Legislative Council

Tuesday, 8 September, 1987

THE PRESIDENT (Hon Clive Griffiths) took the Chair at 3.30 pm, and read prayers.

HANSARD

Daily Production

THE PRESIDENT: I wish to inform the House of changes that have been made in respect of *Hansard*. As from today *Hansard* will no longer be keyboarded at the State Printing Division. Instead it will be printed from text prepared in the Hansard office. This requires certain changes in the format and appearance of *Hansard*, and I invite members to comment on the new format.

Under the new system a daily *Hansard* will be available at 11.30 am each day. This will be a proof issue for the information of members and should not be quoted. Members' corrections will be included in the daily *Hansard* where possible.

The new system is not yet fully developed, and as we progress some changes will be required to the rules regarding the correction and return of speeches. One significant change is that the weekly *Hansard* will be the final, fully corrected version.

Corrections for the weekly *Hansard* should reach the Hansard office not later than noon two days after the speech; that is, the deadline for Tuesday's corrections is noon on Thursday.

FINANCIAL ADMINISTRATION AND AUDIT ACT

Report Tabling: Extension of Time

THE PRESIDENT: I have received the following letter from the Office of the Premier addressed to me as President --

> Under Section 62 of the Financial Administration and Audit Act, provision is made for the responsible Minister to grant extensions of time for the presentation of annual reports of departments and statutory authorities.
>
> When such an extension is approved it is necessary for the Minister responsible to inform both Houses of Parliament of the extension of time and details of the extension, within 21 days of Ministerial approval of an extension.
>
> Following an approach from the Secretary of the Government Employees Superannuation Board, I have agreed to grant an extension of time for the tabling of the Superannuation Board Annual Report 1986/87 and the Parliamentary Superannuation Fund Annual Report 1986/87.
>
> The reasons for my action are as follows:
>
> > Delays in finalising accounting statements for the SB Investment Trust and the Fremantle Steam Laundry. The accounts for these operations are subject to external audit which has not been completed. The accounts therefore

cannot be consolidated with the Board's statements to show the overall financial position of the Board.

Introduction of the new superannuation scheme which has necessitated the fullest attention of the Board's personal resources to ensure its successful implementation.

Yours sincerely,

Brian Burke, M.L.A.
PREMIER AND TREASURER

Point of Order

Hon G.E. MASTERS: Mr President, is the letter you have just read from the Premier a debatable matter at a later stage or is it just to inform the House?

The PRESIDENT: The letter complies with section 62 of the Financial Administration and Audit Act which states that if an extension is granted, both Houses of Parliament must be informed. It is simply an advice.

CREMATORIUM

Albany: Petition

The following petition bearing the signatures of 101 persons was presented by Hon D. J. Wordsworth --

To the Honourable the President and Members of the Legislative Council in Parliament assembled.

We, the undersigned residents of Western Australia humbly pray that the West Australian Government take measures to have a crematorium sited in Albany for the use of the residents of the Great South Region.

Arranging for cremations 400 kilometers away from Perth or Bunbury places a heavy financial and emotional burden on the communities of this region.

The need for this facility will steadily grow, particularly as the towns of Albany and Denmark are popular retirement areas for older people.

(See paper No 318.)

ASSOCIATIONS INCORPORATION BILL

Second Reading

Debate resumed from 11 June.

HON MAX EVANS (Metropolitan) [3.44 pm]: It is with a great deal of pleasure that I speak on this Bill. Some comments were made by the Minister that he found the old Act, the Associations Incorporation Act 1985, to be inadequate; but the Act has stood the test of time, and anyone who has had a lot to do with associations would realise that we have been very fortunate in this State to have the Associations Incorporation Act.

As the Attorney General will know, some other States do not have that facility, which has provided an easier way of running associations than is found in the Companies Code. The

Law Reform Commission of 1972 made recommendations, and I was interested in the honesty of the Attorney when he said he had criticised the previous Government for being slow in bringing this Bill forward, yet he found a few difficulties himself.

The Bill is basically well drafted. There are a number of amendments which I will move and which I have discussed with the Minister, and I understand he has a lot of amendments to move also.

The incorporation of associations is a complex matter because there are some very large associations in this State and also some very small, local associations such as meccano clubs and pony clubs, and it is difficult to have rules and regulations which will cope with them all and not be too loose on the large associations or too harsh on the smaller ones. Some associations have a very large professional staff, and others have no staff at all and the work is done by a lot of do-gooders. As members know from experience, some of these community-minded people are very capable, but others are not; they do not carry out their responsibilities in the manner in which they should be carried out, not due to any malice or lack of intent but because they are not qualified to do the job.

I believe the Bill and the amendments will tighten up a lot of these points. In the past there has been a lack of accountability of the executives of associations. Accountability is a term we use a lot these days. People must be more accountable if they are working in associations that are dealing with other people's money.

This proposed Act aims to clarify and simplify the existing law in respect of incorporation. The new Act will allow the Commissioner of Corporate Affairs to transfer an association to the Companies Code if he believes it should not be under the Associations Incorporation Act. The Bill also provides for voluntary or compulsory winding up of incorporated associations. Voluntary winding up can occur if an association has been going for many years and one wants to close it down. If one says, "Enough is enough; we do not need this any more", how can one go about getting rid of it? The old Act did not provide for this, and I presume the constitutions of the associations did not provide for this either under the old Act.

Similarly, when a body got into serious financial trouble and was insolvent, under the old Act there were no guidelines for winding it up. The rules of the body did not usually provide for winding it up either. This legislation in respect of winding up incorporated associations is well overdue. I do not think any associations have been forced into liquidation, but there is a need for such legislation.

The Minister has said the Bill reduces the number of and frequency with which documents must be lodged or registered. I would be interested to hear the Minister's comments on that because I do not think that many documents are lodged at present by these associations.

The Government and the Opposition are grateful for the work done by the Law Society of Western Australia with respect to this legislation, which is one of those pieces of legislation where we do not have any vested interests in the community to do this work for us. With other legislation such as the Dog Act, there were 1 001 people wanting to give advice about how to change it. If one considers financial Acts, there are always financial institutions that are willing to help. However, the Associations Incorporation Act involves a lot of nebulous associations which do their own thing. The Law Society has taken up the task and has made an 18-page submission which we received 10 days ago, and I commend the society for what it has done.

The Bill will clarify and simplify the existing law. The Commissioner of Corporate Affairs now has a reviewing role to take responsibility away from the Minister.

Political and sporting organisations are specifically included in this Bill. Most of them have been included under the Act for years, to my knowledge, yet they are now specifically included.

Hon J.M. Berinson: That has been an exercise of discretion rather than as of right.

Hon MAX EVANS: Yes, and now they are specifically included.

A recommendation is made in the Bill -- and we recommended this also -- that if the Commissioner of Corporate Affairs does not want to agree to the name or the registration of an association, the Minister can consider the matter and give his opinion, which is final, but we believe the opinion should be given in writing so that the applicant knows the reasons why the association has been disallowed -- whether it be its name or its rules, or something like that. It should be simple to accommodate this within the Bill.

The Bill was drawn up, I presume, in 1972 soon after the Law Reform Commission was established, and some new developments have happened since then. It is recommended that we be more specific and bring in bodies such as sporting bodies, and be more specific about how such organisations may raise their money; express accommodation should be made for corporate sponsorship, sale of broadcasting and television rights -- which has become popular with sporting bodies -- and all charitable organisations should be more specific about how they raise their money so that there is no doubt about their ability or their legal position when it comes to signing contracts or doing deals.

As the Attorney General would be aware, as he is a lawyer, people often want to back out on contracts if those contracts go wrong at some later date by saying, "This was not allowed for or provided for" and that under the rules of the Act these things are ultra vires. I know that there is specific cover for that word in the Bill as well, but I believe it should be emphasised to cut out any future problems, particularly when the contracts involved are large.

Comments have been made in respect of the Trade Union Act of 1902, which prohibits trade unions from applications under the Associations Incorporation Act 1985, and any Acts amending that Act. Now we have a new Bill and the Law Society has recommended serious consideration should be given to the possibility of preventing a union which has been deregistered in another place seeking registration under the Associations Incorporation Act. In other words, it gives them a limited liability under the Act, similar to the structure they had under the old Trade Unions Act. As the old Act referred only to the old law, we now have a new Bill which will become a new Act and this should be considered in the new documentation, or otherwise in an amendment to the Trade Unions Act.

Hon J.M. Berinson: I might just point out that I am having amendments prepared to produce that effect.

Hon MAX EVANS: The applications for incorporation are now much easier than they were before. I think this is good because most of these bodies find this an expensive and complicated thing and they have to employ solicitors to do the work for them. They will be able to do this much more cheaply and easily than they did before.

There will be model rules and I look forward to the Attorney's comments on the exact rules when they come in; I do not know whether they have been drafted yet but mention has been made of them as a result of the recommendations of the Law Reform Society. I believe this is worthwhile. I will address these model rules because, following this legislation, the model rules will ignore the matter of audit. I look forward to the Attorney's comments in this matter. As a chartered accountant practised in this work, one never looks forward to getting such work because they are mostly honorary audits. I would like the Attorney's interpretation; I know very large and very small organisations are involved, but I feel there should be some mention of audits in the Bill, or at least in the rules. I know there are worthy persons on committees who will appoint auditors; but I have seen a number of frauds or misappropriations of funds in small organisations which have only $2 000 or $3 000 in the bank and have lost a considerable portion of that.

I believe this should be seriously considered; I do not know whether one could apply it to the large and not to the small. I believe the smaller organisations need more protection than the larger ones. There are a lot of do-gooders in the community, yet nobody wants the treasurer's job -- I know most professional accountants try not to get the treasurer's job, because they are expected to do the banking and write out the receipts and so on; and they usually have people to do that for them -- so often the person doing the treasurer's job is completely unqualified. They prepare sets of accounts which are equally unprofessionally prepared; they do not give the true position of the organisation. In fact they might just get away with receipts and payments, with no balance sheet to show the assets and liabilities. Some of these organisations buy plant and equipment, and they own buildings and have cash at the bank and yet no record of their assets is given.

I would hope that an auditor coming in would at least give a bit of fatherly assistance by saying, "This is the way it should be done." I did this with the swimming association; I was the auditor of that association for some years and I was able to make a big contribution to the manner in which figures were presented every month and at the end of the year. I believe this could and should be done with other organisations. It could be an imposition, but it is an honorary capacity in which most of us feel we should act; it is just part of one's community service. Books are often inadequately written up, money is not properly accounted for and cheques are not properly signed; there are many things which need tighter controls, even with the very small organisations that might only have a few thousand dollars in the bank. The audit keeps them honest.

In fact I have discussed this with my partners and they want to have auditors in the organisations in which they act as treasurers just to ensure that there is no shadow of doubt cast on them. It gives everybody a better feeling.

Clauses 10(c) and 12(2) seem somewhat ambiguous in respect of liabilities of associations before and after incorporation. I believe this needs to be looked at closely, particularly the wording in clause 10(c), so that there is no misunderstanding in respect of the liabilities of the association that is being taken over and incorporated -- that it is quite clear that the liabilities have been taken over or are still the responsibility of the members because before incorporation associations formed by certain persons could get in deep financial trouble and the members of that association would be financially liable. Now with incorporation they have no further liability, but the situation is hazy in respect of where one stands with those liabilities before incorporation. It should be spelt out quite clearly what is intended by this legislation because this will help with the Interpretation Act later.

Interestingly, clause 14(1)(a) refers to "private persons". This is very important in respect of associations. Some of these associations can be very large or very small and it is important to know with whom one is dealing; it is important to have a register where one can search for the directors, secretaries and so on so that one knows with whom one is dealing and who can sign on behalf of that body. It is the same as with the articles of association of companies where the common seal can be affixed by the director, two directors or the secretary. I believe there should be a clearer definition under this Bill of responsibility for the common seal. Some of the organisations which are leasing sporting ovals and halls, for example, or borrowing large sums of money, have virtually anyone picking up the seal and affixing it. The seal is the signature of that body which makes sure that the contract will hold good at some later date, and it should be quite clear to the lender or the lessor who is in the position of responsibility for affixing the seal and making those decisions.

Clause 17 deals with the alteration of rules. I believe that the comment was made that the heading should be "Additions and Alteration of Rules". One can make additions as well as alterations to the rules, and the process is quite adequate in the new Bill. However, what is missing is the fact that although one must notify the Commissioner of Corporate Affairs of the amendment to the rules, there is nothing requiring the commissioner to advise that he has accepted the change. This has two effects. Firstly, it affects the lodgment and whether it was received because the secretary might say, "Yes, I sent them in." Time goes on and with some

of those organisations one really has no way of finding out whether the lodgment has been made.

This is very important. We know that even large companies overlook lodging important documents by the due date. It would be far better if the Commissioner of Corporate Affairs positively acknowledged receipt of the amended rules and then agreed or disagreed with them. After all, this is what he has to do when an association is incorporated.

The penalty laid down for fraud or for misappropriation of funds is $500. In other Acts and in the Companies Code, provision is made for a maximum fine of $5 000 or $10 000. This Bill would be improved if we included a fine of a maximum of $5 000 or $10 000 because in some cases the misappropriated funds could be a considerable amount and a token fine of $500 is not very appropriate. A penalty of $500 might frighten a small organisation but it would be inappropriate for large organisations where large sums could be misappropriated.

I come to annual general meetings, which brings me back to my comments on audited accounts, where I believe an amendment is necessary. There are reasons for us to have tighter controls on these people, although many people involved in my profession act as auditors on an honorary basis.

I come now to the voluntary winding up provisions. This is where the people agree to wind up a company. When a company has creditors and is forced to wind up, we have the opposite situation. With a voluntary winding up the assets will be distributed prior to the meeting to wind up the association. I would have thought that the responsibility for distributing surplus assets should rest with the liquidator. It should be noted that it has not been defined whether the liquidator would be a registered company auditor. The Bill is not clear on this. The liquidator should be the person who is appointed to sell up or distribute the assets as the committee has decided. I do not think the surplus assets should be distributed prior to the winding up of the company.

Hon J.M. Berinson: The voluntary winding up provision proceeds on the basis that the organisation itself can distribute the funds without the need to appoint a liquidator.

Hon MAX EVANS: So the term "liquidator" is used in the broad sense?

Hon J.M. Berinson: Winding up, yes.

Hon MAX EVANS: Being a professional accountant, I take the reference too literally. I look forward to the Attorney's further comments on this point.

I turn now to the provision dealing with the cancellation of incorporation by the commissioner. If an association has not been active for 12 months, its incorporation can be cancelled and its assets sold up. A clearer definition is needed to explain when it will be advertised that this is to happen. Often organisations become inactive because they cannot find office bearers or they are no longer the flavour of the month. They can find themselves in vogue months later, however. Their assets should not be sold off without the appropriate advertising.

Clause 44 deals with the use of the word "incorporated" and provides that if a person carries on business or enters into a contract under any name or title of which "incorporated" or any abbreviation of the word is the final word or abbreviation, the person is guilty of an offence unless incorporated under this Act. The Attorney needs to give consideration to the point that many American companies include in their names the word "incorporated", as do some Eastern States associations. The clause is too broad and needs to be looked at further.

We support the legislation and commend the Attorney for its introduction. The Act has been under consideration for a number of years and we know it is a difficult area to cover, with both large and small organisations to take into consideration. Both I and the Attorney have given indications that we will be moving amendments to the legislation in Committee.

HON H.W. GAYFER (Central) [4.05 pm]: The Attorney gave his second reading speech explaining this Bill some time around the middle of June and I remember him saying then that he would let it lie until the Budget session, which is where it is now. He also made the interesting comment that the legislation was first reviewed in 1972. He indicated that since he had been a member of this place he had continually asked for a copy of the review and of the proposed legislation to be provided to the Parliament, for someone to bite the bullet and get on with the job. When he became a Minister and became aware of how very complex the legislation was, he saw some reason for the review of the legislation to have been simmering for so long.

I too find the legislation complex. I was charged by my party to consider the legislation over the break between sessions and I found this to be an extremely interesting Bill. The Bill is not really complicated and spells out its intentions very well. However, the implications behind the Bill are complex and this has been pointed out by my honourable colleague, Mr Evans. Certainly some aspects of the legislation are difficult for a layman to understand; nevertheless it does achieve a greater clarity than the present Act, which was framed some 92 years ago in 1895.

The Bill deals with four broad areas: The first is the eligibility of incorporation, the second is the accountability of associations to their members, the third is the power of the Commissioner for Corporate Affairs to deal with matters arising from such incorporation, and the fourth is the procedures relating to the winding up of associations.

The Attorney General in his second reading speech went through the Bill clause by clause and in that way we were better enabled to understand what it was all about, and with that information and the subsequent information we gleaned from outside sources we have come to see no real reason to oppose or to alter the Bill, although one or two points need clarification.

The point raised by Hon Max Evans about the suitability of penalties is an area of the Bill we also questioned, and I refer especially to clause 39, which provides that if someone produces a record which contains information which to the person's knowledge is false or misleading, the penalty is $500. That seems a pretty light fine for anyone who wilfully produces a financial record that he or she knows is false and misleading.

There is no doubt that the Attorney General has good reasons for incorporating a ceiling of $500. The National Party questions his action, and that is its main misgiving about this legislation.

Hon D.J. Wordsworth: It must be understood by the Lake King basketball team.

Hon H.W. GAYFER: Fair enough. Previously we were dealing with churches and I suggest that we would expect them to act honourably; however, there are still some misgivings about what could happen.

The National Party does not have any qualms about the $200, but, as I have mentioned, it does question the ceiling of $500.

I indicate that the National Party supports the passage of this Bill.

HON D.J. WORDSWORTH (South) [4.11 pm]: The Bill has been adequately covered by the previous speakers. However, I would like to make a plea on behalf of the small organisations which feel they must be incorporated. For some reason or another half a dozen people might get together to form a sporting team or to work together in some way. It is suggested to that group that they should become incorporated because they could be sued if something went wrong and someone was injured during the course of their activities.

It is an expensive business for an organisation to become incorporated and I cannot help but feel that this Bill does not get over this problem. If anything, this legislation will make it more complicated for small organisations. I wonder whether they could be treated differently from larger organisations which handle large sums of money and realise they must have strict regulations to which they must adhere. Perhaps we should allow the small community organisations to undertake their activities in an easier way. We cannot expect them to be aware of everything that is contained in the Bill.

I interjected on Hon Mick Gayfer and said that the Lake King basketball team must understand this Bill and operate within it. It will be very difficult for it to do that.

Hon J.M. Berinson: I really hope that it will not be. Our whole approach has been with a view to not putting smaller organisations to any measures they cannot comfortably cope with.

Hon D.J. WORDSWORTH: I hope the Attorney General is right.

Hon J.M. Berinson: I can tell you that the present version is very much watered down from the original which came to me.

Hon D.J. WORDSWORTH: I do not know whether that is very satisfying.

I cannot help but recall a telephone call I received a few days ago from the president of the Denmark trotting club. He said, "Do you remember the block of land you obtained five years ago for our training track?" I told him that I could remember it and I hoped that everything was going well for the club. He informed me that the club still did not have that land.

I told him I was surprised because when I was Minister for Lands five years ago I was sure that the land had been allocated to his club. He told me that what happened was that despite the fact that his club could have used the track the pony club wanted a piece of land to provide an area on which the children could ride their ponies. The shire council said that the pony club could have the centre of the land and that his club could use the outer area. The shire said that it could be easily resolved, but there could be only the one incorporation because it could lease it to one club only.

Members can imagine the complications that would arise with a pony club and a trotting club having a joint incorporation and applying it to this Bill. This has been brought about by this Government's saying that there must be a joint incorporation. I do not think that it would be possible, otherwise the Office of Titles would require separate titles and access to both.

Hon J.M. Berinson: I think they need subleases.

Hon D.J. WORDSWORTH: I am sure the Attorney General will use his legal brain to help people who find themselves in this situation. I have illustrated the type of situations which will cause concern. They do not want a joint organisation and to have a common financial liability as liability is the main reason organisations become incorporated.

The Attorney General has suggested that he will make available pamphlets explaining the rules resulting from this legislation. I hope that he does this and that he will outline easier ways than those which exist for clubs to be incorporated.

Debate adjourned, on motion by Hon Margaret McAleer.

WILLS AMENDMENT BILL

Second Reading

Debate resumed from 21 May.

HON MAX EVANS (Metropolitan) [4.16 pm]: I support this Bill which amends the Wills Act 1970. I suggest that members pay attention to this legislation because it is the one thing that will be required by every member in this House at some time during his life. Other Acts, such as the Dog Act, may affect some people, but not everyone; but this legislation will affect every one of us when the time comes to make a will.

Members may be aware of problems faced by people because wills have not been drawn up legally. Many problems arise from the handling of an estate and some of them are impossible to settle. This Bill attempts to solve these problems, but there could be other problems which this Government has not foreseen.

The existing legislation is very strict. A will must be properly witnessed or it is considered not to be a valid document. In fact, the rules are so strict that beneficiaries may not be a witness to the testator's signature and this applies also to the executor. Some very fine points of law are involved in the existing legislation and they have created a lot of problems.

The new legislation will make the handling of wills easier. It has been stated that the legislation will help protect against duress or undue influence and will impress upon the testator the importance of the document. That is a very important factor.

Draft wills have created a problem. How does one decide what were the intentions of a deceased person if the documents have not been drawn up properly?

I recall a very big estate I handled where the testator had a draft will at his lawyer's office which outlined the way in which his assets were to be distributed between his four children. He had drawn up his current will many years prior to that and at that time he was not happy with his sons-in-law and he did not know how they would look after his daughters. He decided that he did not want to leave them a lot of money.

Some years later, just prior to his death, he had drawn up a new draft will which had been left with his lawyer. It could not be considered as his will because it had not been signed in the correct manner. Under the new legislation a draft will can be accepted as the latest will. The lawyer could insist that that was the intention of the deceased person. In the case I have outlined this legislation would have made a great difference in the way in which the deceased person's estate was distributed.

The legislation refers to a wife and husband signing each others will. That appears to be so simple that one would wonder why such a reference has been made.

Signing a will is quite a traumatic experience for some people. I have often heard of people who sign a will the day before they leave by air or ship on a trip overseas. They seem to think that death is more likely to occur overseas than at home. That is when many wills are made. At the time it may be traumatic, and many people do not like doing it.

Sir Walter James was a famous case; he was well-known Perth lawyer who died intestate. He prepared thousands of wills for other people but never got around to preparing his own will. He did not make up his mind himself what he wanted to do.

People do not like to face up to the possibility of death. They do not want to face up to preparing wills and deciding what to do with their assets.

A few years ago lawyers started to use photocopying machines with wills. It is hard to tell the difference between an original and a photocopy today. The Supreme Court said that a certain signed will was a photocopy; the man concerned had not signed the original. That is absurd. It is harder to alter a photocopy than the original, typed copy. We had to obtain affidavits to show that the man had intended to sign the original but he had signed the photocopy which was the same as the original.

These are examples of the stupidity of the law being dogmatic about what should be done. I hope this Bill will produce more rationality. People find it hard to understand these hiccups in the administration of estates. A will is a personal thing, and it is very important to have these things tied up. People do not want to sign further documents.

In another case an affidavit had two pin holes because it had been in an envelope with a rusty pin which had made marks on it. The Supreme Court thought a codicil may have been attached and wanted to know where it was. The executor had to sign affidavits stating that when the will was found, nothing was attached; it was not known how those pin holes came to be there.

In 1985 the Law Reform Commission reported on the desirability of modifying the need for strict compliance with the formalities of the Wills Act. On a first reading, the Wills Act seems satisfactory, but these problems come out and this sort of thing has to be done. Queensland is different; it has moved to an alternative of substantial compliance with what the testator wanted. South Australia allows the court to dispense with formalities in certain circumstances. Our legislation follows that of South Australia.

I support the legislation because it is necessary. It is necessary for the right thing to be done by people and their intentions must be reflected in their wills. A will is a very final document, and it becomes a document of law only after the person's death. It can never be changed or amended after his death. It requires interpretation. The executor has very little room to manoeuvre concerning the funds. Sometimes a will has been made so long ago that it is impractical to hold on to houses, for instance, which become expensive. Further extensions could be made to streamline the administration of estates.

Clause 9 is most important because it provides for wills of persons dying after the amendment comes into operation. The Bill applies to old wills as well as to new wills. A document purporting to be a will does not have to be created after the legislation. It deals with an executor administering documents of a testator prepared before the Act came into operation, but where the testator dies after the commencement of the Act.

In 1977 the Commonwealth probate duty was rescinded. Some people died two or three days before that legislation came in, but they were responsible for paying death duties when, a week later, they would have paid nothing. It is one of those sad things in life that one cannot do much about. The sooner this legislation goes through the better, because many of these anomalies have arisen in the past and this Bill will prevent further complications.

The legislation does not allow a jigsaw to be put together to make up a will. That is right, because I have seen people jotting down this, that and the other, providing for 50 per cent here, 25 per cent there, and so on for different charities. All those scraps may not be brought together. A dishonest executor could bend the rules and bring in parts which suit him. No doubt or slur should be cast on anybody. It might be unfair sometimes, but my experience is that this Bill will result in the intention of the person being made clear and justice being done.

There should be stronger words governing the responsibility of the executor. He has a great responsibility as a trustee. I do not know how to bring this in, but executors carry out what is required.

Hon J.M. Berinson: That is a matter for the Trustees Act rather than the Wills Act.

Hon MAX EVANS: In my experience people have come back years later and said, "What happened to those funds?"

The Opposition supports the Wills Amendment Bill.

Debate adjourned, on motion by Hon Margaret McAleer.

FIREARMS AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Graham Edwards (Minister for Sport and Recreation), read a first time.

Second Reading

HON GRAHAM EDWARDS (North Metropolitan -- Minister for Sport and Recreation) [4.28 pm]: I move --

That the Bill be now read a second time.

As part of its financial management programme the Government instigated a review of judicial fines and fees and infringement penalties that are brought to account through Crown Law Department revenue. The proposals contained in this Bill reflect some of the findings of that review.

The provisions of this Bill will increase the maximum penalties for breaches of the Firearms Act and allow for increases in penalties for breaches of that Act by between 25 and 400 per cent. The present penalties have not been increased since 1980. They are outdated and require amendment to ensure that they remain an effective deterrent against misuse of firearms.

The Bill reflects the view of the Government that substantial penalties should be available to the courts to ensure that offences against the Firearms Act are adequately punished.

I commend the Bill to the House.

Debate adjourned, on motion by Hon Margaret McAleer.

VIDEO TAPES CLASSIFICATION AND CONTROL BILL

In Committee

Resumed from 30 June. The Chairman of Committees (Hon D.J. Wordsworth) in the Chair; Hon J.M. Berinson (Leader of the House) in charge of the Bill.

Clause 4: Report of Committee --

Progress was reported on the clause after the following amendment had been moved --

Page 4, line 20 -- To insert after "may" the words ", and on the application of any adult person shall,"

Hon J.M. BERINSON: This clause was in fact debated at some length, and despite the passage of time I think that the comments which Hon Phillip Pendal and I made were so memorable that we do not have to cover the same ground again.

Briefly though, I remind the Committee that the general practice under current circumstances is that the Minister does refer matters to the committee. The only question in dispute is whether he should be obliged in all cases to do so, irrespective, for example, of the number of times that the same person might put the same complaint to him. It is really only a question of preserving some reasonable administrative flexibility that leads the Government to pursue its own view that this amendment should not be carried, and it is on those grounds that I ask the Committee to reject it.

Hon P.G. PENDAL: It is true that the amendment was debated at some length nearly three months ago, and it is also true, as the Leader of the House points out, that the difference between my amendment and the proposal in clause 4 is the obligation that my amendment would place on the Minister to refer the material on to the committee set up under another Statute. Having said that, which really repeats what was at the heart of the debate before, I want to mention two matters which have occurred since the debate was adjourned a couple of months ago and which I would submit actually support the position I put; namely, that it should be a right on the part of any citizen to lodge an appeal or an objection to the Minister of the day about any classification that he has given to a video.

Before I mention those two new pieces of information, I want to say that I think the Government is overreacting to the proposition I am putting. No-one could suggest that the right of appeal these days against anything is in any way revolutionary. Members should consider that about 15 years ago a Labor Government in this State introduced the legislation to establish the office of an Ombudsman -- and what did the office of Ombudsman do for all Western Australian citizens? In short, it gave them the right to object to a parliamentary officer about the conduct of or a decision made by a decision maker.

I put it to the Committee that the right I am seeking to have written into the video legislation really is no different at all from the principle that was enshrined in that legislation in the early 1970s. One therefore has to ask in these circumstances why the Labor Party has changed its mind on that principle of allowing ordinary people to object to a Government decision. All we are talking about here is a Government decision, in this case about the classification given to a certain piece of material.

Having said that, I want to mention the two pieces of information that I think indicate that the Opposition's amendment is in a stronger position to succeed now than it was several months ago. I refer members to an article which appeared in the *Daily News* recently, and I regret to say I do not have the date of it. However, under a Sydney dateline the story read thus --

> Legendary film director Stanley Kubrick has threatened to withdraw his latest movie, *Full Metal Jacket*, from Australia because local censors have given it an R-rating.
>
> This means it cannot be viewed by any person under the age of 18.
>
> Village Roadshow Corporation, local distributor of the movie, a critically acclaimed Vietnam war film, has twice appealed to the Australian Films Board of Review to have it reclassified.
>
> But both appeals have been disallowed.
>
> Village Roadshow has now taken the unprecedented step of asking the Federal Court to overturn the classification.

I ask members to note that last sentence particularly. It is significant because the Government wants to prevent ordinary citizens in this State from having the right of appeal, whereas in another part of Australia in a similar situation a person in the form of a well-known film director wants to have the same right, but of course from his point of view. He wants to have the right to take, and I repeat the words of the newspaper, "the unprecedented step of asking the Federal Court to overturn the classification".

If it is competent for one part of the community to have the right of appeal at law, then it is very difficult to mount an argument that says people elsewhere in that same community should have no such right. That is the first point I want to make.

A not dissimilar point came my way from the Video Industry Distributors Association, which is a body incorporated in New South Wales. It wrote to me on 21 July following a Press report on the last debate on this Bill in this Chamber. It was regrettable that an organisation of this status started out by getting its facts wrong, by saying that the Opposition was actually opposing this Bill. I quickly pointed out to that body that, far from opposing the Bill, the Opposition was giving it every chance of passage through the Chamber. But I went on to say that the one thing the Opposition was asking for was to have inserted this right of appeal which we have gone over many times.

Interestingly, in the course of that letter to me, the chairman of VIDA referred to a matter that was raised in debate on this Bill over the rather famous case of the film *Hail Mary*. He said --

> It is possible that you may be unaware that the original decision of the Federal Court to refuse standing to the Rev. Frs. O'Neill and Ogle was subsequently overturned on appeal to the Full Federal Court. This decision was handed down on 13 February, 1987.

I was unaware that the original application to the court, which I described in this Chamber, has since been overturned. I was complaining then of the case of a Catholic priest and an Anglican minister in the Federal Court objecting to the classification given to *Hail Mary* but they were told they did not have any standing. Therein lies the heart of the matter I am seeking to overcome.

The letter goes on to say --

> In granting the applicants standing before the Court, the law on standing has been substantially broadened and the definition of "persons aggrieved" by administrative decisions (such as those made by the Film Censorship Board) has been widened. It would now, in some circumstances, allow persons other than the applicant to appeal against decisions of the Film Censorship Board.

Therefore, I believe that strengthens the hand of the Opposition in saying to the Government that the amendment before the Committee is perfectly reasonable. It was reasonable in June when we moved it. I submit the industry now has provided its own information as to why we should press on and write the provision into Western Australian law for the reasons defined by the organisation.

Putting aside State law, this organisation says that in Commonwealth law there is now a far greater opportunity for ordinary people to challenge a decision in the courts; that is the principle at stake in this amendment. I cannot do anything more, having mentioned these two reasons, than to ask the Government in all seriousness to allow the amendment to pass.

I admitted in my earlier contributions to the debate that maybe it would be a facility for abuse by some people, but that applies in any case. People appear before the courts week in week out, month in month out -- vexatious litigators, I think they are called. In other words, the privilege and right given to us can be abused by one per cent of the population. I have no doubt that would be the case with my amendment, but we reply to the Leader of the House in the same way that he replies to us on most occasions. The Leader of the House is apt to say, "If these things come about we will look at the legislation in six or 12 months down the track."

An important principle is at stake. It is no more than to give ordinary people the right to object to the classification given to a particular video film. The amendment is not revolutionary and I commend it to the Committee.

Hon J.M. BERINSON: With respect, I do not think that Mr Pendal adds anything to what has been said previously, nor does he overcome the potential problem that can be created by making reference to the committee mandatory.

I frankly do not recall whether I have already indicated to this Chamber -- if I have, I ask to be excused for the repetition -- a provision exists in clause 4 for this Minister to refer matters to the committee as he thinks necessary or appropriate, by means of a provision which already exists in the Indecent Publications and Articles Act and following similar practices under the Censorship of Films Act. We have not heard any indication of difficulty arising under these Acts, nor is it correct to say that clause 4 can be equated with ordinary appeal rights.

Mr Pendal would like to amend clause 4 in a way that would oblige a Minister to refer any matter by any person submitted on any number of times for consideration and report by the committee. That cannot be done to an appeal court. An appeal court will not continue to hear similar matters and, in any event, there are questions of costs which would deter people from simply pursuing the same question which concerns them in a way that they would not be deterred from doing with the availability of an informal approach to the Minister.

There are two aspects to be considered in reply to those comments. Firstly, the experience in this area is that matters that are put to the Minister are in fact referred to the committee. Secondly, as Mr Pendal concedes, to make such a reference obligatory in every case could well create problems in an area where the present nature of the administrative arrangements demonstrate no current problem exists.

I do not think anything can really be added to that. The Committee ought now to proceed to make up its mind. I urge members, however, to consider the practicalities. I do not think there is any real dispute in principle but there is a dispute on the practicalities of this proposal. I urge members to give proper recognition to those.

Hon P.G. PENDAL: The Leader of the House rather blandly touched on and then retreated from the very important principle that is at stake here. He said the existing proposal would be for the Minister to refer on that material as he thinks appropriate -- or words to that effect. That is precisely the point I make: If the Minister does not think it appropriate, or perhaps the Minister has had a bad night, or is in a bad mood -- or even for no reason at all -- he could say, "Stick this in the rubbish bin."

Hon J.M. Berinson: There has been no such case. Are you aware of any complaint that Ministers in these areas have not referred such matters?

Hon P.G. PENDAL: I refer the Leader of the House, in his spare moments, back to the arguments that were used in this Chamber by his own party in attempting to put legislation through setting up an Ombudsman. Plenty of people in those days said: "Will you give us an example of where a legitimate complaint sent to a Minister or to a department was not followed up?" Of course, it is possible that hundreds of ordinary people are waiting for a review of an administrative decision of Government, and without this amendment that would not be possible. That is the answer to what the Minister is saying.

Hon J.M. Berinson: Not at all; that is not the answer.

Hon P.G. PENDAL: It is. I invite the Leader of the House to go back and read the debates which I did in relation to another Bill and he will see that the Chamber was told, and his members were told, by the appropriate speakers of the day that unless we had the services of an ombudsman to stand between a departmental head and an aggrieved citizen that person

had no redress at all. He could appeal to the Minister of the day in precisely the same way, and people were saying the Minister would always be reasonable, as the Attorney General is saying now. That is no answer for Hon Joe Berinson to be putting to the Committee.

The other red herring he dragged across our path a few minutes ago was that there had to be some limit because of the court and legal costs.

Hon J.M. Berinson: No, I did not say that. I said appeals to court are in fact deterred by considerations of cost in a way that repeated applications to a Minister are not.

Hon P.G. PENDAL: I accept that.

It was suggested during the second reading debate on this Bill that a fee could be imposed to keep away frivolous complainants -- people who might want to complain en masse about 1 000 different video titles. None of these things is insuperable and none is an answer to the central point I put to the Government, which it is clearly not going to accept, that it will be denying the right of ordinary citizens to appeal. We should not be surprised by that given the comments we have heard in recent days about the ID card. I appeal to the Minister to give it a try. There is the possibility of bringing legislation back to the Parliament in the event that it is abused or becomes the subject of frivolous complaints. In the meantime it would provide an avenue of appeal and objection to a whole range of conscientious people in this community who feel the current laws and system are simply letting them down.

Hon J.N. CALDWELL: As I have indicated previously, the National Party has a very strong view on this Bill and we will put forward many amendments.

I endorse Mr Pendal's point about repeated appeals. I think I was responsible for mentioning the fee and a figure of about $50 per appeal, but that would be done by regulation. Clause 16 would provide an opportunity for that amount to be designated by the Government. Depending on that figure, I am sure appeals would be limited. It is a known fact that money talks, and if that appeal amount were substantial there would not be repeated appeals about a certain classification.

The National Party also thinks that the right of a person to appeal against classification is paramount. We feel very strongly that this amendment to clause 4 is a little too broad and should be limited. Perhaps the amendment would be so broad as to create many appeals and clog up the system. We are particularly concerned about that and feel our amendment to clause 13 is more appropriate.

Hon P.G. PENDAL: I want to make one final comment about the attitude expressed by the Minister for The Arts, Hon David Parker, in this matter which is one I have canvassed with him for some time and is the subject of this amendment. People talk about George Orwell and *1984* and the changing attitudes of Labor politicians. I want to give the Chamber a remark the Minister made about the system I am proposing being impossible. He said --

> A system whereby every offended citizen had the opportunity to lodge a formal appeal against every decision of the Film Censorship Board would create numerous difficulties.

I ask the Minister: Who does he think the Parliament is serving? Is it the Civil Service or the censorship office, or might it possibly be the citizens of this State? That is where the attitude of people like Mr Parker, and indeed the Leader of the House, have altered radically in the direction of a conservative decision-making process in the four-and-a-half years they have occupied ministerial office.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell I cast my vote with the Ayes.

Division resulted as follows --

Ayes (13)

Hon C.J. Bell	Hon Tom McNeil
Hon J.N. Caldwell	Hon N.F. Moore
Hon E.J. Charlton	Hon P.G. Pendal
Hon Max Evans	Hon W.N. Stretch
Hon H.W. Gayfer	Hon D.J. Wordsworth
Hon P.H. Lockyer	Hon Margaret McAleer *(Teller)*
Hon G.E. Masters	

Noes (13)

Hon J.M. Berinson	Hon B.L. Jones
Hon J.M. Brown	Hon Garry Kelly
Hon T.G. Butler	Hon S.M. Piantadosi
Hon D.K. Dans	Hon Tom Stephens
Hon Graham Edwards	Hon Doug Wenn
Hon John Halden	Hon Fred McKenzie *(Teller)*
Hon Kay Hallahan	

Pairs

Ayes	Noes
Hon John Williams	Hon Tom Helm
Hon Neil Oliver	Hon Robert Hetherington
Hon A.A. Lewis	Hon Mark Nevill

Amendment thus negatived.

Clause put and passed.

[Questions taken.]

Clause 5: Arrangement with Commonwealth --

Hon J.N. CALDWELL: I have an amendment to delete this clause.

The CHAIRMAN: I have to inform Hon John Caldwell that it is his position to vote against the clause rather than move for its deletion.

Hon J.N. CALDWELL: I oppose this clause because as yet the Commonwealth does not have its act together so far as video classifications are concerned. This clause links the Bill with the Commonwealth or the ACT Ordinance, and the reason we oppose this clause is because we should not have a Bill or a censorship committee in Western Australia if we have to comply with what the Commonwealth does. I believe that in the course of debate in another place, the Minister handling the Bill gave an indication that he would delay the proclamation of this part of the Bill to allow the Commonwealth to pass its own Bill. I would like to hear from the Leader of the House whether he has considered that.

Hon J.M. BERINSON: The Government strongly opposes this amendment. Before I go into detail about the Government's opposition, could I ask the honourable member to elaborate on his comments about the responsible Minister's suggestion that certain action would be withheld pending further Commonwealth legislation? I am not clear on the background to that question.

Hon J.N. CALDWELL: We have been informed that is so, and it was not agreed to, but the Minister handling the Bill said he would look at delaying that particular part of this Bill until appropriate legislation was arrived at by the Commonwealth. The classification of videos in Western Australia could be different from the proposed classification by the Commonwealth, and it would be good if this part of the Bill were delayed until the Commonwealth had completed its Bill.

Hon J.M. BERINSON: I support the clause. As far as I am aware, the Commonwealth system is in place. The purpose of clause 5 is to ensure that not only this State but other States act uniformly with the standard established by the Commonwealth. The various amendments that have been listed require us to address them with different levels of seriousness. Some amendments relate mainly to matters which might affect the technical administration of the Act, and I think our discussion on clause 4 was largely of that nature. However, clause 5 really goes to the heart of this Bill, and if it was deleted, as the honourable member's proposed amendment would have it, it would deprive the Act of its core. The Bill's purpose essentially is to put in place a uniform national system in respect of video censorship. This amendment would pull it apart.

The deletion of the facility for the making and determination of agreements with the Commonwealth for the classification of video tapes on behalf of the State would require in the first place the appointment of a State censor to conduct an independent system of video classification. The Government very strongly opposes that, and I must stress very heavily to members the undesirability of moving in that direction.

The background to the proposal embodied in clause 5 is that in July 1983 an agreement was reached between the Commonwealth and all States that a uniform and compulsory classification scheme should be introduced on a national basis and legislated into effect by the individual States. As I understand the position, Western Australia is the last State to move on this question. This Bill is to enable that national uniformity to be finally put in place.

Hon E.J. Charlton: Has the Federal Act been put in place?

Hon J.M. BERINSON: Yes. The classification of video tapes by a separate State censor would, in the face of the national provisions, inevitably lead to a total breakdown of national uniformity.

Hon P.G. Pendal: That might not be a bad thing.

Hon J.M. BERINSON: I suggest it would be a very bad thing. It could lead to videos being approved here which were not approved elsewhere, and, conversely, to our rejecting videos here which were approved in other parts of the country. Not much would be achieved in the latter case since I doubt that anyone would really believe that the different standards of censorship would have the effect of preventing a flow of material which was approved in other States from coming into Western Australia.

The honourable member's proposition goes to the heart of this Bill, and if carried it would make the whole of this Bill relatively pointless. It would leave us in a position which was worse than pointless because of both the confusion and the prospects for evasion to which I have referred. I urge the Chamber to reject the proposition that clause 5 be deleted.

Hon J.N. CALDWELL: As the Minister has indicated, the Commonwealth Act has been approved, so in effect this particular amendment does not apply.

The CHAIRMAN: I did not accept the amendment. While at one stage Hon John Caldwell indicated he might vote against the clause, it would appear he is now removing his objection.

Clause put and passed.

Clause 6: Other arrangements for appointment of censor, etc. --

Hon J.N. CALDWELL: Clause 6 is consequential upon clause 5, so I will not move my amendment.

Clause put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Classification of video tapes --

Hon J.N. CALDWELL: I move an amendment --

Page 7, after line 14 -- To insert a new subsection (1A) --

(1A) In determining the classification of a video tape as "G", "PG" or "M" under subsection (1), the censor shall also determine the extent to which the video tape includes --

(a) violence;

(b) language; and

(c) explicit sexual behaviour that may be considered by a reasonable adult to be unsuitable for exhibition in the presence of a child.

This amendment deals with a further classification of videos in a numerical way. It deals with three very important factors -- violence, language, and explicit sexual behaviour. I think this is extremely important and I would like to give the Chamber an example in respect of the classification of films. Where one has films which deal with creatures like Mickey Mouse and Donald Duck, one could find alongside them G films which should have a different classification. According to the "Guidelines for Classification of Videotapes/Discs for Sale/Hire" words such as -- and I hope the Chamber will bear with me -- "bloody", "bastard", "arse" and "piss" may be used. I find this revolting in G classifications and I can find no reason why such words should be used in films in this classification. General classification films should not include films which contain this sort of language. If we had a numerical way of dividing the videos, it would be very simple for people to select the videos they want; they would not be offended by the language I have just referred to.

I think a video that has this sort of language in it may be classified as "9" for language; it may have no sex in it and under that classification it would have a "0". If a person is offended by bad language, he would know not to take that particular video home. I think that amendment has great merit; it was brought forward by Hon Peter Wells, a former member of this place.

Hon J.M. BERINSON: I oppose this amendment and I point out to the Committee that it raises a number of quite serious difficulties. In the first place I might say from an administrative point of view at least, if not in principle, the amendment might reasonably be pursued further if we had adopted the earlier proposal by Hon John Caldwell to set up a State censor.

That, however, is a matter that has now gone by the board. What we are dealing with, therefore, is a system of regulation based on a Commonwealth censor, and not the least of the difficulties of the present amendment is that as a State Parliament we would be purporting to instruct a censor who is not open to our instruction. The censor to whom this clause would have to apply is the Commonwealth censor. For that reason alone I would suggest to the

Committee that we cannot reasonably proceed along the path which Hon John Caldwell has suggested.

I will take that just one step further to suggest that in principle as well this is not a desirable route to take. The censor is, in any event, guided by current guidelines established by the Commonwealth and State Ministers, and in accordance with those guidelines he is required, when classifying video tapes, to, among other things, assess the frequency, explicitness, intensity and purpose of sex, violence and language, and to consider other aspects such as adult concepts, sexual allusions and nudity in respect of each video tape. They are the guidelines covering those areas, and in any event as a matter of common sense we would have to say that if one has a censor who is doing the job at all, those must be the areas which he would have to address. That, however, is rather a different matter from trying to introduce such concepts into an Act and attempting to tie them down to words which, no matter how precise, cannot possibly cover the whole range of situations those videos are going to raise.

For both of those reasons I would urge the Chamber not to agree to this amendment. Indeed I ask Hon John Caldwell to reconsider whether he will proceed with it.

Hon P.G. PENDAL: I support the amendment moved by Hon John Caldwell.

I think it is important for the Committee to understand that it does not in any way alter the intent of clause 9. In fact what it seeks to do is to add a requirement for additional information. It will not in any way, for example, alter the variety of the classifications -- namely, G, PG, M or for that matter, R. It gives effect to an idea that was put forward some years ago by a Liberal member of this Chamber, Hon Peter Wells. The Leader of the House told the Committee that it raises all sorts of difficulties in implementation. That is typical of any Minister of any Government anywhere in this country. If something has a bit of difficulty attached to it, one says that such procedures will be almost impossible to implement. What the Leader of the House could do -- and has not even considered doing, judging by the tenor of his remarks -- is to take this matter to the ministerial council itself or more particularly in this case to the Minister for The Arts.

Like Hon John Caldwell I see no value at all in being part of a uniform system that locks us into a system where we can do nothing other than go along with what everyone else wants. Even though I remain an ardent States' righter, I would rather see legislation like that come off our Statute books so that what we deal with in this Parliament are matters over which we have all or at least partial control. If we are to be told what will be in these Bills, as we are to be told in matters to do with the companies and securities legislation -- that is that we are locked into some ministerial council decision -- we are better off without that silly legislation coming to this Parliament.

Hon John Caldwell's amendment has a lot to commend it. It does not restrict in any way the prior classification system. All it would do is that when the censor classified a film as being, say, PG, he would include the additional information, using a scale of 1 to 10 on the LSV barometer as it were. The Government has been remiss in not conveying to the ministerial council that this is something it should accept on a uniform national basis. That would be the simplest form in which to do it.

Despite my ardent States' rights views, I was not one to support Hon John Caldwell's move to amend the previous clause, which would have meant the abolition of the Commonwealth's censorial powers and their replacement with a State censor. I differ for entirely different reasons than those given by the Leader of the House; mine are pragmatically to do with the costs of duplication.

If the Leader of the House will not accept the amendment moved by Hon John Caldwell, the least we can ask of the Leader is that the matter be referred to the Minister for The Arts so that he might place it on the agenda of the next meeting of the ministerial council in order

that some form of LSV system, relating not only to video classifications but also to cinema movie classifications, might be introduced into this country.

The amendment does nothing other than give the consumer some information; it does nothing other than give a conscientious parent the chance to know the contents of a video before it comes into that person's home. As members here would know, by the time a video comes into a home it is too late to take action. We cannot unscramble the egg, just as we cannot erase what has been shown on the video.

A lot of the categories indicated on videos are misleading, to say the least. I have seen videos with ordinary classifications brought into my home, approved by me or my wife, only to find that they contain material that was either excessively violent or explicitly sexual. Had we known, they would not have been permitted into our home, which is all that Hon John Caldwell seeks to achieve by his amendment. That is also what Hon Peter Wells fought for and indeed interested many of the Commonwealth authorities in when he put forward the idea several years ago.

If the amendment is to fail the Leader should at least give us a commitment that he will refer it to the appropriate body so that it might make a decision on it. I support the amendment.

Hon J.N. CALDWELL: The Leader's comments disappointed me. I was fully aware that by having the previous amendment withdrawn we had given the Commonwealth a great deal of power, and it would be abhorrent to most Western Australians to think that we have to bow down to people over there.

Hon J.M. Berinson: But we are part of the decision-making process through the ministerial meetings.

Hon J.N. CALDWELL: I thank the Leader for that. I hope we have a very major part to play.

A numerical classification is already included in the Commonwealth special gazette on sale at the Commonwealth Government Bookshop at 200 St George's Terrace. Shopowners could readily mark tapes with extra labels under a more informative system. We have that information available and I do not see why WA should not go it alone. We do not bow down to the Commonwealth in all areas of education so why should we bow down to it in the classification of videos?

Hon J.M. BERINSON: Firstly, as I indicated by interjection, this is not a situation of being overwhelmed by the Commonwealth but of agreeing to a system to which all of the relevant Ministers of the Commonwealth and the States have contributed.

Secondly, I am advised that proposals along the lines of this amendment are now before a Senate Select Committee dealing with censorship classification of videos, and if something emerges from the inquiry to reopen discussion at the ministerial meetings, that would follow in the normal course of events.

The fact remains that we are here dealing with a situation where it is not really open to us to instruct the Commonwealth Censor in a way different from the way he is instructed by the Commonwealth's own legislation, and for that practical reason as well as the difficulties in principle raised by this amendment, we cannot support it.

Hon H.W. GAYFER: It has been interesting listening to this debate, to the issues raised by Hon John Caldwell and the remarks made by Hon P.G. Pendal. It was interesting to hear the Leader of the House say that the matter is currently before a Senate Select Committee and, should that committee make a recommendation on this subject, it might be looked at further.

We want the Leader of the House to take into consideration what has been said here, the fears we have expressed about what is being included in videos and how videos are not being marked clearly enough, and we want him to make a submission on behalf of this Chamber to the ministerial council, not just to wait for the Senate Select Committee to come up with a recommendation before taking action or, if no recommendation is made, to say, "I'm sorry, no recommendation was received so there is nothing to be done."

Hon John Caldwell is merely trying to alert members to this problem, and he gave a very graphic illustration of the problem, where we have videos containing the words he uttered alongside the Mickey Mouse type of videos. Although he graphically illustrated the problem, the Leader of the House will not even make a submission for consideration by the relevant council. Surely the Leader could have said, "Mr Caldwell has a point. I agree that some of this material is abhorrent and filthy and so I will take up the matter on behalf of the Chamber and submit a recommendation to the Senate Select Committee to have it endeavour to do something about it."

Incidentally, that is the reason Hon John Caldwell sought the deletion of clause 5. He was trying to get the Chamber to vote against clause 5 because the National Party believes that this State should not come under the umbrella of the Commonwealth Government in this respect. This State should have its own rules.

It is part and parcel of the Commonwealth agreement and it is stated as such in clause 5 of the Bill. The National Party requests the Government to take on board its plea to do something about tightening up this classification.

Hon J.M. BERINSON: Hon. H.W. Gayfer is quite right when he says that all I need say is that I agree to this proposition and I will ask my colleague, the Minister responsible for this legislation, to take certain action on it. The problem is that I do not agree and I have indicated to the Chamber the reason I do not agree on a basis quite separate from questions as to who is the ultimate authority in terms of instructing the censor.

I refer to that part of my earlier comments where I pointed to the difficulties of attempting to define as precisely as the amendment does the area of difficulty we are trying to overcome. I also tried to stress to the Committee that concern for the basic problem that we are addressing -- we all agree there is a basic problem -- is currently addressed by the guidelines established by the Commonwealth and State Ministers. I referred to those in detail and indeed they cover all the questions of undesirable language, violence, and so on which Hon John Caldwell referred to.

What I was attempting to put there was the view that the aim which should be achieved by this amendment is, in fact, covered by the guidelines which are there to guide the censor in his administration of his duties and that until something clearly better emerges that system should continue.

Amendment put and negatived.

Progress

Progress reported and leave given to sit again, on motion by Hon J.M. Berinson (Leader of the House).

ADJOURNMENT OF THE HOUSE: SPECIAL

On motion by Hon J.M. Berinson (Leader of the House), resolved --

That the House at its rising adjourn until Thursday, 10 September.

ADJOURNMENT OF THE HOUSE: ORDINARY

HON J.M. BERINSON (North Central Metropolitan -- Leader of the House) [5.44 pm]: I move --

That the House do now adjourn.

Liberal Party: Branch Stacking

HON T.G. BUTLER (North East Metropolitan) [5.45 pm]: I apologise to members for taking up their valuable time. I raise one matter which I believe is of interest to all members and I raise it simply because of the way in which some members of the Opposition claim to be authorities on the Labor Party's platform and the Labor Party's rules.

Hon A.A. Lewis: The Labor Party changes them so often that someone has to be an expert on these things.

Hon T.G. BUTLER: The matter I raise is --

Hon A.A. Lewis: Privatisation and the ID card.

Hon T.G. BUTLER: -- the question of flexibility in the Liberal Party to its constitution.

Hon P.G. Pendal: You would not know about that!

Hon T.G. BUTLER: Hon Phil Pendal should listen very quietly and carefully to what I have to say because he is one of the worst offenders in terms of claiming that the Labor Party deserts policy. Anything that he thinks the Labor Party may do pales into insignificance when the Labor Party examines what occurs within the Liberal Party.

It is only a matter of months since I read where branch stacking was no longer permitted in the Liberal Party and it was no longer part of its constitution.

Hon P.G. Pendal: Tell us about Nick Clark stacking the Labor Party's branches.

Several members interjected.

Hon E.J. Charlton: What is this about?

Hon T.G. BUTLER: As I said, some time ago I read that the Liberal Party no longer permitted branch stacking and amended its constitution to outlaw such action.

Hon P.G. Pendal: Your facts are wrong again.

Hon T.G. BUTLER: I am going on the statements that I read in the Press; and if my facts are wrong, the Press is wrong. I do not recall reading in the Press where the Liberal Party denied the facts that had been printed. There is no point in Hon Phil Pendal defending that fact.

Several members interjected.

Hon T.G. BUTLER: When I read that statement I felt that it was a very good thing. I was pleased to read it because it meant there would be no more pub brawls and that there would be unity within the Liberal Party.

Hon D.K. Dans: They used to be allowed to do it; it was part of its rules.

Hon T.G. BUTLER: I do not know whether it was part of the Liberal Party's rules, but it was prevalent.

Several members interjected.

The PRESIDENT: Order! This is only the first day of this part of the session, so I suggest that all members contain themselves and allow Hon Tom Butler to make his comments.

Hon T.G. BUTLER: I was very pleased to read that a decision had been taken by the Liberal Party because it was the sort of practice that had been going on and it did nothing for the image of politics. Members of the Labor Party felt very warm about that. However, from information that I have received that statement has not deterred some members, some of whom are very senior members of Parliament and are members in this place. They have failed to abide by that constitutional change and have gone out in defiance of it.

One of the other things about which I was concerned was that the action was taken with the approval of the President of the Liberal Party, Mr Keith Simpson. My information implied that in spite of the newspaper reports and in spite of the fact that Mr Simpson had been elected for another term, he does not have the support of the full Liberal Party.

Hon A.A. Lewis: It is ust like Bob Hawke and privatisation. He does not have the support of the entire Labor Party.

Hon T.G. BUTLER: According to the information I have received, branch stacking occurred only last night when the East Victoria Park branch of the Liberal Party met. I understand my information to be reliable and that Hon Phil Pendal entered only minutes before the meeting commenced with 28 new members, 26 of whom were members of another branch. He claims the new members were there to ensure the election of the branch president.

Hon P.G. Pendal: You are making it up.

The PRESIDENT: Order! I want honourable members to understand that we are not going to start this part of the session on a note which suggests that members can be unruly in the manner in which they are acting at the moment. Every member will have an opportunity to say something. The honourable member is entitled to be heard in silence, as is any subsequent member who wishes to speak.

Point of Order

Hon A.A. LEWIS: I understand that only matters of urgency should be raised during the adjournment debate. I would like your ruling on whether this is a matter of urgency.

The PRESIDENT: That is not a point of order. What may appear to be a matter of urgency to one member may not necessarily appear to be a matter of urgency to another. Hon Tom Butler has the floor, and he has three minutes.

Debate Resumed

Hon T.G. BUTLER: I understand Mr Pendal told the meeting that Mr Simpson wanted David Cole to be the new president. He also informed the branch that Mr Simpson felt he was being undermined, and he doubted if Mr Simpson could continue as president unless he had the support of the various branch presidents, indicating that Mr Simpson did not have the support of the outgoing president, Mr Cleaver. A number of members of the branch objected to Hon Phillip Pendal's approach, reminding him of the change to the constitution made at the recent State conference. They attempted to pass a motion calling for no more branch stacking or dual membership. Our information is that the meeting was told in no uncertain terms by Mr Pendal that the constitutional changes were not yet in place.

Hon P.G. Pendal : At last you have something right.

Hon T.G. BUTLER: That is a remarkable statement. I do not know how the Liberal Party

gets its constitutional changes in place, but I understand this took place at the last State conference.

Hon P.G. Pendal : You have it wrong again.

Hon T.G. BUTLER: I think Mr Pendal might have mucked it up himself, because I understand he also told the meeting that Mr Simpson was fighting for his political survival.

Hon P.G. Pendal : You have mucked that up too.

Hon T.G. BUTLER: If he did not remain as president, the party would not survive the next 10 years. It does not matter whether Mr Simpson is president or someone else is president, the Liberal Party will certainly remain out of office for the next 10 years.

Hon Garry Kelly: They have breached the spirit of the rules.

Hon T.G. BUTLER: If one explored the logic of the whole thing it would boggle the mind.

Several members interjected.

Hon T.G. BUTLER: I was surprised by the news that the party cannot examine the matter because there is no complaint from a member of the party. I raise the matter because I think it is of interest. It makes a farce of the decisions of the Liberal Party conference and of the claims made.

I am sorry to have heard today that Hon Sandy Lewis did not make deputy leader. That would have kept us in Government for the next 20 years.

HON P.G. PENDAL (South Central Metropolitan) [5.55 pm]: I want to make a couple of observations on the drivel that Hon Tom Butler has indulged himself in. Given that Mr Butler is the State President of the Labor Party --

A Government member: Who enjoys the support of the party.

Hon P.G. PENDAL: -- I would have thought he would be better occupied directing his efforts towards sorting out the alleged branch stacking reported the other day on the part of a Mr Nick Clark, who is known to me but is a loyal, active member of the Australian Labor Party, and who is currently facing charges of branch stacking within the Australian Labor Party.

Hon T.G. Butler: No he is not.

Hon P.G. PENDAL: I would have thought that the member who has just resumed his seat would have been better employed looking after his own backyard and not worrying about the Liberal Party and its branches. Hon Tom Butler has repeated a series of untruths and half-truths which were circulated in the Assembly earlier today by no less a person than the Premier. It is not only the Premier's back which must be troubling him but his mental faculties as well. The Premier has his facts mucked up.

Only one serious allegation was contained in the diatribe given to this House by Hon Tom Butler, and that was that I signed up 28 new members. Members understand how serious it is to say the truth in Parliament. For the record, I did not sign up 28 new members.

A Government member: How many was it?

Hon P.G. PENDAL: I did not sign up one new member, and neither did I urge anyone else to sign up one new member, let alone 28.

There are signs of desperation in the Labor Party, and it has a lot to do with the South West Province by-election. In the last couple of weeks I have seen diatribe of the sort which has been given in this House tonight, which is directly connected with the sort of misinformation which is being put out in the south west by such great propagandists as Mr Baden-Pratt, aided and abetted by Tweedledum and Tweedledee -- the two Smith boys from Bunbury. Hon Doug Wenn does not even figure.

The Liberal Party knows that in the South West Province by-election the Labor Party is on the skids. It is doing the most desperate deeds in the south west, including disseminating misinformation, which is another way of saying telling lies.

A Government member: Where do you get this from?

Hon P.G. PENDAL: This is being done in order to put down people who are starting to make inroads into the Labor Party majority in the south west. It is no accident that these pathetic pieces of diatribe have been circulated and peddled in the House by the State President of the Labor Party. It is no accident that the member is the person doing it.

I make no apologies for having attended this meeting last night. It was my duty as a local member of Parliament to do that. These are silly, childish, amateur and idiotic comments made not only by Mr Butler but by other people during the course of the day, including the Premier, who has taken leave of his senses by listening to a bit of background gossip which happens to be quite wrong.

Question put and passed.

House adjourned at 5.59 pm

QUESTIONS WITHOUT NOTICE

COMMUNITY SERVICES

Women's Refuge: Allegations

113. Hon G.E. MASTERS, to the Minister for Community Services:

When asking this question I draw the Minister's attention to an article which appeared in the *Daily News* on Thursday, 3 September, headed "Raunchy Sessions at Women's Night Shelter". Has the investigation on the report in the *Daily News* been completed?

Hon KAY HALLAHAN replied:

Some initial inquiries have been carried out and certainly the management structure at that refuge will undergo some changes. I am awaiting the completion of a more comprehensive inquiry.

COMMUNITY SERVICES

Women's Refuge: Report

114. Hon G.E. MASTERS, to the Minister for Community Services:

Will the interim report or the details of the final report be made available to the public and to this Parliament?

Hon KAY HALLAHAN replied:

I will decide that when I get the report.

COMMUNITY SERVICES

Women's Refuge: Staff

115. Hon G.E. MASTERS, to the Minister for Community Services:

Have any of the staff of that refuge been suspended or dismissed as a result of the inquiries carried out so far?

Hon KAY HALLAHAN replied:

I cannot answer that question. Apparently two members of the staff were dismissed prior to the allegations being made; and some of the discussion we have seen in the media results from some dissatisfaction relating to that.

COMMUNITY SERVICES

Women's Refuge: Audit

116. Hon G.E. MASTERS, to the Minister for Community Services:

Will the Government conduct an audit of the accounts of that particular women's refuge, bearing in mind that it receives something like $215 000 in Commonwealth and State grants?

Hon KAY HALLAHAN replied:

All refuges have to submit audited statements. That will be the case with this refuge also.

COMMUNITY SERVICES

Women's Refuges: Number

117. Hon G.E. MASTERS, to the Minister for Community Services:

Will the Minister advise the House of the number of women's refuges in the metropolitan area?

Hon KAY HALLAHAN replied:

I would be happy to give the member the correct number tomorrow. I cannot give him an accurate figure off the top of my head.

AUSTRALIA CARD

Introduction: Complementary Legislation

118. Hon P.G. PENDAL, to the Attorney General:

(1) Is the Attorney General aware that the introduction of the ID card will require complementary legislation to be passed by the Western Australian Parliament in order to give the Commonwealth access to certain information held by the State?

(2) If so, will he give a commitment today not to cooperate with the Commonwealth and thus help to defeat the introduction of the Australia Card?

Hon J.M. BERINSON replied:

(1) and (2) The State Government has previously indicated that it would cooperate with the Commonwealth in this matter and that remains its position.

PRISONER: PETER MICKELBERG

Appeal: Assistance

119. Hon P.H. LOCKYER, to the Attorney General:

Will the Attorney General advise the House as to the amount of ex gratia payments to be made to Peter Mickelberg to assist him with the legal case taking place in the Supreme Court?

Hon J.M. BERINSON replied:

The calculation of that support will not be possible until the case is completed.

PRISONERS

Appeals: Assistance

120. Hon P.H. LOCKYER, to the Attorney General:

Since Peter Mickelberg has been granted funds by the State Government, can it be

expected that the same privilege will be extended to other prisoners involved in appeals in the Supreme Court?

Hon J.M. BERINSON replied:

This is a rather extraordinary question. The position with the Mickelbergs has been clearly stated. Their appeal has come before the Court of Criminal Appeal under an unusual set of procedures, and they have received the support of the Legal Aid Commission in respect of legal costs for the larger part but not the whole of the issues which they wish to put to the court.

The Government took the view that it was in the interests of all parties that the hearing should proceed on the basis that all issues which the Mickelbergs wished to raise should be raised and disposed of at the one time; and it is for that reason that the additional ex gratia support was agreed to.

If such an unusual set of circumstances arises again, then the matter will be looked at on its merits. However, there is nothing in the decision made in this case in respect of assistance for legal representation that can be taken to establish any new approach by the Government to the question of legal aid generally.

In general, the position remains as it is now and has been for some years, that legal aid should be applied for and obtained through the processes established by the Legal Aid Commission Act.

AUSTRALIA CARD

Confidentiality: Assurances

121. Hon P.G. PENDAL, to the Attorney General:

I refer to my previous question on this subject.

(1) What assurances has the Attorney General sought from the Commonwealth about the confidentiality of information passed to the Commonwealth under this arrangement?

(2) If he has not sought those assurances in the past, will he do so urgently now?

Hon J.M. BERINSON replied:

(1) and (2) I answered the previous question on the basis of my responsibility for the Registrar General's function; but that only goes to part of the issues which are raised by the member's questions.

I am not the Minister responsible for negotiations and discussions with the Commonwealth in respect of the ID card. That is the role of the Premier. If the member wishes to pursue this question, I suggest he puts it on notice for the Premier's attention.