would not all of a sudden have the jurisdiction of 142 Acts conferred on it with the expectation that the body would work from day one,

because it will not work. I have had sufficient dealings as a minister to know that with all the goodwill in the world that is almost an impossibility. The only way it will work is if the Attorney General endeavours to make it work by implementing it slowly and allowing the body to grow to where he expects it to be.

Another concern raised by the constituent bodies was the lack of consultation. That came about by the Bills before us being developed in a very quick fashion. Those bodies continually ask the Opposition what the rush is for this legislation. The rush is that the Government sees an election on the horizon - it is not far away - and has asked itself what else it must do before the election. The Government has therefore taken too many shortcuts with this legislation. If that were not the case, the amendments that the Government made to it would not have been brought forward and there would be no need for the proposed amendments in the other place. Those amendments should have been worked through with the constituent bodies before the legislation was finally drafted and brought into this place. However, because an election is on the horizon, the Government has not taken the appropriate time to work through those issues with each constituent body. That work is now to be done. A whole lot of other work will have to be set aside so that the Government can concentrate on ensuring that SAT is up and running by 1 January, and other amendments to be made to the legislation will have to be drafted and brought back to the Parliament before that date.

I wish the Attorney General well with the proposed framework. I hope he takes some advice and implements it slowly; otherwise the consequences to consumers who have attempted to make an appointment for consultation with the Attorney General and who have not yet been fully briefed, unless it was in the past day or so, as well as the constituent bodies and organisations, professionals and the vulnerable people who are covered under the Mental Health Act and the Guardianship and Administration Act will all be impacted upon in a severe way. I do not want to hear in this place in February or March next year, when Parliament resumes, about huge delays and problems, because everybody in the Government is alert to that. If steps are not taken to avert that potential problem, what could well be a pinnacle in the Attorney General's hat could end up being a failure.

Although the Opposition supports the principle, we do not support the framework, the way in which it has been done and the lack of consultation that has taken place. Although I recognise the changes the Attorney General has made to self-incrimination and the power and entry issues, I still believe they are serious issues and there is a lack of natural justice as a power within the tribunal. Although the Attorney General has said that it is a procedural tool and is simply a viewing tool, who says that it will not become an investigative tool? It is very much supposed to be an informal body. Informal bodies around the world have set their own mechanisms for how they use the powers before them. We will wait and see. I suggest to all ministers that the Fish Resources Management Act is not an Act to follow when considering excessive powers. The Opposition does not support this legislation.

Question put and a division taken with the following result -

Ayes (32)

Mr P.W. Andrews	Mrs D.J. Guise	Mr M. McGowan	Mr J.R. Quigley
Mr J.J.M. Bowler	Mr S.R. Hill	Ms S.M. McHale	Ms J.A. Radisich
Mr C.M. Brown	Mr J.N. Hyde	Mr A.D. McRae	Mr E.S. Ripper
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr N.R. Marlborough	Mrs M.H. Roberts
Mr A.J. Dean	Mr R.C. Kucera	Mrs C.A. Martin	Mr D.A. Templeman
Mr J.B. D'Orazio	Mr F.M. Logan	Mr M.P. Murray	Mr P.B. Watson
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr A.P. O'Gorman	Mr M.P. Whitely
Mr L. Graham	Mr J.A. McGinty	Mr P.G. Pendal	Ms M.M. Quirk *(Teller)*

Noes (19)

Mr C.J. Barnett	Mr J.H.D. Day	Mr M.G. House	Mr M.W. Trenorden
Mr D.F. Barron-Sullivan	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr M.J. Birney	Mr J.P.D. Edwards	Mr A.D. Marshall	Dr J.M. Woollard
Mr M.F. Board	Mr B.J. Grylls	Mr B.K. Masters	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Ms K. Hodson-Thomas	Mr P.D. Omodei	

Pair

Dr G.I. Gallop	Mr T.K. Waldron

Question thus passed.

Bill read a third time and transmitted to the Council.