Legislative Council

Wednesday, 4 November 1992

THE DEPUTY PRESIDENT (Hon Garry Kelly) took the Chair at 2.30 pm, and read prayers.

STATEMENT - BY THE MINISTER FOR POLICE

Police Officers, Bunbury Police Region, Incorrect Numbers

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [2.33 pm] - by leave: I would like to make a statement to the House about an answer I gave to a question asked by Hon Barry House during question time yesterday. The member asked me what were the total number of police officers in the south west in a number of areas which collectively comprise the Bunbury police region. I advised the member that the total number of police in the Bunbury region was 186 officers and I asked him to put the question on notice to enable me to provide the breakdown of numbers requested.

In July of this year in relation to each police region I requested that the department provide me with certain information including a breakdown of the number of police in each region and to which portfolio the police are attached; for example, the CIB and traffic. I was subsequently supplied with information on the number of general operations, traffic and CIB officers stationed in each police region. The information I was given for the Bunbury police region was that there were 140 general operations police officers, 35 traffic officers and 11 CIB officers totalling 186 police officers in that police region.

The Assistant Commissioner, Personnel has now advised me of a mistake in those figures. The number of general operations officers attached to the Bunbury police region is in fact 105 officers and not 140. I am advised a mistake was made in the original figures provided in that the number of traffic officers attached to Bunbury was included in the total of general operations officers as well as being specified separately; that is, the traffic officers were in effect counted twice.

Following the question asked in the House, I detected a discrepancy in numbers which conflicted with earlier information provided to me. I queried those numbers and today have been advised that there are 105 general operations police officers in the Bunbury police region, 35 traffic operations officers and 11 crime operations officers, a total of 151 police officers. There are also two Aboriginal police aides.

I apologise to the honourable member that the figure I provided yesterday was wrong. I provided that figure to the House in good faith. I am now advised that that figure was incorrect and I take this opportunity to correct the information.

ROYAL COMMISSION (CUSTODY OF RECORDS) BILL

Assent

Message from the Deputy of the Lieutenant Governor and Administrator received and read notifying assent to the Bill.

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS AND STATUTES REVISION - WESTERN WOMEN FINANCIAL SERVICE PTY LTD AND GOVERNMENT AGENCIES INQUIRY

Second Interim Report Tabling - Final Report Extension of Time

HON R.G. PIKE (North Metropolitan) [2.38 pm] - by leave: I present the second interim report on the Standing Committee on Constitutional Affairs and Statutes Revision on Alleged Links Between Government Agencies and the Failed Western Women Group. I move -

That the report do lie upon the Table and be printed.

Question put and passed.

[See paper No 534.]

Hon R.G. PIKE: So far as the extension of time sought within which the committee is to report finally on this matter, I move -

That the extension of time be agreed to.

Question put and passed.

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION - REPORT ON FISHERIES AMENDMENTS REGULATIONS Nos 5 AND 6

Tabling

HON TOM HELM (Mining and Pastoral) [2.40 pm] - by leave: I present the report of the Standing Committee on Legislation on the fisheries amendments regulations Nos 5 and 6. I move -

That the report do lie upon the Table and be printed.

Question put and passed.

[See paper No 535.]

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS AND STATUTES REVISION

Interim Report Tabling

HON R.G. PIKE (North Metropolitan) [2.43 pm] - by leave: I am directed by the Standing Committee on Constitutional Affairs and Statutes Revision to present its interim report. Under part of its terms of reference this Standing Committee receives all petitions which are tabled in the House. The committee informs the House that it is unlikely to have the opportunity to consider the petition relating to the fisheries industry, tabled paper No 473, prior to the end of the current session. I move -

That the report do lie upon the Table and be printed.

Question put and passed.

[See paper No 522.]

MOTION - LEAVE OF ABSENCE BE GRANTED TO HON CLIVE GRIFFITHS

On motion by Hon Margaret McAleer, resolved -

That leave of absence be granted to Hon Clive Griffiths for nine sitting days due to parliamentary business overseas.

MOTION - ROAD FUNDING, FEDERAL ALLOCATION

HON KIM CHANCE (Agricultural) [2.45 pm]: I move -

That this House calls on the Federal Government to -

(1) Ensure that road funding levels to Western Australia are maintained at current real levels for the next five years.

(2) Increase funding for the Great Eastern Highway between Northam and Coolgardie.

The importance of the Western Australian road network is impossible to overestimate. While rail transport performs a crucial role in transporting our major bulk commodities -

Hon Fred McKenzie: Hear, hear!

Hon KIM CHANCE: I thank Hon Fred McKenzie for his interjection - and sea and air are also vital modes of transport, particularly for remote areas, road transport most affects the way in which we live. Every single aspect of our lives is in some way affected by road transport. No item that we use in our everyday lives has not at one stage been carried by road.

Not long ago it was common to see bumper stickers carrying the message "Truckies carry this country". While that message was designed to remind people of the valuable role that truck drivers perform, even the hardest working truck driver would be prepared to concede the obvious: Without quality roads truckies could not carry a thing.

As a former truck driver, I have driven on most of Western Australia's minor and major roads, the interstate routes and many of the major routes in the Eastern States. When we compare the major routes in Western Australia with those in the Eastern States, we are not doing that badly. It came as a shock to me as I travelled to Sydney on the western highway which connects Bathurst, a town of 30 000 people, and Orange, a town of 50 000 people, to find that the road was barely sufficient to allow one standard six axle truck to pass another.

The Main Roads Department and the shire councils in Western Australia have taken on the challenge of providing quality, all weather roads over vast distances. Their resources to provide those quality roads are limited by relatively low traffic volumes. I recognise the wonderful job that those authorities have done. The standard of those roads stands in stark contrast to the standard of roads we see in quite heavily populated areas in the Eastern States.

I also recognise the role of the Commonwealth in the provision of funds for road maintenance. Over the past decade the Commonwealth has recognised that the road funding allocation needs to reflect the importance of linking remote communities in Western Australia, particularly where those regions are of major economic importance.

As a result of this recognition by the Commonwealth and the commitment of the State Government, the northern part of this State has seen a revolution in the availability of high quality roads. The economic and social benefits these have brought to the north west is proof of the adage which was coined by the Royal Automobile Club of WA Inc: Good roads do not cost; they pay.

Hon Mark Nevill: That is why Canberra has the lowest accident rate in Australia.

Hon KIM CHANCE: That is a very good comment, and I thank the honourable member for it. Separate statistics are kept in Western Australia, including of the usage of the freeway system. Similar comments can also be made about freeways despite the high traffic volumes and the higher speeds when compared with other roads in metropolitan areas.

Hon D.J. Wordsworth: You have travelled around the major roads except the Great Western Highway.

Hon KIM CHANCE: I will come to that. There are roads in Western Australia that require urgent attention. The Brookton Highway would definitely be one of them.

Hon D.J. Wordsworth: You had better change your motion then.

Hon KIM CHANCE: I have no intention of amending my motion at this stage because I am here to discuss the economic importance of the Great Eastern Highway.

Hon D.J. Wordsworth: You had better amend your motion.

Hon KIM CHANCE: The honourable member should look after it himself. I have mentioned that road users are generally unsatisfied with the manner in which their contributions have been allocated. Many road tax payers are unsatisfied that they are getting their dollars' worth. While I have indicated that the Commonwealth's allocations are recognised and appreciated, it also needs to be acknowledged that of the roundly $8 billion that road users contribute to both State and Federal consolidated revenue funds only roundly $4.7 million is actually spent on the roads. The remaining $3.3 billion -

Hon E.J. Charlton: The GST package removes all of the fuel taxes.

The DEPUTY PRESIDENT (Hon Garry Kelly): Order! I advise the House that yesterday was yesterday and today is today. The normal rules applying to interjections are back in force.

Hon KIM CHANCE: Despite your assistance, Mr Deputy President, I feel I must comment on Hon Eric Charlton's remark. It really surprises me that while his Federal colleagues are bound by their coalition responsibilities to support Fightback, he is not bound by a coalition in this State to support a Federal coalition policy which will increase the cost of his constituents' freight to an extent that he does not even know about. He is flying blind.

Hon E.J. Charlton: You don't know it either, Mr Chance.

Hon KIM CHANCE: We will have a go at qualifying it. It is a little sad that his Federal colleagues are tied and have no choice; Hon Eric Charlton is not tied and he does have a choice but is still going along with it. Only approximately $4.7 billion is actually spent on

roads. Members should not hold me to these figures. Although they are more or less accurate, they are round figures and change with time. The figures I am referring to relate to the end of 1991.

Hon P.G. Pendal: As long as they do not change as dramatically as the losses involving Mr Berinson, we will be happy to accept them.

Hon KIM CHANCE: In that respect, I hope they do not change as much as Mr Pendal's estimations.

The DEPUTY PRESIDENT: Order! If Mr Pendal intends to speak later in this debate, I might have to rule him out of order because he has already spoken.

Hon KIM CHANCE: The remaining $3.3 billion is retained for other Government provided services. In other words, it is retained in CRF and is allocated out of CRF for other functions of Government.

It is true that road users directly contribute to the demand for those services in that they need hospital services which must be funded by Government. No-one here would deny that road users contribute to the requirement for hospital services.

Hon Barry House: Are you going to throw the South West Highway into your motion also?

Hon KIM CHANCE: I will wait until I hear which roads Mr Wordsworth throws in and then I will see if we can afford it. Road users provide funds not only for hospitals but also for police, licensing emergency services, planning and freeway designs, which I referred to a little while ago. There are calls on the Government created by roads which are quite separate from road construction. I will not argue that those costs amount to anything like $3.3 billion. In fact, I will not even try to quantify them. Nonetheless, there is a demand on CRF from that $3.3 billion surplus.

While there may be some concern that the proportion of funds allocated directly to road maintenance and construction under the current arrangements needs some adjustment, it is, nonetheless, a mix of taxing arrangements which has evolved and is still evolving to meet the needs of consumers as far as possible. The key element of present road user tax arrangements is that the bulk of the funds which are raised come from fuel excise. That is the fundamental revenue raising item. That means that, since the funds raised come from fuel excise, it is, effectively, a user pays concept in that fuel use is as good an indicator of road damage per user as any available. For example, a small car doing, in my terms, 60 miles to the gallon which I understand is approximately five litres per 100 kilometres, does infinitely less damage to a road than a road train which uses perhaps a hundred litres per 100 kilometres or around three miles to the gallon.

Hon D.J. Wordsworth: Are you supporting new road charges?

Hon KIM CHANCE: No. If the member were listening -

Hon P.H. Lockyer: He is listening to you read your speech.

Hon KIM CHANCE: I am referring to copious notes.

Point of Order

Hon P.H. LOCKYER: Standing Order No 48 requires a member to identify the notes that he is using in his speech.

The DEPUTY PRESIDENT: The member may table the documents at the end of his speech?

Hon P.H. LOCKYER: I understood that you, Mr Deputy President, knew your Standing Orders very well. Standing Order No 48(a) states -

> A document quoted from by a Member not a Minister shall,
>
> (i) at the time such quotation is made be identified;

You, Mr Deputy President, are referring to Standing Order No 48(a)(ii), which requires a member to table them "immediately upon the conclusion of the speech of the Member".

The DEPUTY PRESIDENT: Will the member identify the documents from which he is quoting?

Hon KIM CHANCE: I am quoting from my notes.

Debate Resumed

Hon KIM CHANCE: In explaining to Hon David Wordsworth why I am not proposing a new road user charge and in suggesting that had he been listening he would have understood what I was talking about, the line that I am taking is to draw to his attention that, because the bulk of road user funds are raised from fuel excise, it is a reasonably effective means of allocating road costs to road taxes. I used as an example the case of a small car using approximately five litres per 100 kilometres which uses one-twentieth of the fuel used by a road train which uses 100 litres per 100 kilometres and therefore pays one-twentieth of the tax. I am certainly not proposing a new tax.

Hon D.J. Wordsworth: The Federal Government is.

Hon KIM CHANCE: That is conjecture. I would be pleased to discuss that with Mr Wordsworth at a later date. If he is referring to recommendations from the National Road Transport Commission, that is not true. I do not know what he has in mind in relation to the Federal Government, but if that statement relates to the NRTC, it is not the case.

A number of options have been canvassed in the past seeking to provide a more accurate link between road damage and the price paid by road users. That is particularly relevant to heavy transport. By far the most accurate means of tying contributions to damage or use of the roads is a mass distance charge. If Mr Wordsworth wants a new road charging system, clearly a mass distance charge is the most effective.

Hon D.J. Wordsworth: I am not looking for additional charges.

Hon KIM CHANCE: The member's Federal colleagues may be if the unthinkable happens and they win the next election because they will not find those funds in the GST. However, I will get onto that in a moment. If some means were available to properly assess each operator's mass distance effectively and efficiently, undoubtedly that would be the preferred system. Unfortunately, there is no known method of assessing a mass distance charge, either effectively or accurately. In the 1970s, Western Australia used a mass distance charge which was called, if my memory serves me correctly, a road maintenance tax. It proved to be difficult and expensive to administer and relatively easily avoided. I never did that myself, but I am told it was relatively easy to get around the road maintenance tax, which was extremely unpopular.

Hon Fred McKenzie: All taxes are.

Hon D.J. Wordsworth interjected.

Hon KIM CHANCE: It was a Liberal Government in Western Australia. I seem to remember that a Liberal Government introduced the tax as well. Subsequently, a tax on tyres has been discussed and dismissed, largely on the ground that it, too, could be avoided and obviously on road safety grounds.

Hon P.H. Lockyer: There is already a tax on them.

Hon KIM CHANCE: There is a sales tax but not a road user tax as such.

The DEPUTY PRESIDENT (Hon Garry Kelly): Order! There are many interjections flying around in this fairly non-controversial debate. Members who want to speak will have a chance to contribute when Hon Kim Chance sits down. I ask members not to interject unless they have something so urgent to say that they cannot wait, and then to make their interjections brief and to the point.

Hon KIM CHANCE: I am finding their assistance quite useful; they are broadening the debate.

Funding road budgets by the use of licensing charges is another alternative. It is generally seen as inequitable because it taxes on the basis of registered ownership and not on the use of the vehicle. That means the high mileage operator is subsidised by the low mileage operator. That has been a problem for the Interstate Commission, which Hon David Wordsworth wanted me to refer to, in its attempts to standardise road user charges; that is, no available system exists which can reflect road damage more accurately than fuel excise does. I am not suggesting for one moment that it is a perfect system, but I know of none - certainly none

that has been tried has been as successful as the fuel excise system.

This raises the question that, given the fact that fuel excise appears to be the most equitable means available to link road use and road damage with road user charges, why should we want to change to another system which less accurately encompasses the user pays principle? The reason for this motion is to try to ensure that current real levels of road funding in Western Australia are maintained over the next five years. My concern is that the Federal Opposition is proposing radical changes to road user charges which appear to threaten the ability of the Commonwealth to adequately fund road maintenance and construction needs. The Opposition proposal to abolish the existing fuel excise, which is now roundly at 26¢ a litre, and replace it with a goods and services tax element on fuel, which at current levels of 15 per cent would amount to roundly 7¢ a litre, would raise about $1.5 billion, rather than the $5.8 billion currently raised by the excise. However, it is estimated that about half the revenue raised by the GST on fuel would be rebated to business, which would leave net revenue raised of $0.75 billion. Assuming the States continued to raise their $2.2 billion annual road revenue, that would leave total revenue of $2.95 billion. Currently road spending is $4.7 billion or $1.75 billion more than the Opposition proposes to raise from the GST and the State revenues combined. There is a gap.

Dr Hewson has made it clear on a number of occasions that the Opposition does not intend to introduce a road user charge to fill the shortfall.

Hon E.J. Charlton: There you go.

Hon KIM CHANCE: I take it from Hon Eric Charlton's interjection that he supports that.

Hon E.J. Charlton: Absolutely.

Hon Doug Wenn: What will he introduce?

Hon KIM CHANCE: We have had an assurance from Dr Hewson time after time on this matter and I quote from page 1137 of *Hansard* of 16 September 1992, from part of a debate in the House of Representatives -

> The shadow Minister for land transport says . . . in a media release -

I deduce that it was made on 14 September 1992 -

> Secondly, the Coalition does not have to introduce a road user charge. Unlike the Government we do not need to continually milk road users for general revenue. Fightback! is fully funded.

That is a fairly straightforward statement which seems to support what Dr Hewson has said. A further statement was then made and it is interesting that it involves a member of the Liberal Party, although only as a recipient of a letter, who is likely to be a member of this House next year. The member for Wannon wrote to Bruce Donaldson, who is the former President of the Western Australian Municipal Association.

Hon Barry House: And a very good man.

Hon KIM CHANCE: I could not agree more; he is a wonderful chap. The letter to Bruce Donaldson from the member for Wannon stated -

> We will have a road user charge but obviously it is not known what form it will take.

That was written at the same time as the statement was made. Have we made a mistake? The shadow Minister for Land Transport said the coalition did not have to introduce a road user charge, but the member for Wannon said that there will be a road user charge but the Opposition does not know at this stage what it will be. Who shall we believe? Let us look into this matter further and refer to Dr Hewson's comments. In September 1992 when addressing the National Transport Federation in Surfers Paradise -

Hon Mark Nevill: What was he doing in Surfers Paradise?

Hon KIM CHANCE: I am not sure; he was probably on parliamentary business. Dr Hewson was quoted as saying at the function -

> We -

That is, the Opposition.

- have left it to be determined in government as to exactly how the charge will be structured and how it will be related to mass and distance.

Hon P.G. Pendal: You cannot seriously suggest that Dr Hewson has not been up-front in a spectacular way, and much more than any other politicians in this nation.

Hon KIM CHANCE: He has been up-front but he is not consistent. He said on one day that the Opposition did not need to have a road user charge in some form and in the same month he said that the Opposition had left it to be determined in Government as to how exactly the charge would be structured and how it would be related to mass and distance. How can we accept that Dr Hewson knows what is going on?

Hon P.H. Lockyer: He knows what is going on.

Hon P.G. Pendal: Next year in Opposition you will have plenty of time to work it out.

Hon P.H. Lockyer: A five per cent swing in your electorate will put you back to truck driving.

The DEPUTY PRESIDENT: Order!

Hon KIM CHANCE: Therefore, after I have clarified the situation vis a vis whether the Federal Opposition will introduce a road user charge - and I understand that it is now quite clear in everybody's mind, because Dr Hewson said firstly that we will not have a road user charge, and secondly that we will but that he will not tell us what it will be, which is very clear, and we should be grateful to him for that - where does that leave us? If we take Dr Hewson's first statement that we will not have a road user charge, that leaves only the Consolidated Revenue Fund as the potential source of funds to close the gap between costs and revenue. Indeed, when Dr Hewson was challenged in Surfers Paradise prior to the September statement on his intention to introduce a road user charge, he said that would be the case. According to that scenario, road users would pay only 63 per cent of the total cost of providing roads, while taxpayers would pay the remaining 37 per cent, presumably by way of the GST that they would pay on meat, milk, bread and vegetables. Hon Cheryl Davenport has reminded me that sporting functions will also pay a 15 per cent GST.

Several members interjected.

Hon KIM CHANCE: In other words, the Opposition is recommending that we abandon a road funding system which is based mostly on the user pays system - I say "mostly" because clearly road licensing has a role to play in that - and which provides not only for all road costs, but also for a substantial contribution to police, hospital and emergency costs, in favour of a system under which low income people will subsidise major transport operators. That in itself is bad enough, but when that is considered in the light of the previous coalition transport funding decisions, who can have any confidence that the Federal Opposition will be prepared to wear the political odium of funding roads from taxes? The Federal Liberal Party introduced the fuel excise arrangements which we now have - for which it blames Paul Keating - under the guise of the import parity policy. The Federal Liberal Party also introduced the bicentennial road fund levy a few years later in the 1982 Budget, despite the fact that the fuel excise was providing more revenue than was required. How can we have any faith at all that Dr Hewson will keep his original promise, which he has now apparently changed, that we will not have a road user fund?

Hon E.J. Charlton: What has happened to the condition of roads in the last 10 years?

The DEPUTY PRESIDENT: Order! I suggest that if Hon Eric Charlton knows, he should let us know when it is his turn to speak. I will give him the call if he stands.

Hon KIM CHANCE: Mr Deputy President, I wish I could respond to that interjection, but it is clearly beyond the resources available to me to tell the House how roads have fared in the last 10 years.

How can we rest assured that road funding allocations will be maintained in the event of a coalition election victory without the introduction of yet another road user tax? I will now say something nice about the Federal Opposition. The use of the goods and services tax principle in this case is not entirely wrong, as the Opposition scheme would still allow some elements of the user pays principle, although it would underfund road needs at 15 per cent.

The DEPUTY PRESIDENT: Order! It is one thing for Hon Cheryl Davenport to interject,

but it is another for her to have a conversation with someone else across the Chamber and to not even enter into the debate with the person who is on his feet. Interjections should be to the member and relevant to the debate.

Hon KIM CHANCE: To fully fund road needs, taking into account the State's contribution and the estimated rebates to business, a GST at the rate of 48 per cent - not 15 per cent - would need to be levied on all fuel. That would raise revenue of 22.4¢ per litre, which would be equal to $5 billion, which after rebates would allow $2.5 billion for road funding, and thus maintain - barely - the existing levels of funding when added to the State's $2.2 billion contribution, although that would mean that road users would make no contribution to the Consolidated Revenue Fund through road user charges.

While I have said that the use of the GST principle is not wrong in itself in this example, all that would happen is that the fuel excise would be renamed the GST. Otherwise, there are some real differences to the extent that private motorists would pay proportionately more than would truck operators, who are able to obtain rebates for the GST which they pay on their fuel. Similarly, and in keeping with the GST principle, country people would pay more than city people as GST is an ad valorem tax while the excise is taxed at a flat rate. In other words, while the GST on fuel could be called a user pays concept, it is nowhere near as accurate in linking damage to roads to charges as is excise, and we would have the classic stand off where city motorists would get effectively cheaper fuel than would country motorists.

I have gone to some lengths to demonstrate the difficulties that will be faced by the Federal Opposition in maintaining current levels of funding. I hope the State Opposition will still support this motion, despite the obvious problems that its Federal colleagues will have if they ever have the opportunity of adhering to this radical restructuring of road funding arrangements. Regardless of whether roads are funded by fuel taxes or by a GST, it is essential that the real levels of funding for roads are maintained in order to ensure that Western Australia continues to have access to an adequate road system.

The second part of the motion calls on the Federal Government to increase funding for the Great Eastern Highway between Northam and Coolgardie. The Great Eastern Highway services the central and eastern wheatbelt and the goldfields, and it is our primary link with the Eastern States. It is connected to the Eyre Highway by the Coolgardie-Norseman road. The Great Eastern Highway is by far the most important of all the major highways in Western Australia, but it is also the oldest highway in respect of its design and construction and is rapidly degenerating because its outdated construction is not capable of coping with the enormous heavy transport demands being made of it. The greater part of the highway between Meenaar and Coolgardie is too narrow and too rough, and in places is breaking up badly because of an inadequate road base. In spite of its key role, the Great Eastern Highway is far below the standard of other major Western Australian highways which carry the same or lower tonnages. Road maintenance crews and the Main Roads Department are working overtime to keep up running repairs on the highway, but in some places the road condition is so poor that new potholes appear within inches of holes which were filled only days before.

That situation is occurring throughout winter, and last winter was much wetter than usual. Nonetheless, it is a critical situation, and this was drawn to our attention by Hon Eric Charlton recently.

The Great Eastern Highway is in urgent need of redesign and reconstruction if it is to continue to be this State's link with the rest of Australia. This must be done if it is to be compared with other major highways within Western Australia. Also, as it is a major national highway, it is important that the Commonwealth be advised that increased funding for reconstruction must be a priority.

Hon Mark Nevill, along with probably every shire along the route of the Great Eastern Highway, has brought this matter to the attention of the Minister and the Main Roads Department. The problem is growing. The Commissioner for Main Roads has instigated a review on the Great Eastern Highway, and I understand the report will be available soon. In discussion with departmental officers I discovered that the most urgent works identified in the review will be carried out as a priority before the deregulation of road train freight.

The desired standard for the Great Eastern Highway is that equivalent to the section of the

highway known as the "Grass Valley strip"; if this were achieved, most users of the highway would be satisfied. However, reconstruction of such a great length of road to such a standard will involve immense cost and would take several years to complete. For that reason, it is most important that my motion receive the support of the Legislative Council, both in the interests of safety and the economic wellbeing of the Great Eastern Highway users. This support will be in the State and national interest and will recognise the important role the highway plays in our economy.

Point of Order

Hon P.H. LOCKYER: Under Standing Order 482, I request that the member table the documents from which he quoted. That means all of the documents - even the handwritten ones.

The DEPUTY PRESIDENT: Is the member satisfied?

Hon P.H. LOCKYER: I can check the member's notes against *Hansard* tomorrow.

The DEPUTY PRESIDENT: The document will be tabled.

[See paper No 536.]

Debate Resumed

HON MARK NEVILL (Mining and Pastoral - Parliamentary Secretary) [3.24 pm]: I second the motion, which has two parts: Firstly, it refers to general road funding in Western Australia and requests that the current level be maintained at a real level for the next five years; and secondly, it refers to upgrading the Great Eastern Highway.

I compliment the job done by the Main Roads Department over the past 20 or 30 years; it has been by far the most effective and efficient department in this State over that time. This fact has been recognised by many people who see the MRD set the standards for Government financial management and engineering. The department has done a fantastic job in maintaining and improving the road system in Western Australia.

During the 1960s, 1970s and 1980s, owing to massive efforts, a substantial sealed road network was established in Western Australia. In the 1960s the beef and defence roads were built in the Kimberley, followed by a massive road building program throughout the 1970s. This was followed by the bicentennial highway program, which gave the network a further fillip.

The Main Roads Department has done tremendous work in bridge building as well as road construction, and has achieved better value for its dollar than any other similar department throughout Australia. It developed techniques of using critical mixtures of sand and clay for road bases rather than rocks and gravel, which greatly reduce costs. Nevertheless, many of our roads are ageing and breaking up. The stretch of the Great Eastern Highway between Coolgardie and Northam is most unsatisfactory.

Many road trains should be taken off our highways and the goods moved by rail - the more road trains we can remove from the road system the better. Nevertheless, roads will still have substantial traffic, despite the giant strides being made in rail efficiency. Therefore, it is essential that more money be ploughed into the major roads to ensure that they are safe and economic.

I interjected on Hon Kim Chance and indicated that Canberra has the lowest road accident rate in Australia.

Hon E.J. Charlton: They do not travel anywhere in Canberra.

Hon MARK NEVILL: A great deal of money was spent on Canberra's roads - it does not matter how many cars use them - and well engineered roads save lives; that is undoubted.

Hon W.N. Stretch: Hear, hear!

Hon MARK NEVILL: I become annoyed with the traffic calming systems in the metropolitan area as the same results could be achieved by dropping the speed limit in the suburbs. The traffic calming devices, such as speed humps, are a hazard for fire engines, ambulances and motorists like me who are used to driving on country roads. The money spent on traffic calming works by local councils should be taken away by the Grants Commission to be directed to areas of real need; namely, country roads. This will save lives

and have beneficial economic effects. The risk of people being killed in suburban streets is much lower than that of people driving on deteriorating, poorly constructed country roads.

Hon P.G. Pendal: The traffic calming methods have a dramatic impact in reducing speed in inner city suburban areas.

Hon MARK NEVILL: I do not mind that. I am talking about speed humps. Plenty of roads are available on which louts can speed; if one constructs a speed hump, they will relocate their activities to another road, which does not achieve much.

The $1.75 billion shortfall in road funding which would follow the implementation of a goods and services tax was referred to by Hon Kim Chance. The other day the Federal Leader of the Opposition ended four or five months of doubt regarding road user charges under a coalition Government in Canberra. The speculation was that it would cost users between $16 000 and $34 000 a year depending on the type of truck and road used.

Hon N.F. Moore: You seem resolved that it will be introduced.

Hon MARK NEVILL: I am not saying that. The Federal Leader of the Opposition said that such charges would not be imposed in the first term of a coalition Government. Therefore, it would be necessary to direct $1.75 billion from consolidated revenue to make up the shortfall until the funds were received in the second term. Mr Charlton would have a great deal of difficulty justifying such a road user charge on a farmer using his truck for only eight or nine weeks in a year. That is when he will get into difficulty. The present system is equitable. That shortfall must be made up with a road user charge. Whether the member likes it or not they are the sorts of figures at which he will be looking. He could push some up and pull some down, but that would be politically unpalatable to the nervous nellies in the National Party and there would be another coalition split on that issue.

Hon E.J. Charlton: I'm sorry; I was not nervous.

Hon MARK NEVILL: The member was obviously not listening earlier.

[Debate adjourned, pursuant to Standing Order No 195.]

CREDIT AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon John Halden (Parliamentary Secretary), and read a first time.

Second Reading

HON JOHN HALDEN (South Metropolitan - Parliamentary Secretary) [3.33 pm]: I move -

That the Bill be now read a second time.

The amendments to the Credit Act 1984 contained in this Bill address three main areas of concern. The first is the coverage of the Act in its present form. At the moment, the Act applies only to contracts which, among other things, charge interest at a rate above 14 per cent per annum. Immediately prior to the introduction of the present credit legislation in 1984 the framers of the legislation did not anticipate the present state of the consumer finance market. Since the Credit Act came into force, interest rates have moved mainly in the range of 16 to 25 per cent. Although on some occasions interest rates were even higher than that, they were never lower. That contrasts distinctly with the state of the present finance market where the range of interest rates being charged by credit providers has changed so dramatically that a large portion of the personal lending presently being done is at a rate only slightly in excess of 12 per cent per annum. Although this is a benefit to many consumers, a side effect is that protection under the Act will be denied to a large number of recent borrowers. Present indications appear to be that although interest rates may vary slightly in the near future, they are unlikely to rise substantially for some time. To address this development, the Bill contains provisions which will allow the threshold interest rate, above which the Act will apply, to be varied according to the needs of the market.

The Bill provides for the actual level of interest rates at any particular time to be fixed by regulation, thus avoiding the need to bring repeated amendments before the Parliament. This

amendment is a response to the early advice from the banking and finance sectors that interest rates were likely to decline below the existing Credit Act threshold. The finance sector has indicated its belief that fixing the threshold rate in the range of six to eight per cent will adequately address the situation. It is proposed that in conjunction with the enactment of this Bill regulations will also be prepared to fix a new interest rate threshold in this range. In the interim, to preserve existing Credit Act coverage for most borrowers, an exemption order under section 19 of the Credit Act has been put in place. The order will be revoked on the successful passage of this Bill.

The second area addressed by this Bill is that of insurance disclosures under the Credit Act. The existing legislation imposes strict requirements for disclosure in credit contracts to reveal the real cost of credit. That cost often includes ancillary costs such as insurance for a variety of risks such as life cover, sickness and accident insurance and unemployment insurance. If effected, these insurances and their premiums and any commission must be disclosed in the credit contract. To ensure as far as possible that the appropriate disclosures are made for each contract, a civil penalty consisting of the loss of insurance charges is applied to failures to disclose that information.

The experience of the banking and finance industry indicates that the three types of insurance already mentioned are often sold together as a package. Even though the insurance may be effected as a single package, the present form of the Act requires separate disclosure for each insurance type effected. As a result, a number of credit providers are leaving themselves open to a loss of their terms charges for failure to comply specifically with the requirements of the Credit Act. However, on most occasions there has been complete disclosure of the total cost of the relevant insurances and complete disclosure of the total commissions involved. In nearly all such cases which have so far come before the commercial tribunal, affected borrowers have either not taken part in the proceedings or have expressed the view that the additional disclosure required by the Credit Act is not material to them. The present position is, therefore, characterised by an inconsistency between industry practice and the requirements of the Act. It appears that in this area the existing requirements of the Act place credit providers at risk for failing to disclose items of information which, if disclosed, would not provide significant additional benefits to consumers. The Bill, therefore, contains further provisions which will allow the combined disclosure of relevant insurance coverage in the areas of life, sickness and accident and unemployment insurances where those insurances are commonly effected together, thus removing the potential for a credit provider to lose its terms charges for what is essentially a technical breach of the Act.

The third area addressed by these amendments is the powers and procedures of the commercial tribunal. A significant function of the commercial tribunal is to deal with applications from credit providers for relief from the consequences of not complying with the disclosure requirements of the Act. In a number of cases before them Australia wide, the various commercial tribunals have found that the breaches are relatively minor and the sum of money involved with each contract is very small. Another feature of a number of breaches has been that they affect a large number of contracts. Presently, when a credit provider applies to the commercial tribunal for relief, it prima facie should serve every individual debtor affected by the breach personally with notice of its application. In many cases, the effective penalty to the credit provider by having to do so is vastly increased. The Bill recognises this by giving the commercial tribunal the discretion to allow a credit provider to give notice of any such application by advertisement. The tribunal may, in its discretion, also decline to deal with an application unless personal service is effected if service by that method is likely to be more desirable.

The amendments also contain provisions modifying the application of civil penalties. At present, an automatic civil penalty applies to every failure to meet the disclosure requirements of the Credit Act. There is no relief from that civil penalty until the commercial tribunal finally orders otherwise. The finance industry has repeatedly observed that this is a significant burden. The primary purpose of the application of a civil penalty is to encourage credit providers either to comply from the outset or to apply as soon as possible to the commercial tribunal, and thus effectively rectify breaches of the Credit Act. Hence, the function of the civil penalties has been discharged at the point at which the application to the commercial tribunal is made. The Bill, therefore, contains provisions which suspend the operation of the civil penalty once the application to the tribunal has been made. In the

interim, the effect of the sections is to restore the credit provider's right to its interest charges but to prevent it enforcing or refinancing the contract while proceedings in the commercial tribunal are pending. The amendments also contain provisions for the tribunal to make ancillary orders in support of the main proceedings. The Credit Act provides significant protection for the interests of borrowers but has been criticised regularly by sections of the community for its inflexibility and its complexity. These amendments address some of the more significant of those criticisms while preserving the existing levels of consumer protection.

I commend this Bill to the House.

Debate adjourned, on motion by Hon Margaret McAleer.

JURIES AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon J.M. Berinson (Attorney General), and read a first time.

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [3.40 pm]: I move -

That the Bill be now read a second time.

This Bill is to increase the maximum number of reserve jurors in long criminal trials from three to six. In October last year the Government introduced a similar amendment to the Juries Act, along with other changes to increase the efficiency of the jury selection system. Unfortunately, the Opposition was not prepared to support the latter amendments and the Government did not proceed.

The Bill now before the House is restricted to the proposal to increase the number of reserve jurors only. This is an important but, so far as I am aware, a non-contentious issue. The concept of reserve jurors was introduced in 1975 to reduce the possibility of a trial being aborted for want of a sufficient number of jurors during the whole of the proceedings. The present provisions allow the trial judge a discretion to direct that, in addition to the usual 12 jurors, up to three reserve jurors be empanelled at the commencement of the trial. Those jurors take a modified form of oath, sit with the jury and are available, if necessary, to replace an incapacitated juror during the trial. The risk in terms of the proper administration of justice as well as costs, both to the community and to the accused, could be very substantial indeed if a long trial had to be aborted because of insufficient fit jurors.

Although the Bill is only to change one number the Supreme Court has urged that it be dealt with urgently, as one or more extremely long trials are expected in 1993. Based on experience elsewhere, it is considered that the current maximum of three reserve jurors is insufficient and it is therefore proposed that they be increased to six.

With further reference to the view of the court that this matter be dealt with urgently, I indicate to the House that I will be seeking the agreement of the Opposition to have the second reading debate on this Bill no later than next Wednesday.

I commend the Bill to the House.

Debate adjourned, on motion by Hon Margaret McAleer.

APPROPRIATION (CONSOLIDATED REVENUE FUND) BILL

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [3.42 pm]: I move -

That the Bill be now read a second time.

The Bill seeks appropriation of the sums required for the services of the current financial year, as detailed in the Estimates. It also makes provision for the grant of Supply to complete requirements for 1991-92. Included in the expenditure estimates of $5 061.5 million is an amount of $706 009 000 permanently appropriated under special Acts, leaving an amount of $4 355 491 000 which is to be appropriated in the manner shown in the schedule to the Bill. Supply of $2 900 million has already been granted under the Supply

Act 1992. Hence, further Supply of $1 455 491 000 has been provided for in the Bill. In addition to authorising the provision of funds for the current year, the Bill seeks ratification of the amounts spent during 1991-92 in excess of the estimate for that year. Details of these excesses are given in the relevant schedule to the Bill.

I commend the Bill to the House.

Debate adjourned, on motion by Hon George Cash (Leader of the Opposition).

Sitting suspended from 3.45 to 4.00 pm

MEMBERS OF PARLIAMENT (FINANCIAL INTERESTS) BILL 1989

Committee

Resumed from 21 October. The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon John Halden (Parliamentary Secretary) in charge of the Bill.

Progress was reported after consideration of clause 16 had been postponed.

The CHAIRMAN: When the committee last considered this Bill clauses 2, 3, 4 and 16 were postponed until after clause 17.

Hon JOHN HALDEN: I seek leave to vary that original motion so that clause 16 can now be considered as clause 17 is consequential upon that clause and later amendments may become superfluous depending on what happens with this clause.

Hon P.G. PENDAL: So that other members and I understand what is happening, we have not dealt with clauses 3 or 4 and my proposed amendments to them and we have not dealt with new clause 17.

The CHAIRMAN: There is also an existing clause 17 in the Bill.

Hon P.G. PENDAL: Which will become clause 18. As I understand it, the Parliamentary Secretary is saying that clause 16 is the crunch clause and were the Opposition to win certain other things would happen.

The CHAIRMAN: That is correct.

Hon P.G. PENDAL: Also, that if the Opposition does not win that clause there is no point in spending time on the other matters. If that understanding is correct we will proceed.

The CHAIRMAN: That is correct.

Leave granted.

Postponed clause 16: Registers -

Hon P.G. PENDAL: I will go back over one or two points if for no other reason than not knowing the gestation period of an elephant.

The CHAIRMAN: It is 22 months.

Hon P.G. PENDAL: If it is 22 months it does not take as long for any of God's creatures to reproduce as it has taken for the Members of Parliament (Financial Interests) Bill to reach this stage. We are dealing with a Bill introduced in 1989 and the same second reading. The Premier who introduced the Bill resigned about two Premier's ago and the Opposition member who responded sadly died 18 months ago. Yet in the dying days of this session we are asked to deal with this Bill.

The debate has been interrupted on so many occasions that I wish to argue my point in respect of clause 16 again. I emphasise for the record that the Opposition supports the Bill. I do not know how many times we have to say these things. We have seen this great paragon of virtue, the Premier, on television, and heard her on radio, misleading people as she is unable to understand the plain meaning of words. She has already been found out for misleading another place which went so far as to say that she had lied. Therefore, let us be clear about this Bill.

The Opposition does not need the Premier to speak for it on this matter. It supports the Bill with amendments. One of the principle objections the Opposition has is that this Bill will do nothing to clean up political life in this State. It is therefore quite superficial and is window dressing at its worst, or best, depending on one's point of view. The Government says that it is best to have a register, kept by both Clerks of the House and open to inspection by anyone

who wants to walk in off the street. We know that the provisions of the Bill are sufficiently and absurdly open for that to occur and will not amount to a row of beans at the end of the day. As a member of Parliament I will have to paint such a vague picture of my interests that the register will be of no use whatsoever; it will have no public value at all.

Hon John Halden: The member would not want to circumvent the law.

Hon P.G. PENDAL: When this Bill becomes law I will obey the law, as I am sure other persons on this side will - unlike the events of the 1980s when the Labor Party advocated this law and then systematically broke the spirit of it. The Royal Commission has made one or two remarks about some people.

Hon John Halden: The Opposition rejected this legislation in 1985.

Hon P.G. PENDAL: We rejected a number of things in 1985 that were quite different; let us be clear about that. Nonetheless we support this Bill, with amendments. The clause deals with the register that the Clerk of each House will hold. The question of ownership of the registers should not reside here at all. It should go down to an independent body - the Supreme Court, if members like. I think that would appeal in order to take the politics out of the matter, because we are talking about the Registrar of the Supreme Court keeping the register so that if persons, members of the public, feel aggrieved to the extent they believe that a member is not being honest about his or her financial interest, an approach can be made to the Registrar of the Supreme Court in the first place. Our amendments then mean that if a prima facie case is made out that the complaint is warranted, it would be open to the Chief Justice to enter the picture at that point. Our amendment seeks to take the matter out of this tiny political environment, to take the Clerk of each House out of the procedure and to move that procedure down to arguably the most respected institution in the State, the Supreme Court. I move -

> Page 18, line 3 - To delete "Clerk of each House of Parliament" and substitute "Registrar".

Hon JOHN HALDEN: The amendment provides for the placement of the register at the Supreme Court. The member said that such a step would take the politics out of the matter. I suggest that it would take the scrutiny out of the issue. The situation would be that any inquirer who believed any decision or action of any person required to declare an interest was in conflict with private interest could request the Chief Justice to advise whether a filed return reflected the possibility of such conflict. The Chief Justice would then advise whether there was a possibility of conflict. First, we would not know the interests of the member; we must guess, and then we would decide whether there was potential for a conflict. That is not my idea of public scrutiny. It is guesswork. Again, it is an attempt by the Opposition to try to remove the scrutiny of this place and its members, and the other place and its members, from a reasonably close scrutiny to one that is difficult for the general public to enforce.

That is not my reason for opposing the amendment and the principles embodied in it. The disclosure of members' financial interests involves the keeping of a register in this place, and such a register would remain in the jurisdiction of the House and, effectively, the Clerk. If we were to do what the amendment suggests, we would have a problem which would run contrary to article 9 of the Bill of Rights.

Hon P.G. Pendal: The Parliamentary Secretary was not too keen on the Bill of Rights yesterday.

Hon JOHN HALDEN: I am always keen on the Bill of Rights. It is a shame that the member has not read it lately. The Bill of Rights confers on each House the authority to regulate its own proceedings. It is foreign to that principle for either House to submit that what is essentially a housekeeping matter should be transferred to the independent jurisdiction of the Supreme Court, at which point there would be no jurisdiction available to this House. Clearly, under the proposal by the Government, the Clerks - being officers of the House - are open to the directions of the House, and anything which occurs within the walls of the Parliament should not be subjected to outside scrutiny or control.

The proposal requiring the Chief Justice to adjudicate on what is essentially a non-judicial matter is improper. It places the Chief Justice in a situation of being asked to exercise judicial power outside the court structure. The real judge in this situation, as proposed in the Bill, must remain the House. If consistency with the principle of article 9 of the Bill of

Rights is to be retained, the proposal by Mr Pendal would see this House abdicate that principle. The amendment, by restricting the inherent powers of each House to regulate all matters relating to the proceedings and administration of each House, is contrary to that principle. On reflection perhaps Mr Pendal may consider it contrary to article 9 of the Bill of Rights. The Opposition should be careful about giving away the inalienable powers of our House, powers which have applied to Houses under the Westminster system for some four centuries. The Government provision is for the maintenance of the register within the confines of the House, where throughout history the business of the House has rightfully been undertaken. The amendment is a very dangerous one because it would do away with the considerable prerogatives and powers that the Houses of Parliament of the Westminster system have enjoyed over many centuries. On a kinder note - and I do not propose to become political in this debate - Mr Pendal was perhaps trying to look at various options. Hon Phil Pendal came up with an option, but not a very good one: It would cause great constitutional and parliamentary problems. It is not one that we should entertain with any great relish. The House should support the Government's position.

Hon P.G. PENDAL: The argument that has been put by the Parliamentary Secretary is a good one. We should never lightly move against article 9 of the Bill of Rights, but Hon John Halden has presented a selective use of the argument. It was only a week ago that his Premier proposed that we do something very similar; that is, she made recommendations about benefits of members and ex-members. Hon John Halden is suggesting that we should not give the Chief Justice powers and rights over members of Parliament, but that they should properly be exercised within the Parliament. I have no difficulty with the principle, but the Government already subscribes to that breach by sheer dint of having, for example, the Salaries and Allowance Tribunal. If one used the Parliamentary Secretary's argument and took it to its logical conclusion, one would say that no-one outside the Parliament should set salaries and, therefore, there was no need for the Salaries and Allowances Tribunal. We would not let public servants in the Ministry of the Premier and Cabinet administer our imprest account, because if one took article 9 literally one would arrive at a position where civil servants had no rights over the travel allowances of members of Parliament. The system we have is a good one, and the Parliamentary Secretary must show some consistency in his argument. It was only a week ago in the wake of the Royal Commission's reporting adversely on certain ex-Premiers that the Premier intervened and took away certain rights and privileges that had accrued to those ex-Premiers. On that occasion the Premier should have been listening to the advice we have been given today by the Parliamentary Secretary. The Government cannot have it both ways: Either Parliament, in everything, regulates the conduct and affairs of members of Parliament, or outside people do that and set our salaries, administer our imprest account and in this case allow someone not in the parliamentary arena to examine our conduct in relation to our financial interests. It is no good bringing into the Committee an argument that we must stand on our dignity, because we have let that go on a number of occasions that I have just outlined.

My second point is in response to the Parliamentary Secretary's comment that it is not good to have someone like the Chief Justice being drawn into things that are not of a judicial nature. On the face of it, it is a very strong argument; in fact, I have used it myself in this Parliament before.

Hon John Halden: I will have to be excused then.

Hon P.G. PENDAL: Hon John Halden may even want to withdraw his argument in the knowledge of that, because he breached the spirit of his argument by using a senior puisne judge as a Royal Commissioner. The Royal Commission is not a judicial body and there is a body of people like Mr Foss and others, who would know better than I, that has argued for years that we should not use judges as Royal Commissioners because we get into this mode of thinking that the only people who can conduct inquiries are judges. Many judges refuse to accept appointments with Royal Commissions when asked by the Chief Justice on behalf of the Governor. I recall a Chief Justice of New South Wales who said to the Government of the day, "Don't come to me and ask me or my judges to be Royal Commissioners, because we are not and we will not accept the post. We are judges of the courts and we do not want to be invited to do non-judicial work."

The spirit of what Hon John Halden said was that we should not take out of the hands of this Parliament the right to administer or in any way to adjudicate on the financial interests of

members of Parliament and send those rights down to the Supreme Court where we might involve the Chief Justice in something of a non-judicial nature. The members's argument collapses on that point alone. If we go back to the original argument put by the Opposition - and it is strange to be arguing this case today when the member who introduced the legislation in the other place has been dead for 18 months, although that is an indication of the delays in the passage of this Bill - the Clerks of the Parliament are people with the highest professional skills, but they should not be the holders of the records of the financial interests of members of Parliament. In fact, one could argue that they are far too close to the political scene and may be more open to undue influence being brought to bear on them than someone who occupies the position of Registrar of the Supreme Court. When one works with someone day in and day out one tends to form a reasonably close working relationship with that person, even on a personal basis. It may then put those particular officers in a very difficult position if they begin to make decisions based on their working or personal relationship with a member, a relationship that would not exist if the Registrar of the Supreme Court had this task to discharge. We may well be injecting a level of political partisanship that was never envisaged when the Bill was introduced a long time ago.

The Committee should look seriously at the notion of having the Supreme Court and its officers keep the register. I have demonstrated that it is a nonsense to say that we are setting some nasty new precedent by involving the Chief Justice in a non-judicial process. It is interesting that at the moment, the acting Governor is the Chief Justice. If members wanted to take Mr Halden's argument to its logical conclusion, Hon David Malcolm should not have been asked to act as the acting Governor. Historically, when the Governor is not in office or is absent, invariably the Chief Justice of the day is the Lieutenant Governor.

Hon John Halden: Are you looking for a job?

Hon P.G. PENDAL: I would find that a very attractive job if Hon John Halden wanted to mention it in the right places.

Hon John Halden: We will do a deal outside.

Hon P.G. PENDAL: Provided the house and the tax free salary goes with it I will be available for interview at any time.

The CHAIRMAN (Hon Garry Kelly): I think this is outside the scope of the clause.

Hon P.G. PENDAL: I think it is, Mr Chairman. That is the principle with which we have lived for a century in this State. The Governor resigns or is away from the State and, invariably, the Chief Justice is - I think he is called - the administrator, or the deputy governor. No-one could suggest that we are not giving him something other than a most unjudicial role. He would be actually administering good government in Western Australia. I do not think it is in any way possible to sustain the argument that, by the registrar's initially keeping the records and the involvement at a later stage of the Chief Justice if necessary, one is asking the Chief Justice to do something terribly unusual in the existing circumstances in Western Australia. Again, for those reasons I ask that the Parliamentary Secretary and the Committee take more serious note of the Opposition's argument and point out where it is wrong, if indeed it is. I happen to think the Opposition is putting forward very credible arguments.

Hon JOHN HALDEN: I do not think that a philosophical argument of how the State is run will necessarily prove that Hon Phillip Pendal's argument is wrong, although I admit I started that line. I wanted to point out my concerns about the erosion of the powers of both these Houses of Parliament. However, it is not worth going down the line put forward by Hon Phillip Pendal, except to say that there is probably some justification for a Supreme Court judge not being on a Royal Commission. However, there are many precedents to there being Royal Commissioners who are judges. They do not sit in the Supreme Court at the time they are Royal Commissioners.

The other matter concerns the involvement of the Clerks with this legislation. There is a significant difference between what we are asking the Clerk to do and what Hon Phillip Pendal's amendment would have the Chief Justice do in the Supreme Court. The Government's proposal requires the Clerk to collect, collate, publish and store a set of records. There is no judgment to be made on them. Therefore, the comment that there might be some political closeness, conspiracy or whatever between the Clerk and a member is

spurious. The Clerk will have no decision to make, except whether to print a series of forms or a document on behalf of a House. Quite clearly, under the proposition put forward by Hon Phil Pendal, the Chief Justice would have a very significant role to play; one which would require political judgment.

Hon Peter Foss: Which would require political judgment from the Chief Justice?

Hon JOHN HALDEN: It may well require political judgment from the Chief Justice. It is necessary to highlight the differences on a philosophical level, and on a mechanical level. Compared with the Government's proposal, under Hon Phillip Pendal's amendment a person could not approach the Registrar unless he believed there was a conflict of interest. However, he would not have the knowledge to form that belief until he had seen the person's return. Under the amendment one would not be able to see the return. How could the Chief Justice make a decision under what is to be new clause 17 and on what material would he make such a decision? How would he conduct investigations or hear evidence from parties? Who would be the parties? Who would advise the Chief Justice? Those issues have not been provided in detail by Hon Phillip Pendal. An inquiry will have no means of finding out what may be the financial interests of a member. Hon Phillip Pendal's amendment would require the public to go on a fishing expedition.

Hon P.G. Pendal: They will be doing that anyway.

Hon JOHN HALDEN: The Chief Justice would constantly be requested to advise on conflicts of interest. That is not an appropriate use of the Chief Justice's time. The financial interests of members must be established first. The Government proposes that members' financial interests be on public record. On that basis, they will be known. Hon Phillip Pendal also proposes that the Chief Justice should advise on the mere possibility of a conflict of interest. The possibilities could be endless. How would one make that decision? The guidelines are not detailed in the amendment. If the Chief Justice were to say there was potential for conflict of interest, how would one appeal that? Hon Phillip Pendal's amendment has no guidelines for that. Quite clearly, the opportunity for redress is provided in the Government's proposal; it is via the House. Two positions exist: One is the philosophical position and the general concerns put forward, and one is the mechanism. In both respects, the Government's proposal is far more tenable, fair and a more appropriate use of the Parliament than that put forward by Hon Phillip Pendal.

Hon PETER FOSS: I raised a matter during the second reading debate - I think it ties into the views of the Parliamentary Secretary - which relates to the question of the conflict of interest of a member. What are we talking about when we refer to a conflict of interest of a member? As a member of Parliament one's role is to deal with legislation which, by its very nature, is general. There may be exceptions, for instance, with the ratification of State agreements, but I cannot think of anything else.

Hon P.G. Pendal: Perhaps disallowances.

Hon PETER FOSS: Generally speaking, one is dealing with general legislation. It is quite proper for one's interests to be brought to bear when dealing with legislation. I referred previously to union legislation. I would not expect someone who was a member of a union to have a conflict of interest purely because he was dealing with legislation relating to a union. The same would apply where a lawyer was dealing with legislation which affected lawyers. Similarly and more directly a landowner or a pastoralist would not have a conflict of interest if he were dealing with a Bill relating to pastoral tenure. We have been particularly gratified when Hon David Wordsworth has given his views about heritage legislation. He has restored a ruin into a highly valuable heritage building and will obviously be affected by heritage legislation. None of those cases could be seen as creating a conflict of interests but more as part of the useful background of members. That is something one looks for in members of Parliament; they are here to represent various views. That is why we call it representative Government.

Hon P.G. Pendal: Perhaps we should report Mr Wordsworth for the dreadful sin of putting the State before his own interests.

Hon PETER FOSS: That is the point I am getting at. It seems to me that, in legislation, generally speaking, that is not a conflict; that is part of the desiderata of a member of Parliament. It is only when one becomes a member of Government when daily one makes

decisions in individual cases that one has a possibility of conflict. Once we get into Government it is very important that this be known because obviously we make decisions daily.

There has often been confusion between local government councils and Parliament. I have heard councillors say that they must disclose their interests, why should not members of Parliament? The reason is that they perform both roles; they are the Government and they are the Legislature.

Hon D.J. Wordsworth: They do not vote on matters in which they declare an interest.

Hon PETER FOSS: Exactly. Ninety per cent of what they do is governmental and only 10 per cent or less is legislative. They do not vote on matters in which they have an interest.

Hon D.J. Wordsworth: Therefore, their electors are disfranchised. If that were the case, we should declare our interests before we go to elections so that our electors can make decisions on those matters.

Hon PETER FOSS: I think it is important that we vote on legislation. Whether or not we have an interest, we are obliged to vote. That is what we are elected to do. If we did not, we would be depriving our electors. It is altogether different with matters of government. Then we declare our interests and make sure that we do not participate in the discussions. That is a proper principle to be applied.

I am a little concerned about whether the legislation has really addressed that. Does the Parliamentary Secretary think that Hon Phillip Pendal's amendment, maybe with some further amendment, is better able to handle that situation than is this legislation? Does he think his legislation, as it stands, recognises that distinction and adequately deals with it? How does he think that then compares with Hon Phillip Pendal's amendment? If he does not think either of them addresses it absolutely and completely, where does he think that might be addressed?

Hon JOHN HALDEN: My answer will be very quick and simple. Under this Bill the Government makes no judgment about the conflict of interest. The Bill provides only that information is revealed to the public and to members of the House. Based on those revelations, the House and the public can then make a judgment. Should members of the House -

Hon D.J. Wordsworth: What sort of judgment does it make?

Hon JOHN HALDEN: Whatever judgment an individual wants to make. Based on that, if the House makes a judgment that it is inappropriate, penalties apply and the penalties are within the power of the House. Therefore, the issue is retained as a matter for the Parliament to deal with. It is an open process. That is the significant difference between that which Mr Pendal proposes and the Bill. I am not condemning Mr Pendal -

Hon D.J. Wordsworth: So, you decry members for how they vote.

Hon Peter Foss: If you accepted Mr Pendal's idea, you would make your disclosure and there would be a running record of what your disclosure was, but you would make it public as soon as you could -

The DEPUTY CHAIRMAN (Hon Doug Wenn): Order! If the member wishes to pursue this matter, he should be upstanding.

Hon PETER FOSS: I accept the Parliamentary Secretary's point. I find it difficult to accept Mr Pendal's views so far as they relate to members holding public office. If one were in Government, I accept the Parliamentary Secretary's view that it must be open; I do not disagree with that. Something is to be said for members commencing their disclosure immediately and continuing their disclosure, so that there is a record of disclosures. That is important, also, because someone might show a sudden increase in assets which is inexplicable. Therefore, the history of the matter is important. I accept that we should put our affairs on the record and it should be done by everybody because ultimately those people may become members of Government. The time when it must be open is related really not to when we are backbenchers, but to when we become a member holding an official position with the ability to make decisions in individual cases. The Parliamentary Secretary might ask: If it is going to become open then, why not now? There are reasons for that. First of

all, it is an imposition on members and I believe there are already enough impositions on members. It is hard enough now to get people to become members of Parliament. We certainly have long hours, extreme pressures and we get little money for the job. It is not easy already to attract people to politics. To add to that the disclosure of financial interests from the moment one enters Parliament, whether it is relevant or not - I am not yet satisfied that it is - seems another dissuasion for somebody thinking of becoming a member of Parliament. Why should we add another imposition to members of Parliament when there is not a need for it? If the Parliamentary Secretary can show me there is a need, I will accept it. I endorse the principle entirely, but I query the value to be gained by requiring disclosure of unofficial members at any time.

I have an example which I will put on the record because I was shocked how I could be caught out. I went to look at Barron Films Ltd's operations the other day. It is a Western Australian film making company. I was interested to see the organisation. After we had a look at its operations, we were given a short description of how the company worked. We were told that the company was buying all its old copyrights. I said that was interesting because I had subscribed to one of the company's early films. I was asked which one and I said *Fran*. I was told the company had bought that one. I said I did not know anything about it. I was then told that I had shares in Barron Films instead of the copyright. I said that was the first I had heard of it. I was told that the company was sure that I had been notified. I received a letter a couple of days later stating that the company had written to the address that was on the register which was my old legal office in the Law Chambers and that the mail had been returned "address unknown". Anyway, my name is now on the share register of Barron Films. I do not know how it can legally take my copyright and give me shares instead. I was stuck on the register, issued with shares in my name and put down as a shareholder in Barron Films. That could have been embarrassing to me if and when I become Minister for The Arts and the Government gave money to Barron Films. People would suggest that I was giving money to something in which I had shares. That is an anecdotal example of the hazards that could occur. It does seem to me there are some hazards in this. I understand that an explanation can be made and, of course, everyone will believe me. However, it came to me as a shock and I am not saying that we should not have this legislation, but I do not think we should increase those hazards any more than is necessary. For instance, had this legislation been in existence in 1989 when I entered this Parliament I would have gone three years without disclosing this. The fact that I have a share in Barron Films Ltd seems to be totally irrelevant to anything before this Parliament. I am exposed to this problem and I am a private member of Parliament. In those circumstances I believe I am entitled to do whatever I like in this regard. Even if I had known about those shares, I do not believe it would be any of the public's business. Why do we go this extra step? I think that Ministers of the Crown should be included in the provision but not private members.

Hon JOHN HALDEN: If the member found that he had overlooked something of that nature, he would simply approach the Clerk and, if necessary, make a statement to the House. On the other hand, if somebody applied to the Supreme Court and said that Hon Peter Foss had shares in Barron Films, the Supreme Court would advise that he did not. That person could then say he had a copy of the share certificate or share register which indicated that Hon Peter Foss was a shareholder. What would the Chief Justice do then? There is a potential conflict of interest and it is not covered in Hon Philip Pendal's amendment. Clearly the Government's proposal covers this situation. No-one will judge the member harshly.

Hon D.J. Wordsworth: How do you know?

Hon Murray Montgomery: You are pre-empting the Chamber.

Hon JOHN HALDEN: That is correct, and I do not mean to. However, I do not imagine for one second that members will judge another member harshly in those circumstances.

Hon Peter Foss: The protection is that as a back bench member of Parliament I could not influence a decision or question to any extent.

Hon JOHN HALDEN: I am glad the member raised the point of back bench members. He referred to the continual need for updated statements about his financial interest and made the point that Ministers would be required to reveal their interests. What would happen if a Minister were appointed midterm?

Hon Peter Foss: That would also be registered but it would not be public.

Hon JOHN HALDEN: It would be at the Supreme Court, where no-one would see it.

Hon Peter Foss: In the case of a Minister there is an argument that the information should always be public. I disagree slightly with Hon Phillip Pendal's amendment as it relates to Ministers.

Hon JOHN HALDEN: The member said that he agreed with the continuum. Hon Peter Foss is suggesting that if a member were appointed a Minister after his party had been in Government for two years the member would not have to make a declaration.

Hon Peter Foss: He would make a declaration but it would be protected from disclosure and as soon as he became a Minister it would become public.

Hon JOHN HALDEN: What would happen if there were a sudden hiccup in a member's financial interest very soon after he became a Minister? We would not know about that.

Hon Peter Foss: Why not?

Hon JOHN HALDEN: Because there would be nothing to compare it with. The Government has put forward a fair proposition which addresses the question of continuum and the range of issues that cause public concern. The public want to know the financial interests of members of Parliament and to be able to make judgments about them. We must live with that as members of Parliament. This legislation is in operation in four or five other States and in the House of Representatives. It has not stopped people from wanting to become members of Parliament. It does not have a negative impact on people's desire in that area.

Hon D.J. Wordsworth: How do you know that?

Hon JOHN HALDEN: Because there are no vacant seats and there are always plenty of candidates. There is no evidence to suggest that is the case and I ask members to support the Government's position.

Hon P.G. PENDAL: If there is any dilemma in Hon Peter Foss's mind about that conflict of interest as the next Minister for The Arts, he should not get the job and perhaps I should. I do not have any shares in Barron Films. However it raises the point that as shadow Minister for The Arts I may well have been caught up in these provisions. The Fremantle Arts Centre very kindly sends one copy of the 12 volumes it produces every year to the Minister for The Arts. I do not think I would have to declare it because it will escape those clauses. I notice Hon Kay Hallahan has breathed a sigh of relief that she will not have to send back the books the centre sends her.

I refer the Parliamentary Secretary to clause 16(5) which states that the returns in any part of a register shall be filed in alphabetical order according to the surnames of the members concerned. There must be a reason for that, but I cannot see it. If anything trivialises what we are doing, that is it. Again, given that we support this legislation I am nonetheless puzzled about why we need to go to that level of detail in order to achieve the Government's ends.

[Questions without notice taken.]

Hon PETER FOSS: If the Government makes an exception of Hon Phillip Pendal's amendment for Ministers of the Crown so that as soon as one holds an official position the record is open, the Government would then be serving the public need while there still exists the possibility of a member's records becoming available if a person can show there is a possible conflict of interest. I do not believe that it could be shown that a conflict of interest existed with a private member because I do not see how a member could have a conflict of interest as a private member, except in the very exceptional circumstances which were mentioned before questions without notice were taken. It seems that we meet all the requirements about which we were talking without impinging on the members unnecessarily. With legislation such as this, we must always return to why we are doing it. We are doing it because there exists a need and we accept that that need is where there is a possible conflict of interest. With a private member that possible conflict of interest cannot generally be shown in 999 cases out of a 1 000. However, that member would be required to declare his interest continually, and when he became an official member the full records for all the years

would become available. Of course, he would return to not having it disclosed when he ceased to be an official member. Some of the detail would already have been disclosed and would remain public. It should not then be put under lock and key. The scrutiny should continue to be available, even after one ceased to be an official member of Parliament. After that there ceases to be any reason. Does the Parliamentary Secretary think a scheme such as this might serve all the purposes we are talking about but that we should underline and emphasise the reason we are doing it? The problem with wide ranging legislation is that we lose sight of the real difficulty. When people talk about the disclosure of members' financial interests, they forget that the real disclosure that is necessary is when one is an official member of the Government. Members are losing sight of the constitutional importance and understanding of the legislation and the fact that there is a distinction between a member of Parliament and a Minister. We would be better emphasising that distinction instead of playing it down.

The DEPUTY CHAIRMAN (Hon Doug Wenn): I advise members that we have some new *Hansard* reporters and members are making it quite difficult for them to hear. I ask members to direct their comments to the Chair.

Hon JOHN HALDEN: I appreciate the point Hon Peter Foss is making. Basically, we are one step apart from each other; that is, the period when one is a member. My position is that all members of Parliament should disclose their financial interests because the public should know what they are. With that information available the public and members in both Houses will be able to make a judgment based on it. This does not only apply to legislation. Take the issue of travel: An Opposition backbencher may be provided with travel arrangements on the basis that one day his or her party will be in Government and he or she will be appointed to the Ministry. Favours could be owed from a long way back.

Hon Peter Foss: As soon as they become a Minister they will disclose it.

Hon JOHN HALDEN: I understand that, but the public will be interested in the issue of influence.

Hon Peter Foss: You could not draw a conclusion until such time as that person became a Minister.

Hon JOHN HALDEN: Of course. The public would be interested if, for example, five or seven members are suddenly transported around their region by a mining company and all of a sudden an agreement Bill is introduced. Under the Opposition's proposal no-one would know of any connection.

Hon Peter Foss: What other kind of legislation could that be relevant to?

Hon JOHN HALDEN: We have been through it, but there is clearly the issue of agreement Bills and disallowance motions. In addition there could be legislation in regard to specific facilities being provided. I remind members that the purpose of this Bill is not to make a judgment; it is purely to put matters on the public record so that people can view that information.

Yesterday in debate on another matter Hon Phillip Pendal questioned the influence of Caucus in certain issues. If we are to be serious about the disclosure of financial interests of members of Parliament and we are saying that Caucus has the ability to influence or not influence, it is only appropriate, under the example put forward by the member, that the financial interests of members of the Caucus are known. We cannot get away with applying that to the Labor Party only. It must be applied to members of Parliament per se. This is a question about the appropriateness of the public having access to information about the people they elect to both Houses of Parliament. I do not have any concern with people having knowledge of my financial interests. It may be of slight embarrassment to me, but my lack of worldly wealth would be revealed very quickly.

Hon D.J. Wordsworth: You would like to reduce the members in the Liberal Party.

Hon JOHN HALDEN: We always live in hope, but I do not know what that has to do with this debate.

Hon D.J. Wordsworth: Certain people will not be able to become members of Parliament.

Hon JOHN HALDEN: I do not understand the point the member is trying to make.

However, Hon Phillip Pendal made the point last night that the community has expectations and we have a requirement to provide an open book in respect of certain issues. Whether members opposite like it or not, one of those issues is the disclosure of the financial interests of every member in both Houses.

Amendment put and negatived.

Postponed clause put and passed.

Clause 17: Inspection of registers -

Hon P.G. PENDAL: The Opposition was aware how the vote would go on clause 16. Given that vote the amendment I have on the Supplementary Notice Paper to this clause would make a nonsense of the legislation. We will not proceed with it.

As this is the last time I intend to speak in this debate I advise members that I have no objection, and neither does the Opposition, to the principle that is being argued. I certainly do have strong objections to the fact that we are dealing with a Bill in which there has been a time lapse of three and a half years from the time it was introduced to the time it will complete its passage through this Parliament. I am not talking about a Bill which has been reintroduced and redebated; I am talking about a Bill which has not had any debate between its second reading in the Legislative Assembly in mid 1989 and when it was reinstated in the Legislative Assembly this year, before it made its way to this place.

I do not believe, and I believe most members of the Opposition feel the same way, that it is a good principle to be legislating when members know, and the Government knows that it involves a set of rules and regulations that will be easy to step around. It makes a mockery of the whole thing. I really do not know what good it will do for people to know that I, along with the bank, own 27 York Street, South Perth and I have a couple of cats, a dog and a hill trolley. It will not, as has been pointed out by Hon Peter Foss, draw any distinction between those people who make decisions of an executive character in Government and those people who make decisions of a general nature in the Legislature. That will be clear to anyone who has taken part in the debate over this three and a half year period..

Given that clause 16 was the pivotal one for the Opposition, the legislation will now pass, which does not upset me. I support the principle involved and in the wake of the report of the Royal Commission it is clear that the public expect something of this kind to be implemented. However, it makes a mockery of things when the Government, which is supporting this legislation, has been so wide of the mark and knows in its heart of hearts that it is legislation through which someone can drive a bus and because of that it is not desirable legislation.

Clause put and passed.

Postponed clause 3 put and passed.

Postponed clause 4: Members to lodge returns with Clerk -

Hon JOHN HALDEN: I move -

Page 6, line 4 - To delete "90" and substitute "30".

This amendment is a result of the debate the week before last and an interchange involving either Hon Phillip Pendal or Hon David Wordsworth and me. The interchange related to the fact that members would be given 90 days from commencement of the Act to complete the register and it was suggested that that period could run into the next election. After due consideration it seemed appropriate for this information to be available prior to the next election and my amendment will enable that to happen. This will be dependent upon the Clerk being in a position to prepare the appropriate paperwork within 30 days of proclamation of the Act. Shortly after the Bill has passed both Houses the Premier will advise members of the necessity to consider this matter and formulation of the paperwork required will take place.

Hon P.G. PENDAL: As I understand it, the Parliamentary Secretary is suggesting that the clause should read as follows -

(1) A Member shall -

(a) within 30 days after the day on which he is sworn in lodge a primary return with the Clerk.

Clause 4(1)(b) will remain the same. Under what circumstances would that allow people to make declarations prior to the next election if we are talking of the requirement for the member to lodge a return 30 days after the day on which he is sworn in? It seems to me that requirement is to lodge the return after the next election.

Hon JOHN HALDEN: The transitional provisions under clause 5(1) and (2) provide that existing members will be required to lodge their primary return within 30 days of the commencement date of the Act. Clause 5(1) states -

> The requirement in section 4(1)(a) that a Member lodge a primary return extends to a person who is a Member . . . on the day on which this Act comes into operation.

The requirement under clause 4(1)(a) will change from 90 days to 30 days.

Hon P.G. PENDAL: Is the Parliamentary Secretary saying that the combined effect of an amended clause 4 and existing clause 5 is that if the Act came into operation, say, on 15 December within 30 days members are obliged to enter their primary return? If so, I guess we are then talking about people lodging a primary return, in all likelihood, prior to the next State election.

Hon JOHN HALDEN: The member's expectation is correct. If the Bill were proclaimed on 15 December, 14 January would be the last day for completion of the form.

Hon D.J. WORDSWORTH: It seems to me that a member who is retiring from Parliament and not standing at the next election, particularly a member of the Legislative Assembly, could well have to put in a return for two or three days. I believe the reason for the 90 day period was so that the requirement would not apply before the next election.

Hon P.G. PENDAL: Mr Wordsworth has raised a point I intended to raise as I was not here when the suggestion was made that the 90 day period be changed to 30 days. As one who will hopefully be filling in a form, it is immaterial whether I fill it in on 15 January or after the next election.

Sitting suspended from 6.00 to 7.30 pm

Hon P.G. PENDAL: I have had a chance to refresh my memory regarding the suggestion I made at the second reading stage of the Bill. The Government has obviously responded to that suggestion that the matter not be held up until after the election. The first knowledge I had of the acceptance of the suggestion was a couple of minutes before the dinner break. In the meantime, the Government has had a chance to refer the matter to the Caucus and the Cabinet, and that is the reason the suggestion has been accepted. It is a good idea and I will vote in favour of it. I urge all members of the Opposition to support the Government's amendment. However, I signal to the Government and to the Parliamentary Secretary that he, like me or anyone else handling Bills, should not make unilateral decisions. If a suggestion is to be taken up, the normal facility might be afforded where the suggestion is taken back for ratification not just by Government parties but by Opposition parties as well. I support the amendment.

Hon D.J. WORDSWORTH: Having made the suggestion, Mr Pendal can hardly not support it. It is a ridiculous situation because we have no guidelines for the returns. We do not have much hope of getting an accountant or a lawyer to assist us within 30 days, when that time includes Christmas and New Year festivities. The best of British luck to the Attorney General. He will need all the skills he has used over the last four years in order to do his own return - however curious.

Amendment put and passed.

Postponed clause, as amended, put and passed.

Clauses 18 to 22 put and passed.

Title put and passed.

Bill reported, with amendments.

ACTS AMENDMENT (JURISDICTION AND CRIMINAL PROCEDURE) BILL

Committee

The Deputy Chairman of Committees (Hon Doug Wenn) in the Chair; Hon J.M. Berinson (Attorney General) in charge of the Bill.

Point of Order

Hon PETER FOSS: Mr Deputy Chairman, I have a point of order.

The DEPUTY CHAIRMAN: I do not know why Mr Foss is raising a point of order, we have not done anything yet.

Hon PETER FOSS: I know, but I raise this point because it affects the Committee. The Notice Paper contains a number of amendments suggested by the Attorney General, and I am happy to support those amendments. However, because they depart rather radically from the previous Bill I had thought that before we went into Committee the Attorney General would seek an instruction for the Committee to deal with it. Without that instruction the Committee would not be capable of doing so. I formally advise that I will support the move for that instruction, but I would prefer that be moved.

Hon J.M. BERINSON: I have taken the advice of the Clerk and the President, before his departure, on this issue. My understanding is that a motion of the nature suggested by Mr Foss is not necessary. I wonder, as the point has been raised at this preliminary point and as you, Mr Deputy Chairman, have not had the advantage of advice on the issue, whether the Committee could take a few moments so you can obtain that advice?

Hon PETER FOSS: I am a little confused as to when we need a direction and when we do not. Mr Deputy Chairman, when giving the ruling could you deal with some parameters about when we need a direction. These seem to be departures which are greater than others which were previously ruled as requiring a direction to the Committee. I would be grateful also if in the course of considering the matter you could give some reasonable direction as to why you do not need a motion.

The DEPUTY CHAIRMAN: I will leave the Chair until the ringing of the bells.

Committee suspended from 7.42 to 8.01 pm

Deputy Chairman's Ruling

The DEPUTY CHAIRMAN (Hon Doug Wenn): I have received advice that the amendments produced are in order. That advice is somewhat lengthy and I will table the reasons for my decision in the House tomorrow.

Committee Resumed

Clause 1 put and passed.

Clause 2: Commencement -

Hon J.M. BERINSON: I move -

Page 2, line 6 - To delete "The" and substitute the following -

(1) Subject to subsection (2), the

Page 2, after line 7 - To insert the following subclause -

(2) Part 6 comes into operation on -

(a) the day on which this Act receives the Royal Assent; or

(b) the day on which the *Acts Amendment (Evidence of Children and Others) Act 1992* comes into operation, whichever is the later.

I have moved to insert a new subsection (2) so that part 6 of this Bill which amends the Evidence Act in relation to children's evidence will come into operation on the day it receives Royal assent or when the Evidence of Children Act 1992 commences.

Hon PETER FOSS: I am sure the Attorney General can guess the point I will raise because it is one I have raised many times before; that is, the question of proclamation and, in particular, proclamation on days that are to be fixed. When I raised this originally I suggested that an amendment be made to the Interpretation Act to deal with this so that there was an end date by which the Act would come into effect. Therefore, whatever else happened Parliament would know it would come into effect and be implemented no later than a particular date. That was to get rid of the situation where Acts have been unproclaimed for the past 12 years. It is unsatisfactory for an Act passed by the Parliament to be left in limbo for 12 years. However, even more objectionable is the situation in which

certain parts of the Acts are proclaimed at various times, especially because that means any section can be separately proclaimed. It is objectionable because certain sections in an Act may severely qualify other sections. I am not suggesting it would happen in this State but one is presented with the spectre of what happened in Victoria when the laws legalising prostitution were amended in the upper House and those amendments were not acceptable to the Government. The Government got around that situation by proclaiming some parts of the Act and leaving others. It was an unmitigated disaster.

Hon George Cash: The Western Australian Development Corporation started with that. Some parts of the Act were not proclaimed at the same time as others.

Hon PETER FOSS: It is plainly unsatisfactory. I do not believe it should be theoretically possible for the intent of an Act to be changed by selective proclamation. Surely in this case at least it should be possible to break the thing up. The Government has done that with the current amendment, and I commend it with regard to the amendment to part 6. It is a discrete part and if the Government is to make some variable proclamations it may be necessary to refer it to particular parts. To the extent that it is necessary to proclaim parts separately, the Government should make a distinction about how the separation will take place so that it is shown in the Bill. It should also include an end date so that Parliament retains its control over the legislation. If there is a disaster and there is something wrong with the Bill, it is essential that it should not just be forgotten. Amending legislation should be introduced into the Parliament so that Parliament does not believe it has carried out a change, only to find that as a result of an Executive decision the legislation it passed has not been brought into effect. Why is the Government not proposing legislation in the form the Attorney General suggested to me when I sought to deal with the matter by amending the Interpretation Act? I have been tempted to bring my Bill back to the Parliament simply because the alternative remedy suggested by the Attorney General has not been followed by the Government. I raised this matter with the Attorney General at least a year ago, and perhaps two years ago, and the Attorney General suggested that was the reason that we do not need to deal with it on a comprehensive basis.

Hon J.M. BERINSON: I have a problem every time Mr Foss raises this matter because in general I agree with him but in particular I am aware that the particular Act does not involve what he is constantly reminding us about. I think it is fair to say that Mr Foss' regular advocacy of the need for more definite proclamation dates has had an effect, and I think he will concede that the occasions on which we have the flexibility as proposed in the present Bill are much less frequent than they used to be. We have in this Bill, however, a quite unusual range of provisions which go to no less than five Acts, by the time we add the Evidence Act, and to all manner of procedures which require different attention. To give just two examples, we have an expansion of the work and development order to local government penalties. That involves the establishment of infrastructure which is not entirely within the Government's own hands but will have to proceed in consultation and cooperation with local government. I have no doubt that will be forthcoming, but nonetheless that process is not entirely in our hands. In another aspect of the Bill, we have the introduction of what might for simplicity's sake be referred to as a means test system, which will apply to the process of converting fines to work and development orders, and that will require not only regulations, but also training and the preparation of suitable material, and it is really not possible to look to any one particular date by which this can all reasonably be done. This is an occasion when the Chamber can accept that there is no question of the availability of different proclamation dates being used to delay out of existence some parts of the Bill.

Hon Peter Foss: That is quite clear, other than by some frustration of your intent.

Hon J.M. BERINSON: I would like to make it clear, but I am sure this much is acknowledged, that this Bill represents a series of initiatives with which the Government is anxious to proceed and which, from my understanding, have broad cross party support. It is not a situation where there can be questions of clashes of political ideology or anything else. All I am saying is that to the extent that I have anything to do with it, there will not only be a proclamation of the whole Bill, but also a proclamation of it at the earliest possible opportunity. I accept the general point that Mr Foss raised, and if I do not reach the happy stage of proclaiming this Bill during the current term of Parliament, I will look to my successors in the next Parliament.

Hon George Cash: Your successors in the Ministry, of course.

Hon J.M. BERINSON: Of course. My successors in the Ministry as drawn from my colleagues, will be in the Ministry as they continue into the next Parliament and Government while I look on benignly from a distance.

Hon PETER FOSS: The Attorney General has stated correctly that particularly since this legislation is entirely Government legislation and will not be amended in any substantial way by the Opposition, no political reason exists for our playing with it. The concern I have is to that extent theoretical with respect to this legislation, but I again point out that the Mental Health Act was exactly the same. I do not know that that had any major political differences, but it struck a frustration that prevented it from being proclaimed. Has the department worked out assemblages of clauses which might be proclaimed separately; in other words, what hangs together logically and what needs to be dealt with as a separate part?

Hon J.M. BERINSON: So far as I am aware, that has not been thought through, but the department is certainly well aware of the Government's interest in expediting the proclamation of all parts of this Bill as quickly as possible.

Hon Peter Foss: Could the department undertake to indicate to us whether there would be any separate proclamations?

Hon J.M. BERINSON: I am happy to put that request to the department. I suspect, however, that given the range of issues to which I have referred, it may not be reasonable to expect a reliable response all that quickly. Nonetheless, I will put that to the department at the first opportunity and will advise the Chamber of the information which I receive.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Chapter LXA inserted -

Hon PETER FOSS: Mr Deputy Chairman, I am not sure how you intend to deal with this clause because it deals with various proposed sections. Would it be possible to take the clause section by section?

The DEPUTY CHAIRMAN (Hon Doug Wenn): I accept your advice on that.

Proposed section 570 put and passed.

Proposed section 570A -

Hon REG DAVIES: Will the Attorney explain the situation if a person goes into a police station, say, to seek information, and after entering the station a fracas or some problem occurs which is videotaped? Although no offence is committed and the person is not charged, would this provision mean it would be possible for that person, for legal reasons, to view or to have access to that videotape later?

Hon J.M. BERINSON: Proposed section 570A is restricted to videotaped interviews. "Interview" in the interpretation section means an interview with a suspect by a member of the Police Force. Other provisions relate to other matters which would be the subject of videotaping. The fact that an incident occurred in a police station, or for that matter in the street, would not draw proposed section 570A into operation. That would need to be addressed in an entirely different context.

Hon REG DAVIES: I have in mind a recent incident at the Fremantle Police Station where I understand a young chap was charged. A friend came into the police station to inquire of his friend, and during that inquiry I understand that the inquirer was involved in an altercation with the police. This was videotaped. Questions were asked of that person. Some suggestion was made that he would be charged with an offence, but that did not occur and no charges were laid. The incident was on videotape and the person was interviewed.

Hon J.M. Berinson: Interviewed about what?

Hon REG DAVIES: About his actions while at the police station making an inquiry of his friend.

Hon J.M. BERINSON: Although I have followed the media reporting of the matter I do not

know the full detail of the incident. Having said that, I must add that from both the media coverage and from Mr Davies' comments, there do not appear to be circumstances which could reasonably be regarded as an interview, or that the person could be regarded as a suspect. This provision relates to the interview of a suspect of an offence. On the description I have heard, it would not come within that definition.

Hon Reg Davies: But an anomaly appears to exist.

Hon J.M. BERINSON: No, I do not think so. This provision deals with highly specific situations. I do not whether statutory or police standing orders provide the basis for the videotaping to which the member refers. It may be necessary to address either the guidelines or possibly other legislation in this regard. The provision before the Chair is highly specific and relates to the questioning of suspects. As I indicated in the second reading speech, it is directed deliberately at the position thrown up by the recent High Court judgment in this area.

Proposed section put and passed.

Proposed sections 570B and 570C put and passed.

Proposed section 570D -

Hon PETER FOSS: Members may recall that I mentioned during the second reading debate that an accused person means a person charged with an indictable offence which is not tried summarily. I raised the question of children in two contexts: Children are never tried on indictment, but always summarily in the Children's Court. The Attorney assured me at the time that that was not the intent of the drafting of the proposed section. I hope that his assurance is acceptable to the courts which must consider this legislation.

Another more broad applicable consideration is that I cannot see why we should not have every interview of a child videotaped. This would seem to be highly desirable. I understand that other places overseas videotape all child interviews, and this has produced very satisfactory results. It improves the demeanour of everybody involved in the interview, cuts down the arguments regarding undue influence and leads to more proper behaviour in the treatment of juveniles. This is a desirable outcome.

I realise that this is a rehash of what was said in the second reading debate, but I would appreciate it if the Attorney General could elaborate a little on this point.

Hon J.M. BERINSON: I do not know that I can take the response beyond my comments in reply to the second reading debate. I must confess that I lost track of Mr Foss' comments at one stage, and I ask him to let me know whether my understanding is right; namely, that he suggested that all interviews of children on all offences be videotaped. I am not sure which one the member wants me to elaborate upon.

Hon PETER FOSS: It is important from the point of view of lawyers looking up this section and its interpretation to have the matter clarified. I have doubts whether it is enough for the Attorney to say that his interpretation is such on this proposed section and that is enough for it to be carried. Also, from the point of view of research this matter should be clarified during the Committee stage.

Hon J.M. BERINSON: Does the member want me to progress both aspects?

Hon PETER FOSS: Yes, please.

Hon J.M. BERINSON: At the risk of repetition of my reply to the second reading debate, the member again queried whether proposed section 570D may apply to all offences in the Children's Court because all charges in that court are tried in a summary manner; that is, without a jury. Pursuant to the Criminal Code some of those offences are indictable offences which are not triable summarily. Murder is one obvious example. Notwithstanding the code, such offences are tried summarily in the Children Court because the offender is a minor.

Proposed section 570D(1) defines "accused person" to be a person charged with an indictable offence that is not triable summarily. This definition is intended to include a child charged with an indictable offence not triable summarily even when the case is in fact dealt with summarily in the Children's Court. If it is tried in the Children's Court it will be dealt with summarily as if it were a trial on indictment. This follows from section 19B(4)(c) of the

Children's Court of Western Australia Amendment Act (No 2) which provides that "The court shall, subject to the provisions in section 19(1) hear and determine the charge as if the complaint were an indictment and the hearing were a trial of indictment and the Criminal Code shall apply with such modifications as the circumstances require; but the child is not therefore entitled to have any issues tried by jury."

Hon PETER FOSS: Some offences are triable summarily at the option of the defendant. It is my recollection that we recently dealt with some offences as being triable summarily at the option of the Crown. I believe that is what we did with an amendment to the Criminal Code about 12 months ago.

Hon J.M. Berinson: On my understanding that does not apply to the children's provisions.

Hon PETER FOSS: But the point is that when we made that amendment which said it could be tried summarily at the option of the Crown we made certain it could not be referred back to a higher court for sentence. In other words, once one had opted to take a summary trial, it stayed there and was summary for all purposes after that. Therefore, there are really three categories of offences: Those which are always triable on indictment; those which are triable on indictment, but at the option of the Crown may be summary; and those which are triable on indictment, but which at the option of the defendant may be tried summarily. In the Children's Court they are either all tried summarily or none of them is tried summarily. It seems to me that in the Children's Court, because of section 19B(4)(c) to which the Attorney General just referred, as far as a child is concerned, an offence which is triable on indictment is always triable on indictment in the Children's Court. For the purposes of section 570D any offence which the Criminal Code provides to be triable on indictment as far as the Children's Court is concerned, is always triable on indictment. Therefore, the majority of offences other than those under the Police Act and various other Acts will fall under that provision anyway.

Hon J.M. BERINSON: It is not all that simple to give a consistent answer to a question covering that field. However, it was the subject of specific advice to me by senior counsel. That advice was to the effect that it is understood that section 19B(4)(c) is a deeming provision which deems the trial in the Children's Court to be a trial of indictment, so that it is, for all intents and purposes, dealing with an indictable offence.

Hon PETER FOSS: That is precisely the point I am raising. I accept the argument that because of section 19(4)(b) any offence in the Children's Court, no matter what method of trial - we know the method will always be summary - is deemed to be triable on indictment or in fact deemed to be tried on indictment. That is what the Attorney General is saying.

Hon J.M. Berinson: It must be an indictable offence in general terms.

Hon PETER FOSS: Exactly. Provided it is an indictable offence, section 19(4)(b) provides that it does not matter how one tries the case, it is deemed to be on indictment. I agree with that. That is our starting point. We throw out the normal test which is, is it triable on indictment; is there a jury? If there is not a jury, it is a summary offence. In the Children's Court we say, "Even though there is no jury, those which are indictable offences are tried on indictment. Those which are not are tried summarily." I am saying that as a result of section 19(4)(b) of the Children's Court of Western Australia Amendment Act (No 2) there is no such thing as an indictable offence which is triable summarily because they are either all tried summarily or none is because of the deeming provision in section 19(4)(b). I am quite happy with that result. If the result of section 19(4)(b) is that every single offence which theoretically could be on indictment, when it is in the Children's Court is deemed to be on indictment, it seems to me the result is that all the indictable offences in the Children's Court are deemed to be tried on indictment and are therefore not tried summarily. The result is that unless it is a summary offence - that is, if it is a crime or misdemeanour - within the meaning of the Criminal Code or some other legislation, it is caught by proposed section 570D.

Hon J.M. BERINSON: I am not altogether sure whether Hon Peter Foss is directing our attention to clarify the effect or suggesting that there should be a different effect. My understanding is that the outline he has given is correct and that is the intended effect.

Hon PETER FOSS: I am very happy to hear that. I hope everybody understood what I said.

Hon Garry Kelly: As clear as mud.

Hon PETER FOSS: Good. For further clarification, it seems to me that in the Children's Court, unlike the Supreme and District Courts there are not three categories of offences, only two; indictable and summary offences. All indictable offences are deemed to be tried on indictment and, of course, summary offences are deemed to be tried summarily.

Hon J.M. BERINSON: I always worry when Hon Peter Foss declares himself satisfied with something that I have said. I would prefer not to take the matter further. I have tried to be as clear as I can on the initial point. If, taking Hon Peter Foss' cautionary comment that he hoped everyone understood what he said before we agree with what he said, I will consider this matter further on the daily record, and if necessary, suggest further consideration of this clause at a later stage. I do not think that will be necessary on my understanding of the position.

Hon PETER FOSS: I am happy with that. I would not be happy with proceeding to the third reading and trying to do it at that time; it would have to be recommitted.

Hon J.M. Berinson: That is what I have in mind.

Proposed section put and passed.

Proposed sections 570E and 570F put and passed.

Proposed section 570G -

Hon PETER FOSS: I move -

Page 9 - To delete lines 1 to 11.

This is also a matter I raised in my second reading speech. I am concerned that the accused person can be required to deliver to the Commissioner of Police any videotape within one month of being requested to do so. There is a qualification on that, that the Commissioner of Police shall not make a request under proposed subsection (1) until the time for exercising any rights of appeal by the accused person in respect of legal proceedings in relation to the charge to which the interview relates had expired. Obviously, that would mean during the normal course of events. As members know, in certain contentious criminal matters further appeals are mounted outside time, often on the basis of new evidence. Such a contentious case would be that of the Mickelberg's where, even to this day, there is still some dispute about some of the evidence. It is in the best interests of everybody that the defendant has a copy of the videotape and can keep it. That was the theory behind, for instance, the three samples of blood that were required under the Road Traffic Act. The idea was that people had their own sample, which they could have independently tested, the police held on to one, and one was sent by the police for testing. In that way, suggestions that police had tampered with the evidence could be overcome.

It is in the interests of everybody that the suggestion of tampering cannot be mounted. One of the best ways of preventing that from occurring is to provide some sort of counterpart such as, in this case, giving people a video from the original tape which they can retain. The idea of the police gathering it back will surely lead to people suggesting, mischievously or through a sense of paranoia, that the police will destroy or fiddle with the evidence. The more that we can prevent that kind of suggestion the better. The great benefit of this whole provision is that it will stop the sorts of disputes we have about verballing. It is interesting that when the suggestion of videotaping was first raised some years ago it was pushed forward by civil rights groups and vigorously opposed by the police. However, the police are now among the strongest supporters of it because they know that it puts to rest the sorts of allegations that are made against them about verballing. I am sure that there are corrupt police who do engage in verballing, but there are also many police who do not. That does not mean that the police who do not engage in verballing are not subjected to the same accusations as the ones who do.

An honest cop can only benefit by having a videotape of this sort of investigation. That applies equally to the copy of the videotape which the accused can keep. For the benefit and interest of the public, people should be entitled to hold on to their videotape. Any operational difficulties which may arise are the same sorts of problems which the police saw when the videotapes were first suggested. I think that the Police Force will find that it is far better off having a defendant with a tape which he knows he received at a good stage, and which can be shown that it was not fiddled with. Therefore, those allegations of the police dealing with evidence in an improper manner are removed.

Hon J.M. BERINSON: I oppose the amendment, and the reason for my doing so was foreshadowed in my reply to the second reading debate. My opposition is based wholly on the police concern to which I referred. The police have a major concern that the retention of the videotapes in the community could result in interviewing police officers being more readily identifiable by criminals. Therefore, it is a matter going to the security and safety of individual police officers that we must consider in this context. I understood Hon Peter Foss' concern to be related to the need to ensure that tapes remain available in cases which involve extended disputes. He referred to the Mickelberg case as a handy point of reference.

Hon Peter Foss: I said that it has universal application, but that was an extreme case.

Hon J.M. BERINSON: The provisions in the Act allow any concerns on that score to be adequately met. Proposed section 570H provides that if an interview is videotaped the Commissioner of Police will ensure that a videotape of the interview is kept in safe custody for at least five years.

Hon Reg Davies: Is it currently six weeks?

Hon J.M. BERINSON: I do not know. This section ensures five years, but it is a minimum of five years. I draw members' attention to proposed section 570H(2), which notes that there is a capacity to obtain a Supreme Court order to have that time extended. Therefore, an argument based on the continuing availability of tapes for legitimate purposes can be responded to largely by saying that this is reasonably met by other provisions.

Mr Foss raised another question relating to the possibility of the tampering of tapes, or the possibility of allegations of tampering with tapes.

Hon Peter Foss: That is the problem. It is the community disquiet. There is no limit to paranoia.

Hon J.M. BERINSON: It might be helpful if instead of going forward in the Act I now go back a step and outline the practical procedures which are intended to apply to this general area of individual videotaping of suspect interviews. In such cases the videotape machine produces two copies of the confession. One of those is immediately designated as a master tape and is forwarded to the Maylands police complex for storage. That is the master tape and it is intended that it remain for as long as the law requires in detention in security at Maylands. The second copy is used for the reproduction of additional copies. The way the scheme has been set up is that the original master copy at Maylands will always be available for scientific examination and checking against any copies which are subsequently made. An understanding of that arrangement is necessary to explain how proposed section 570H(1) would work. The prospect of checking any copy against the master tape kept at Maylands is one of the means of ensuring authenticity. The other means which has been pivotal to this exercise is that the video recorder has built into it a time and date generator which reproduces that information at the foot of the film. Thus, if there is any break in the videorecording or any tampering of the tape, the tape generator will not run continuously. This is regarded as an essential element of the practical operation of the scheme to prevent tampering for any inappropriate police practices.

I summarise my position in regard to the amendment in three propositions. Firstly, this legislation is regarded by the police as very necessary for purposes of the security of police officers, and that is a consideration which has to be given proper weight. Secondly, in respect of the continued availability of tapes, there are other specific provisions of the legislation to which we will shortly come that meet that situation. Thirdly, to the extent that there is a problem of tampering or allegations of tampering, the procedures are well able to ensure the necessary level of confidence in the integrity of the system.

After all that has been said I think it is fair to reverse the question and ask: What legitimate or necessary justification exists for the retention of the tapes if there is an extensive period allowed by proposed section 570G, and having regard to the safeguards I have detailed?

Hon REG DAVIES: I support the amendment moved by Hon Peter Foss. Our primary concern is to protect the rights of citizens. I understand that the police have some concerns, a major one being that they want to protect themselves from criminals. The major role of a police officer in this State is to apprehend offenders, to charge them, and then to give evidence in open court. Therefore, a policeman's role is not a covert role and should be readily recognisable by the public.

There are certain concerns that videotapes in the custody of the police could be tampered with. People would have a sense of security just knowing that they had a copy of the videotape. Many of the concerns are offset by the benefits. I support the amendment.

Hon PETER FOSS: Most of the duties of police officers are public duties. If we are dealing with people who for dishonest reasons want to know the identity of police officers while those people have possession of a videotape, it would be the easiest thing in the world for them to copy the videotape and to give back the original. Those people could be charged with an offence; however, the people who observe this requirement will be penalised.

Hon J.M. Berinson: What will they lose?

Hon PETER FOSS: These people will have the satisfaction of knowing that they have the counterpart of the videotape. I find the concern of police officers about being identified an extraordinary one for the reasons outlined by the Hon Reg Davies. I do not think police officers who carry out interviews should be anonymous figures. Many police officers who are involved in these duties are those who are regularly seen in public and in court.

The whole measure is intended to give the public confidence in the administration of the law. The handing over of the counterpart videotape is a very important way of doing this. We are dealing with people for whom it is significant to know the identify of police officers. The sort of people Mr Berinson is talking of are those who will get a collection of these tapes and use them for nefarious purposes. Those people will make a copy of the tape, keep it and hand back the original. The only people who will be affected are those who should be protected, the ones who will observe proposed section 570G and hand back the videotapes. The people who Hon Joe Berinson is talking about will not be too worried about a $5 000 fine and will be engaging in activities far worse than would attract that penalty. We are dealing with a notional criminal who collects videotapes, hands them back in conformance with proposed section 570G, but who would like to keep them so that he can identify police officers and do nasty things to them.

I do not believe this is a realistic problem. More importantly, we will find that this is the same sort of reaction that we had when video-taping was first suggested. The police were against it, but they can now see its benefits. I understand their concerns, but I do not believe they are real concerns. We will be persisting with the amendment.

Division

Amendment put and a division called for.

Bells rung and the Committee divided.

The DEPUTY CHAIRMAN (Hon Doug Wenn): Before the tellers tell, I cast my vote with the Noes.

Division resulted as follows -

Ayes (13)

Hon George Cash	Hon Murray Montgomery	Hon W.N. Stretch
Hon E.J. Charlton	Hon N.F. Moore	Hon D.J. Wordsworth
Hon Reg Davies	Hon Muriel Patterson	Hon Margaret McAleer
Hon Peter Foss	Hon P.G. Pendal	*(Teller)*
Hon P.H. Lockyer	Hon R.G. Pike	

Noes (11)

Hon J.M. Berinson	Hon B.L. Jones	Hon Bob Thomas
Hon T.G. Butler	Hon Garry Kelly	Hon Doug Wenn
Hon Kim Chance	Hon Mark Nevill	Hon Fred McKenzie
Hon John Halden	Hon Tom Stephens	*(Teller)*

Pairs

Hon Max Evans	Hon Sam Piantadosi
Hon Derrick Tomlinson	Hon Graham Edwards
Hon Barry House	Hon Kay Hallahan

Amendment thus passed.

Proposed sections 570H and 570I put and passed.

Clause, as amended, put and passed.

Clause 6 put and passed.

Clause 7: Section 618 repealed and a section substituted -

Hon PETER FOSS: What if in relation to this clause a defendant has a genuine change of mind about his plea? I know how this could be abused and used merely to delay a trial, but sometimes people genuinely change their minds. It previously was the situation that people had the opportunity to elect to go to trial. This clause does not seem to provide that alternative. The Bill is calling for a conviction at the time of the plea of guilty before the Court of Petty Sessions. Would it not be a better way to do things to keep the law consistent with how it used to be rather than deeming that people are unable to change their plea? What we are doing here is violence to ordinary custom. This seems to be a drafting that could have been handled better under the law as it stands rather than its being drafted in this way.

Hon J.M. BERINSON: It is often the case that there are alternative routes to the same objective. Careful attention was given to available options. If I understand Mr Foss correctly, he is not saying this is undesirable but that there may be a better way to do it. I believe we should proceed along these lines in the absence of any real argument that there would be something undesirable in doing this.

Hon PETER FOSS: That was my point because the Bill still contains the requirements for a person to be asked to plead to the indictment, so we really have a fiction here. We are legislating a legal fiction and are still requiring a person to plead to the indictment and then, having taken his plea, if he pleads not guilty that is disregarded. It seems a strange idea.

Hon J.M. Berinson: There is the proviso which allows the court to do certain things.

Hon PETER FOSS: Yes, but the facts are different. A person could plead guilty in a Court of Petty Sessions and be remanded to their court hearing to plead to the indictment. They might then plead not guilty and the court would say it did not care that the person was pleading not guilty and would enter a plea of guilty. Why bother asking people to plead to an indictment if their plea is to be disregarded?

Hon J.M. BERINSON: It is not as though the process at the earlier proceeding is a rushed one where the accused person does not have ample time to consider his position. The person is provided with the normal opportunities for an adjournment, proper consideration and proper advice. It is only if at the end of that process that plea is entered that the provisions of this proposed section apply.

Hon Peter Foss: You miss my point.

Hon J.M. BERINSON: I must, because at the end of the day it seems to me that the argument put by Mr Foss could be reversed and we could say that if there did not seem to be much point in asking a person to plead when he appeared for sentence perhaps we would look at a provision which says his original plea stands.

Hon Peter Foss: Exactly.

Hon J.M. BERINSON: Mr Foss says, "exactly", but what is achieved by that? We have in this case a clear indication that it applies "unless", and then there is the proviso allowing the court to consider that some alternative course is open. I repeat that it is always possible to find an alternative process or way of securing the effect that is wanted, but if all we are coming down to is the suggestion that when we get to the District Court or Supreme Court the accused should not be asked whether he pleads, I really do not think there is any great benefit worth pursuing from the point of view of the accused person, the court, or the general law enforcement process.

Hon PETER FOSS: This reminds me of the Wizard of Id cartoon I found quite delightful. In the first frame Sir Rodney has pulled his bowstring back and yells out, "Stop or I'll shoot." In the second frame he goes, "Twang" and shoots. In the third frame the person says, "Lucky he stopped." In this instance I think we have exactly that. It may seem nice and logical and academically satisfying to Mr Berinson, but we are dealing here in most cases with

underprivileged people. We occasionally get white collar criminals, but most of the people who come up for trial are underprivileged and the whole legal system is bewildering and overpowering to them. It is bewildering and overpowering enough without our adding a legal fiction to it. Even in the nineteenth century the Parliament of Westminster went to a lot of trouble to abolish legal fictions because they added nothing to the law. They are a way of allowing one to achieve something by pretending that the facts are different from what they are. What do we think an uneducated, unprivileged person will say when he has been through the situation of pleading guilty in the Court of Petty Session and is then taken to the District Court to appear before a judge and the court goes through the marvellous formality of reading the indictment and asking the defendant whether he pleads guilty or not guilty and, being petrified of the whole situation, he decides to plead not guilty only to be told the court is sorry but he is not allowed to plead not guilty? That person could reasonably ask why he was asked to plead in the first place. At that stage the court would have to go through the performance of saying to the man that he had been asked whether he pleaded guilty or not guilty but that the court did not want him to tell it what his plea was because the law is such that he was not allowed to plead and that it did not matter what he pleaded, as the court would enter a plea of guilty anyway. If the person did not think at that stage that the law is an ass I will eat my hat. How can they explain to people in the courts that the situation is that we thought of this sophisticated way to do things? We have set up this legal fiction where people continue to go through the indictment procedure but are not allowed a choice of plea. That is improper. It is all very well for us to say that it makes sense, but it will not make sense to the criminal who is presented with the bewildering fact that he is asked to plead and then told that he cannot.

Hon Garry Kelly: Is he criminal?

Hon PETER FOSS: He is, because he has pleaded guilty and even if he has not been convicted at that stage we will convict him because this procedure says we will do that. The person has not pleaded guilty to the indictment because he is not brought up on the indictment. When he is, he is asked how he will plead and if he says he pleads not guilty he will be told that he cannot, because he is guilty. That is puzzling. The better way would have been to say that the person is not required to plead any further, but the plea carries forward unless the person raises the fact that he wants to change his plea to one of not guilty by reason of this process. He can then change it. He actively says that. It seems that we should not be setting up a criminal justice procedure where we slot in a new procedure, inventing a legal fiction and adding a perplexing step to the criminal procedures for untutored people.

Hon J.M. BERINSON: I could understand the argument better if it involved some concern that there was a legal fiction at the Court of Petty Sessions where the accused is called on to plead. If there is an added complication there, in what Mr Foss describes as circumstances overpowering enough as they are - and I think that is a valid way to describe it - then there might be something to the concern about an appearance of legal fiction. That is not the case at all, however. At Petty Sessions the position will be very clear, and a choice must be made by the accused whether to plead guilty or not guilty. There are two circumstances - one where the accused has legal advice and one where the accused does not have legal advice. Under the requirements of the Justices Act, there is an obligation on the Court of Petty Sessions to ask the accused whether time is required to consider the matter or seek legal advice or to have an adjournment. The opportunity then arises for an unrepresented person to seek legal advice. In many cases that will be obtained, especially considering that we are dealing here with indictable offences. The point where clarification is needed is not when the accused reaches the superior court and goes through what Mr Foss describes as a legal fiction of being called on to plead guilty or not guilty. The point of real concern is at Petty Sessions where the charged person enters his plea. Again, we have two circumstances: Either the accused will have counsel, in which case it will clearly be the obligation of that adviser to ensure that the accused understands the effect of a plea of guilty -

Hon Peter Foss: Even though he thinks it is totally stupid.

Hon J.M. BERINSON: I do not envisage a lawyer advising his client in Petty Sessions, that he must understand that if he pleads guilty now that is the way that he will be dealt with from now on even though when he comes to the higher court he will be asked whether he is guilty or not guilty. That will not be the nature of the advice. The advice will be that the person

must understand that if he pleads guilty he is stuck with it. There is no room for doubt and there is no reason to introduce complications or concepts of legal fiction or the fact that one needs to be on guard. The advice would be that not only is one stuck with it but also one can pretty well ignore what is asked in the higher court because apart from exceptional circumstances it will not make any difference. The important point is that the accused at that point understands the effect of pleading guilty; where he is represented it is surely the obligation of his legal adviser to ensure that he understands that clearly and without scope for misunderstanding. If he is not represented by counsel it will surely be the obligation of the court itself to ensure that he understands the effect of the plea. Nobody in the current circumstances in the higher court says, "Do you plead guilty or not guilty? If you plead guilty you must understand that is the way you will be sentenced. It is only if you go to appeal and all manner of other things happen that anything will affect your current plea." What is required and what is ensured is that the accused person understands that if he pleads guilty today in the higher court that is the way the matter will proceed. Under this provision the same will apply when it comes to the plea in Petty Sessions. It will be essential for the accused to be brought to understand that that is the plea that he is stuck with.

With all due respect for the theoretical possibilities that can emerge about what goes on in people's minds when they appear in the higher court thereafter, the reality is that the accused person, who has been given clearly to understand that having pleaded guilty he will turn up at the higher court for sentencing only, will turn up at the higher court and wait to hear the sentence. He will not be all that concerned about the form that is adopted from that point on. Any legal fiction will be his very last concern.

Hon PETER FOSS: I am sure that all the things the Attorney General points to will happen, but the fact remains that this person will be taken into a court and he will be told that he will be given, on the face of it, an option. He will have an indictment read to him and he will be asked whether he pleads guilty or not guilty. If he happens to say not guilty, he will be told that he cannot plead that way. Whether the Attorney thinks that is logical or not, the fact remains we have a procedure in the higher court which is a nonsense. We ask a person to take an election to plead guilty or not guilty, and it does not matter what he does because he will be made to plead guilty. That is the reason I gave the example of the Wizard of Id. "Stop or I'll shoot!", Twang!, "Lucky he stopped." Whether the person stops or not, he is shot. That is the sort of thing we will do. It seems very weird. It has been drafted in this way; it includes an unnecessary step. It is stated that a person will be given the alternative; he will be asked to choose between pleading guilty or not guilty, and no matter what is said, a plea of guilty will be entered against him. If that is not nonsense then it is hard to know what is. If the Government is determined to go ahead with this nonsense it can do so but I would not want anybody to think that this is a sensible procedure. Perhaps the Attorney General should go back to the drawing board and find a procedure that makes more sense than this one.

Clause put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Section 42 amended and consequential amendments -

Hon J.M. BERINSON: I move -

> Page 17, line 15 to page 19, line 14 - To delete the lines.

This is necessary as a result of the Acts Amendment (Sexual Offences) Act 1992 having already come into operation. As members will know the whole of the existing clause 10 between page 17 line 15 and page 19 line 14 was to cover the situation if this part came into operation before section 6 of the Acts Amendment (Sexual Offences) Act. None of that applies now.

Amendment put and passed.

Hon J.M. BERINSON: I move -

> Page 19, lines 15 and 16 - To delete "If this Part comes into operation after the *Acts Amendment (Sexual Offences) Act 1992* comes into operation the" and substitute the word "The".

I move this amendment for precisely the same purpose as the previous amendment.

Amendment put and passed.

Hon PETER FOSS: I have always had some difficulty with the division of the jurisdiction between the Supreme and District Courts. This is definitely an improvement on the previous situation, but what was the logic behind the distinction which still applies? For instance, why do we have section 186 of the Criminal Code and chapter 31?

Hon J.M. Berinson: In general terms those now reserved for the Supreme Court are looking to the highest range of penalties and this one is based not on the description of the offence but on the 20 year penalty that applies.

Hon PETER FOSS: I suppose there is some benefit in there remaining a criminal jurisdiction in the Supreme Court. If there were not a criminal jurisdiction in the Supreme Court, we would end up with a Supreme Court full of judges who knew nothing about criminal law, and a very unsatisfactory court of criminal appeal; that would not be a very good idea. It worries me that we have a peculiar way of splitting it up. I suppose the total offences one might be able to charge people with is not a bad system, but it seems to be almost a random selection of offences in the Supreme Court. Is there anything more logical than the ones that we have there? I accept the point that the Attorney General has raised and that is the same situation as in sections 186 and 398, but it seems to be a funny selection of offences.

Hon J.M. BERINSON: I tried to indicate by interjection that the choice of criteria is limited. The selection here is based on the highest penalties applicable to these offences; that can reasonably be advanced as the most rational and logical way of approaching the problem. I agree with Mr Foss' earlier comment about the need to retain a criminal jurisdiction in the Supreme Court. I am sure that is the view of the Supreme Court. On the other hand, it is undeniable that the Supreme Court is currently dealing with cases which do not require the Supreme Court and the offences being transferred to the District Court are undoubtedly within the capacity of that court to handle. It is therefore preferable that we should reserve the availability of the Supreme Court to cases that can be accepted on the basis of their seriousness at being at the highest level and justifying the availability of that court.

Hon Peter Foss: Has the Attorney General made any estimate of the overall effect this will have on the number of judges occupied in the criminal jurisdiction of the Supreme Court? Will it make a difference of half a judge or one judge? What does the Attorney General see the impact being on the amount of experience that criminal judges would get?

Hon J.M. BERINSON: I do not believe there has been any attempt at a measurement on that basis. There has obviously been an analysis of the numbers of cases that would pass.

Hon Peter Foss: Can you give us an idea?

Hon J.M. BERINSON: No, I cannot. We went through quite a long period where in the normal course of events only one criminal court operated in the Supreme Court. That went first to two and I think I am right in saying that it is quite a regular occurrence that three judges are now occupied. I am referring to the Supreme Court Perth, and that is without reference to the circuit obligations of the Supreme Court. The best I could do is to offer an extremely rough rule of thumb and suggest that the court should reasonably be able to proceed with a maximum of two judges at any one time.

There would be at least some occasions during the year when it might even be able to revert to its former arrangements where normally only one judge was occupied full time. One of the reasons I say that it is not possible to be too definite or accurate about this matter is that so much depends on the nature of particular trials which will still be dealt with by the Supreme Court. Earlier today I introduced an amendment to the Juries Act which was driven by an expectation by the Supreme Court that one or more cases with which it will deal next year could last as long as 12 months. When circumstances such as that arise, all theories go out the window. There may be one judge to start with but the court may well end up with three. It depends very much on the circumstances from month to month. One thing about which we can all be reasonably confident is that to whatever extent, if any, the overall criminal burden of the Supreme Court is reduced, there will always be ample work for the judges.

Clause, as amended, put and passed.

Clauses 11 to 19 put and passed.

Clause 20: Sections 169 inserted -

Hon J.M. BERINSON: Proposed sections 169 and 169A and associated provisions are to prevent fined offenders from opting for either prison or work and development orders where they have a capacity to pay. The detailed provisions of these two proposed sections go to requirements including means testing and the administrative arrangements required to achieve that purpose. Basically, this Bill takes the approach that if offenders are fined they should pay the fine if there is a financial capacity to do so, and it is only in cases where there is no such financial capacity that the opportunity should exist to opt for work and development orders.

Hon PETER FOSS: I have some concern about this amendment because it seems to indicate that work and development orders are not all that effective.

Hon J.M. Berinson: In what sense?

Hon PETER FOSS: They really may not be as much a penalty as they appear to be; in other words, they are not all that effective in getting people to do something. The whole idea of work and development orders is a good method of dealing with a penalty whether a person is rich or poor. Of course, it often can be said to be almost a means tested penalty because if a person has a lot of funds, a work and development order will probably cost him or her more in lost income than a person who has no income. I cannot see that there is a problem with work and development orders; it seems an appropriate and even penalty.

Hon J.M. Berinson: But it is not the penalty that the court has imposed.

Hon PETER FOSS: I appreciate that. However, if we believe that work and development orders are a reasonable alternative, there should be no objection to people opting to pay a fine or doing the work of an order. It concerns me a little that it is seen in some way as not being as severe as a fine, and that a person should not be allowed to take the option simply because he is getting off lighter. I do not think that people should be seen to be getting off lighter. It is a good alternative punishment because it is beneficial for the community and for the individual. Why must we add the further administrative detail of having to put people through a means test if it is a sensible alternative anyway? Why are we so concerned that people might get out of paying fines and instead do a work and development order when it is a more reasonable and egalitarian alternative? There are more benefits to the community of people carrying out a work order if it is properly supervised and is an effective program. It is often said that it can be expensive administratively, and to some extent it can be a joke. I am not saying that that is a fair criticism across the board. It does not always work out the way we would like work and development orders to work out. Therefore, I have my concerns that perhaps we are treating the wrong symptom. We really should not be introducing an extra administrative layer to decide whether people should do work orders. If they want to do work orders, that is fine. If we have concerns about the work orders we should fix up those orders rather than introducing another layer of administration. We should try to steer clear of means tests.

Hon J.M. Berinson: This involves much less administration than the administration of the work and development order.

Hon PETER FOSS: I realise that. One of the concerns we have about the work order is that it is administrative. We are adding another administrative step in order to prevent people from doing something. We should not prevent them from doing something. We are inserting a new bureaucratic measure in order to allow for the fact that perhaps we are not so good at administering work orders.

Hon J.M. BERINSON: I will not respond at length now because there are obligations to other Bills that I would like to proceed with. However, I will make a preliminary response now. In that respect, I suggest to Hon Peter Foss that he is missing the point which justified the introduction of work and development orders in the first place. No-one has been a more enthusiastic advocate of work and development orders than I, but the reason they were introduced was to avoid the very serious problem which we had, and to an extent still have, of people going to prison in default of payment of fines. In particular we had the problem of people going to prison in default of payment of fines because they did not have the financial capacity to pay the fine. In principle, we approached it on the following basis -

Hon Peter Foss: It is still a good process.

Hon J.M. BERINSON: No, it is not.

The fact that the court has said that a person should be fined is an indication of the view of the court that that person should not go to prison. That person should, therefore, not go to prison anyway because of his incapacity to pay the fine. On that basis we established the work and development order alternative. Precisely the same principle applies to the payment of fines by people who have the financial capacity to pay them. The court has said they should pay the fine and that is what the court regards as the appropriate penalty in the case. Our position is that, if they can afford to pay, they should pay because that is the only way of satisfying the penalty which the court has regarded as appropriate. Nonetheless, if there is a case of financial incapacity to pay there should be an alternative available which prevents imprisonment in default; that is, the work and development order. It is really a matter of being consistent with one's principles as we go down the line. We must accept that the starting point has to be that it is for the court to exercise its discretion as to an appropriate penalty and, to the maximum extent possible, that should be the penalty which the offender is called on to meet. It may be appropriate to say a little more on the point than that, but as I indicated earlier, we have obligations to other legislation tonight.

Progress

Progress reported and leave given to sit again, on motion by Hon J.M. Berinson (Attorney General).

STATUTORY CORPORATIONS (DIRECTOR'S DUTIES) BILL

Second Reading

Debate resumed from 6 May.

HON MARK NEVILL (Mining and Pastoral - Parliamentary Secretary) [9.45 pm]: Hon Peter Foss should be complimented on this third draft of the Statutory Corporations (Director's Duties) Bill. The Bill has improved with each draft, but there are still significant problems with it.

In October 1991 the Government gave a commitment to conduct an inquiry into this matter. As a result the Sutherland report on accountability and responsibility was released on 14 August 1992. This report outlines the Government's approach to director's duties and it is probably broader than the approach which has been taken in this Bill. The Sutherland report refers to the code of ethics which closely follows the code of ethics of the Public Service Commission and a director's charter. This Bill is narrower in its focus on these issues.

Part 1 of the Bill deals with civil liability and clause 3 refers to the declaration of directors' duties. I understand that Hon Peter Foss wants to decriminalise the standard duties of directors. Part 3 of the Bill deals with criminal liability and clause 9 provides a scheme for the prosecution of directors, officers and employees of corporations. This part of the Bill covers many aspects of a director's duties and includes clauses which cover the improper use of information and the improper use of position. I am concerned about these clauses because I envisage many situations in which criminal liability could apply where the conduct of a person is not of a genuine criminal nature. I am not entirely sure how that relates to clause 3.

The Bill extends the sanctions in clause 9 to officers and employees of corporations. This will create a problem because officers and employees who make similar decisions in other areas of Government are not subject to these sanctions. The wording of this Bill follows very closely the wording in the new corporations Act and that is basically designed to apply to trading organisations. In the format of this Bill those same provisions will be applied not only to trading organisations but also to Government agencies that are purely regulatory. I do not think it is appropriate in some of those particular situations.

Clause 4 refers to action to recover damages for any loss suffered by a corporation as a result of breach of duty by a director. I hope that would not apply in any sense to a corporation that usually runs at a loss; for example, the Eastern Goldfields Transport Board, which probably will never make a profit.

Another problem with the Bill is in clause 17, which states that no transaction involving more than 25 per cent of the gross assets of a corporation can be entered into without the consent of the Governor in Executive Council. It is a fairly onerous provision for some Government agencies which have very few assets. There could be some problems in the sense that it is an unnecessary burden on some regulatory agencies to comply with these rules.

Clause 11 refers to the duty to exercise reasonable care and diligence. That section could probably well do with the addition of the American business judgment rule. A rule such as that clearly spells out the responsibilities of directors, officers and employees. I will read the recommendation of the House of Representatives Standing Committee on Legal and Constitutional Affairs in its report on corporate practices and the rights of shareholders, to which I made a submission last year. Recommendation 20 on page 164 states -

> The Committee recommends that there be enacted a business judgment rule in the following terms:

It would need to be worded differently in Western Australia. It continues -

> A director or officer shall not be liable to pay compensation to a company or suffer the imposition of a penalty in respect of his or her business judgment unless it is made to appear to the relevant court that at the relevant time the director or officer:
>
> - had an authorised interest in the transaction of the company to which the judgment relates;
> - had not informed himself or herself to an appropriate extent about the subject of the judgment;

Events in recent years make that a fairly important factor. It continues -

> - did not act in good faith for a proper purpose; or
> - acted in a manner that a reasonable director with his or her training and experience could not possibly regard as being for the benefit of the company.

It goes on to define what is meant by "business judgment" -

> In this section "business judgment" means a lawful judgment made for the conduct of the company's business operations and, without affecting the generality of the expression, includes a judgment as to:
>
> - the company's goals;
> - plans and budgeting;
> - promotion of the company's business;
> - acquiring assets and disposing of assets;
> - raising or altering capital;
> - obtaining or giving credit;
> - deploying the company's personnel; or trading.

It goes on to list some matters which are not included in the business judgment. I am afraid my knowledge of company law exhausts itself at that point. The recommendation states -

> but does not include a judgment as to -
>
> - matters relating principally to the constitution of the company or the conduct of meetings within the company;
> - appointment of executive officers; or
> - the company's solvency.

I am not sure what the last three mean but the first two sections are very clear and anyone in the position described in the Bill could well be aware of them. The wording in this section is very simple but probably the true implications are missed by the simplicity of the wording. I am not one who usually argues for more pages in the Statute books, but it should be considered in that section for Western Australia.

Another problem is the need to put directors' duties into legislation for Government authorities. I am concerned that once we have these provisions on the Statute book, directors and people who offer themselves to serve on boards of Government trading enterprises and regulatory bodies will want to be paid a lot more money if they face the possibility of civil or criminal prosecution for their behaviour. A lot of these directors' packages will need to include professional indemnity insurance. It seems to me that at the end of the day nothing will change. People must be paid more and part of the package will be professional indemnity insurance in case they make a mistake. It comes back to the basic position that if we want to progress we must make sure that the people appointed to the board have high standards of ethics. It is a circular process of paying people more and giving them professional indemnity insurance as part of the package. I do not think much is achieved by that.

There are other problems. I understand the Taxi-car Control Act indemnifies members of the Taxi Control Board and I think there could be some conflict with this Bill in that regard. Although I want to encourage the development of this initiative by Hon Peter Foss - and I think credit is due to him - this whole area of law needs to be thought through a great deal more. I am not convinced that criminal sanctions are the way to go. We must somehow make clearer to people in these positions what are their obligations, and perhaps tackle it from that point of view.

This Bill fairly well follows the Corporations Law, and that is almost growing into a monstrosity. I know it goes past 1 300 sections, and it may go on a lot further than that. That Act is very prescriptive, and I am not sure that is the way to go. There has been some discussion in the Press of late about whether we are going down the right track in respect of our approach to companies' law. I made a submission to the inquiry on corporate practices and the rights of shareholders, and that was very different from what was proposed in the Corporations Law. Members can understand my annoyance when that Bill went through this House at short notice. One cannot control corporations externally. The control must be internal because external controls on directors do not have much impact. The German system is very appealing, because there are two boards - a management board and a supervisory board - and all of the controls seem to be internal and not external. That would seem to get away from the problem of the Corporations Law growing in size every year because of the need to rely upon external controls. The fairly long submission that I made was noted, but it was obviously a bit too radical for these times. However, I found that to be an interesting exercise.

Hon Peter Foss should be complimented, but his Bill should be broader. I have not seen what the Government is proposing, but it is a lot broader and perhaps will be more encompassing, and following the Sutherland report, the Government will oppose this Bill.

HON N.F. MOORE (Mining and Pastoral) [10.02 pm]: I wish to make a few comments on the Statutory Corporations (Director's Duties) Bill in my capacity as Chairman of the Standing Committee on Government Agencies. In 1989, Hon Peter Foss introduced into the Legislative Council a Bill which was similar to this one. That Bill was referred to the Standing Committee on Government Agencies for its consideration, and the committee recommended that that Bill should proceed no further and be discharged from the Notice Paper; that the State Government, in consultation with the proposer of the Bill - that is, Hon Peter Foss - and taking into consideration the principles of the Statutory Corporations (Directors' Liability) Bill and the issues raised in this report, prepare a Bill for presentation to the Standing Committee on Government Agencies; and that the Standing Committee on Government Agencies consider this Bill during its proposed future inquiry into the establishment and scrutiny of Government agencies in Western Australia, which may include the development of a statutory corporations Act or code in respect of Government agencies.

That inquiry has progressed since 1989, and members may be aware that part of the activities of the committee recently attracted some interest from certain persons in the media. The point I wish to make is that the committee is well progressed in its major inquiry into the establishment and scrutiny of Government agencies, and only last week it presented a further interim report on that inquiry. The Standing Committee on Government Agencies intends to consider the content of Hon Peter Foss' first Bill and this current Bill in its deliberations in respect of its major inquiry. I indicate, therefore, to Hon Peter Foss that, regardless of what may eventually happen to this Bill, the committee supports the principles that are contained

therein. It will be considered as part of the committee's final report into the way in which Government agencies should be established, operated and scrutinised in Western Australia. Would Hon Peter Foss be good enough to assist me by indicating in his response the differences between the current Bill and the Bill that went to the committee, and would he give any consideration, depending upon the fate of the Bill, to having it referred at his instigation to that committee for consideration as part of its major inquiry?

HON PETER FOSS (East Metropolitan) [10.17 pm]: I am pleased to hear the general agreement in the House about the principle behind the Statutory Corporations (Director's Duties) Bill and its support for the fact that we need to do something in this area. My biggest disappointment has been that I introduced the first Bill in 1989 at a time when a number of substantial abuses were taking place within statutory corporations. Perhaps the worst of those abuses may now have passed, although I think when we read the report of the Auditor General we still have some concerns about whether the boards of corporations really understand what are their duties. Therefore, although I am pleased to hear that progress is being made by the Government and by the Standing Committee on Government Agencies towards attacking more comprehensively the problem, which again I support, my concern is that three years have passed and we still do not have any legislation.

It may be a good idea to have the perfect solution, but in the meantime an imperfect solution is better than nothing at all. The reason I say that is that even though this Bill in its substantive provisions has the ability to change the way in which things happen in corporations, it also has some procedural provisions which can be applied immediately to deal with the abuses that we had in the past. Those provisions are contained in the manner in which action can be taken to recover damages; for example, in clause 4. We already have the situation where the law in respect of statutory corporations is that directors have a liability, and that liability does not arise out of anything other than the general law. Hon Mark Nevill pointed out that there are statutory corporations where the general law has been altered, and he cited the Taxi Control Board. However, the reason that the Taxi-car Control Act has that provision is that, apart from that provision, the general law would be that members of the Taxi Control Board did have a liability. The concern has been about what is the scope of that liability, because there have not been many cases on it.

In addition to the liability which undoubtedly exists in respect of statutory corporations and the people who run them, is the question of how to enforce that liability. One of the useful things about this Bill as far as I am concerned is that it provides a method of enforcement. More importantly, it puts in place immediately for the clarification of people involved in those corporations a regime of liability and of duties which they must observe. I am not very keen on the idea of referring to codes of ethics and director's charters. I believe that in this area of the law, simple statements of principle are better. The criminal liability provisions set this out quite well. Clause 10 states that a director shall at all times act honestly in the exercise of his powers. That is a fairly basic way of saying it, and I would not like to go into any more detail so far as that is concerned. People should act honestly. That is a good word and it is one we should use to describe the situation. Clause 11 states -

> A director shall at all times exercise a reasonable degree of care, skill and diligence in the exercise of his power . . .

Again, these are very ordinary words. I would not like to see them greatly defined beyond that. Those are concepts we should judge in the factual circumstances rather than try to define too prescriptively in future. I agree with Hon Mark Nevill; we have gone the wrong way with corporations law. Corporations law has become over prescriptive to the extent that it has become ineffective. Although I have no personal knowledge of it, I understand that the New Zealand approach to corporations law has gone the other way. That corporations law equivalent is considerably slimmer than ours. We have reached the stage where the Companies Act is about 20 millimetres thick; the Companies (Western Australia) Code has two volumes about 30 millimetres thick, and the corporations law is mainly contained in vast quantities of regulations plus a number of other thick volumes. We have gone further and further. Corporations law has become an arcane science that only those people who can read its incredibly convoluted words and who study it regularly have any idea of what it is about. It provides a field day for accountants and lawyers; it is no closer to the basic principles. The basic principles are set out here; that is, one must act honestly and exercise a reasonable degree of care, skill and diligence. One should not use information for one's own benefit;

nor should one improperly use one's position. They are basic statements, and that is about as far as we should go.

Clause 9(2) is a fuzzy law provision. Clause 9(1) and (2) constitutes a fuzzy law to attack this area. It is becoming the preferred way of attacking this area of the law in that one states where one intends to go and the general principles to be applied and allows commonsense to reign in determining how it works. We should look at that concept increasingly because it ends up a fairer and better law rather than increasing the prescription.

As to the two remarks made by Hon Mark Nevill and Hon Norman Moore about other legislation that is coming, the time has come for some legislation of this sort. We must proceed to put in place legislation now because I see a clearly demonstrated need for legislation of this sort. The concern expressed by Hon Mark Nevill is that part 3 could apply to action which is not of a criminal nature. I find that hard to understand because it seems each of those statements of intent in principle are clearly things that people should not be doing and for which it is reasonable that a criminal penalty follow. Why should there not be a penalty if one has not acted honestly? Why should there not be a penalty if one has not acted with a reasonable degree of care, skill and diligence?

Hon Mark Nevill: It may not be a general criminal action.

Hon PETER FOSS: It is saying that when a person is acting for a corporation he must act honestly. If one acts dishonestly why should that person not be punished? It seems that is a good start for criminal behaviour; if it is dishonest it should be criminal. This has been used in the context of corporations. Each of those things, as the Parliamentary Secretary pointed out, has been lifted from the corporations law, and it is punishable for people in ordinary corporations. The argument I put is that if it is punishable there how much more should it be punishable where the corporation is acting with funds which are compulsorily required from the public? In saying that I rely on the Burt Commission on Accountability, which made that point; that is, the degree of accountability rises with the degree of a number of factors. The Burt Commission on Accountability made out the difference between a sole trader, a partner, a company manager, and a Government because a Government has the right to compulsorily acquire funds. As to a corporation, some people run the corporation and other people provide the money. People have an opportunity if they do not like the way the corporation acts to take out their funds. In a partnership, one has a duty to one's partners. With a sole trader one is accountable to oneself. If it is fair for a company under the corporations law to apply those duties it is equally fair to apply them in the Public Service. The other point is that it appears if one is not employed by a corporation a person will not be the subject to the same sanctions. The Government was looking at the question of whether the sanctions should be more broadly based. One argument is that they should be.

When I was originally drafting this Bill in 1989 I considered making it across the entire gamut of Government. It struck me that perhaps a better way was to get the principle established by way of analogy between two corporations, private and Government, and then perhaps to proceed once that idea was established. When I first raised the idea it was by no means considered acceptable. We have come some way since 1989 when I proposed what was thought to be a radical and different idea which caused some excited opposition among some Government corporations. When the matter went to the Standing Committee on Government Agencies it was attacked in some ways as an extravagant move. Since then people have realised it is perhaps not so extravagant. Often we need to move step by step, and there will be inconsistencies between those employed by a corporation and those employed in the Public Service. However, I give notice that we may need to look at that not as grounds for withdrawing from corporations but for extending it to the Public Service. The move is necessary and needs to be taken. The abuses we had with the State Government Insurance Commission and the Government Employees Superannuation Board, which are amply demonstrated in the report of the Royal Commission into Commercial Activities of Government and Other Matters, show that there has been a massive misunderstanding by officers in those corporations as to what their duty is to the corporation and what they should be doing to carry out those duties. If there is inconsistency I suggest it is only temporary. I understand the Government has been looking at that.

Hon Mark Nevill: In public corporations there is an ignorance of directors' duties as well.

Hon PETER FOSS: At least they know it exists. That is a start, and perhaps there is some ignorance about how it applies.

The other concern raised by Hon Mark Nevill related to part 1 of the Bill. Clause 4(1) refers to an action to recover damages for any loss suffered by a corporation as a result of a breach of duty by a director. First, clause 4 does not establish the duty. It is only if one has a liability that the clause can come into effect. It not a substantive provision; it is a procedural provision. It does not say what the Parliamentary Secretary says. There must be a right of action in the first instance arising under a breach of duty. If there is such a right of action, this is how one brings it on. There is no substantive law provision change; it is a procedural change.

Hon Mark Nevill: It would not cover a loss if there is a loss of duty.

Hon PETER FOSS: It would not cover a negative profit loss unless it happened in circumstances where one was liable for damages anyway. It may result in a loss but it is not simply because one has a negative profit that makes one liable. It is not a necessary consequence. More importantly, clause 4 is not a substantive law provision; it is a procedural provision.

Hon Mark Nevill next commented on clause 17 and said that the 25 per cent may be too burdensome. Provisions exist in the corporations law relating to the disposal of the business of a corporation. Obviously what motivated bringing this across to the statutory corporations legislation was the sort of transaction which took place with the SGIC and the purchase of the Holmes a Court assets. Hon Max Evans calculated that about 110 per cent of the assets of the corporation were involved in that transaction. It must be a matter of considerable importance that one does not engage such a large part of the assets of the corporation in one transaction. Maybe somewhere between 25 and 50 per cent would be satisfactory. I think 50 per cent is too high.

Hon Mark Nevill: I can understand your point about large trading enterprises, but some statutory authorities have almost no assets.

Hon PETER FOSS: Hon Mark Nevill might be saying that he would disregard anything less than $1 million, for instance.

The point Hon Mark Nevill raised leads to another point with which I intended to deal; that is, what should happen to the Bill after this. This relates to the question raised by Hon Norman Moore. It should go to the Standing Committee on Legislation. As has been shown previously, the Legislation Committee has the ability to work with subcommittees of other committees. The Legislation Committee has a history of dealing with public submissions and getting legislation through the Parliament. I am very keen to see this legislation passed. I do not by any means say that the Standing Committee on Government Agencies would not get it through, but it does not have quite the same experience as the Legislation Committee in doing that. It would also give me an opportunity, as the proponent of the Bill, to propel it along. I am very keen that it should receive further scrutiny for two reasons: It is a private member's Bill and there is a lot to be said for private members' Bills being referred to a committee simply because as a private member one does not have the ability to gain public comment and suggestions as does the Government. One is able to only allow the legislation to be submitted to public scrutiny through such a committee. The other reason is that it is a significant law reform and as such it should be subject to the Legislation Committee's scrutiny. I would be quite happy if Hon Norman Moore suggested that a subcommittee be formed from the Government Agencies Committee and the Legislation Committee. We would gain the benefit of the experience of those committees.

Hon N.F. Moore: The Government Agencies Committee is more interested in the final result. We would be happy to see an amended Bill, but we do not want to investigate the detail of it. We agree with the principle of it.

Hon PETER FOSS: Having worked on this Bill since 1989 and become aware of events which have taken place since then, the time has come, as the walrus said, to get some legislation on the books. I am extremely supportive of the suggestion by Hon Norman Moore concerning a statutory corporations Act. I may have mentioned it in my first introduction; it is a fairly substantial job on which that committee will embark. It will by no means be a simple task, and will be fairly time consuming.

Hon N.F. Moore: It may be finished about 1996.

Hon PETER FOSS: I do not expect it will happen overnight. It is about time we had some

legislation on the books. I would like to see it given a little push along. However, it should have appropriate scrutiny and appropriate public comment which may very well pick up matters such as Hon Mark Nevill raised and other matters which should be considered.

Hon Mark Nevill also mentioned the idea of the business judgment rule in the United States. Although that is appealing, my first reaction is that at least one of the principles I have tried to adopt is to follow the same law generally applicable in Australia. It may be a good idea to consider the United States rules as a better way of approaching the matter, but that should probably be done in the context of changing the law regarding directors' duties generally in Australia rather than have the pioneer work done with statutory corporations. I have some sympathy for the concept and believe that we should look at directors' duties in that light, but as a general inquiry, in the same way as Hon Norman Moore's inquiry is a general one concerning corporations.

The other matter raised by Hon Mark Nevill was that directors would want to be paid more money if they faced similar criminal liability. I do not believe that is correct. There are hundreds of thousands of statutory corporations, most of which are not highly active with massive amounts of trade. The fact remains that they are used as vehicles for achieving a particular purpose. They have the ability to pay out certain amounts of money to their shareholders and earn certain profits to pay their officers. They are very much constrained by commercial considerations. It is not the risk they face which determines how much they get paid, but the amount the corporation allows them to take out. There have been some spectacular examples of people taking out large amounts of money from corporations, probably in breach of their duty. Many corporations operate with quite minuscule directors' fees being paid. I am a director of a particularly small company. I know the liability I face, and my principal way of dealing with that is by performing my duties diligently. I know that if I act honestly and diligently I will be all right. That is the case with most businesses. Hon Mark Nevill is quite right, an amount of directors' insurance has been taken out and the premiums have been paid by an increase to the salary of the directors. However, I still believe that in those circumstances if the amount of directors' and officers' insurance is included, the fact that one has the liability is a very important effect on what one does.

Hon Mark Nevill interjected.

Hon PETER FOSS: That is an excellent point. Not only should one watch one's own conduct, one should very carefully watch the conduct of one's fellow directors. Hon Mark Nevill might have heard me outline that regarding Cabinet Ministers. In a partnership one does exactly the same thing. There is nothing like self-interest to motivate people.

There is a lovely illustration in the opening of *Rosencrantz and Guildenstern are Dead*. It opens up with two men tossing a coin which keeps coming down heads. Rosencrantz, or perhaps Guildenstern, says, "That is 405 times that this coin has come down heads." The second person says, "Yes, that is so." The first person then says, "You have won 405 times because you called heads" to which the second person says, "Yes, that is right." The first person then says, "Doesn't that strike you as anything", to which the second person replies, "No." The first person then asked, "What if it had come down 405 times tails?" The second person then says, "Then I would like to see your penny." At least self-interest is a motivating factor. People are prepared to allow things to happen as long as they do not affect them. As soon as self interest is involved, not only do we look after our own interests, but also we can be motivated to look after other people's interests. One of the important things in this legislation is that it gives some self-interest in looking after the interests of the corporation. I think that is a very important move.

The Parliamentary Secretary referred to the Taxi-Car Control Act and said that it would be inconsistent with this Bill. That is correct. This Bill does not overrule that. The situation is such that this being a general Act and that being a specific Act which includes an amending law but it is principally a declaratory Act, the specific conditions contained in that Act will override this. Again, perhaps that is something that Hon Norman Moore's committee should look at. Obviously part of the Government's statutory corporations legislation is that all statutory corporations will need to be examined under those circumstances to see whether we should be going through those and changing the general regime that applies to them. That is an important point. I do not think this changes that, but it is certainly something that Hon Norman Moore's committee should look at when it gets a little further down the line on

what it will do; that is, whether it will cause its general principles to be applied to every single existing corporation or whether it will not. My Bill does not purport to do that and I do not think it would be appropriate for it to overrule those specific provisions.

I agree with the Parliamentary Secretary's point about external controls and that we are better off with internal controls. I think this Bill does try to get there. One of the things we do when we are given self interest to do so is to set up internal controls. That is why I believe part 3 should be left as it is because it is in these general terms of principle which require people to act in accordance with those terms of principle rather than set out a whole lot of things we can and cannot do. Once we start being proscriptive, the only way we can do anything about it is to have someone come in and check it off bit by bit.

Hon Mark Nevill: It never ends.

Hon PETER FOSS: Yes, and we find that when we have not proscribed something we have to fill in that detail. Every time a bit of detail is filled in, we leave more and more room for something to fall outside the proscription. If it is left in these general terms, people will have to set up their own system in order to be able to comply with it. I agree entirely with the Parliamentary Secretary's statement; it is correct. It is consistent with my maiden speech in which I talked about self-enforcing laws. I think the Parliamentary Secretary said the same thing.

The Parliamentary Secretary referred also to the European Community law. I have looked at the EC law. One of the things I looked at was the fifth directive, I think it is called, which deals with the duties of directors. I might even have mentioned it in my second reading speech. It is so long ago since I gave it that I cannot remember whether I did. I know I was looking at it at the time I did this draft Bill because I have, over the time in which I have been working on this legislation, been collecting more information about it. I cannot pick up any reference to it at the moment, but I did get the EC law in. I think the problem with the EC law is that there are many layers of law and eventually we will find that even the European Community will end up with even more proscriptions than we have here. Given the point made by Hon Mark Nevill, I accept the point that there may very well be better ways of dealing with corporations than we have and that it is always a good idea to look at the examples overseas. That is one of the reasons I think it is important for members of Parliament to travel. If we do not look at the solutions overseas, we become far too narrow in our way of dealing with legislation and often reinvent the wheel and end up with a poor solution.

Hon Norman Moore asked me to what extent this Bill differs from the other. I tried to pick up some of the comments that were made by his committee which asked for certain things to be changed. As far as possible, I have dealt with those. For instance, one of the things raised by his committee was that, rather than incorporating by reference the criminal provisions, those criminal provisions should be specifically set out. That is why part 3 is as it is now; it does that. However, I have kept them as simple and as small as possible and have not taken up the full Corporations Law.

Another matter that was raised was some criticism - I think, to some extent, misplaced criticism - by the witnesses about the effective directions. I did not want to have a situation where ministerial direction meant that everybody said, "Well that is fine; we have a ministerial direction, we do not owe any more duty". There was a misapprehension on the part of some of the people who gave evidence to the Standing Committee on Government Agencies that the Minister ceased to have any responsibility by virtue of the fact that the Bill specifically said that the directors were not relieved of responsibility. Of course, two people can be responsible. The fact that some people retain some responsibility does not mean that the Minister still has one. In order to get to a better result - to some extent I have looked at the SGIO draft that we dealt with when the SGIO was going to be corporatised as opposed to privatised - I have changed part 2 with regard to ministerial directions quite specifically so as to keep the obligation of the Minister and the right of the Minister to direct, but not to direct beyond law. We have had this point before where we have put in that a direction must be lawful and that it cannot be unlawful or outside power or against the interests of the corporation. That is in there and there is a sort of a check and balance set up that the directors of the corporation are not protected until such time as they have actually considered the direction and made up their minds about it. They are also given the opportunity of

challenging the decisions so that there is somebody in there with an incentive to say, if they think a direction is ultra vires or unlawful, that it is ultra vires or unlawful and to do something about it. At the moment, there is no incentive whatsoever for them to do so.

I think they were the main ones. Another point related to how broadly we should define a corporation. I have not yet changed that; I have kept it much as it is.

I also set out in the second reading speech some of the other events that have occurred since 1989. One, of course, was that the Auditor General recommended that this legislation be brought forward. The Committee made its recommendation, the Auditor General made his recommendation and the Government gave an undertaking with regard to the State Government Insurance Office. Three fairly strong statements were made that the legislation should be progressed. The suggestion of the Standing Committee on Government Agencies has been totally ignored by the Government. I have been introducing my own Bills in the hope that it would prompt some response. I have been getting undertakings from the Government, and I have been trying to talk to various people but I have not had a great deal of joy in getting enthusiasm and cooperation from the Government. I view with some scepticism the statement that the Government's legislation is coming. It has been coming since 1989 and the only push towards this legislation since that time has come from me, despite the enthusiastic endorsement I received from the Auditor General and from the Standing Committee on Government Agencies. I believe that the time has come for this legislation. We must try to get it through in the near future if we possibly can. I thank members for their support for the provisions of this Bill. I hope they will also support the Bill in its second reading and referral to the Legislation Committee in order to allow as soon as possible the public scrutiny which the Bill deserves to receive.

Question put and passed.

Bill read a second time.

Referral to Standing Committee on Legislation

On motion by Hon Peter Foss, resolved -

> That the Statutory Corporations (Director's Duties) Bill be referred to the Standing Committee on Legislation.

EQUAL OPPORTUNITY AMENDMENT BILL

Committee

Resumed from 21 October. The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon Tom Stephens (Parliamentary Secretary) in charge of the Bill.

Clause 10: Section 27 amended -

Progress was reported after the clause had been partly considered.

Hon TOM STEPHENS: The last time the Committee met, Hon Peter Foss asked some questions relating to this clause which I am now in a position to answer following advice received on the matter.

The amendments are as a result of a decision in the Supreme Court of Western Australia in the case of Bowie v Director General, Department of Community Services. The complainant, Mrs Bowie, was employed as a group worker at Riverbank Detention Centre. She applied for a permanent position, which was advertised for the male roster. At the time there were four females at Riverbank, and there are now many more. There were no other applicants for the job. Mrs Bowie was not considered for the job, which was re-advertised. She applied again and was told that she was not eligible to apply because she was female. The respondent claimed that part of the duties of a group worker included supervising the boys showering, and searching them on return from court and so on. There was, however, a great deal of evidence that at any one time there was an ample number of males on duty to carry out those duties, and they made up a small proportion of the total duties of group workers. The Equal Opportunity Tribunal found that sex discrimination had occurred and that the respondents could not rely on the exception provided by section 27 since there was evidence that a male was not required as there were ample males to do the work.

The Full Court of Supreme Court ruled that because of the way the exception in section 27 is

drafted, the fact that there was no need to employ another male because there was already an adequate number of males on the staff to carry out those duties was irrelevant. If the advertisement for the job said "male" then it was implicit that the person employed may have to carry out those duties to which the exception under section 27 applied, irrespective of whether it was necessary to have a male. A single judge of the Supreme Court considered the matter at the first instance and reviewed similar provisions in the United States and the United Kingdom, from which this provision was derived. He distinguished the USA and UK provisions and stated that the different wording of the WA provision relieved a respondent of having to show a "need for" an employee of a particular sex, or that the requirement was a reasonable one.

The interpretation by the Supreme Court means that the exception could be so widely applied that it could defeat the object of the legislation. For example, in a female hospital the provisions of section 27 could be applied so that all the staff who had contact with patients would have to be female. By contrast, under UK legislation there is a requirement to show a need for a person of the same sex. Thus, in the case of Drummond v Hillingdon Health Authority, Dr Drummond applied for the job of airport medical officer at Heathrow. He was rejected because the job consisted of medically examining immigrants, some of whom were women. His complaint of sex discrimination was upheld. The Health Authority could not demonstrate a need for a female doctor as the complainant had carried out such duties without complaint.

The proposed amendments retain the sensible approach of the exception that recognises that in some circumstances a person of a particular sex is required, but ensures in the future the exception cannot be used to defeat the legislation. The commissioner consulted with the Commonwealth Sex Discrimination Commissioner as section 27 mirrored a provision in the Sex Discrimination Act. The Commonwealth commissioner was very concerned by the Western Australian Supreme Court's interpretation and indicated it was never intended that the exception should be used in that way. It is most likely that the Commonwealth commissioner will follow WA's lead in this amendment.

I am sorry I was not able to provide that detailed information sought by Hon Peter Foss at the time we last dealt with this clause. I am sure the advice with which I have been provided by the commission, and which I have in turn relayed to the Committee, will go a long way to allay the member's fears.

Hon PETER FOSS: I am very grateful to the Parliamentary Secretary for that explanation, which I found very informative and logical. My only concern is that I am not sure the amendment achieves what the Parliamentary Secretary is talking about. Perhaps he will explain how this amendment will achieve the outcome he speaks of.

Hon TOM STEPHENS: Clause 10, as it would read if this Bill were passed, focuses on the response I have just given. Following the determination of the Supreme Court, section 27 of the principal Act is to be amended by inserting a new subsection (3). It is self-explanatory and has been further explained by the additional information provided.

New subsection (3) was explained in the advice I have relayed to the Committee. It states -

> This section does not apply in relation to a person at a time when an employer or principal concerned already has employees, commission agents or contract workers of the opposite sex to the person -
>
> (a) who are capable of carrying out the duties of the position concerned;
>
> (b) whom it would be reasonable to employ, engage or allow to work on the duties referred to in paragraph (a); and
>
> (c) whose numbers are sufficient to meet the likely requirements of that employer or principal in respect of the duties referred to in paragraph (a).

Therefore, section 27 is the exception provision of the Equal Opportunity Act and is utilised for appeals under the Act. This amendment effectively limits the use of section 27 to cases where it is absolutely and completely necessary to employ a person of the same sex; for instance, the case we referred to from the English courts. Surely the member would not want to see a provision such as this utilised by a complainant?

Hon Peter Foss: I said I was in total agreement with the principle. However, I wonder whether the Parliamentary Secretary can achieve what he seeks through this amendment.

Hon TOM STEPHENS: I am confident on the advice relayed to me that the clause achieves that result. The clause was drafted in response to the recommendations of Parliamentary Counsel responding to the decision of the Supreme Court.

Hon PETER FOSS: If I understand the Parliamentary Secretary clearly he is saying that he does not understand how the clause will do this, but he is trying to give me the confidence it will do what he says because somebody has advised him it will do it even though he does not understand how it will work. That does not give me a great deal of confidence that the clause will achieve what the Parliamentary Secretary tells me it will achieve. The Parliamentary Secretary said exactly what I raised in my point. He has not told me anything I did not know. I told him previously how section 27 works; because it is an exception this is an exception to an exception and therefore brings one back under operation of the provisions. These are exceptions to part 2 which are the basic discrimination provisions.

The Parliamentary Secretary has said what he wishes to achieve and I agree with that. I wonder why that is not what the legislation says. It is saying something totally different. I am always suspicious of drafting which sets out to achieve (a) by legislating for (b), (c) and (d) because one never knows whether one will end up with (a). I do not think the Parliamentary Secretary has ended up with (a) in this case. Section 27 commences by saying that nothing in the section renders it unlawful for a person to discriminate against another person on the ground of the other person's sex in connection with a position as an employee, contract worker or commission agent being a position in relation to which it is a genuine occupational qualification to be a person of the opposite sex to the sex of the other person.

That is not a brilliantly understandable provision. We have "another person" and "other persons" and "persons of the opposite sex to the other person". One is not allowed to discriminate against "another person", that is, the potential employee, on the ground of the other person's sex. The "other person" is also "another person" so when we read "other person" we also have "another person". The Parliamentary Secretary is saying that it is a genuine occupational qualification to be a person of the opposite sex to this employee. At this stage we have the "other person" occasionally called "another person" and "a person of the opposite sex to the sex of the other person".

Progress

Progress reported and leave given to sit again, pursuant to Standing Order No 61(c).

ADJOURNMENT OF THE HOUSE - ORDINARY

HON J.M. BERINSON (North Metropolitan - Leader of the House) [10.56 pm]: I move -

That the House do now adjourn.

Adjournment Debate - "Inquiry into Asbestos Issues at Wittenoom" Report

HON P.H. LOCKYER (Mining and Pastoral) [10.57 pm]: Today Hon Mark Nevill brought a report before the Parliament titled "Inquiry into Asbestos Issues at Wittenoom". I commend him for the work he did on that report. In my nearly 13 years in this Parliament it is one of the best and most concise reports I have ever seen presented. That person that the Government chose to undertake the inquiry into the asbestos issue at Wittenoom was well chosen. He is a person of great ability in this area who approached his task with poise. He did an incredible amount of research. I recommend that members read the report. I will not bother the Parliament with the whole of the report but I will read the recommendations which are as follows -

(1) The town should remain open and be cleaned up in one program as submitted by the Shire of Ashburton.

The central business district, the recreation centre, the caravan park, the hospital and the residential area bounded by Fifth, Sixth and Seventh Avenue should be preferentially developed.

(2) The tailings at the mine site should be cleaned up over a five to 10 year period.

Options include pumping tailings into the mines, or dams, or consolidating and reprofiling dumps, covering them with topsoil and re-vegetation.

(3) Wittenoom should be allowed to develop as a tourist centre and include a museum and memorial to commemorate those effected by asbestos related diseases.

(4) The system of compensation for past workers and residents needs to be rationalised. In particular, a Compensation Board needs to be formed to deal with past non-working residents.

On the face of it those are highly acceptable recommendations and I will be surprised if any member of this House does not accept them. Hon Mark Nevill was given the job of undertaking this inquiry by the Premier. The report was made public today.

This afternoon, the very same day the honourable member brought down his report, a media statement came from the Minister for North-West, Ernie Bridge, as follows -

> North-West Minister Ernie Bridge today announced that all Government-owned buildings in the old asbestos mining town of Wittenoom would be demolished in line with Government policy to phase down activity in the town.
>
> Mr Bridge said the decision was prompted by ongoing concern over the safety of tourists and others visiting Wittenoom.

In other words, finally, and after the death of 1 000 cuts, the Government has decided that Wittenoom will go. For months, almost years, it has held over the heads of the people who have chosen to live in this important tourism centre certain considerations. The town has a hotel. Previously the Government had removed the police, the school and Government authorities, leaving only the hotel. This week the Government would not renew the lease of the hotel and has left it on care and maintenance until it makes its decision. The Government said it was waiting for Hon Mark Nevill to bring down his report before making a decision on what would happen to the town. He has done that, producing a report containing clear recommendations that with careful handling the town should be developed and the Government hotel should stay. However, the Government has chosen to close the place and to knock it down. Mr Nevill cannot rise and defend himself tonight, and I do not expect him to because he is a loyal member of the Labor Party and it is not in his make up to stand in this place and criticise his colleagues, but I will stand up for him tonight.

Hon Mark Nevill: I will not defend myself, I will defend the report.

Hon P.H. LOCKYER: The member has done a tremendous amount of work. If he had come down with a recommendation that Wittenoom should be closed, I would stand in my place and say that I accepted that recommendation. However, the member has said that it should remain open, but his friends have cut him off at the knees. The member's work has paled into insignificance. He may as well have sat at the bar sipping gin and tonic spending the Government's money, because this report may as well be shredded and turned into Sorbent for use around this place for the good it will do!

Hon Mark Nevill: I am not that pessimistic.

Hon P.H. LOCKYER: The member's colleague, the Minister for North-West, has treated his report with contempt. The rest of the community will listen to the announcement tomorrow morning that Wittenoom is finished. The member may as well have not written the report.

It is a disgrace that the Government held back on this decision until this occasion. It would have been better to tell the member on the day the inquiry was established that a decision had already been made and that he should not bother with his report. However, the Government let Mr Nevill do his good work, and on the very day he presented his report to the Parliament the Government's decision is announced! The member must feel as if he has egg on his face; he does not deserve that. The people at Wittenoom and those booked into hotels there who cannot find other accommodation do not deserve that. The people of the Shire of Ashburton told the Government that it should not close Wittenoom, and all these people will feel hard done by.

I realise that the Government has problems with the WA Inc revelations, but this episode represents another chink in its armour. It has lost a little more respect of the people of the Pilbara region, and, sadly, this Government is bringing down respectable people like Mr Nevill in its quest to gain a few green votes.

This decision was made because a few people down at the Health Department do not agree with Mr Nevill and his very competent advisers on his committee. It is ridiculous that on the same day Mr Nevill produced his report, it has been destined for the rubbish bin forever! The people of Wittenoom, the Pilbara and the tourism industry will not accept this situation. This Government stands condemned for its decision.

Adjournment Debate - Contaminated Site, Mosman Park - Waste Disposal, Williams Proposal Concern

HON P.G. PENDAL (South Metropolitan) [11.02 pm]: The House should not adjourn until I have had a chance to draw to its attention, particularly the Leader of the House's, to a matter of significant environmental concern which has come to my attention during the last day or so. This is a proposal to remove an enormous amount of contaminated material from a site in McCabe Street in Mosman Park to a site a couple of kilometres west of the town of Williams.

This Government is replicating the situation which arose some months ago when the State saw fit to export its toxic waste to France, and into the bargain, of course, the toxic waste sailed around the great oceans because a few people on the other parts of the planet woke up to the fact that they did not want to be the recipients of other people's fouled nest. In this case we are talking about the removal of literally a small mountain from Mosman Park; in fact, if the proposal goes ahead it will create something of a valley there, as I am told the amount of contaminated soil represents 4 000 truck loads. The proposal is that the Government might move the contaminated mountain down to the town of Williams.

This matter has been drawn to my attention by two parties: Firstly, by the parties directly involved, and secondly, and more recently, by my colleague Hon David Wordsworth.

Hon Mark Nevill: With what is it contaminated?

Hon P.G. PENDAL: I will come to that.

The land is jointly owned by the University of Western Australia and, dare I say it, LandCorp. It is remarkable that that organisation should become involved in so many things, and this case is pretty unsavoury.

This site was previously a fertiliser works, and consequently the land is now contaminated with lead, copper, zinc, arsenic, cadmium and mercury. The owners of the land have been advised that the level of contamination is safe for residential development, which, of course, is what this land is destined for. For the residential development to take place it is necessary for something like 120 000 cubic metres, or 160 000 tonnes, or 4 000 truck loads of contaminated material to be removed from the site and disposed of.

I am told that a company known as Octennial Holdings Pty Ltd has an option to purchase the land owned by the university and LandCorp. It has apparently reached an agreement with LandCorp to organise a cleanup of the site, which, of course, involves dumping the soil somewhere else.

Hon Mark Nevill: The site must have a negative value.

Hon P.G. PENDAL: In that case, we would not ask the Attorney General about it, because we know what his views are on that!

I am told that Octennial proposes to excavate the contaminated material and truck it to a site about two kilometres from the town of Williams. This shows that the State is totally lacking in the capacity to deal with this amount of contaminated toxic waste. We have recently been through the process, to which I referred earlier, of having our toxic waste transported to France. I have no serious objections to that if France has the ability to eliminate waste by way, I believe, of a high temperature incinerator. However, I have every objection to having the problem picked up from one part of the State - in this case from Mosman Park - and sent approximately 160 kilometres down the track and dumped right on the doorstep of a major town.

Also, some people believe that the waste to which I refer will remain a risk to the human food chain in perpetuity because of the possible leaking and leaching of contaminants. I am told that the contaminants could spread down the Williams River into the Murray River and the Mandurah estuary system. If the Mandurah estuarine is not already under enough

pressure because of the phosphates pumped into it over the years, this proposal will put it at further risk in a most extraordinary way. The detrimental effects on the environment of this proposal can only be imagined. The transporting of the material from one point to another, with 4 000 trucks moving about 40 tonnes of material each, will have a substantial effect on the environment.

That comes on a day when we have heard another member talking about the pounding our country roads are taking. It is time for Western Australia to do something about its own needs. No longer should we be satisfied with the idea of sending waste to France. We should not tolerate our waste being moved internally - in this case from Mosman Park to be dumped somewhere in Western Australia. There is clearly no comprehensive plan to deal with toxic and contaminated waste. We have seen a problem with waste on other Government owned land at the East Perth gasworks which is badly contaminated and leaching into the Swan River, causing serious harm. A Government that has broken just about every other promise it has made to the environmental movement must be called to account and it must come back to the Parliament within a couple of days with some form of ministerial statement from the new Minister for the Environment as to why this proposal has been allowed to go this far. It reveals an incapacity to deal with long term questions of waste disposal from contaminated sites as well as disposal of the toxic kinds that we are now shipping overseas.

I can give this undertaking on behalf of an incoming coalition Government: This situation will be dealt with within the first term of a Liberal National coalition Government. A comprehensive set of plans will be put in place in which we will not transfer one man's problem to another man in some other part of this State. I ask the Leader of the Government to draw the attention of the Minister for the Environment to this very serious matter. I can tell him that in the meantime the Opposition will not sit idly by and see this sort of crazy situation go without challenge.

Adjournment Debate - Wittenoom Hotel, Demolition Reconsideration

HON PETER FOSS (East Metropolitan) [11.12 pm]: I endorse the remarks of Hon Phil Lockyer. I was recently approached about the problem of accommodation for tourists in the Pilbara, in particular in Wittenoom. As members know, the gorges close to Wittenoom are very important tourist attractions. The only accommodation in Wittenoom is the hotel presently owned by the Government. The person who contacted me has an extensive tour operation which uses the Wittenoom hotel to accommodate overseas tourists. He has made bookings for four years ahead which represent a valuable tourism export for this State. What will this person do to ensure accommodation is available to satisfy the bookings that he has for four years in advance if there is no hotel that can be used? It appears from the Press release that this hotel is about to be demolished without some form of alternate accommodation having been put in place. This tour operator will be put in the embarrassing position of not being able to honour his commitment to these tourists and the State will lose valuable tourist income. I understand that two people have indicated a willingness to take over the lease of the hotel. So it is not as if there is any financial obligation on the State or no way in which the hotel could continue.

The precipitate action of the State will damage our reputation overseas. We have an operator who will be forced to break an arrangement that he has made. The income of the State will be damaged because the tour operator will lose those contracts, due solely to the lack of planning and foresight. The Government is acting in a manner which will create a good public impression but is not taking into account the best interests of the State. I sympathise with the remarks of Hon Phil Lockyer. I ask that the Government, before it takes any action with regard to the hotel, keep in mind the damage it is causing to our reputation overseas, the inconvenience it is causing to tourists in this State and the loss of income that we cannot afford. I ask the Government to reconsider the matter in regard to the hotel and allow tour operators to carry out their contractual obligations.

Adjournment Debate - "Inquiry into Asbestos Issues at Wittenoom" Report

HON MARK NEVILL (Mining and Pastoral - Parliamentary Secretary) [11.15 pm]: I was not here at the start of the remarks of Hon Phil Lockyer. I can assure him that it is disappointing to hear the Government's decision today to close down and demolish the Fortescue Hotel.

Hon P.H. Lockyer: Not just the Fortescue Hotel, but all the properties the company owns.

Hon MARK NEVILL: It is even more disappointing to have the report released on the day when the Government made the decision. I am bitterly disappointed that the report was not released for public debate, thus giving the critics the opportunity to pull it apart and attack its empirical base.

One of the very disheartening things about the asbestos issue is that very few people debate the scientific issues. The debate usually rests on the emotive side with a picture of someone with mesothelioma. It is a terrible disease to die from and has great trauma associated with it. However, we have to stand back from individual cases and individual traumas that people are experiencing and try to get the big picture when making public policy. This report has used very rigorous empirical scientific information. Some of the report will probably be published in the *British Journal of Industrial Medicine*, setting out some of the original research that was done. It concerns me that in politics today most decisions seem to be based on polling for popularity or political opportunism.

Hon P.G. Pendal: You guys pioneered it.

Hon MARK NEVILL: All parties are guilty of it. It is not easy to put the facts before the public. I wonder whether members have ever read the play by Strinberg or Ebsen entitled *Enemy of the People*. In that play the doctor in some Norwegian spa town informs the townspeople that there are deadly bacteria in the spa. He is doing everyone a favour, but he is hounded out of town because it is not the popular thing to do.

Hon P.G. Pendal: There is a parallel.

Hon MARK NEVILL: One of the disappointing points about preparing a report such as this which involves a lot of unpaid work is that not one critical comment on the data in the report has yet come forward. The decision of whether I recommend that the town remain open or closed is not all that important. What is important is the interpretation of the empirical information in the report. We used the best air monitoring equipment in Australia in line with international standards. We used the transmission electron microscope of the Sydney University which is the best instrument in Australia; we used the risk equations of Dr Nicholas de Klerk from Sir Charles Gairdner Hospital which are the best available in Australia; and we used the population estimates of Dr Musk's team which have taken eight or nine years to produce, having gone through detailed medical records, electoral rolls, etc. That research virtually identified every person who lived in Wittenoom. The report cost $30 000. Had it been done by outside consultants, we would have to multiply the cost by 10. It is written in plain English for the public to read. Alas, the decision has been made before the public can read it and comment on it. I find that quite galling.

The other factor I find quite galling is that from the time of delivering the report and the decision being made, not one person has asked me for my views about any of the information in that report. I do not know whether they could understand the information or whether they needed some concerns allayed. Perhaps I could not have convinced them, but I was never given that opportunity. I find that quite amazing.

People think that I have problems with the Asbestos Diseases Society. I think the people at the Asbestos Diseases Society do a fantastic job in counselling and giving support to the victims of asbestos related diseases. I take my hat off to them. However, I do not agree with Robert Vojakovic's view about the risk associated with exposure to low levels of asbestos. I think he is quite wrong and is relating occupational exposure to environmental exposure; they are very different issues. I hope that his reading of this report will help to partly change his views. It was particularly annoying for me to see Robert Vojakovic on television the other night attacking my report when he had not had the opportunity to read it. That is unacceptable. These issues should be made public. If they cannot stand on their own technical merit they deserve to fall. If somebody can point out to me technical weaknesses in the empirical arguments in this report I will acknowledge them publicly. However, my view is that this report will hold together for the next 10 to 20 years. I will be looking at it in the next 10 to 20 years and if I am right - and I am sure that I am - I will be reminding a few of the people who made this decision of that.

The town of Wittenoom will not die as a result of the decision this afternoon. I do not share Hon Philip Lockyer's pessimism on that matter. I do not know how the hotel and hospital

will be demolished, but I am sure that by the time the relevant people go to do so it will be occupied by homeless Aborigines, of which there are many in Wittenoom. The Bunjamar tribe is native to that area and has not moved back there for any reasons connected with this report. Horace Parker and his group moved back into the area about two years ago. They are not trying to grab land or anything like that. I accidentally found out about 12 months ago that a flying doctor landed at Wittenoom and took away a young chap who was severely haemorrhaging after being circumcised. They are carrying out their ceremonial work at Mulga Downs; it is not just some sort of rort that they are trying to put over their community. They have been kicked off Mulga Downs and have asked to use the hospital in the town. My recommendation to them is to move into the hospital and use it. As soon as the hotel becomes vacant they should use it; it would be an ideal place to accommodate homeless Aborigines. The authorities would have fun trying to knock down the hotel then.

In undertaking an inquiry with Alan Rogers, a scientist without peer in Australia in air monitoring, the critics in the Environmental Protection Authority and the Health Department conducted an absolute bodgie and incompetent job of the air monitoring at Wittenoom. They were enthusiastic amateurs wasting Government money. If members read that section of the report they will see that. The problem is that I have not seen their critique of my report to refute their findings, so Cabinet has had the advantage of their opinions without any comments. The Premier quite graciously has agreed to provide me with those critiques, and I look forward to receiving them and perhaps making some public comment on them.

This report is not a parliamentary report, but from tonight's discussions one would think that it was. I thank people such as Robert Vojakovic, Dr Musk, Dr Nicholas de Klerk at Sir Charles Gairdner Hospital, CSR Limited and everybody involved in this report who gave me and Alan Rogers the utmost help. The third member of the inquiry, John Enfield, a Public Service commissioner, accepted a position on the committee but found out a week before he went to Wittenoom that he had cancer of the urethra and passed away a week before the draft report was prepared.

Adjournment Debate - Contaminated Site, Mosman Park - Waste Disposal, Williams Proposal Concern

HON D.J. WORDSWORTH (Agricultural) [11.25 pm]: I have further information to provide the House about cadmium contaminants to be shifted from Mosman Park to Williams. Like most country people, I am shocked at the proposal to take waste from the city of Perth and dump it in the food growing areas of Western Australia. The Mosman Park Town Council is also shocked at that proposal. A report in the *Post* headed "Toxic soil riles Mos. Pk." states -

> Plans to truck 120 000 cubic metres of poisoned soil from the riverfront to Williams, in the wheatbelt, do not impress Mosman Park Town Council.

The article continues that the deputy mayor, Graham Emery, was deeply concerned about the effect on Mosman Park of the digging up of the soil, let alone the carting of the material to Williams. The proposal was to dig a hole twice the size of a football field. Four thousand trucks would travel to Williams and try to cover it with clay in the hope that it would not break out. What is worse - I feel that this is WA Inc all over again - is that it is a LandCorp deal. The company that was to carry out the movement of the contaminants was Octennial which, I believe, belongs to the family of Mr Michael W. Hodgson, whose other companies are experiencing some sort of financial difficulty. One of those companies, Jimwa Pty Ltd, is going into receivership because of a judgment granted against it of about $106 000. This is the sort of company which the Government is encouraging to carry out this movement, and to be ultimately responsible for looking after it in the future. In fact, as can be seen, it is just a way of having a shelf company and being able to quit the responsibility once the material is transported. That is completely irresponsible of this Government and indicates that we have not heard the last of these Government deals into which the Royal Commission has been looking.

The people of Williams held a public meeting recently and about 90 per cent of the residents attended. They certainly left the Williams Shire Council and the Government in no doubt about their feelings about having this contaminant dumped two kilometres away from the townsite. If it is not good enough for Mosman Park to have it, it is not good enough for Williams to have it. We must make up our minds about first class and second class citizens.

The people of Williams are utterly disgusted at the manner in which the Government is carrying out this project.

Question put and passed.

House adjourned at 11.29 pm

QUESTIONS ON NOTICE

HOSPITALS - FREMANTLE
Annual Report 1990-91, Non-lodgment

564. Hon MAX EVANS to the Leader of the House representing the Premier:

(1) Why has the Premier's department not followed up the non-lodgment of the annual report of the Fremantle Hospital for 1990-91 as at 26 August?

(2) What procedures are in place to prevent this happening again?

(3) How many other signed reports have not been tabled as at 26 August?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(1) The lodgement of hospital annual reports is coordinated by the Health Department of Western Australia. The oversight of the non-lodgment of the annual report for Fremantle Hospital has subsequently been addressed and the report has now been tabled.

(2) The Health Department of Western Australia has been instructed to introduce a mechanism to ensure that such oversights do not occur again.

(3) It would appear that reports from the following statutory bodies were outstanding as at 26 August 1992 -

Dental Board of WA - 1990-91
Medical Board of WA - 1990-91
Pharmaceutical Council of WA - 1991

Since that time the reports for the Dental Board of WA 1990-91 and the Pharmaceutical Council of WA 1990-91 have been tabled. The report of the Medical Board of WA 1990-91 will be tabled following the next parliamentary recess.

REDUNDANCY PACKAGES - PUBLIC SERVANTS
Applications; Approvals; Employed as Government Consultants

641. Hon DERRICK TOMLINSON to the Leader of the House representing the Premier:

(1) How many public servants applied for voluntary redundancy in the financial year 1991-92?

(2) How many voluntary redundancies were approved?

(3) Are any of those former public servants who accepted voluntary redundancy now employed as consultants to Government departments or public agencies?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(1)-(2)

It is presumed that the information sought is for all Government officers, rather than those only employed under the Public Service Act 1978 - that is, public servants. 5 573 officers applied for voluntary severance; 2 488 applications were approved. Previous relevant parliamentary questions have related to the special voluntary severance scheme 1991-92. This question relates specifically to all voluntary severances, and hence includes an additional 73 voluntary severances approved under redeployment, retraining and redundancy general order during 1991-92.

(3) It is Government policy that employees who receive a voluntary severance payment be restricted from re-employment in the WA public sector for a period of two years. Officers taking severance pursuant to the special voluntary severance scheme 1991-92 agreed, in

writing, not to become an employee of, or consultant to, the WA public sector for a period of two years. No exemptions have been granted to this requirement.

HOSPITALS - ANNUAL REPORTS TABLING

726. Hon MAX EVANS to the Minister for Education representing the Minister for Health:

Can the Minister confirm that all hospital annual reports to 30 June 1991 have been tabled in the Legislative Council, other than the Albany and Fremantle Hospitals' reports?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

All hospital annual reports, including Albany and Fremantle, have been tabled in the Legislative Council.

HOSPITALS - FREMANTLE
Annual Report Tabling, Delay Reason

727. Hon MAX EVANS to the Minister for Education representing the Minister for Health:

Why was the annual report of the Fremantle Hospital to 30 June 1991, signed by the Auditor General on 8 July 1992, not tabled in the Legislative Council within 21 days?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

Fremantle Hospital omitted to provide to my office copies of the annual report complete with the opinion of the Auditor General. This oversight has since been rectified and the report has now been tabled.

SOCIAL ADVANTAGE UPDATE SEPTEMBER 1992 - COPIES PRINTED
Production and Printing Costs

748. Hon PETER FOSS to the Leader of the House representing the Premier:

What were the production and printing costs, and quantity printed of the pamphlet "The Social Advantage Update September 1992"?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

1 000 copies; $1 248 production and printing costs.

GOVERNMENT PUBLICATIONS - COSTS AND PRINTINGS
Managing for Balance; The Social Advantage - Decisions to Support Communities, Families and Children; A Sense of Responsibility - Preprimary Schooling; The Western Australian Youth Conservation Corps

749. Hon PETER FOSS to the Leader of the House representing the Premier:

What were the production and printing costs, and quantity printed of each of the following pamphlets -

(a) "Managing for Balance";

(b) "The Social Advantage - Decisions to support Communities, Families and Children";

(c) "A Sense of Responsibility - Pre-Primary Schooling"; and

(d) "The Western Australian Youth Conservation Corps"?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(a) I refer to my response to Legislative Assembly question on notice 1175.

(b) 20 000 copies; $4 372 production and printing costs.

(c) 60 000 copies; $4 350 production and printing costs.

(d) 5 000 copies; $1 179 production and printing costs.

SOCIAL JUSTICE AND THE BUDGET - COPIES PRINTED
Production and Printing Costs

750. Hon PETER FOSS to the Leader of the House representing the Premier:

(1) How many copies of the booklet "Social Justice and the Budget" have been printed?

(2) What was the total cost of production and printing of these booklets?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(1) 3 000.

(2) $5 975.

GOVERNMENT PUBLICATIONS - COPIES PRINTED; PRODUCTION AND PRINTING COSTS
The Social Advantage - Decisions to Support Communities, Families and Children; Speaking Out, Taking Part Reports

752. Hon PETER FOSS to the Leader of the House representing the Premier:

How many copies each of the following books were printed, and their respective production and printing costs -

(a) "The Social Advantage - Decisions to support Communities, Families and Children";

(b) "Speaking Out, Taking Part - a report to the Government from the Community and Family Commission on behalf of the people of Western Australia"; and

(c) "Speaking Out, Taking Part - a summary of the Final Report of the Community and Family Commission"?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(a) 3 000 copies; $15 939 production and printing costs.

(b) 1 000 copies; $22 475 production and printing costs.

(c) 10 000 copies; $10 820 production and printing costs.

SUPPLY BILL - ADDITIONAL ACCRUED LEAVE ENTITLEMENTS
Additional Lump Sum Superannuation Payments

777. Hon MAX EVANS to the Leader of the House representing the Premier:

During the course of debate on the Supply Bill 1992 mention was made of an additional amount of $56 million required for additional estimated outlays for accrued leave entitlements and lump sum superannuation payments. Will the Minister advise the amounts for -

(a) additional accrued leave entitlements; and

(b) additional lump sum superannuation payments?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

The additional amount referred to comprised payments during 1991-92 as follows -

(a) $19.2 million; and

(b) $35.7 million.

HOSPITALS - NICKOL BAY
Beds Available and Capacity

797. Hon N.F. MOORE to the Minister for Education representing the Minister for Health:

(1) How many beds are currently available for use at the Nickol Bay Hospital?

(2) What is the capacity, in bed numbers, of the Nickol Bay Hospital?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

(1) There are currently 26 beds available.

(2) The capacity of Nickol Bay Hospital is 41 beds. However, the average occupancy for 1991-92 is 38.66 per cent of bed capacity.

ROYAL COMMISSION INTO COMMERCIAL ACTIVITIES OF GOVERNMENT AND OTHER MATTERS - LEGAL COSTS OF MEMBERS AND FORMER MEMBERS TABLING

804. Hon P.G. PENDAL to the Leader of the House representing the Premier:

(1) Will the Premier table all legal costs approved by her for the Royal Commission appearances of -

(a) Brian Burke;

(b) Peter Dowding;

(c) David Parker; and

(d) other members or ex-members of Parliament?

(2) Before her approval has been given for these payments, have such payments been subjected to the scrutiny of -

(a) the Solicitor General; and

(b) the Attorney General?

(3) Has either of these two officers made any adverse comment in the matter?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(1) Yes, these details were tabled in the Legislative Assembly on Tuesday, 20 October 1992.

(2) (a) Yes.
(b) No.

(3) The Attorney General has had no role in relation to payment of accounts. However, all payments have been on the basis of the Solicitor General's advice that the account was reasonable. In some cases, in the absence of the Solicitor General the State Crown Solicitor provided the advice in lieu of the Solicitor General. It should also be noted that assessment of the reasonableness of relatively routine components of some accounts, such as travel costs, was sometimes delegated to the Ministry of the Premier and Cabinet.

"INTO ASIA" CONFERENCE - BURSWOOD CONVENTION CENTRE

805. Hon P.G. PENDAL to the Attorney General representing the Premier:

With reference to the Into Asia conference to be held in November at the Burswood Convention Centre -

(1) What is the name and location of the company/authority organising the conference?

(2) How many invitations have been issued for the conference?

(3) To which countries have individual/group invitations been sent?

(4) Where have the printed kits and other materials related to the conference been produced?

(5) What is the overall cost to the Government of this conference?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(1) The name of the company which is organising and underwriting the Into Asia Trade and Investment Convention is Corporate Location, part of the Euro Group, which is based at Milton Keynes in the United Kingdom.

(2) Throughout the world, approximately 150 000 targeted letters and information sheets have been sent by Corporate Location inviting individuals and companies to attend the Into Asia Trade and Investment Convention.

(3) Individual invitations have been sent to people and companies in over 70 countries throughout the world. Requests for further information from receivers of these invitations have been received from over 50 countries. Group invitations have been sent to all WA's sister State prefectures and States including Hyogo Prefecture, Zhejiang Province and the East Java Province.

(4) With the exception of the first print run of the outside cover of the convention marketing kits and some initial program information, all subsequent editions of the insert material, newsletters, brochures, and requests for further information forms and posters have been designed, produced and printed in Western Australia. The majority of this material has been paid for by Corporate Location.

(5) The overall cost to the Government of this convention for the current financial year is budgeted to be $500 000. In addition, $82 000 was spent on the convention in the previous financial year.

AVRO COMMUNITY HEALTH CENTRE - SUPPORT PROGRAMS FOR MENTALLY DISABLED

806. Hon P.G. PENDAL to the Minister for Education representing the Minister for Health:

(1) What is the function of the Avro Community Health Centre?

(2) Is it involved in providing support programs for some mentally disabled adults who reside, for example, in church-run hostels in the community?

(3) How is the Avro group funded?

(4) Are the support facilities of Avro in danger of being cut back or changed in anyway?

(5) If so, for what reason?

(6) If these current support programs for the mentally disabled are to cease, what other support facilities will be available for mentally disabled residents in community hostels?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

(1) Community support for people with a psychiatric disability in the inner metropolitan area.

(2) Yes.

(3) Fully funded by the Health Department of Western Australia.

(4) No.

(5)-(6) Not applicable.

GOVERNMENT MOTOR VEHICLES - MINISTERS' CHILDREN DRIVING TO AND FROM SCHOOL CIRCUMSTANCES

808. Hon P.G. PENDAL to the Leader of the House representing the Premier:

(1) Do any circumstances exist whereby the children of Government Ministers are allowed the use of Government vehicles to drive to and from school?

(2) If so, what are these circumstances?

(3) Is it correct that during the last few months the daughter of one Minister was stopped by a police officer in relation to her parking a Government vehicle at a school?

(4) If so, what are the details of this incident?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(1)-(2)

Ministers may have access to two vehicles - one supplied from the Government garage for use in the capacity as Minister and one supplied under the members' leased vehicle scheme which may be used at the member's discretion in accordance with the determination of the Salaries and Allowances Tribunal.

(3)-(4)

Not to the best of my knowledge; however, if the member has a specific concern which he wishes to raise, I will have the matter investigated.

BUNBURY ENTERPRISE AGENCY - FUNDING WITHDRAWAL

822. Hon BARRY HOUSE to the Leader of the House representing the Premier:

(1) Has funding for the Bunbury Enterprise Agency been withdrawn?

(2) If so -

(a) why;

(b) is there a right of appeal for the Bunbury Enterprise Agency; and

(c) will alternative employment be offered to the two permanent employees?

(3) Will the Minister table all correspondence between the Department of State Development, the South West Development Authority and the Bunbury Enterprise Agency since June 1992?

(4) If not, why not?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

(1) Not to my knowledge.

(2), (4)

Not applicable.

(3) The Bunbury Enterprise Agency is a privately registered association. It is suggested the member approach the agency direct for copies of its correspondence to Government departments.

I am prepared to table copies of the correspondence written since June 1992 from the Department of State Development to the Bunbury Enterprise Agency. I am informed that in the same period there is no correspondence from the South West Development Authority to the Bunbury Enterprise Agency.

SEXUAL ASSAULTS - AGGRAVATED SEXUAL ASSAULTS
Occurrence and Reported

825. Hon P.G. PENDAL to the Minister for Police:

With reference to question on notice 490 of 1992: How many of the assaults reported relate to offences committed prior to June 1990 as distinct from assaults committed since 1990 and reported for June 1991-92?

Hon GRAHAM EDWARDS replied:

Sexual assaults reported 1991-92	196
Aggravated sexual assaults reported 1991-92	852
Assaults occurring during the fiscal years 1990-91 and 1991-92 and reported during the 1991-92 fiscal year -	
Sexual assaults	167
Aggravated sexual assaults	487
Assaults occurring prior to 30 June 1990 and reported during the 1991-92 fiscal year -	
Sexual assaults	29
Aggravated sexual assaults	365

PUBLIC SERVICE - TRAINEESHIPS

829. Hon P.G. PENDAL to the Leader of the House representing the Premier:

(1) When will the Public Service traineeships announced in the recent Budget come into operation?

(2) What criteria will be used for selection of trainees?

(3) Is it likely that a young person who successfully sat the Public Service examinations this year will be offered a traineeship?

(4) Is there any avenue whereby an interested young person can apply for one of these traineeships?

Hon J.M. BERINSON replied:

The Premier has provided the following response -

(1) A decision has not been taken on the commencement date.

(2) Clerical administrative trainees will be tested using the standard Public Service Commission tests. A small number will be selected, from disadvantaged groups - that is, Aboriginal and/or people with a disability. Future selection criteria for non-clerical trainees are yet to be determined.

(3) Yes.

(4) It is intended that a special test for traineeship applicants will be conducted shortly.

BUSH FIRES BOARD - REVIEW AND STANDARDS OF FIRE COVER, ONE AND THE SAME THING

838. Hon MARGARET McALEER to the Minister for Emergency Services:

(1) Are the Bush Fires Board review and standards of fire cover referred to in his letter to me of August 19 one and the same thing?

(2) If (1) is no, and in light of his advice in the aforementioned letter that the development of the standards of fire cover had commenced and would take 12 to 18 months to complete, would the Minister advise when is it anticipated the Bush Fires Board review will be completed?

Hon GRAHAM EDWARDS replied:

(1) No.

(2) The Bush Fires Board review is nearing completion and is awaiting some more formal advice from other Government agencies. It is expected that the review should be completed by late December 1992.

SCHOOLS - NANNUP DISTRICT HIGH
Accommodation Improvements

842. Hon MURIEL PATTERSON to the Minister for Education:

(1) Is the Minister aware of the lack of accommodation for students at the Nannup District High School?

(2) If so, what steps have been taken to redress this problem?

(3) Has any consideration been given to accommodation improvements of a capital works nature?

(4) How many schools are currently using transportable classrooms as a result of a spate of fires?

Hon KAY HALLAHAN replied:

(1) The accommodation situation at the school is known.

(2) A senior officer from the ministry's facilities operations branch discussed the utilisation of an existing temporary classroom to alleviate accommodation pressures with the deputy principal several months ago. In addition, the provision of a temporary classroom for 1993 will be reviewed towards the end of the year.

(3) Yes. Nannup District High School will receive every consideration in relation to the needs of other schools when the details of future capital works programs are compiled.

(4) Three.

FACT AND FANTASY FILE DIARY - DISTRIBUTION

845. Hon MURIEL PATTERSON to the Minister for Education representing the Minister for Health:

(1) Has the "Fact and Fantasy File Diary" been distributed in Western Australia?

(2) When did this occur?

(3) If no, is there any intention of this diary to be released in Western Australia?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

(1) No, the "Fact and Fantasy File Diary" has not been distributed in Western Australia.

(2) Not applicable.

(3) The Health Department has no intention of distributing the diary.

POLICE - INTERSTATE CONFERENCE, HOBART, 1984

846. Hon MURIEL PATTERSON to the Minister for Police:

(1) Is the Minister aware of an interstate Police conference that was held in Hobart in mid 1984?

(2) If yes, does the Minister have a copy of the submission that resulted from that conference?

(3) If no, can the Minister please find out details of this conference?

Hon GRAHAM EDWARDS replied:

I have no personal recollection of such a meeting and the Commissioner of Police advises me that it has not been possible to identify the conference to which the member refers. However, if additional details are provided a further search for that information will be undertaken.

PARKING FINES - UNPAID
Execution of Summonses

850. Hon GEORGE CASH to the Minister for Police:

(1) Are police officers required to serve a summons in person in respect of unpaid parking fines?

(2) What other methods are available for the execution of a summons for the non-payment of parking fines?

Hon GRAHAM EDWARDS replied:

(1) Personal service of a summons in respect of unpaid fines is required only in the case of a juvenile.

(2) Section 56A of the Justices Act allows a complaint for a simple offence against the Road Traffic Act or any regulation, rule, by-law or order made under the Road Traffic Act, to be served upon the person to whom it is directed by posting it by prepaid registered post to the person's last known place of residence or business.

HOSPITALS - BROOME DISTRICT
Extensions or Redevelopment Discussions

851. Hon P.H. LOCKYER to the Minister for Education representing the Minister for Health:

(1) What discussions have taken place with the Broome Shire Council with regards to proposed extensions or redevelopment of the Broome District Hospital?

(2) Has the Government considered possible alternative sites within the proposed new town planning scheme in Broome?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

(1) Mrs Christine O'Farrell, Regional Director, Kimberley Health Region, initially met with the Broome Shire Council early in 1992 and has met with it again recently. The Broome Shire Council at its request has further invited her to a meeting in early November.

(2) Yes.

HOSPITALS - KARRATHA
Doctors Employed

854. Hon P.H. LOCKYER to the Minister for Education representing the Minister for Health:

(1) How many doctors are employed at the Karratha Hospital?

(2) Are any of these doctors on temporary appointment?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

(1) No doctors are employed at the Karratha Hospital; however, an agreement with the AMA ensures that doctors from both Karratha and Dampier are available on a 24 hour roster system to service on call arrangements.

(2) Not applicable.

POLICE - SUPERINTENDENT APPOINTMENT, PILBARA REGION

855. Hon P.H. LOCKYER to the Minister for Police:

(1) Has an appointment for a superintendent for the Pilbara region been announced yet?

(2) If so, who is that appointment?

(3) If not, when will an appointment be announced?

Hon GRAHAM EDWARDS replied:

(1) Yes.

(2) Superintendent T.C. Sims.

(3) Not applicable.

HOSPITALS - COUNTRY

Protocols for Persons Claiming to Have Been Unconscious Through Injury - Carson, Eric

856. Hon REG DAVIES to the Minister for Education representing the Minister for Health:

In respect of the request by Mr Eric Carson of Nullagine that under the PATS scheme he be reimbursed for airfares for the trip to and from Perth, will the Minister inform me -

(a) of the protocols for anyone presenting at Newman Hospital or any country hospital of similar capacity when they claim to have been unconscious for between 15 to 30 minutes through injury and demonstrate obvious external injury; and

(b) whether these protocols were observed by Newman Hospital staff in the case of Mr Carson?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

(a) Patients presenting at country hospitals without resident medical officers are examined by the senior nurse on duty. The nurse determines whether to call a doctor based on the symptoms presenting at the time. If no doctor is called the nurse will treat the patient, and advise the patient to seek medical attention if further symptoms appear.

(b) These protocols were observed in the case of Mr Carson.

QUESTIONS WITHOUT NOTICE

QUESTIONS ON NOTICE - UNANSWERED

569. Hon FRED McKENZIE to the Leader of the House:

Has the Leader of the House been able to check -

(1) How many questions on notice to him by Hon George Cash remain unanswered?

(2) In respect of each such question, how long has been the delay in reply?

Hon J.M. BERINSON replied:

I thank the member for that question, and it is not really coincidental that, in spite of the time and extensive detail required, I am in a position to respond comprehensively. That situation arises because of the circumstances which emerged in one of our discussions on a different matter during yesterday's proceedings. At one point, as members will recall, the Leader of the Opposition complained that he had a number of questions on notice to me and he was still awaiting answers to them. The obvious implication was that the number of questions was significant and that the delay in reply was unreasonable. That seemed to me to be quite a serious complaint, and I asked Mr Cash how many questions were involved. He replied that he would not do my job for me and that I should check the number for myself. I compliment Hon Fred McKenzie because he picked up that interchange and understood - and I see that Mr Charlton also indicates that he understood - that the question

having been raised in that way, naturally I would proceed to make the check as requested. That is what I did, and the advice available to me is that at the time when Mr Cash made his allegation yesterday, the answer was -

(1) Number of questions on notice by Mr Cash remaining unanswered by me: Nil.

(2) Not applicable.

To complete the picture, I add this further advice; namely, that the total number of my unanswered questions on notice by all members in all parties and in both Houses is one. That was the source of Mr Cash's bitter complaint. This issue may at one level appear to be relatively minor. I do not believe it should be considered in that light and it cannot reasonably be considered in that light, because anyone who saw and heard Mr Cash on this point yesterday would recall the utter certainty with which he made this allegation and the fire and brimstone and indignation which he brought to it.

Point of Order

Hon GEORGE CASH: It appears to me that the Leader of the House is no longer answering the question that was asked. I will ask a question in a moment which will demonstrate that what Mr Berinson is saying is again false. Mr Berinson has decided to introduce debatable material, which is outside the scope of the question that he was asked, and I ask you, Mr Deputy President, to rule in that way.

The DEPUTY PRESIDENT (Hon Garry Kelly): The Leader of the House is giving his answer and I call on him to complete his answer.

Questions without Notice Resumed

Hon J.M. BERINSON: I will complete the answer and make it brief. The point I was making is that the Leader of the Opposition spoke with great certainty and indignation. On the advice available to me, there was no substance at all to what he said. I believe that that general approach which he brings to many questions and debates and to many other serious issues should be considered by the House in the context which this issue, small as it may appear on the surface, provides.

QUESTIONS ON NOTICE - UNANSWERED

Building Services Division Review

570. Hon GEORGE CASH to the Minister for Corrective Services:

Apart from the Minister for Corrective Services showing in his reply to the question asked by Hon Fred McKenzie the falsity of his previous statements, will he acknowledge that a considerable number of questions on notice are outstanding in respect of the review into the building services division of the Department of Corrective Services? I believe that, without exaggerating, there are at least 10 questions to which I am awaiting answers. It seems to me that Mr Berinson, rather than give this House accurate information, wants to hide behind the fact that he claims that a report is allegedly not complete. I say "claims" because were he to table that report, it would show his mismanagement of the Department of Corrective Services.

The DEPUTY PRESIDENT: Order! The Leader of the Opposition is in danger of being in the position of a pot calling the kettle black.

Hon J.M. BERINSON replied:

I have made a clear statement that the complaint made yesterday by Mr Cash about the serious number of questions which have remained unanswered for an unreasonable time has led me to an inquiry, on the basis of which I am advised that there are no unanswered questions on notice by Mr Cash.

Hon George Cash: Go and find out how many questions you have not answered about the building services division!

The DEPUTY PRESIDENT: Order! I ask the Leader of the Opposition to cease

interjecting. He has asked his question; let us hear the answer.

Hon J.M. BERINSON: There is an easy way to test this. I ask the Leader of the Opposition to indicate the numbers of the 10 questions on notice which he alleges to be unanswered. If he indicates those to me and a check shows that he is right, then naturally I will have to withdraw and, indeed, apologise. I must say that apart from the inquiries made in my office, the only basis upon which I can proceed in respect of unanswered questions on notice is the Supplementary Notice Paper, which lists postponed questions. I do not see there any questions in the name of Mr Cash.

Hon D.J. Wordsworth: Question on notice 867, Hon George Cash to the Minister for Corrective Services.

Hon J.M. BERINSON: I am interested in that comment because it does not mesh with the advice that I have.

Hon George Cash: It probably does not mesh with what you have just said.

Hon J.M. BERINSON: While I am waiting for a copy of question on notice 867, can I have an indication of the numbers of the other nine unanswered questions?

Hon George Cash: Can I have a go?

Hon J.M. BERINSON: Wait a minute! I have now seen the question! This is below Mr Wordsworth's usual standards, and I mean that seriously; he has led himself astray. The point will not have escaped you, Mr Deputy President, that Mr Cash's complaint was made yesterday and my answer referred specifically to the check being made on the basis of unanswered questions yesterday. Question 867, to which Mr Wordsworth referred, was submitted only yesterday; therefore, it had not reached me and cannot be regarded as unanswered if it had not been asked!

QUESTIONS ON NOTICE - UNANSWERED
Building Services Division Review

571. Hon GEORGE CASH to the Minister for Corrective Services:

Will the Minister acknowledge that a considerable number of questions are outstanding to which he has promised me answers regarding a number of issues I have raised on the review of the building services division of the Department of Corrective Services? The Minister seeks to hide behind the falsehood that the report is not complete.

The DEPUTY PRESIDENT: Order! I warned the Leader of the Opposition in jocular terms that he was in danger of being the pot that called the kettle black. He is entering debatable material. Is the Leader of the Opposition stating that on the Supplementary Notice Paper there are questions which have not been answered?

Hon George Cash: I am saying I have put a considerable number of questions to the Minister for Corrective Services which remain unanswered.

The DEPUTY PRESIDENT: With respect, the question is out of order.

Hon George Cash: This bloke is a joke!

Hon J.M. Berinson: Could I suggest that the Leader of the Opposition be permitted to rephrase that question; I wish to answer it.

Hon George Cash: I will rephrase it; I said you're a joke!

Hon J.M. Berinson: That is your question, is it?

Hon George Cash: It is a compliment!

Hon J.M. Berinson: You have been caught out, and it is not the only time!

Several members interjected.

The DEPUTY PRESIDENT: Order! I am about three seconds away from calling off questions without notice to return to the Members of Parliament (Financial

Interests) Bill. I will do so if members continue in this fashion. The Minister took a point of order, which I ask him to repeat. Hon Phil Pendal was seeking to raise a point of order at the same time, but we will deal with the Minister's first.

Hon J.M. BERINSON: I was not seeking so much to make a point of order as to claim to be misrepresented and to seek an opportunity to correct the misrepresentation.

Hon N.F. Moore: Get an extension of time.

Hon J.M. BERINSON: I will move an extension of time. Questions will finish at 5.33 pm; the Opposition will have a bonus.

Several members interjected.

Personal Explanation

Hon J.M. BERINSON: As the Leader of the Opposition is reluctant to proceed on the basis of my suggestion, let us proceed on the basis of his words.

Point of Order

Hon P.G. PENDAL: I rose a moment ago to raise a point of order to indicate that, with respect, the Chair was not in a position to rule the Leader of the Opposition's question out of order, and then to allow the Minister to answer that question.

Hon J.M. Berinson: I am not answering it; I am making a personal explanation.

The DEPUTY PRESIDENT (Hon Garry Kelly): I will rule on this matter. There is no point of order as the Leader of the House is not answering a question; he is making a personal explanation.

An Opposition Member: He must seek leave of the House to do so.

Personal Explanation Resumed

Hon J.M. BERINSON: I do not know why Mr Cash wants to run away from his words.

Hon George Cash: Are you going to seek leave?

The DEPUTY PRESIDENT: Order!

Hon J.M. BERINSON: Mr Cash's words were "I am still waiting for answers -

Several members interjected.

The DEPUTY PRESIDENT: Order! Does the House wish questions without notice to finish? I can terminate them right now. The Minister has the call.

Point of Order

Hon P.H. LOCKYER: I draw your attention, Mr Deputy President, to the fact that the Minister wishes to make a statement. It is the practice of this House for a member wishing to make a personal explanation to seek the leave of the House to make such a statement, and it is then up to the House to grant him that leave.

The DEPUTY PRESIDENT: I draw members attention to Standing Order No 87 -

> A Member who has spoken to a question may again be heard to explain himself in regard to some material part of his speech which has been misquoted or misunderstood, but shall not introduce any new matter, or interrupt any Member in possession of the Chair, and no debatable matter shall be brought forward or debate arise upon such explanation.

Therefore, the Minister is entitled to explain where he believes he has been misrepresented, but no new material may be debated.

Personal Explanation Resumed

Hon J.M. BERINSON: I will be extremely brief; I do not need to expand on this at

any length. Mr Cash's actual words yesterday were "I am still waiting for answers to a number of questions Mr Berinson asked be placed on notice".

Hon George Cash: I asked questions about the building services division of the Department of Corrective Services.

The DEPUTY PRESIDENT: Order! The Leader of the Opposition will stop interjecting.

Hon J.M. BERINSON: Having accused me of not answering questions, and being faced with the truth - that is, that no questions on notice from Mr Cash to me are unanswered - he now wants to refer to questions which are not on notice, and to which he has already had the answers which were available to me at the time the questions were asked. The member cannot make a complaint about unanswered questions on notice and then tell me I am not telling the truth without me responding.

Hon N.F. Moore: You are losing your grip.

Hon Kay Hallahan: You lot are losing your grip!

The DEPUTY PRESIDENT: Order! The Minister for Education will come to order.

Point of Order

Hon PETER FOSS: I understood from your ruling, Mr Deputy President, that under Standing Order No 87 the Minister could not introduce debatable material. He was not making a personal explanation at all.

The DEPUTY PRESIDENT: I rule that the Minister was answering the point on which he believed he was misrepresented.

Questions without Notice Resumed

ATTORNEY GENERAL - RESIGNATION

572. Hon P.G. PENDAL to the Attorney General:

Given that this House was elected in 1989 under a Labor-sponsored electoral system, given that yesterday all Liberal, National and Independent members voted for his resignation, and given also that that vote comprised 55 per cent of the membership of this House, will the Attorney General now act in accordance with the democratic decision yesterday and resign forthwith?

Hon J.M. BERINSON replied:

I am sure Mr Pendal will not be surprised to learn that the answer is no.

Several members interjected.

Hon P.G. Pendal: You're a fraud, to use your words of yesterday!

Hon J.M. BERINSON: The member understands very well the reasons for my answer.

Hon George Cash: Are you inviting us to take the next step? Is that what you are asking us to do?

Several members interjected.

POLICE - BUNBURY REGION POLICE NUMBERS
Incorrect Figures by David Smith and Phil Smith

573. Hon BARRY HOUSE to the Minister for Police:

I thank the Minister for his statement earlier today which clarified the police numbers in the Bunbury region as being 151 officers and not 186, and I commend him for taking the course of action so promptly in the Parliament to correct the mistake. Had this practice been adopted consistently over the past 10 years, WA Inc may not have happened. I now ask: What action will the Minister take against Mr Phil Smith, MLA, and Mr David Smith, MLA, who made false statements in an advertisement - authorised by Hon Doug Wenn - in the *Leschenault Reporter* on Wednesday, 21 October under the heading "A

good police record"? The advertisement stated that "in the Bunbury region police numbers have risen from 120 in 1983 to its current level of 186 police officers. That is a 55 per cent increase." A week later in the *Leschenault Reporter* of 28 October an article headed "Police level raised by 55 per cent" again claimed that police numbers had risen to the "current level of 186".

Hon GRAHAM EDWARDS replied:

Mr Deputy President, you need to accept that I conveyed that information upon which that advertisement has been placed in good faith. I do not intend to take any action. I advised the members today, in the same way as I have advised the House, of the situation in relation to those numbers.

There has been about a 46 per cent increase in the number of police officers in this State. The Secretary of the Police Union - a union not noted for being on side with the Government - made the comment that this Government has better resourced and better supported the police than any other. That is the record of Hon Doug Wenn, Hon David Smith and Mr P.J. Smith. They have a very proud record of support for police, as does this Government generally. However, I provided the figures.

Hon P.G. Pendal: Do you accept responsibility?

Hon GRAHAM EDWARDS: Of course I accept responsibility; I am the Minister for Police. The figures used -

The DEPUTY PRESIDENT: Order!

Hon P.G. Pendal: He is the President, and he called you to come to order.

The DEPUTY PRESIDENT: Order! We are dealing with questions without notice. If members want to ask questions they should not do so by way of interjection, they should stand, get the call and then ask the question.

EDUCATION, MINISTRY OF - LIAISON UNIT

574. Hon P.H. LOCKYER to the Minister for Education:

Can the Minister explain to the House the use of the ministerial liaison unit within her department? How many staff members are in the unit? Is it a fact that those staff have been seconded from other sections of the Ministry of Education, leaving those areas understaffed? Finally, how is this liaison unit funded within the education budget?

Hon KAY HALLAHAN replied:

I am unaware of the ministerial liaison arrangements that the honourable member has alluded to. The chief executive officer would have put those arrangements in place.

Hon P.H. Lockyer: The ministerial liaison unit is your personal unit.

Hon KAY HALLAHAN: It is not my personal unit. It might be a unit within the department that has the word "ministerial" in its title; however, it is within the administrative arrangements of the department.

Hon George Cash: Do you know he is talking about the unit within the ministry?

The DEPUTY PRESIDENT: If members want to ask questions, they should stand up and get the call to do so.

Hon KAY HALLAHAN: If the honourable member wants to pursue this question, I suggest that he put it on notice.

Hon P.H. Lockyer: Take it as being on notice.

TODAY'S DATE - SIGNIFICANCE

575. Hon B.L. JONES to the Minister for Education:

Does the Minister know today's date and what significance it has?

Hon George Cash: The answer is probably no.

Hon P.G. Pendal: I hope that you have not mucked this one up, Beryl.

Hon E.J. Charlton: It's not my birthday!

Hon KAY HALLAHAN replied:

As members seem to be in such a good mood for just 30 seconds, I advise that it is my fifty-first birthday. I think it is a very significant day. I thank Hon Beryl Jones for her question.

Several members: Happy birthday, Minister.

HOSPITALS - FREMANTLE
Computer Contract for Pathology and Radiology

576. Hon N.F. MOORE to the Minister for Education:

(1) Has a contract been let for the writing of a computer program for pathology and radiology for Fremantle Hospital?

(2) If so -

(a) who has been awarded the contract, and what is the cost; and

(b) were tenders called and, if not, why not?

Hon KAY HALLAHAN replied:

I thank the honourable member for having given some notice of the question. The Minister for Health has provided the following reply.

(1) Yes.

(2) (a) PDP Networks Pty Ltd for project management for a fee of $93 000. The writing of components of various programs has been subcontracted by PDP Networks Pty Ltd to a number of individual specialist programmers for an overall cost of $418 000.

(b) I am advised that tenders were called for the project management component and as is normal practice the successful tenderer, PDP Networks Pty Ltd, engaged the specialist programmers.

It should be noted that pathology includes the blood bank, biochemistry, haematology and histopathology.

ROTTNEST ISLAND LODGE - LEASE PAYMENTS

577. Hon REG DAVIES to the Minister for Police representing the Minister for Tourism:

(1) In respect of the lease of the Lodge at Rottnest Island -

(a) what are the current monthly lease payments;

(b) what are the current annual lease payments;

(c) what is the term and the actual expiry date of the Lodge Dallhold lease;

(d) was the Minister involved in lease negotiations when Dallhold took over from the former Hancock ownership;

(e) if not, who negotiated the new lease with Dallhold; and

(f) what is the date of the signing of these negotiations?

(2) With respect to all other lease payments for businesses on the Island -

(a) who decides the level of lease payments for individual lease holders on the island; and

(b) how are these payment levels determined?

Hon GRAHAM EDWARDS replied:

I thank the honourable member for having given notice of the question, and have been advised by the Minister for Tourism as follows -

(1) (a) $7,233.91 for the business and $703.40 for staff housing;

(b) $86 906.02 for the business and $8 441.88 for staff housing;

(c) a 35 year lease with the expiry date of 31 May 2018;

(d)-(e) no;

(f) under the terms of the lease agreement, the lessee has assignment rights after first obtaining the written consent of the Rottnest Island Authority board. The outgoing lessee exercised this right with the approval of the board at a meeting on 21 February 1989. Assignment was granted for the unexpired portion of the existing lease. No new lease was negotiated.

(2) The Rottnest Island Authority advertises in *The West Australian* newspaper for expressions of interest in leases on the island prior to the expiry date of any current lease. Parties expressing interest are invited to indicate their proposed base rental, the level of capital expenditure to be committed and, if appropriate, any share of revenue above their indicated targeted gross. The Rottnest Island Authority selects the successful applicant based on the above information together with an assessment of each party's demonstrated capacity to conduct the business within the Rottnest environment successfully.

CAMP QUARANUP - MUSIC CAMP FEES

578. Hon PETER FOSS to the Minister for Sport and Recreation:

I refer to the answer the Minister recently gave me concerning the music program to be held at Camp Quaranup. Am I to understand from that answer that the terms of disposal of the camp will mean that the price will remain the same for the forthcoming music camp?

Hon GRAHAM EDWARDS replied:

I cannot recall the exact terms in which I responded to Hon Peter Foss. As I recall it, I said that it is not expected that there would be any significant increase in price and that the price could be expected to be about the same as it is now. If the member wants further clarification, I am happy to provide that, but I will need to go back and check the contents of the letter.

CAMP QUARANUP - MUSIC CAMP FEES

579. Hon PETER FOSS to the Minister for Sport and Recreation:

In particular, could the Minister ensure that the terms of disposal of the camp are such that the new owner guarantees there will be no increase in fees for those who are presently booked into the music camp?

Hon GRAHAM EDWARDS replied:

It would be absolutely accepted that there should be no increase in any fee for a current booking. That should extend across the board not just to the music camp but to any other booking. Any changes would have to be within accepted commercial practice. We are not at the end of the day with respect to the camp. I will draw the Minister's attention to the question.

CONSUMER AFFAIRS, MINISTRY OF - CREDIT UNIONS
Deed of Undertaking, Refunds to Customers

580. Hon GEORGE CASH to the Parliamentary Secretary representing the Minister for Consumer Affairs:

(1) Has the Minister for Consumer Affairs agreed to any credit union entering into a deed of undertaking whereby credit unions will be

required to refund amounts in excess of $60, where it has been established that the credit union was in possession of money due to customers and former customers, on whose contracts breaches had been committed by a credit union?

(2) What action will be taken to refund amounts less than $60 to current and former clients of credit unions?

(3) Has any agreement been reached on the distribution on amounts of less than $60?

(4) What is the legislative base of such an agreement?

(5) Is it intended that the Ministry of Consumer Affairs be paid any of the money lawfully due to a client of a credit union but unable to be traced by a credit union? If so, what is the legislative base of such an agreement?

(6) Does the receipt of such money referred to above contravene the Financial Administration and Audit Act?

(7) Is the proposed payment of the funds to the Ministry of Consumer Affairs being paid in exchange for an exemption from prosecution for previously identified breaches of the Credit Act by credit unions?

(8) Will the Minister table a copy of the Ministry of Consumer Affairs No C3/20285/89? If not, why not?

Hon JOHN HALDEN replied:

I thank the honourable member for some notice of this question. The Minister for Consumer Affairs has provided the following reply -

(1) No. The Ministry of Consumer Affairs, with the consent of the Minister for Consumer Affairs, is presently engaged in negotiations with solicitors representing a finance company under the provisions of section 28(1) of the Credit (Administration) Act to settle the terms of a deed of undertaking which will address prior misconduct acknowledged by that finance company and the steps to be taken to rectify it as required by the Act. In those negotiations there has been no distinction whatsoever about the obligation to refund amounts greater or less than $60. It has been proposed, but not settled, but greater efforts might be made to contact personally a small percentage of borrowers who might be owed more than $60.

(2) It has been proposed, but not settled, that a display advertisement in the early pages of a Saturday edition of *The West Australian* will be placed by the company inviting people who have borrowed from it to contact it, if necessary, after seeking advice from the ministry. All verifiable claims will be met. In addition, where amounts over $60 are involved personal, letters will be sent to the borrowers' last known addresses. If those letters are returned, follow-up will be made through data available from the Credit Reference Association of Australia Ltd.

(3) No agreement has been reached on this or any other matter. It has been proposed by the finance company involved that after a period of three months any funds remaining from the amount set aside from the company to meet its obligations under the credit legislation and the anticipated deed of undertaking would be placed in an interest bearing account where they will be subject to claims for a further period of two years.

(4) No agreement has been reached. Discussions with the finance company are continuing.

(5) It has been proposed by the company that a cy pres trust fund be established into which funds set aside to reimburse borrowers but

against which no claim has been made should ultimately be paid to be used for the benefit of credit consumers in accordance with the specific purposes detailed in the proposed deed of undertaking. No proposition has been made that money be paid to the Ministry of Consumer Affairs, only that to ensure appropriate accountability, the Commissioner for Consumer Affairs be made the trustee of the fund. It has also been proposed that the fund be established and operated pursuant to the provisions of the Financial Administration and Audit Act.

(6) Receipt of the money does not appear to contravene the Financial Administration and Audit Act. The Act makes provision for the establishment of trust funds, including those holding funds that are private in nature and held in trust.

(7) No funds are to be paid to the Ministry of Consumer Affairs. There are no prosecutions outstanding against the finance company. The company has been successfully prosecuted by the ministry. Negotiations related to a deed of undertaking flow from the identification during the ministry's investigation prior to prosecution of unjust conduct by the finance company.

(8) The reference number referred to is a Ministry of Consumer Affairs' current file. It comprises three large volumes. In the circumstances it is not appropriate to table the file.