

Legislative Council

Thursday, 22 October 1992

THE PRESIDENT (Hon Clive Griffiths) took the Chair at 2.30 pm, and read prayers.

STATEMENT - BY THE PRESIDENT

Royal Commissioners' Statements on Parliamentary Privilege

THE PRESIDENT: Members may have noticed a report on page 42 of this morning's *The West Australian* under the heading "Ruling on MPs' privilege called into question". The article quotes pages 1-32 to 1-36 of the Report of the Royal Commission into Commercial Activities of Government and Other Matters. That part of the report deals with the question of parliamentary privilege so far as it had a bearing on the proceedings of the commission. The question arose before the commission in two forms. The first was the conduct and statements of members of Parliament so far as the conduct or statements were relevant to the terms of reference of the commission and were, on their face, protected by parliamentary privilege. The second form was the testimony of witnesses who appeared before parliamentary committees, again so far as that testimony had a bearing on the commission's inquiries.

I have no argument with the commissioners' description of the outcome of their meetings with Mr Speaker and me and the Clerks of the Houses. However, I take issue with the statement the commissioners make in paragraph 1.6.78, which states -

The Commission has set out the history of the exchange between the Parliament and the Commission because of its importance. As we have said, in its origins, the privilege was asserted in defence of the common people against the arbitrary power of the Executive. Its assertion in the present circumstances has been to inhibit the Commission in its search for the truth.

Parliament and the commission agreed that article 9 of the Bill of Rights 1689 applies to proceedings of the Western Australian Parliament, but it was obvious as our discussions progressed that the commissioners preferred the view taken by Justices Hunt and Cantor of the New South Wales Supreme Court in the Murphy cases. Mr Justice Hunt's view of what article 9 really means is that it prevents a member or parliamentary witness from being punished for what was said or done by that member or witness in the course of parliamentary proceedings. It does not prevent the proceedings themselves from being questioned or examined in courts or tribunals such as the commission if they are otherwise relevant to the trial or inquiry. That view is not supported by the majority of judicial opinion on the subject, a point acknowledged by the two judges themselves and by the academic writers who have analysed the attitude the courts have taken to article 9 since its enactment.

I add that one of the factors influencing our view was the 1899 decision of the Full Court of this State, which held that the immunity from legal proceedings given by Standing Orders to a witness was absolute. The court's reasoning suggests that where a committee witness testifies to his or her detriment and does so in reliance on the immunity from legal proceedings that might otherwise result from that evidence, the House may not thereafter resolve to deprive the witness of that immunity. In 1987, in the wake of the NSW court's decisions, the Commonwealth Parliament enacted the Parliamentary Privileges Act, which affirmed the "traditional" interpretation of article 9 and, by implication at least, reversed the court's judgment.

In paragraph 1.6.79 of the report, the commissioners make reference to my letter in which I described the commission as an arm of the Executive Government, and contrast that with the direction in section 4 of the 1992 Act. I stand by my opinion. It hardly needs saying that the Governor's commission is the only command required for the commission to embark on its inquiry. Parliament may, as it could be said to have done by section 4, reinforce that command, but the commission is, and remains, for present purposes, a creation of the Executive.

What I believe the commission is hinting at is the proposition that Parliament, by operation of the 1992 Act, joined the Governor as the commissioning authority. Accordingly, the

commission became an investigative arm of both Parliament and the Executive, with the result that article 9 immunity no longer applied to its proceedings. I have to say that this argument was not put to me at the time and I do not intend to express an opinion on it now, no matter how intriguing the arguments might be.

Another matter raised by the commissioners on which I want to comment relates to the question of waiver. Waiver is commonly understood to be a forgoing or non-insistence of a legal right. It can be passive in the sense that no objection is raised by the possessor of the right when its existence or use is impinged upon. It can be active where the possessor formally agrees not to insist upon another's observance of the right. It was in the active sense that the question came up for discussion between Parliament and the commission.

The commissioners invited the Presiding Offices to arrange for both Houses to pass resolutions waiving the privileges and immunities conferred by article 9 so far as they prevented the commission from questioning members and others about their conduct in Parliament or a parliamentary committee. Given the nature of the commission's terms of reference it was not unreasonable to request parliamentary waiver. Nevertheless, Mr Speaker and I declined this course of action, for one reason. The Bill of Rights, despite its title, is an Act of the British Parliament adopted by this Parliament upon the enactment of the Parliamentary Privileges Act 1891. On the authority of *Stockdale v Hansard*, neither House, whether of the United Kingdom Parliament or this Parliament, has the power by its own resolution to alter the law. The prohibition against questioning parliamentary proceedings contained in article 9 is absolute; it says nothing to the effect "Unless either House may otherwise order, the freedom of speech etc may not be questioned . . .". It seemed to us, reinforced by parliamentary authorities, that a purported waiver by simple resolution of each House would be legally ineffective. The only effective waiver would be for Parliament to enact legislation authorising the Houses to do so.

I need to make a final point. I am bound to the best of my abilities to assert and uphold on members' behalf what I understand to be the privileges of this House. I understand the frustrations expressed by the commissioners, but it will always be the case that parliamentary privilege may, under certain circumstances, hinder the work of the courts or commissions of inquiry by the very nature of privilege. It is not for me to change the ambit of the privilege or tacitly agree to its non-observance. Any change is a matter for this Parliament and until it makes a change I am bound to ensure that its privileges are acknowledged and applied no matter how inconvenient that may be.

PETITION - ROCK LOBSTER INDUSTRY MANAGEMENT MEASURES

Fishing Industry Regulation Review

The following petition bearing the signatures of 365 persons was presented by Hon Peter Foss -

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

We the undersigned citizens of Western Australia request that

1. The Council review the manner in which the fishing industry is regulated by notice published by the Minister for Fisheries and amend the law so that the industry is regulated in a manner which is supervised by Parliament
2. Determine whether recent measures regarding conservation of the rock lobster industry were made:
 - (a) in the best interests of the conservation and sustainability of the industry;
 - (b) on the basis of the preferred option of the professional scientific advisers to the Minister;
 - (c) whether they are fair to all persons operating in the industry; and
 - (d) whether it would be possible to attain the interests of conservation without dealing unfairly as between the members of the industry

Your Petitioners therefore humbly pray that you will give this matter earnest consideration and your Petitioners, as in duty bound, will ever pray.

[See paper No 473.]

PERSONAL EXPLANATION - ROCK LOBSTER INDUSTRY MANAGEMENT MEASURES PETITION

Leave Denied

HON R.G. PIKE (North Metropolitan) [2.45 pm]: I seek leave to make a personal explanation regarding the petition just lodged.

Leave denied.

SELECT COMMITTEE OF PRIVILEGE - HON REG DAVIES' TELEPHONE TAPPING CONCERNS

Appointment

On motion without notice by Hon Graham Edwards (Minister for Police), resolved -

That Hon George Cash, Hon Murray Montgomery, Hon Kim Chance, Hon T.G. Butler and Hon Derrick Tomlinson be appointed to the Select Committee of Privilege appointed to inquire into certain allegations in relation to Hon Reg Davies; and that Hon George Cash be chairman.

MOTION - DEFERRAL OF MOTIONS TO NEXT DAY'S SITTING

Royal Commission (Custody of Records) Bill Consideration

HON J.M. BERINSON (North Metropolitan - Leader of the House) [2.48 pm]: I move without notice -

That all motions be deferred to the next day's sitting.

This is an unusual course, on which I have had discussions with the Leader of the Opposition; unfortunately, insufficient time was available to discuss it with Hon Eric Charlton.

Members will be aware that an urgent need exists to proceed with a Bill dealing with the custody of Royal Commission records. We have very limited sitting time available today, and in order to maximise our opportunities for discussion on this Bill I propose that motions be deferred. I indicate at the same time that this is the same reason for declining leave to Hon Bob Pike regarding his requested statement. If as the day proceeds consideration of the Bill is finalised before the adjournment, the member will have another opportunity to make his statement.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [2.50 pm]: I support the motion. The Leader of the House discussed the matter with me. I also acknowledge that no time was available to discuss it with Hon Eric Charlton. However, the Royal Commission (Custody of Records) Bill is important. Questions must be raised during the second reading and at the Committee stage which will need answers from the Government. It is also possible that amendments will be moved during the Committee stage. As the Leader of the House has indicated, as much time as is available this afternoon should be set aside to properly consider the Bill. I have asked the Leader of the House to ensure that Parliamentary Counsel and a senior representative of the Solicitor General are available in the Parliament this afternoon to allow ongoing negotiations and discussions and to provide advice on possible amendments to the Bill. That will assist the Bill to progress in this House and be returned to the other place, if necessary, for its concurrence.

I confirm that Parliamentary Counsel is available, but when the request was made for Kevin Parker, the Solicitor General, to be available at Parliament House this afternoon I was advised that was not possible. He is attending a funeral. I therefore asked the Leader of the House whether a senior officer of the Solicitor General's office could be made available this afternoon in his place.

Question put and passed.

The PRESIDENT: I have message No 55. Order members! I am fast becoming sick and tired of members having total disregard for the rules of this Chamber. Perhaps it is the time

of the year, but any further indication of members wanting to destroy the decorum of this place will be met with some vigorous responses from me in the future. Members' wandering at large around the Chamber is out of order. I have never questioned members in the past about that because, in the main, it is in the interests of the business of the House. However, because I let them go, members are holding conferences while leaning over the backs of seats. The Standing Orders specifically preclude that. That would not be quite so bad if the rest of the Chamber were not disturbed by it. When that happens, enough is enough.

ROYAL COMMISSION (CUSTODY OF RECORDS) BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon J.M. Berinson (Attorney General), read a first time.

MOTION - STANDING ORDERS SUSPENSION

Royal Commission (Custody of Records) Bill

On motion without notice by Hon J.M. Berinson (Attorney General), resolved with an absolute majority -

That Standing Orders be suspended so far as to enable the Bill to pass through its remaining stages in this sitting.

ROYAL COMMISSION (CUSTODY OF RECORDS) BILL

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [2.55 pm]: I move -

That the Bill be now read a second time.

The Government established the Royal Commission into Commercial Activities of Government and Other Matters on 8 January 1991. The Royal Commission handed to the deputy of the Administrator its interim report on Monday, 19 October 1992. Within a few weeks it will present its final report. On 24 September, the Premier gave notice in the Legislative Assembly of the Government's intention to introduce legislation to ensure the transfer of evidence and other documents held by the Royal Commission to the Director of Public Prosecutions. This Bill meets that purpose. There has been a growing public expectation that the commission's report would lead to the institution of criminal proceedings. It was directed to report, among other things, whether any matter should be referred to an appropriate authority with a view to such proceedings. As a result, the commission's interim report was accompanied by a confidential appendix for the DPP, who is now studying that document.

In the course of its work the commission has generated thousands of documents, and seized an enormous number of documents under its statutory powers. Pursuant to the existing provisions of the Royal Commissions Act, seized documents will be returned to their source when the commission has no further need of them. Those documents, or some of them, may prove important to the decision whether to pursue further investigations and to formulate briefs for prosecutions for matters identified by the Royal Commission. Other documents held by the commission may have no bearing on any possible prosecution. The commission holds a wide range of records, including documents voluntarily supplied to it; materials seized or supplied under compulsion; statements of witnesses; documents generated by the commission, such as transcripts and reports commissioned for its own use; documents tendered as exhibits; and, of course, the transcript of the evidence it received. Some of those records are stored electronically. The need has been recognised to change the law to authorise the retention of relevant Royal Commission documents for the purpose of any prosecutions.

In May, Hon Max Evans introduced a private member's Bill into this House in an attempt to make the necessary change. His Bill, in effect, proposes that all documents of the Royal Commission be made available to the DPP. Unfortunately, his Bill suffers from several deficiencies. They include the following -

fails to recognise a mechanism for the ultimate disposition of material after use by the DPP; it

lacks clarity on whether the Bill is proposed to override the Royal Commissions Act and common law which requires the return of material;

does not allow any scope for future access for legitimate public interest purposes;

would apply to all material obtained by the Royal Commission under assurances of confidentiality; and

may have the effect of requiring third parties who have "collated, amassed, obtained or created materials for the purpose of the commission" to pass them to the DPP.

The form of the Bill now before this House has been developed at the instigation of the Royal Commission. At the commission's suggestion it distinguishes between the different classes of documents held by the Royal Commission, and how each class should be dealt with. It acknowledges that some documents held by the Royal Commission were obtained by its giving to the source assurances that it would keep them in confidence. With some sources, this was necessary to achieve cooperation, especially in the case of persons and documents outside Western Australia and beyond the compulsory powers available to the commission.

Under this Bill, the commission will have a discretion whether those documents should be returned to their source, transferred to the State Archives, or passed to the DPP. Another class of material of the Royal Commission is made up of its own internal working documents. These may consist of working documents, drafts and other records prepared for its own purposes. Some documents in this category have been prepared by staff of the commission, but never even seen by the commission. Some could be of value to the DPP, while others could be quite misleading or useless. The Royal Commission is concerned that it should have a discretion whether these documents should be delivered to the DPP, held in confidence by State Archives or destroyed.

Another class of documents consists of private submissions. Submissions to the Royal Commission concerning terms of reference 1(e) and 2(e), which relate to proposed changes to the law or its administration or decision making procedures, were invited in some cases under assurances of confidentiality. Because of their subject matter, the commission believes they are of no relevance to the task of the Director of Public Prosecutions.

The Bill will allow the Royal Commission to return the submissions to their source, or transfer them to State Archives, or destroy them. Internal administrative records of the Royal Commission would have no use to the Director of Public Prosecutions. These will be delivered to the Public Service Commission, so that ordinary accounting and other administrative procedures are observed. The custody of all other records, including the transcripts of all evidence received by the commission, pass automatically to the DPP under the terms of the Bill. The DPP could pass these on to other prosecuting, revenue collecting or regulatory bodies. This ensures that relevant authorities have access to the information they need for further investigations or other actions resulting from the Royal Commission's inquiries. The records in the hands of the DPP will also be available for civil litigation in which the State is, or may be, involved arising from various matters investigated by the Royal Commission. This is necessary to protect the interests of the parties and especially the financial interests of the State.

Looking further ahead, provision is also made for the ultimate transfer of documents held by the DPP to State Archives, once the civil litigation is concluded and the DPP has no further use for them. With the Supreme Court's permission, allowance is made for access to Royal Commission documents held by State Archives for genuine research purposes.

I stress to the House that the scheme of the Bill is a direct response to the views and concerns of the Royal Commission. The Director of Public Prosecutions has also been fully consulted in the preparation of this Bill. The Royal Commission would have preferred that it also have a discretion to keep some transcript of evidence from the DPP. Even though this evidence was given under compulsion, the commission may have given some assurances of confidentiality. In this matter, however, the Government has taken the position that the public interest requires that the DPP have access to all the evidence given to the commission. Otherwise the Royal Commission and the DPP are satisfied with the Bill. This Bill is a

further example of the Government's wholehearted commitment to the completion of a wide ranging and thorough inquiry as a means of restoring the public confidence and trust in the parliamentary and political process in Western Australia. It will ensure a full capacity in the DPP to follow up the work of the commission. I commend the Bill to the House.

HON MAX EVANS (North Metropolitan) [3.05 pm]: The Opposition supports the Royal Commission (Custody of Records) Bill but gives the Government notice that it will attempt to amend it. In the last paragraph of his speech, the Attorney General said -

This Bill is a further example of the Government's wholehearted commitment to the completion of a wide ranging and thorough inquiry as a means of restoring the public confidence and trust in the parliamentary and political process in Western Australia. It will ensure a full capacity in the DPP to follow up the work of the commission.

That is the most outlandish statement ever made in this House. The Attorney General said that it will restore "public confidence and trust in the Parliamentary and political process". This Bill has taken longer to develop than it does for an elephant to give birth, and nothing takes longer than that. I introduced a Bill similar to this into this House and it was adjourned by Hon Fred McKenzie on 26 May. I have been waiting since then for something to happen. I assumed Hon Joe Berinson, the Attorney General, was looking at this matter and eventually was told that he was. I asked myself why would I try to reinvent the wheel; if he was going to do the right things I would wait. I waited and waited.

We rose on 2 June. On Tuesday of the last week before we rose, I gave notice of a Bill. Hon Fred McKenzie did the right thing and he adjourned it. On the following Sunday, the *Sunday Times* carried an article under a huge headline which indicated that the Attorney General had given Hon Max Evans notice to withdraw his Bill because he, the Attorney General, had been working on a Bill since March which would be brought into the House and would do what was required.

As I have said, we have been told that this matter will restore the confidence of the public in the parliamentary system. On Tuesday I began worrying about this Bill, particularly with the other events that were going on in the Parliament. Mr Ed Russell was kind enough to give to me a copy of the draft of this Bill about a week to 10 days ago. I spoke to him again on Tuesday and he could not tell me when the Bill would be brought into the Parliament, or who would bring it in because the other House did not have a leader. I have been following its movements since Tuesday. I am aware that it must be passed this afternoon although we could sit tomorrow and next week on it because it is not required until 31 October.

Hon George Cash has advised me that the Premier has extended the time of the Royal Commission to 15 November. I am not certain whether that extension will affect this legislation. Maybe the Attorney General can tell me. My Bill was a simple Bill. It had only four clauses. Clause 1 related to the short title, clause 2 to the commencement and clause 3 referred to the interpretation of the words "commission" and "document". Clause 4 stated -

Records etc of Commission

4. Upon completion of the report required by paragraph (3) of the Commission, possession of all records, information, documents and materials collated, amassed, obtained or created for the purpose of the Commission, whether or not used in evidence before the Commission, shall pass to the holder of the office of Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*.

However, it brought this matter to a head. I was going to get out a dictionary to find out what a "catalyst" is because this is a catalyst; it made something happen. In scientific terms, a catalyst makes something move quickly. This Bill must be the greatest fizzer of a catalyst of all time. My Bill was introduced on 26 May but this Bill was not introduced into the Parliament until yesterday. At 5.45 pm on Tuesday the Premier replied to a question from the Leader of the Opposition that the Bill would be brought into the House by the Attorney General. I waited until eight o'clock that night but still we had been given nothing. A total of \$30 million has gone into this Royal Commission to tell us all about WA Inc. This legislation is probably the second most important piece of legislation to be introduced into the Parliament in the last four or five years. The most important was the legislation setting up the Royal Commission. Under this legislation, the records of the Royal Commission will be made available to the Director of Public Prosecutions for him to carry out prosecutions

where necessary. Even though this is such an important piece of legislation, the Government did not know on Tuesday night who was going to do what with it. Without this legislation, the Royal Commission has been only a headline for the newspapers and television stations. All of the action will come from this legislation.

Notice was given eventually at 8.45 that night that the Premier would introduce the Bill the next day. Further problems arose with that Bill. Seven copies were given to Hon George Cash's secretary, which were then taken from her because it was found they had been distributed before the second reading speech had been made in the other place. I went to the Bills and Papers Office and was told I needed the permission of the Premier to obtain a copy of the Bill. I went to her office with Mr Richard Court and talked to Mr Bob Willoughby. I asked why we had to wait for that Bill. He said that the Premier was in an important meeting and could not be disturbed. I thought perhaps she intended to resign next, but we were not that lucky. An hour later I was told that I could have a copy of the Bill. I asked Mr Ed Russell for a copy of the second reading speech at one o'clock yesterday but was told I could not have one because it had not been finished. On the second last day on which this Bill must be passed through both Houses of Parliament, the second reading speech had not been completed.

The second reading speech was eventually read last night and I received a copy of it from another place. I understand that some amendments have been made to the draft copy of the Bill which I received. That was the fifth or sixth draft and the Bill before us is possibly the seventh or eighth draft. However, those amendments are not relevant to this debate. Last night the Bill was read and debated in another place and the Opposition gave notice of some amendments. To expedite passage of the Bill it was decided that it would pass through the Legislative Assembly in its existing form and be sent to the upper House. That is the history of this important Bill to date. As a result of the amendments foreshadowed last night it was agreed by Minister David Smith that Parliamentary Counsel and Mr Kevin Parker QC, Crown Solicitor, would meet the Opposition at 11.30 this morning to discuss the points we wished to raise. Hon George Cash, Hon Phillip Pandal and I went to meet them at 11.30 am. At 11.50 am when they had not arrived, we made inquiries and learned that David Smith had cancelled the meeting.

Hon J.M. Berinson: The message I have is that he did not understand he had undertaken to arrange the meeting.

Hon MAX EVANS: We had no meeting and no persons to meet with. Mr Ed Russell did the right thing and arranged for Mr Calcutt and Mr Parker from Crown Law Department to come to Parliament House to meet us. They arrived about 12.10 pm. Unfortunately, this is one of those days on which we had to keep a prior commitment, and it was necessary for us to leave before 1.00 pm. We discussed a number of matters with those persons, but since then a further submission has been put to the Opposition about some distinct shortcomings in the Bill. Hon Peter Foss is discussing them with Parliamentary Counsel at the moment and suggesting work on them, and he will speak later in the debate about the reservations he has. I think the Attorney General will appreciate that very important matters such as this must be properly considered. This is the last day of the parliamentary week and we have approximately three hours and 10 minutes before this House rises and one hour and 40 minutes before the other House rises in which to pass this legislation. This has happened with a great deal of legislation which the Government has forced through. A major speech was made last night by Hon Phillip Pandal about the rushing through of legislation. This is one of the most important issues ever and this legislation will be pushed through as well.

We would like to know about the extension of the Royal Commission to 15 November, which the Premier mentioned. Does that change the need for the legislation to be passed by 31 October? Has the change been formalised? I ask the Attorney General to inform Hon George Cash behind the Chair so that we know where we stand on this matter. Since the Premier gave notice that this legislation would be passed it has been delayed for one reason or another. The following statement was made in the second reading speech -

The Royal Commission holds a wide range of records, including documents voluntarily supplied to it; materials seized or supplied under compulsion;

One of the Opposition members has asked what will happen to members' election records relating to finances and donations for their campaigns. They were given voluntarily. Will

they be part of the records returned to the people who provided them, will they go to the State Archives, or will they be destroyed? That is a worthwhile question because it affects members of Parliament many of whom were forced to "voluntarily" provide their records to the Royal Commission. The second reading speech also states -

In May, Hon Max Evans introduced a private member's Bill in another place in an attempt to make the necessary change.

We have waited from 26 May until today to see something happen. It was not an attempt to make the necessary change, I was the catalyst that made something happen. Almost two months ago I was asked to discuss with David Wicks, principal counsel to the Royal Commission, the problems it foresaw with my legislation. It is hard to believe that so much time has elapsed since that discussion. Some of the problems raised related to information from private hearings and discussions, on which undertakings had been given to people that it would be held in confidence and would not become part of the general records of the Royal Commission. Those documents were printed on coloured paper and held in separate files. The Royal Commission was also worried about what would happen to the administrative records and the working papers. These matters have been looked into and the Attorney General has advised that Kevin Parker QC, Crown Solicitor, provided a long opinion on this matter, to which the Opposition was not privy. The Opposition had to take the word of the Attorney General on this matter. Hon George Cash and I appreciate the opportunity we had to be well briefed by Mr Wicks in August. Nothing has happened since that time.

I refer once more to the statement in the second reading speech that I introduced a private member's Bill. I hope that the late Andrew Mensaros, looking from above, recognises that at least one member has been recognised by the Government for introducing a private member's Bill. I recall that in my first year as a member Mr Mensaros introduced five or six private member's Bills in the other place. Neither the Press nor the Government admitted that he was the catalyst for legislation later introduced by the Government. It is unfortunate that his efforts were not recognised in his time. The second reading speech also gives me a great deal of credit for the deficiencies in my Bill -

Unfortunately, that Bill suffers from several deficiencies. These deficiencies include -

fails to recognise a mechanism for the ultimate disposition of material after use by the DPP;

This was referred to as soon as my Bill was introduced. Officers at the State Archives were worried about where the documents would go to. It was also stated -

lacks clarity on whether the Bill is proposed to override the Royal Commissions Act and common law which requires the return of material;

I have heard indirectly that at one stage it was suggested that the Government go back to my Bill. That would have saved many of the problems faced today. Once it was decided not to transfer all the records and to be discriminatory, the problems began and they will grow bigger and bigger. It was also stated -

does not allow any scope for future access for legitimate public interest purposes;

would apply to all material obtained by the Royal Commission under assurances of confidentiality; and

may have the effect of requiring third parties who have collated, amassed, obtained or created materials for the purpose of the commission to pass them to the DPP.

There is a problem here in that many people came forward with very detailed submissions, including public servants who, for obvious reasons would be placed in a difficult position if the submissions came out. Members can imagine how long they would keep their jobs. It is essential that they be protected by the documents being either given back or destroyed. The worry is that if the documents go into the State Archives, human beings being what they are they may seize on certain information if it is made public. I believe it would destroy any future Royal Commission in this State if people found out that highly confidential information they had given to a commission could get out onto the public record. We know this happens from time to time, but for the credibility of Royal Commissions to stand we must be able to assure people that it will not happen. Mr Wicks put it to us that technically

this is retrospectivity; we would be changing an undertaking and saying the documents would not be given back and they might go to the archives. It is a worry from the point of view of the integrity of the Royal Commissioners and the counsel for the Royal Commission itself.

The Minister in his second reading speech went on as follows -

The form of the Bill now before this House has been developed at the instigation of the Royal Commission itself. At the commission's suggestion it distinguishes between the different classes of documents held by the Royal Commission, and how each class should be dealt with.

When one looks at that one can only wonder whether the Royal Commissioners got their priorities right. If this Bill has been developed at the instigation of the Royal Commission why did it not do more work on it, and more quickly? Who is responsible for the Bill becoming bogged down is a factor we cannot debate at length today because time does not permit. This Bill must pass through the Parliament by 31 October otherwise legal complications could arise in regard to the return of documents. It has been put to us today that the Royal Commissioners could destroy all the documents if they chose to. The speech goes on as follows -

It acknowledges that some documents held by the commission were obtained by its giving to the source assurance that it will keep them in confidence. With some sources, this was necessary to achieve cooperation, especially in the case of persons and documents outside Western Australia and beyond the compulsory powers available to the commission.

Further on the Minister said -

Another class of material of the Royal Commission comprises its internal working documents. These may consist of working documents, drafts and other records prepared for its own purposes. Some documents in this category have been prepared by staff of the commission, but never even seen by the commission. Some could be of value to the DPP, while others could be quite misleading or useless.

There are many working papers, notes and such like, or even thoughts about following up something the next day. They believe the documents could be misleading if they were made public. Let us face it, many of them could have been destroyed already. The Royal Commissioners wanted some discretion to destroy documents rather than hand them on. The Minister's speech goes on as follows -

The Royal Commission is concerned that it should have a discretion whether these documents should be delivered to the DPP, held in confidence by State archives or destroyed. Another class of documents consists of private submissions. Submissions to the Royal Commission concerning terms of reference 1(e) and 2(e), which relate to proposed changes to the law or its administration or decision making procedures, were invited in some cases under assurances of confidentiality. Because of their subject matter, the commission believes they are of no relevance to the task of the Director of Public Prosecutions.

The Bill will allow the Royal Commission to return the submissions to their source, or transfer them to State archives, or destroy them.

This relates to legislation in the future and what their recommendations are, but says nothing about persons being charged. Further on the Minister said -

The custody of all other records, including the transcripts of all evidence received by the commission pass automatically to the Director of Public Prosecutions under the terms of the Bill. The Director of Public Prosecutions could pass these on to other prosecuting, revenue collecting or regulatory bodies. This ensures that relevant authorities have access to the information they need for further investigations or other actions resulting from the Royal Commission's inquiries. The records in the hands of the Director of Public Prosecutions will also be available for civil litigation in which the State is, or may be, involved arising from various matters investigated by the Royal Commission. This is necessary to protect the interests of the parties and especially the financial interests of the State.

We support the principle of the Bill; it is a most important one. It is unbelievable that it has taken so long for such a Bill to come before Parliament, considering the \$4 million-odd lawyer costs incurred by the commission itself. The Bill represents a degree of compromise by all parties in order to get the information together; some wanted more, some less. We are told that it must be passed by 31 October. Quite simply, if we cannot finish our deliberations on it today we must come back tomorrow or next week. The Bill must go through in the right shape and form because it is so vital.

Perhaps even more important than the commission's report which was tabled yesterday is its report on recommended improvements on the handling of legislation in this State. I do not know whether the Government has that report yet. These recommendations will be important if we are to ensure that the events of the recent past do not happen again. Of course, legislation by itself will never stop tax avoidance, rape, murder and so on; no legislation has managed to stop that sort of activity. We need honourable people acting with integrity. If we had had that over the past few years we would not have had all these problems.

I congratulate the commissioners and their counsel for having done such an excellent job, and in a short time. We must not forget just how many things were going on at one time in government. Government advisers must have been putting together one deal after another.

It is important that this legislation be handled properly. It has our support and we want it to go through. But what a disgrace it is that yesterday, at 1.00 pm, the Government did not have the second reading speech for the Bill. The Premier finally introduced the Bill at 7.30 pm yesterday, less than 24 hours before this House sat today. And we are told that it must be passed by both Houses by 31 October in order that it can be proclaimed so that the Royal Commission's records are protected. We will be looking forward to the future discussions with the Parliamentary Counsel, the Crown Solicitor and the Attorney General so that we can hear their views, particularly on the points raised only this afternoon by Hon Peter Foss.

HON P.G. PENDAL (South Metropolitan) [3.28 pm]: I intend to oppose the Bill and vote against it unless at least one major amendment is made, and I hope in the course of my remarks to persuade a majority of members to reject the Bill unless one and possibly other amendments are made to it. Sections of the Bill are a positive outrage when we consider the future wellbeing of cultural material in Western Australia, and I will come to the details in a few minutes.

Secondly, the manner of the passage of this Bill is an outrage. I should not need to remind any member here that it is only a couple of days since the Royal Commission into Commercial Activities of Government and Other Matters reported on various matters, among which was the need for Parliament to properly scrutinise Bills. By extension, it means that to properly scrutinise a Bill we need time. We cannot be vigilant in a hurry. We have had 17 hours from when this Bill, which has some extraordinary consequences, was introduced into the other House, read a second time, responded to by the Opposition, passed and then bundled into this House with the request that it be passed, no questions asked, in order to suit the convenience of the Government. That is an outrage, given that we have been asked now to repeat the very behaviour that the Royal Commission and other members of the public say is unacceptable behaviour; that is, putting Bills through without proper scrutiny.

In the course of my remarks I want to explain why there is a sense of outrage about one serious omission which has led me to circulate an amendment, No 20 on the Notice Paper today in my name. I quote the Records Management Association of Australia which issued from Canberra late today a statement about the consequences of this Bill. It says -

The Media are clearly reporting the Bill as one which is preventing the destruction of public records. However, upon perusing the Bill it would appear that it actually is sanctioning the destruction of records . . .

Incidentally, I find it equally extraordinary that the Minister in charge of the Bill is not present to hear debate. Someone might give him a message that even if he does not intend to take notice of amendments, courtesy demands he should be here. More than that, he might learn something of the sense of outrage which has been expressed.

Hon Graham Edwards: He has been unavoidably called away; these things happen all the time.

Hon P.G. PENDAL: He is handling the Bill which he has asked us to put through without question. It is his job to be here, not outside. The Minister for Police is one of the worst offenders.

Clause 3 of the Bill bypasses the very supervisory role that is constitutionally put in place to protect public documents from being destroyed. I refer to the provisions of the State Library Act. I do not know how many Government members have read the Bill, but they should note that under the provisions of the Library Board of Western Australia Act part of the public archives are being set aside by the Bill.

I want to say a few words about the Royal Commissioners because it occurs to me it is an extraordinary matter that the Royal Commissioners who have just completed a report critical of the processes whereby not enough vigilance and scrutiny was shown, are themselves sponsoring a Bill that will cut out or diminish the proper supervisory functions contained in the Library Board of Western Australia Act. Members opposite may not realise it but by passing this Bill unamended they will be effectively making the Royal Commissioners their own archivists. I have every respect for the Royal Commissioners as judges, as we all have; they are eminent in their fields. However, by sponsoring this Bill or by urging its adoption they show a regrettable ignorance about the professional responsibility that archivists have to protect the public record and to preserve that stuff of which history is made. In particular, my concern is over the provisions of the Bill that allow for the destruction of those documents.

The Bill seeks to put the Royal Commissioners directly at variance with clearly enunciated procedures for the retention and disposal of public records. I have said before that the Royal Commissioners' brief, that I believe they adopted some time into the inquiry, was to ensure the correct management, retention and disposal of public records. The commissioners were the ones who raised that because we heard evidence of Ministers and public servants who were interfering with the integrity of public documents, either by removing them altogether or by the use of those little yellow stick-on attachments whereby apparently at least one Minister was able to use those stickers to scribble on instructions, which could be removed later; and by which process the original document was never interfered with. So, it is extraordinary to me that having properly taken an interest, as the Royal Commissioners did, in the proper management of records into the future they are now, wittingly or unwittingly, a party to a decision that would allow records to be destroyed without reference to the one person in this State who has the responsibility for assessing those records.

I will give an analogy: What would the public, the Press or members of this House say if we were to pass a Bill today exempting the Auditor General from auditing the accounts of the Superannuation Board? That is the archival equivalent of what we are doing here. But worse, we then say, having exempted him from the Financial Administration and Audit Act, the Auditor General says that we will send in someone to audit the books, but not an auditor. It will be a bloke from the Government Garage, someone from the Perth Dental Hospital or someone else whose qualifications do not match the task with which they are entrusted. If that occurred we would all fall about laughing. We would say that a qualified auditor should go in and apply the provisions of the Financial Administration and Audit Act. In this case, we should be sending in the State Archivist, not the Royal Commissioners. The State Archivist should apply the provisions of the Library Board of Western Australia Act. Not to do that would mean that this House will become party to the very behaviour of which the Royal Commissioners and other people have been critical.

I am also angry that provision is here for the Royal Commissioners and/or their staff to dispose of records without supervision. If anyone else in the public domain did that, the State Archivist would have a case against them under the provisions of the Library Board of Western Australia Act, yet we are putting on an unwarranted pedestal the staff or even the Royal Commissioners who have no training whatsoever and no qualifications to make the judgments they are about to be called to do.

Hon Peter Foss: With no historical consciousness.

Hon P.G. PENDAL: Everyone knows, because we read in our history books - unsanitised in this case - that in 1915 the Gallipoli landing by the British was a disaster. The ANZACS landed at Gallipoli on the morning of 25 April 1915, but they were supposed to land a couple of miles up the coast. History records that the landing was a disaster and Australia lost many

thousands of young soldiers. We know that because years after the event people were able to get hold of the unsanitised records, and discover the expeditionary force landed at point X whereas it was supposed to have landed at point Y. Historians were able to draw the proper conclusion that the landing had been botched. I object when the Royal Commissioners, or anyone else, want to remove the working documents of the commission. They do not have the right to remove those working documents.

Hon PETER FOSS: Particularly not the working documents.

Hon P.G. PENDAL: A case exists for one or two other forms of records being returned to their owners. In case it is thought I am being insular I will read two quotes from international experts in the field of archives and record management which confirm that what is being proposed is indeed an outrage. Richard Cox, the Canadian national archivist said that archivists must focus on the full documentation of society not merely the piecemeal evaluation of isolated records. Yet, if passed, this law will allow us to rely only on the piecemeal evaluation of isolated records. We are breaking international best practice. At the Australian Society of Archivists biennial conference in 1989 Professor Terry Eastwood said, when stressing the need to protect the integrity of records, that archives are arsenals of democratic accountability. By that he meant that when one gets hold of documentation afterwards, one is able to determine the basis upon which people did certain things and one can make them accountable. Ms Ann Pederson, a notable United States academic recently said at a meeting in Montreal that knowledge of the context in which records are originally created and used is central to their value as archives; that archivists must accurately identify and explain their context and carefully maintain the archives in such a way as to preserve the contextual character and relationship. I am asking Parliament not to destroy the context in which these documents were created. I received today a urgent response from the President of the Federal Council of the Records Management Association of Australia in Canberra, Mr Ray Holswich. The association is concerned that the Bill currently before Parliament is progressing without due consideration for vital records management procedure. Records management has come under the spotlight over the past 18 months due to Royal Commission findings, and that profession is conscious of its role and responsibilities. The association says that by not allowing these public records to be controlled under the Library Act by the State Archives' responsible and accountable record keeping procedures will become jeopardised.

Hon Peter Foss: Hear, hear!

Hon P.G. PENDAL: The Western Australian branch of the Records Management Association today faxed a message to me which contained a most telling point. Norma Easthope, the secretary of the branch stated -

I am writing on behalf of the members of this professional association to express our concern with the Royal Commission (Custody of Records) Bill currently before the Western Australian Parliament . . .

The Media are clearly reporting the Bill -

I will interpolate by saying that the association is not attacking the media, and neither am I.

Sitting suspended from 3.45 to 4.00 pm

Hon P.G. PENDAL: Before the suspension I was saying that the impression has been given that this Bill will prevent the destruction of documents arising from the Royal Commission and that it will protect those records. In fact, the reverse is the position. The Records Management Association of Australia's statement, which was sent to me by urgent courier today, also states -

The Media are clearly reporting the Bill as one which is preventing the destruction of public records. However, upon perusing the Bill it would appear that it actually is sanctioning the destruction of records without the need to comply with approved disposal authorities.

The letter further states -

To introduce a Bill which overrides the current public records legislation and its preventative mechanisms is to introduce a dangerous precedent.

... We do not question the need for legislation to facilitate the interim transfer of the records to the Director of Public Prosecutions.

Hon Max Evans made it clear that neither does the Opposition. The document continues -

This follows a precedent set in Commonwealth legislation. We do, however, question the need to allow the destruction of records without the need for this destruction to be in accordance with approved disposal authorities as stipulated in the Library Board of Western Australia Act Section 30(2). We must once again stress that this is a very dangerous precedent and would seem to indicate that nothing has been learnt from the Royal Commission and its findings relating to records management practices in this State.

We urge you to give serious consideration to amending the Bill so as to at least allow for the involvement of the State Archives of Western Australia and thus ensure the appropriate disposition of those records.

That is why I have mooted an amendment to this Bill. Further evidence of community concern is contained in a letter from Paul Brunton, President of the Australian Society of Archivists Incorporated. The letter states -

The Australian Society of Archivists has expressed some concern at the terms of the Royal Commission (Custody of Records) Bill, 1992 which the Western Australian Government is attempting to force through both houses of Parliament.

The letter further states -

The Society is concerned especially with regard to clause 7 (internal working documents) and clause 9 (administrative records), and is particularly concerned with clause 13, where it is ordered that (subject to certain reservations) the State Archives shall not grant access to any internal working document transferred to its custody. The prohibition on granting access to confidential records and private submissions is understood...

That is understood by the Opposition also. The Opposition has no desire to request documents that were given in confidence to the commission and cause those confidences to be broken. Private submissions can be returned. The Opposition has no difficulty with that, but it is the provision for the destruction of those documents that is causing all the trouble. The letter continues -

The Act could further specify that, in the event of a disagreement between the Director of the Archives and the Royal Commissioners, the matter be referred to the Standing Committee on Public Records of the Library Board of Western Australia.

The provision in my amendment to the Bill has a direct bearing on what I have just read. The letter continues -

The Society believes that it is ironic that this bill should be attempted to be forced through Parliament at the very time that the Library Board has issued its Discussion Paper on the proposed new Library, Archives and Information Act, and when the Freedom of Information legislation is very much a topic of lively debate.

It is a pity that the Minister for The Arts is not in the House at the moment because I briefly quizzed her about her inability to bring into this House up to date archival legislation. It has been put to me in the last 24 hours, and that is all the time members have had to discuss this Bill, that the working documents referred to in the Bill are the skeleton, bones or preliminary conclusions of the commissioners. There seems to be a fear that we should not put into the public record skeletal, bone like or preliminary conclusions, but that is the stuff of which history is made. Students in 30 years will want to know why one commissioner began his draft at point A and then moved to point C. There is nothing sinister about that. I have previously given the analogy about the invasion of Gallipoli in 1915.

Hon Reg Davies: Were you there?

Hon P.G. PENDAL: No; I missed my call.

If this Bill applied to the British archives it would be found that the General who landed in the wrong spot in 1915 would have been given the chance to sanitise the records. I stress

that I am not suggesting that the Royal Commissioners want to sanitise the record. However, with the greatest respect to them, as eminent as they are in their field, they are not archivists and clearly they have little understanding and sympathy with the objections of the archivist provisions.

The Opposition has no difficulty with observing undertakings given to witnesses about passing over confidential information. Provisions are already within the State Archives to impose an embargo on material. The Parliamentary Liberal Party and the Parliamentary Labor Party deposit material in the Archives and impose an embargo on it. One can apply through the State Archivist to have the material released, subject to permission from the relevant party for the embargo to be lifted.

This Bill is seeking to ensure that the Royal Commission records cannot be destroyed without the State Archivist assessing them in the normal way. It was argued by a Government officer this morning that the archivist would not know which documents within the Royal Commission were important. I will tell the House what I told that officer privately; that is, the State Archivist is trained to know the value of the contents of these documents.

It is a shame that we do not have the presence of one Minister in this Chamber, let alone three Ministers. I wanted to pose a series of questions to the Minister for The Arts who is in charge of the State's library system.

Hon Tom Stephens: I am sure they will be answered.

Hon P.G. PENDAL: I hope they will be because this Bill is required to be passed by this House by 4.30 pm today.

Was Hon Kay Hallahan, as Minister in charge of the State Archives, consulted about the contents of this Bill? Was the Library Board of Western Australia consulted about it and, if so, what is its attitude to the Bill? Was the State Archivist consulted and, if so, what is his attitude to the Bill? Has the Minister consulted with the standing committee on public records which is located beneath the Library Board? I hazard a guess that none of them was consulted.

Hon Tom Stephens: I am confident enough to say that the Minister was consulted because, of necessity, the Bill went to Cabinet and to Caucus.

Hon P.G. PENDAL: Government officers will not be impressed with that answer because they will wonder at the way in which their interests have been bypassed. I am somewhat disappointed with the member's answer. I have circulated an amendment to the Bill which in no way weakens the provisions contained in it. I appeal to the Leader of the House to remember that my amendment does not weaken the Bill, but will protect the proper procedures at the State Archives. My amendment will allow the Royal Commission to continue to exercise its discretion in respect of the destruction of records, but it cannot do it until it has first consulted with the State Archivist.

Hon J.M. Berinson: Am I right in assuming that you are giving final consent to the State Archivist?

Hon P.G. PENDAL: The final say will be given to someone other than the State Archivist. My amendment will include the establishment of a court of appeal. What that means is that the Royal Commissioners or their staff will come to an agreement with the State Archivist, but if there is no agreement the matter will be referred to the standing committee of public records. In that case, it will have the final say because it has the expertise. It is no different from a range of other statutory and non-statutory bodies. My amendment will continue to protect confidential documents and the return of private documents, but it will not allow the wholesale burning or destruction of records - under no circumstances will I agree to this.

I repeat my intention to vote against the Bill and to call for divisions unless the Government agrees to my amendment.

Hon Fred McKenzie: Will you repeat the questions you want to put to the Minister for The Arts now that she is in the Chamber?

Hon P.G. PENDAL: Was Hon Kay Hallahan, as Minister for The Arts, consulted about this Bill? Was the Library Board, for which she has ministerial responsibility, consulted? Were the State Archivist and the standing committee on public records consulted?

It is imperative that the Legislative Assembly does not adjourn at 4.30 pm because we are being told to pass this Bill or else. It is on the head of the Government and I know the internal reason why it is imperative that the Bill be passed today. It is a legitimate reason, but I will not put my name to something without proper consideration of it, particularly when we have been lectured by the public, the Press and the Royal Commission for passing Bills without scrutinising them properly. I want to move an amendment and I understand that Hon Peter Foss also wants to move an amendment - the result of an observation by the Law Society of Western Australia - and we are being told that the Bill must be passed by 4.30 pm. I have news for the Government. Government members in this House should tell their colleagues in another place that it is not on.

When I met with the Solicitor General this morning I told him that the Opposition was not asking for a radical departure from procedures; it is asking that procedures be followed.

Hon Peter Foss: They are already doing it under section 9.

Hon P.G. PENDAL: That is correct. Therefore, my amendment and Hon Peter Foss' amendment should be passed before 5.30 pm. The Legislative Assembly should sit until then for the Bill to be returned to it in its amended form so that it can be proclaimed by 31 October. If the Legislative Assembly does not continue to sit to deal with the Bill, as amended, I suggest that the Parliament sit for a couple of hours next week to debate the amendments. It is immoral that members are being coerced to pass this Bill quickly; it is a "here we go" situation.

I give notice to the Government that I will support the Bill, but with the amendment I have circulated. Unless the Government is prepared to accept my amendment I will not only vote against the Bill, but I will implore my colleagues to vote against it.

HON PETER FOSS (East Metropolitan) [4.19 pm]: A few things are emerging from the debate on this Bill which prove that Bills should be subject to proper public scrutiny. We have both an external and an internal obligation to this legislation.

I wish to inform the House of the concerns the Law Society of Western Australia has raised with me. The Law Society has examined the Bill from the point of view of individuals whom lawyers represent in the community. It says that this Bill may very well inadvertently override section 20 of the Royal Commissions Act. For the benefit of members who might not recall what section 20 is about, I advise them that it provides for a Royal Commission to require a witness to answer a question even though it is incriminating, but his answer cannot be used as evidence in proceedings against him. That seems a fairly basic way in which to proceed. It is a fundamental right. The rule used to be, and in America still is under the fifth amendment, that a person is not obliged to incriminate himself. We have a modification of that rule which says that if a person is obliged to incriminate himself the evidence cannot be used against him.

The Law Society has pointed out that the wording of this Bill is exceedingly wide when it says that this Bill has effect notwithstanding the Royal Commissions Act, and in clause 10 that the transcript, records and prescribed exhibits are available to the State for the purposes of investigation and prosecution of offences. That overrules the Royal Commissions Act, including section 20. This means that all those people who went along to the Royal Commission and gave evidence having been told that if they gave incriminating evidence against themselves it could not be used against them were misled because this Bill has come along saying the Government has changed its mind and that that evidence can be used against them.

The Government may say that this is not what it intended. However, the fact remains that it is a possible and highly likely interpretation of the Bill. This was not picked up by anybody until the Law Society picked it up. Why was it not picked up by anybody else until then?

Hon P.G. Pendal: Because of the rush.

Hon PETER FOSS: Yes, but also because it is necessary that each person looking at such matters does so from his own perspective. The Law Society looked at the Bill from the perspective of the clients its members represent. It could see that those clients' rights were being infringed upon. The State Archivist looked at the Bill from his point of view and said that we should hang on because these records may be destroyed without proper regard for their historic value.

Hon P.G. Pendal: I must say, for his protection, that he has not been in touch with me, but other people have. I do not want the Government ganging up on him.

Hon PETER FOSS: Archivists mindful of their professional duty have said they will not have an opportunity to judge these documents from an historic point of view. I have given the external relevance of looking at this legislation from one's own point of view. However, the internal relevance is this: Royal Commissioners do not look at documents in the same way as archivists look at them. The important thing is that when the archivist looks at the document he sees the bones of it and its ability to follow through draft after draft - the very things the commission thinks are not relevant and says should not be kept. I can see from the Royal Commission's point of view that it might not want those documents kept. However, from an historic perspective, which is the important part, they are the very essence of the matter. We have invested not just money, but also the State's intentions, efforts and thoughts in this Royal Commission's very important role.

Hon Reg Davies: And State integrity.

Hon PETER FOSS: Yes. Everything is wrapped up in the Royal Commission, which will be a highly historical watershed in our history. It is important that it and its documents be looked at from an historic perspective. I believe that some of the most important documents are the internal ones, the very ones we are told the Royal Commission thinks should not go to the State Archives. They are probably the most important ones to go there. However, it is only because the matter is being seen from the point of view of the Royal Commission as a bit of a nuisance that it has been suggested things be done in a certain way. Clause 9 states that although the Royal Commission can destroy administrative records at its discretion it is subject to any applicable administrative or statutory requirement. Therefore, it is admitted and accepted for the purposes of administrative records that it should comply with the rules related to archives. These are presumably the not very important papers, the boring ones and the ones about which it will be a bit of nuisance to get onto the archivist about to find out whether they can be destroyed.

Hon P.G. Pendal: It is the only part of this Bill that allows the Library Board to have a role when it is convenient but excludes it when it is not.

Hon PETER FOSS: The ones that really matter are the internal working documents of the commission which the commission says it wants to destroy without having to comply with the applicable administrative or statutory requirements. That seems to be absolutely the wrong way around. Why on earth should the Royal Commission be the only body exempt from procedures that apply in this State for the maintenance of documents? It seems to me that more than any other body it should have to comply with that law. Why should it have a special Act exempting it from complying with the requirements every other person producing documents for the Government has to comply with? It seems extraordinary that we should allow those documents to be viewed from the Royal Commission's point of view instead of an archivist's point of view.

The Royal Commission may be saying it is worried about confidentiality. I hope that is not what it is saying because if it is it has an incredible cheek so far as the archivists in this State are concerned. Archivists have the obligation to deal daily with highly sensitive Government documents. I have never heard the slightest suggestion there has been any leak or breach of confidentiality through the State Archives. These people are dedicated professionals who regard their job of maintaining the records of the State as I regard it; that is, as an important role. One of the problems we had with the whole WA Inc saga was people not learning the lessons of the past. One of the reasons we had this disgraceful performance is that people have been in Government who have not respected the traditions of Government and its systems and establishments in place to make things work properly.

The only way these things will be drawn to their attention is if people have regard to history. The State Archives are vital in that respect in maintaining the constitutional position of this State. I would not in any way play down its role as this information will be of vital interest in 30 years so that people know exactly what were the procedures gone through by the Royal Commission in its internal working documents. That may in fact be the most important part to come out of the Royal Commission. It is quite extraordinary to suggest that simply because the Royal Commission thinks it should have different rules applying to it we should arrange for it to do so.

One other small point to use a legal analogy is that in the law when passing Statutes there is often the statement that a compendius Statute may be either what is known as a tabula rasa or a pallanses. A tabula rasa comes from the days when clay tablets were used and after they were finished with their surface was cleared and imprinted upon again. Sometimes the surface was not cleaned properly and the words underneath came through the new words. At other times the tablet was completely erased and was clear and the person using it would start afresh with a completely clear tablet.

When interpreting the Statutes, if it is intended to be a tabula rasa, one does not go behind that legislation but reads it as it is without reference to the law that was before. If it is a pallanses then one sees the law showing through; that is, the law which has been passed. Generally speaking the law we pass is a pallanses because we interpret the Statutes in the light of the law and Statutes that have gone before rather than as a tabula rasa. Generally speaking things are far more understandable when one has that pallanses for presentation rather than a tabula rasa. How can one understand things better than seeing the process by which someone arrived at the current state rather than taking something on its face value? I understand that, for present purposes, public satisfaction and dealing with the instant matters of the Royal Commission, it should be a tabula rasa. I do not believe it is a matter of legitimate public interest at the moment to know the workings that went on behind the Royal Commission. Right now, I agree. However, 30 years from now that could be one of the most vital parts of the information that is there. We must see this matter with a sense of history, and it is a little ironic that we are being asked today in this very hurried state to destroy the sense of history by passing this legislation, which in itself seems to be an action quite contrary to the recommendations of the Royal Commission in respect of Parliament's exercising a proper role in its supervision of the processes of this State.

Another matter raised by the Law Society is that under clause 10(2)(b), the State can have access to transcript records and prescribed exhibits for the purpose of the conduct of civil litigation involving the State. The Law Society argues that if the State were to have windfall access to those records and exhibits, it is only fair that they also be made available to parties on the other side of the litigation at the earliest possible opportunity once the litigation has been commenced; and members will notice that I have foreshadowed that I shall move an amendment to achieve that objective. It is said that other people will have access to those documents through the process of discovery, but that is often much later than when the documents will be made available to the State.

I seek leave to table the letter from the Law Society of Western Australia.

Leave granted. [See paper No 474.]

Hon PETER FOSS: I am curious about the term "prescribed exhibits". The definitions clause of the Bill states that a "prescribed exhibit" means "an exhibit received by the Royal Commission in the course of a hearing relating to item 1.1, 1.2, 1.3 or 1.4 of Schedule 1 to paragraph (1) of the terms of reference". There is no explanation in the second reading speech about why those items have been selected. Is it just that the State is taking the opportunity on the way through to give itself an extra benefit? Why have those terms of reference been distinguished from the other terms of reference? It is important that that distinction be explained, but it does not appear to be explained in the second reading speech.

It has been suggested that we should allow this Bill to go through the Chamber unamended and that the Attorney General will give a written undertaking to deal with section 20 of the Royal Commissions Act to which I referred. That is not a good idea, for a number of reasons. Firstly, it is bad in principle. Why should we do things that way? Why should we pass imperfect legislation, on the say so of the Attorney General that he will sign a document that he will undertake to introduce an amendment? The Attorney General wants to do that in regard to his amendments, but he does not want to deal with any of the amendments suggested by Hon Phil Pendal or, possibly, the second amendment that I mentioned.

Hon P.G. Pendal: Particularly since he will not be here next year to do it! You will be that person, and we will not have to convince you.

Hon PETER FOSS: That is true. I keep this document in my drawer because I like to remind the Attorney General of it from time to time. This document outlines the last written undertaking that I received from the Attorney General on 16 May 1990, and the Attorney

General knows how many times I plagued him about when he would honour that undertaking. It was always the fault of someone else that there was a delay and that time was being taken.

Hon J.M. Berinson: I am sorry that I have not been here all the time. Is this in respect of your proposal to preserve the effect of section 20 of the Royal Commissions Act?

Hon PETER FOSS: Yes.

Hon J.M. Berinson: If it would assist you, I have agreed with the Leader of the Opposition that that amendment should be carried.

Hon PETER FOSS: I am pleased to hear that. That relieves me enormously because that is the correct procedure that should be followed. I am pleased that one procedure which was suggested, which I believe was improper, has now been withdrawn.

I am pleased to support the Bill, subject to the amendments proposed by Hon Phil Pandal and me.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [4.35 pm]: The Opposition clearly supports the substance of the Royal Commission (Custody of Records) Bill, and that has been indicated by Opposition speakers to date. However, it is clear that there are matters of significance within the Bill that need to be addressed by way of amendment, and in part those matters have also been addressed by speakers on the Opposition side. Hon Max Evans has already given a history of the Bill that he introduced into this place some months ago and outlined to the Parliament the negligent manner in which the Government has handled the custody of the records of the Royal Commission.

We now find ourselves in a position where, at 4.36 pm on Thursday, we have deferred motions listed for today and have agreed to defer questions without notice to give the Government the opportunity of expediting this Bill, yet the Government is still unable to answer the questions put to it by the Opposition in respect of this Bill. The Government's handling of this Bill is abominable. We are talking about the custody of documents which have cost this State more than \$30 million to gather, and if the Government in its negligence does not enable the Bill to pass in a proper form, \$30 million of taxpayers' money will, by and large, go down the drain. There is no doubt in my mind - and I qualify that by saying I have not taken expert legal advice on it - that if this Bill does not pass, the legitimate owners of certain documents which are currently held by the Royal Commission may be able to sustain a claim to have those documents returned to them. If that were the case - and that matter would need to be tested in a court of law - the future prosecution of certain individuals could be put in jeopardy. I do not know whether that is the intention of the Government by the manner in which it has handled this legislation; I hope not.

Hon Peter Foss raised significant issues about this matter, and I trust that during the Attorney General's response to this Bill he will answer all of the questions put by Hon Peter Foss. Hon Phil Pandal raised the question of whether the documents should be referred to the State Archivist. That will be the subject of amendments which appear on the Supplementary Notice Paper.

I now refer to parliamentary documents sent to the Royal Commission from this House and another place some many months ago.

Hon P.G. Pandal: Very good point.

Hon GEORGE CASH: Members will recall that we passed a special Act to enable certain documentation to be passed to the Royal Commission. This comprised evidence given before certain Select Committees such as the Rothwells inquiry by this House, the Midland saleyards Select Committee -

Hon Tom Stephens: Western Collieries.

Hon GEORGE CASH: Indeed. It also included evidence from Privilege Committees and the Burswood inquiry among others. I understand that the Royal Commission can identify those documents, yet this Bill contains no reference to the protection of those documents.

Hon P.G. Pandal: Incidentally, no other copies are available of those documents.

Hon GEORGE CASH: Hon Phil Pandal raises a very important point. I raised this matter

with Hon Max Evans earlier this afternoon, and he made it clear that we were discussing the original copies of the documents, which are the property of the Parliament. They have certain privileges attached to them according to the privileges we enjoy in this House, and when this Parliament agreed to transfer the documents to the Royal Commission no discussions took place - as I recall - regarding the possible further transfer of the documents to other parties.

Hon Max Evans: Or their destruction.

Hon GEORGE CASH: I was not suggesting that anyone would destroy the parliamentary documents. However, the member raises an interesting point.

I do not want to reflect on the Royal Commission or any of its officers. I held discussions with a senior officer of the commission some two or three weeks ago in the company of Hon Max Evans, in which I was fully satisfied that the Royal Commission wants to observe the proprieties expected by this Parliament. Nevertheless, the question of parliamentary documents must be addressed. The Royal Commission can identify something like two filing cabinets full of such documents.

In his reply to the second reading debate, the Attorney General should answer our queries. He should make contact with the Royal Commission this afternoon to obtain an assurance from it that those documents will be returned to the Parliament, if not tonight before this Bill passes, certainly by tomorrow morning. That for all practical purposes is probably the earliest possible opportunity in which that could be done. I am comforted in the understanding that the documents could be returned at any time prior to this Bill receiving Assent without parliamentary privilege being affected in any way.

Also, should the Director of Public Prosecutions require access to those documents in the future, following recommendations of the commission, I would expect him to make application to Parliament, which would give proper consideration to the application; if it was the will of the House, subject to certain privileges, the documents could be made available to the DPP. It must be absolutely understood by the Parliament that the Opposition in no way is attempting to frustrate the work of the DPP.

Hon Max Evans: He does not want them destroyed either.

Hon GEORGE CASH: I am sure he does not. It is not a case of automatically transferring, by way of this Bill, all parliamentary documents through the Royal Commission on to the DPP; the documents must be returned to this Parliament. If the DPP believes he is in need of them, I am sure he will make application and substantiate his need. That matter can then be dealt with by the Parliament. The matter of parliamentary documents has not been addressed in this Bill. I ask the Attorney General to take the action I have suggested; that is, he should contact the Royal Commission and provide an undertaking to this House regarding those documents.

Time marches on. I am very conscious of the fact that amendments will be moved to this Bill. Therefore, if they are passed, the Bill will need to be sent to the other place for its concurrence. In normal circumstances the other place would have risen by this time. Recognising the time limits and not wanting to cut short the debate, I conclude exactly where I started: Many months ago Hon Max Evans introduced a Bill into this House. In doing so he signalled to the Government that unless action was taken regarding the custody of Royal Commission documents, at the expiration of the Royal Commission those documents would be returned to their rightful owners. Hon Max Evans indicated that urgent action was needed to protect the documents.

We have discovered in the last few days that the collection and collation of this documentation has cost approximately \$30 million. It should never be said by the Government that the Opposition has attempted to frustrate the passage of this Bill. I have already said that today we agreed to defer a number of items which normally would have been called on by this time.

Hon P.G. Pental: Including questions.

Hon GEORGE CASH: The Opposition is keen to see this matter dealt with to its conclusion; however, it must be dealt with in a proper manner having regard to the exceptional circumstances surrounding the documents, the custody of which we are seeking to secure. If

it is necessary to sit after 6.00 pm, the Attorney General will have to test this place. I signal that proposition to members because of the negligent way in which this Government has handled this Bill to date. No member of this House would expect to leave Parliament today without this important Bill having reached a satisfactory conclusion.

HON J.M. BERINSON (North Metropolitan - Attorney General) [4.49 pm]: Some serious criticism has been made of the processes connected with the introduction and passage of this Bill. I take that criticism seriously. If I say that I regret the delays in presenting and dealing with this Bill, I do not do so as a matter of form; I do so because I am very conscious that this is important legislation. Under normal circumstances, the more important the Bill the less rushed we should be. However, the circumstances surrounding this Bill are quite extraordinary. They are certainly more than unusual. That is because in a very important sense and in a major area we are moving into uncharted waters. Some measure of the situation might be understood from a comparison of the Bill introduced by Hon Max Evans and the Bill I have presented today. If my memory serves me correctly, Hon Max Evans' Bill occupied something less than one full page. Certainly that was the case if the space taken for the title were discounted. We are now dealing with a Bill of 12 pages.

Hon Max Evans: It has taken five months to prepare those pages.

Hon J.M. BERINSON: Much more detailed attention has been paid to highlight specific issues. Members should be clear that the issues which have led to the expansion of this legislation from one page to 12 pages have not resulted from a Government initiative. They have arisen - I believe Hon Max Evans, from his own contact with the Royal Commission, will be aware - from very strong concerns expressed by the commission that the effect of the original Bill could well have been to override assurances given by the commission in good faith and on the basis of existing legislation and the existing powers of Royal Commissions. As we turned to address that problem raised by the Royal Commission, we very quickly came against a conflicting interest; that is, the Director of Public Prosecutions' having greater access to the material of the Royal Commission than would be possible if the provisions of the current Royal Commissions Act were to proceed unaffected by new legislation.

Thereafter, the effort was made to accommodate these conflicting interests as best that could be done to the maximum extent possible and in the fairest way to all interests, above all the public interest. I deliberately refrained from any direct activity in those arrangements. The reasons will be well known. On the other hand, the Solicitor General was very active in dealing with the two major parties and the two major interests concerned. At the end of the day, as I indicated during the second reading speech, before the House is a Bill the substantive provisions of which meet, if anything, the wishes of the DPP more than those of the Royal Commission. I am happy to have Hon Max Evans' nod of the head to confirm that. Again as I indicated in the second reading speech, that was by a deliberate decision of the Government in what it saw as the public interest and what I believe the House will see as the public interest. Having eventually produced this Bill by that exhaustive process, I ask the House to accept the major features of it as being presented in utmost good faith by all parties associated with it, including the Government.

I will now deal with some particular issues which have been raised during the course of debate. I again say, and mean, that I apologise for my inability to have sat in on the debate to the extent I wished. Members of the Opposition will be aware that my time outside the Chamber was not spent idly. On the contrary, I hope it contributed to a result which can be generally supported.

Hon George Cash: I agree that there has been considerable discussion outside the Chamber during the debate on this matter. I appreciate the manner in which you have assisted us in taking certain advice.

Hon J.M. BERINSON: I thank the Leader of the Opposition for that comment.

I turn first to a matter raised by Hon Peter Foss and, perhaps, by others in my absence. I understand it was based on concerns expressed by the Law Society to the Government as well as to the Opposition that clause 10(2) of the Bill could override the privilege provided by section 20 of the Royal Commissions Act. Firstly, on the advice available to the Government, the effect of the Bill would not be to override the provisions of section 20 of

the Royal Commissions Act. Secondly, it has certainly not been the intention of the Government nor, as I understand it, the Royal Commission, the Director of Public Prosecutions or anyone else, that the privilege provided by section 20 of the Act should be overridden in that way. I interjected on Hon Peter Foss to indicate, as I had previously indicated to the Leader of the Opposition and other Opposition members, that this amendment would be accepted by the Government. I have the Premier's agreement on that.

A second, serious, matter which arose surprisingly late in the day was raised by the Leader of the Opposition in his comment a few moments ago. I must confess some surprise that, given the enormous attention paid by a host of professionals in this field, the problem had not surfaced previously. The Leader of the Opposition pointed out, again quite correctly, that what might be regarded as an analogous problem to that of the Royal Commission Act could arise in respect of papers of the Parliament itself which had been provided to the Royal Commission. There are questions of privilege there and the Leader of the Opposition has put it that that privilege should be preserved. He has added fairly enough that should that prove to create some serious impediment to the work of the DPP, he would expect the Opposition to join with the Government in assisting to overcome that impediment. Nonetheless, the starting point is a recognition of the privilege which those parliamentary papers have and should retain.

Acting on the suggestion of the Leader of the Opposition, I contacted Mr David Wicks, whose title is Principal Solicitor, I think, but he is certainly the solicitor with the general management of the Royal Commission. I asked for an assurance that the parliamentary documents in the current possession of the commission would be returned to the Parliament tomorrow morning. Mr Wicks, through Parliamentary Counsel due to my need to re-enter the Chamber, has provided that assurance. I am further assured by the Deputy Clerk that, acting on the suggestion of Mr Wicks, contact has been made with the documents officer of the Royal Commission who has been advised in response to his previous question as to where those documents should be returned tomorrow morning. I am advised by the Deputy Clerk that they will go to the Clerks of the respective Houses.

I move to other amendments which have been signalled and which I urge the House not to accept. One relates to a proposal by Mr Foss that -

Where a record of the Royal Commission is made to the State for the purposes of civil litigation, then the State shall make a copy of the record available to all other parties to the litigation at the earliest opportunity.

I ask the House to reject that on the grounds of practicality. I am sure that Mr Foss would acknowledge that the process of discovery would ensure that documents in the hands of one party which are required by another -

Hon Peter Foss: I referred to that in my address. You might not have heard.

Hon J.M. BERINSON: I did not and I acknowledge that Mr Foss would have. The practical problem is that - I think it has been the subject of some public comment - although no final count has been made, it is suggested that the Royal Commission holds between two million and three million documents. Theoretically, they could be available, en masse, to the Crown. There would be no point and huge reasons against the provision of those millions of documents to other parties. On the other hand, the processes of the courts would allow documents required by those parties -

Hon Peter Foss: The problem with that is that what is available on discovery is dependent upon what is relevant under the pleadings. As far as the Crown is concerned, it gets all of those documents immediately and from that can formulate its proceedings. What the person on the other side does not know is what other documents there may be that he could then put in his pleadings and make them relevant so as to get them out. They are rarely in the position to find out.

The PRESIDENT: Order! This is not a committee part of a Bill. I suggest in the interests of making some progress that members wait until we get into Committee.

Hon J.M. BERINSON: Okay, I acknowledge there are arguments both ways, but the argument against this amendment is stronger and certainly the Government will oppose it.

Taking your advice, Mr President, I also signal that the amendment listed by Mr Pandal as

new clause 10 will also be opposed by the Government. I believe there are very good reasons for that which I will advance subsequently.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon J.M. Berinson (Attorney General) in charge of the Bill.

Clause 1: Short title -

Hon MAX EVANS: Even since my speech this afternoon, more things have arisen and I am frightened about what might still arise after today's sitting because there has been so little time in which to deal with this matter. We have talked in recent years about the Royal Commission being a lawyer led recovery. If we do not do this right, we could end up with the same problems. My old partner, Sir Charles Court, used to say to his young partners, "If you have important documents to go out, make sure you follow them out yourself." I have worried about this legislation since Monday morning. It has been a litany of disasters one after another. I wonder whether, if I had not kept needling people, it would have come this far. Sir Charles Court used to also say, "Beware of all documents you sign after five o'clock on Friday afternoons, they might hang you." I know it is Thursday -

Hon J.M. Berinson: That is the saving grace.

Hon MAX EVANS: Many legal claims came from documents signed in a rush because the person or his secretary may have wanted to get away. That is when mistakes are made. It is sad that this is one of the most important pieces of legislation ever to come into this place and we are rushing it through at five o'clock on the afternoon of the last sitting day of the week.

God willing, it will go through in a correct form.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Effect of this Act -

Hon PETER FOSS: I move -

Page 2, after line 13 - To insert a new subclause (3) as follows -

(3) Nothing in this Act affects the operation of section 20 of the *Royal Commissions Act 1968*.

Hon J.M. BERINSON: I have already indicated the Government's agreement to this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4: Definitions -

Hon PETER FOSS: During the second reading debate I raised with the Attorney General the reason for the definition of prescribed exhibit because it appears to make a distinction between the effect of clause 10(2) and (3) in that the records in subclause (2) are available in civil litigation whereas those referred to in subclause (3) are available only for prosecution of offences.

Hon J.M. BERINSON: The difference between the two subclauses is that subclause (2) provides that transcript records and prescribed exhibits are available for both the prosecution of offences and the conduct of civil litigation involving the State. The specified areas are those on which, as I understand it, the Crown Solicitor put greatest weight for purposes of civil litigation. Subclause (3) separates civil litigation from the prosecution of offences and makes records indicated by this subclause available for prosecution only.

Hon PETER FOSS: That was an extremely informative answer but it was no more than the preface to my question; I know that is the effect of clause 10(2) and (3). My question was: Why has the Government singled out prescribed exhibits? Why are they to be made

available for civil litigation and why is nothing else to be made available?

Hon J.M. BERINSON: These are matters on which litigation is already under way or is in contemplation.

Hon PETER FOSS: I partly suspected that when I saw clause 11. Why is the Government doing that for litigation already commenced? Has the Government taken the opportunity as the documents have passed by to grab them for its own purposes?

Hon J.M. BERINSON: As has previously been considered, there is no one-sided benefit here. The documents involved in civil litigation which are in the possession of the State would be available to other parties by the process of discovery.

Hon PETER FOSS: The point is that the Government is getting them a lot earlier, which raises another very important matter. Are any of the documents which were submitted to the Royal Commission subject to legal professional privilege on the part of the other party? In other words, is it possible that a document has been made available to the commission for which the party involved would be able to claim some form of privilege in the proceedings, if it were purely in the course of discovery? If not, how can the Attorney say no?

Hon J.M. BERINSON: My understanding is that throughout its proceedings the commission has upheld the claims for legal professional privilege.

Hon PETER FOSS: Is there any other form of privilege to which these documents might be subject?

Hon J.M. BERINSON: I am not aware of any, and in an important sense the question is too hypothetical to respond to more definitely than that.

Hon PETER FOSS: In any litigation referred to, has the stage of discovery been reached or have proceedings already been closed?

Hon J.M. BERINSON: I have played no role in the detail of the litigation and am therefore unable to answer that question from my own knowledge.

Clause put and passed.

Clauses 5 to 9 put and passed.

Clause 10: Availability of records in custody of DPP -

Hon PETER FOSS: I move -

Page 7, after line 15 - To insert a new subclause (4) as follows -

(4) Where a record of the Royal Commission is made available to the State for the purposes of civil litigation, then the State shall make a copy of the record available to all other parties to the litigation at the earliest opportunity.

I have had the opportunity to quickly deal with the question referred to by the Attorney General. My concern is that a considerable advantage is given in having documents earlier rather than later. The process of discovery can be a slow one and it is of considerable benefit to grab all the documents as opposed to waiting for someone to make an affidavit of discovery and then finding out whether the person has left out anything that one thinks should be included. My concern is that the Bill places the Crown in a considerably better position than others. I cannot see why the Crown should be that much better placed than the other parties to the litigation by its having the documents immediately whereas the other parties to the litigation might find that some privilege were claimed against them or that it was decided that the documents were not relevant. That seems to me to be loading the dice very much in favour of the Crown, and I wonder whether there is any other way in which we could modify the wording so as to restrict it. We have already restricted it because it will apply only to documents relating to items 1.1, 1.2, 1.3 or 1.4 of paragraph 1 of the terms of reference and not to all of the documents. Is there any way in which we can restrict this so as to overcome the problems that are envisaged? I am concerned that the Crown could take the opportunity, while the documents were passing by, to grab some for itself, and leave the other parties to wait until such time as the discovery process made available the documents.

Hon J.M. BERINSON: I have indicated already that there are some considerations either way, but the Government is firmly of the view that the provisions established in the Bill should be maintained.

Division

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 Noes.

Division resulted as follows -

Ayes (13)

Hon J.N. Caldwell
Hon George Cash
Hon E.J. Charlton
Hon Reg Davies
Hon Max Evans

Hon Peter Foss
Hon Barry House
Hon P.H. Lockyer
Hon N.F. Moore
Hon P.G. Pendal

Hon R.G. Pike
Hon D.J. Wordsworth
Hon Margaret McAleer
(Teller)

Noes (12)

Hon J.M. Berinson
Hon T.G. Butler
Hon Cheryl Davenport
Hon Graham Edwards
Hon John Halden

Hon Tom Helm
Hon B.L. Jones
Hon Garry Kelly
Hon Sam Piantadosi
Hon Tom Stephens

Hon Bob Thomas
Hon Fred McKenzie
(Teller)

Pairs

Hon Muriel Patterson
Hon Derrick Tomlinson
Hon W.N. Stretch
Hon Murray Montgomery

Hon Kim Chance
Hon Mark Nevill
Hon Doug Wenn
Hon Kay Hallahan

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 11 to 15 put and passed.

New clause 10 -

Hon P.G. PENDAL: I move -

Page 7, after line 4 - To insert the following new clause -

10. (1) Notwithstanding sections 7, 8 or 9 the Royal Commission shall not exercise a discretion to destroy a record unless it has first consulted the State Archivist and obtained the consent of the State Archivist to that destruction.
- (2) In the event the State Archivist refuses or fails to consent the Royal Commission may refer the matter to the Standing Committee on Public Records established by the Library Board whose decision shall be final.

I gave a full explanation of this amendment during the second reading debate. I am disappointed, to say the least, that the Attorney General made no effort to respond to the points that I made, other than to say that he would oppose this amendment. In any case, as Hon Peter Foss has just reminded me, it would have been pretty difficult for the Attorney General to have heard the argument.

Hon Peter Foss: I am sure he would have been convinced had he heard it.

Hon P.G. PENDAL: Exactly. I want to put to members of the Committee a couple of questions which are relevant to what we are debating here. It is an insult that we are being asked to shove through a Bill 17 hours after it went through the other place, and members opposite sit there like lambs, and the Attorney General is speaking on the blasted telephone! This is one of the most important Bills that we shall deal with this session. The first question I ask is: Why are we departing from the provisions of the existing law? We have been given no reason why State Archives -

Hon J.M. Berinson: To provide additional assistance to the Director of Public Prosecutions.

Hon P.G. PENDAL: No. The additional assistance to the DPP will not be affected by our setting aside the provisions of the existing law, and the Attorney General knows it. There is something at the bottom of this. The Government either does not trust State Archives -

Hon J.M. Berinson: Rubbish! You do not know what you are talking about.

Hon P.G. PENDAL: Then the Attorney General can vote for this amendment.

Hon J.M. Berinson: That will be the day!

Hon P.G. PENDAL: Exactly. Had we been dealing with the Financial Administration and Audit Act, we would have been asked to set aside the provisions of that Act, and would not members have wanted to ask why we were being asked to do that? The Attorney General has gone away again!

The CHAIRMAN: Order!

Hon P.G. PENDAL: Mr Chairman, it is no good your shouting "order" to me when the person responsible for the debate is not present. Is not that reasonable?

The CHAIRMAN: Order! I must respond to your retort: Is that not reasonable? We are in a bit of procedural difficulty here, and I assume that discussions are being held behind the Chair in respect of that matter.

Hon P.G. PENDAL: It has been suggested to me that I move that we report progress and seek leave to sit again. I understand that is only to permit the Attorney General to move subsequently that we extend the hours of this sitting, because notwithstanding the inconvenience to other members and to me, this matter is too important to be let go.

Progress

Progress reported and leave given to sit again at a later stage of the sitting, on motion by Hon P.G. Pendal.

[Continued on p 5809.]

SITTINGS OF THE COUNCIL - EXTENDED BEYOND 6.00 PM

HON J.M. BERINSON (North Metropolitan - Leader of the House) [5.29 pm]: I move without notice -

That the House continue to sit beyond 6.00 pm for the conclusion of consideration of the Royal Commission (Custody of Records) Bill, including any message from the Legislative Assembly.

The **PRESIDENT**: I do not have a copy of the motion but I take it that all members understood the motion.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [5.30 pm]: I second the motion, but by way of clarification, as I also do not have a copy of the motion, I want it made clear that the motion does not provide for the Legislative Council to sit through the dinner suspension and, as per Standing Orders, we will rise at 6.00 pm and resume at 7.30 pm.

The **PRESIDENT**: That is correct. The motion does not require us to do that because all the motion does is permit the House to sit beyond six o'clock. In the normal course of events, we rise for dinner and that is what we will be doing tonight.

HON P.G. PENDAL (South Metropolitan) [5.31 pm]: I seek some guidance from you, Mr President. I ask myself why it is that we are not to sit beyond 6.00 pm and 7.30 pm, because it may well be that the matter can be disposed of. I do not know about other members but I would prefer to sit between 6.00 pm and 7.30 pm and dispose of the matter by 6.10 pm - if sense prevails on the Government side - rather than come back at 7.30 pm; that would be a matter of inconvenience to members and require some form of amendment. I would be happy to move it.

HON GARRY KELLY (South Metropolitan) [5.32 pm]: The motion specifies certain items of business. Would that preclude the tabling of reports?

The PRESIDENT: I am advised that it would not.

HON R.G. PIKE (North Metropolitan) [5.33 pm]: It is my clear understanding that at least two members have commitments; one has to catch a plane. Therefore, if it is possible, a motion should be moved and passed in such a way that the House continues to sit until the despatch of the matter before it. To rise for dinner and come back at 7.30 pm will seriously inconvenience some members.

The PRESIDENT: The motion that has been moved and seconded does not provide for what the member is specifically asking. If subsequent to the passage of this motion someone wanted to move another motion, I would be prepared to listen. In the meantime this motion simply provides the requirement for the House to proceed after six o'clock, which our Standing Orders now prevent. The Leader of the House has taken the action that is needed to allow us to come back after six o'clock. In the normal course of events this House adjourns for dinner. I would want an entirely different motion from a member afterwards if that is what the House wants to do.

Question put and passed.

Hon R.G. PIKE: I propose to move that so much of Standing Orders be suspended as to enable -

The PRESIDENT: Order! You do not need to suspend any Standing Order, because the decision when we knock off for dinner is a decision that I make. I would want to hear a substantial reason why I should not do what I normally do.

MOTION

Dinner Adjournment - House to Continue Sitting

HON R.G. PIKE (North Metropolitan) [5.35 pm]: I move without notice -

That the House continue to sit during the dinner adjournment.

The PRESIDENT: The question is that the motion be agreed to.

Hon J.M. Berinson: I am sorry, Mr President, I was distracted.

The PRESIDENT: It has been moved and seconded that the House sit through the dinner adjournment. The House has agreed that we sit beyond six o'clock. That means we can sit until 12 o'clock tonight, if members like; but they will be pretty lonely. The motion moved by Hon Bob Pike simply relates to the normal dinner adjournment. His motion says that we do not adjourn for dinner. That seems simple to me.

HON J.M. BERINSON (North Metropolitan - Leader of the House) [5.36 pm]: I have no objection to the motion but make it clear so that none of us leaves prematurely that, whether or not we sit beyond six o'clock, my original motion related to the need to sit until we concluded our consideration of this Bill, including receiving a message from the Legislative Assembly. I am attempting to get the Assembly to sit through dinner time but I do not know whether we can do it. Among other things, when I try to make that arrangement Mr Pandal complains that I am on the telephone. Be that as it may, as long as it is understood that we are not free to leave simply on the initial passage of this Bill, I have no objection to the motion.

The PRESIDENT: That is normally part of the passage of the Bill, and that has been agreed to. The problem raised by the Leader of the House will not occur, but that is not to say some people might not understand that it will not.

Question put and passed.

[Questions without notice taken.]

ROYAL COMMISSION (CUSTODY OF RECORDS) BILL

Committee

Resumed from an earlier stage. The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon J.M. Berinson (Attorney General) in charge of the Bill.

New clause 10 -

Progress was reported after the new clause had been partly considered.

Hon P.G. PENDAL: Before questions without notice I was asking a series of questions. Firstly, why are we departing from existing law? Secondly, why are we so happy to set aside the archival equivalent of the Financial Administration and Audit Act? Thirdly, why are we overriding section 33 of the Library Board of Western Australia Act, the statutory method by which archival documents are destroyed? Fourthly, why are we overlooking the very powerful secrecy provisions contained in section 32 of that Act? They allow for the matters which the Government is trying to address; section 32 meets that. We are not dealing with records that are owned by judges; they are public records and, therefore, are entitled to be assessed by the archivist, who may or may not recommend that they become part of the archives. Finally, why must all other people in the public domain abide by the provisions of this Bill except people associated with the Royal Commission, including the Royal Commissioners? If ever anything sounded like discrimination or preferential treatment, this is it.

Hon PETER FOSS: I refer to another point made by Hon Phillip Pendal about why is it so important that all members of the Chamber participate in and listen to the debate. I have always taken the attitude that in this Chamber members do seriously consider every argument and do change their minds dependent on arguments put forward. I realise that in many cases, due to party decisions, it may seem that it is a somewhat empty process; however, I never accept that. The Opposition as a party has not had the opportunity to consider this Bill and is labouring hard to make sure that it does the right thing and explains to the Government why it thinks that is the right thing. However, it is galling when the Opposition has carefully reasoned arguments, such as that put forward by Hon Phillip Pendal in the second reading debate and as he is making now, for members opposite not to listen to him. Why do we bother to have a Parliament? I do not believe the Attorney General is in the Chamber with riding orders about what he should agree to. He is, I hope, seriously considering what amendments should be made, but he is not listening to the very coherent arguments. How can he sensibly make a decision on them? It seems that Opposition members are the only members who are taking this matter seriously and working on their arguments. While they are making their arguments the people who should be listening to them have been attending to something else.

Hon J.M. Berinson: Not attending to something else; we have been attending to this very problem.

Hon PETER FOSS: This is the Parliament and the Opposition believes this is where we should argue the matter. We are back bench members of the Opposition in the upper House; members cannot get much further down the decision making process than that. The only real opportunity we get to put our arguments on the record and try to persuade other members is when we speak here. It might seem to a person in Government, with all the majesty of being a Minister, that there are more important things for members to be doing. However, to us, that is what matters and this is where we have our opportunity to influence the way in which our State is run. That is what the Royal Commission told us we should be doing. We are trying to do that, and to persuade members opposite that we have the right arguments. The Government may be looking at the same matter but it is not attending to our arguments. Our arguments are important and deserve to be listened to. Frankly, if Government members had heard Mr Pendal's argument we would not be arguing any further about it now, because it is irrefutable.

Hon J.M. BERINSON: It is a great shame to observe the way this debate has gone. Hon Peter Foss talks about irrefutable arguments, but they are not irrefutable at all. Indeed, what we observed when the last amendment was carried was the use of numbers, huff and puff, indignation -

Hon Peter Foss: You did not even answer my question.

Hon J.M. BERINSON: - and no attention given to the enormous practical difficulties to which I referred in my reply to the second reading debate.

Hon P.G. Pendal: How would you know?

Hon J.M. BERINSON: Perhaps the member was not in the Chamber then.

Hon P.G. Pental: I was, and you did not address that clause. You were absent.

Hon J.M. BERINSON: I know that Hon Phillip Pental loves big noting himself; however, he is way out of line and does not know what he is talking about.

The CHAIRMAN: Order!

Hon P.G. Pental: You are covering up again. You have refused repeatedly -

The CHAIRMAN: Order!

Hon J.M. BERINSON: I repeat that I regret the course that this debate has taken. I have clearly acknowledged the problems of the process with which we have been faced. However, the Government has approached this matter seriously and with a view to achieving the best possible solution, not the solution that will allow Mr Foss or Mr Pental to blow out their chests and say, "See that? We have passed another amendment." What is new about the Opposition passing an amendment in this place? What satisfaction is there to that if, along the way, we then find huge practical difficulties and difficulties in principle arising because of the propensity of members opposite to keep pushing their weight around and having their views prevail no matter what the merits of a position?

Hon P.G. Pental: What a joke.

Hon J.M. BERINSON: Hon Phillip Pental, who just said "what a joke" and who could well have been referring to himself with that short comment, started by asking -

Hon P.G. Pental: I was referring to you. Bevan Lawrence is right, you should resign.

Hon J.M. BERINSON: I think he might be getting hungry. He really wants to take this dinner break, although a few minutes ago he said that he was happy to stay here until midnight. However, now he wants to go and have his din-dins. Off you go Phil; have a bit of nourishment! When he comes back he might contribute a bit more sensibly to the debate.

Several members interjected.

The CHAIRMAN: Order! Members have agreed to sit beyond 6.00 pm and through the dinner break, but I do not think they should become martyrs to the cause.

Hon J.M. BERINSON: The basic question asked by Mr Pental is, why are we departing from the existing law? I think I am right in saying that the existing law to which he refers is the Royal Commission Act.

Hon P.G. Pental: You weren't here. No; I am referring to the Library Board of Western Australia Act.

Hon J.M. BERINSON: That is worse. I refer not only to the Library Board of Western Australia Act but also to the Royal Commission Act. We are departing from the existing law to strengthen the position of the Director of Public Prosecutions. That is why we are doing this. Without this piece of -

Hon P.G. Pental: We passed that bit.

The CHAIRMAN: Order! I suggest that members listen to the explanation. We are in Committee and they are each allowed to speak for 10 minutes.

Hon J.M. BERINSON: We are proceeding with this special piece of legislation to strengthen the position of the Director of Public Prosecutions. As I indicated in the second reading speech, in the absence of this Bill, for example, persons whose documents had been seized would be entitled to have them returned without their being available to the DPP. That would be to the considerable disadvantage of the DPP. This Act provides a special rule arising from the special circumstances of this Royal Commission. That is why we have introduced it. We must strengthen the position of the DPP. In that respect, we are following the pattern which was proposed by the original Bill presented by Hon Max Evans. The major difference between his approach and ours is that it has been put strongly by the commissioners, and it is a highly relevant argument, that there are questions of procedural fairness.

Earlier today - there is no secret about this - people in this House were ready to go to the barricades - as it happened I agreed with them - and have no Bill at all rather than see the legitimate rights protected by the Royal Commission Act overridden; they would rather have

had no Bill at all. The Royal Commission Act is not the only source of provisions for fairness to people who are being dealt with. There are other considerations and among those have been the considerations raised by the Royal Commissioners that people to whom they have given assurances of confidentiality in circumstances where the material or the evidence could well have been withheld otherwise from the Royal Commission should be protected.

As well as that, the Royal Commissioners have indicated that other material - this is a very narrow scope - in their opinion should not be retained. The main category of documents involved there are what are referred to as their working documents. The Royal Commissioners have pointed out that access to those documents could not only lead people to entirely wrong conclusions about the affairs of the Royal Commission and the matters they were dealing with, but they could be entirely misled and that could lead to very great injustice. That is not the argument which the Government raised; I have made that patently clear. The Government has raised no argument at all on those matters. Their origin is with the Royal Commission. This is another example of these people on the opposite side of the House who are full of expressions of respect for the Royal Commission and for the Royal Commissioners but will not respect them to the extent of respecting the very strong opinions they have expressed.

Hon Peter Foss: You are too servile to them.

Hon J.M. BERINSON: Oh, now we are too servile; that is a fairly predictable comment. Mr Foss is ready to stand up against the world. He has expressed his views on just about everyone else in this State before, ranging from judges to masters and legal officers. He has been free in his condemnation of them all.

The CHAIRMAN: Order! I remind members, particularly Mr Foss, that we are in Committee. There is nothing to stop members for speaking for a full 10 minutes if that is their wish.

Hon J.M. BERINSON: At the end of the day, we are presented by Mr Pental's amendment with a contest. The contest is between the views of the Royal Commissioners on the propriety of maintaining certain records and the views, first of all of the State Archivist and, if there is still disagreement, of the Library Board. In other words, Mr Pental, because he has more of an interest in archives than Royal Commissions, is saying that that is where our primary concern ought to be, irrespective of the concerns based on fairness and propriety which the Royal Commissioners bring to bear on matters where they are expert and where neither the archivist, the Library Board and certainly not Mr Pental have any expertise at all. That is not a reasonable contest! That is a contest between commissioners applying proper procedural fairness to the matters and the people with whom they have dealt versus an archivist who has entirely different considerations in mind and does not have the responsibility of caring about whether, in the course of that, entirely wrong, misleading, mischievous and unjust conclusions might be drawn by some people with access eventually to that material.

Mr Pental asked a second major question: Why are the Royal Commissioners given special treatment? The answer is that they are not being given special treatment at all. It is not as though this Bill exempts them from acting in a certain way in which they otherwise would be obliged to act; the contrary is true. The trouble is that Mr Pental proceeds on the basis that all the material of the Royal Commission has to be made available to the archives. That is wrong.

Hon P.G. Pental: Say that again?

Hon J.M. BERINSON: I said that Mr Pental is proceeding on the basis that, under the current rules, all the material of the Royal Commission would be required to be made available for archival purposes under the Library Board of Western Australia Act.

Hon P.G. Pental: I did not say that at all.

Hon J.M. BERINSON: What did the member say?

Hon P.G. Pental: I have said it five times, Mr Berinson. If you do not have the drift -

Hon J.M. BERINSON: Well, say it again.

Hon P.G. Pental: Sit down and I will tell you.

Hon J.M. BERINSON: Go ahead.

Hon P.G. PENDAL: That proves my point. If the man is not on the telephone, he is in the passageway or talking to somebody 50 metres away. I will tell him what I am saying. When every other person in the public domain on the public payroll is confronted with the prospect of what to do with records that have become non-current, those records become the subject of the Library Board of Western Australia Act. However, this Government does not propose that the Royal Commissioners be subject to the same Act and it wants to introduce new rules that will apply to them only.

Hon J.M. Berinson: Now sit down and I will tell you where you were wrong all six times.

Hon P.G. PENDAL: Just a second. The Attorney General, through this Bill, wants to give the Royal Commissioners the power to decide whether certain documents will be destroyed. I say that they do not have that entitlement. Everyone else in the public domain, Ministers of the Crown, public servants, -

Hon Peter Foss: Where Government moneys are used to produce documents.

Hon P.G. PENDAL: That is my point; that is what makes it a public record. Those people are subject to the Library Board of Western Australia Act. However, under this legislation, the Royal Commissioners will not be subject to that Act. I do not care how eminent in the law they are; I am not as servile to them, to use Mr Foss's words, on the issue of archival material as is the Attorney General. I am happy to accept their judgments on the law. However, frankly, they do not know anything more about the cultural and archival value of that material than does the bloke who sits at the front door of this place. That is the reason I am saying the Government is trying to bring in new laws simply to accommodate the Royal Commissioners. The Royal Commissioners, like everyone else, should be made to obey the current laws.

Hon J.M. BERINSON: Hon Phillip Pendal repeated himself for the sixth time according to his own count and in that case he is wrong for the sixth time. His fundamental error is that he proceeds on the basis that if not for this Bill the records of the Royal Commission would be subject to the Library Board of Western Australia Act, and that is not so. He had the benefit of advice from the Solicitor General and he will know from that advice that records of Royal Commissions, not only this Royal Commission but any Royal Commission, are not public records for the purpose of the Library Board Act.

Hon Peter Foss: And they should be.

Hon J.M. BERINSON: Now we are coming to it. A minute ago Hon Phillip Pendal was saying the Government was seeking to change the law from one which makes them subject to the Library Board Act to something different and now Hon Peter Foss has given the game away. He says we need to change the law in order to achieve the position which Hon Phillip Pendal has said we have always had. Which of these two geniuses will we follow?

Several members interjected.

The CHAIRMAN: Order! If members wish to make a contribution to this debate they are at liberty to do so. I ask members to cease interjecting.

Hon J.M. BERINSON: There is no question about the present Royal Commissioners being given preferential treatment.

Hon P.G. Pendal: Then agree to my amendment and prove the point.

Hon J.M. BERINSON: Of course I will not agree to the amendment, because it is wrong in principle. This Bill is required because, in general, it is accepted that a Royal Commission should have the discretion with the return of material to people from whom it has been received and with which material should be retained or disposed of. That is the present rule, it has always been the rule and there has been no argument against that rule. All of a sudden, because we are trying to strengthen the position in order to strengthen the position of the Director of Public Prosecutions, Hon Phillip Pendal says we are not strengthening it enough and it does not matter what other considerations have previously justified the freedom of Royal Commission records from the full effect of the library Act; none of that matters.

Hon Phillip Pendal has had a brilliant idea and he has Hon Peter Foss on his side. The numbers are on the opposite side of the Chamber and the Opposition will continue with its

amendment. It is an entirely irresponsible exercise in an area which, above all, demands proper responsibility and respect, not for individuals and not in any servile way, for the principles that the individuals are attempting to preserve. That is what the Bill does and that is what this amendment directly attacks.

Hon REG DAVIES: The amendment is simple and I support it. It asks that before any of the records of the Royal Commission are destroyed that the State Archivist is given the opportunity to examine them to determine whether they are of any worth. The historians will look with interest, and for a long time, at this period of Western Australia's history.

Hon J.M. Berinson: The working documents are not of that nature and that is why the Royal Commission draws that distinction.

Hon REG DAVIES: I am sure the commissioners and the archivist will decide what is in the best interests of the State. We are not talking about people who want to grab records for some ulterior motive.

I take this opportunity to set the record straight. The Attorney General is always talking about the numbers in this House. I sometimes exercise my democratic right and listen to debates in this case before I vote. I have had discussions on this Bill, albeit very brief, with the Attorney General, members of the Opposition and advisers to the Government. I was standing in the hallway having a cigarette while I was listening to Hon George Cash's speech earlier today and the Attorney General walked past me and said, "Are you aware we are accepting the Opposition's amendments", and he walked back into the Chamber.

Hon J.M. Berinson: I said "amendment".

Hon REG DAVIES: The Attorney General then came into this place and abused me because I voted with the Opposition on the amendment.

Hon J.M. Berinson: We should not get into corridor chatter, but you expressed an interest in preserving the Royal Commissions Act and I indicated we were accepting the amendment which met that.

Hon REG DAVIES: I support this Bill and the historical significance of the Royal Commission's workings. These documents are not documents of the State until they are handed to the Government. Until this Bill is passed I suggest the Royal Commissioners have a right to destroy any of their confidential workings.

Hon J.M. Berinson: But they have deliberately not done that.

Hon REG DAVIES: If the information is sensitive and is not in the best interests of the State -

Hon J.M. Berinson: You are inviting them to destroy the documents.

Hon REG DAVIES: I support the Bill and I take offence at the comments that I am part of a numbers scheme.

Hon D.J. WORDSWORTH: I would like the Attorney General to cool down and explain to the Committee what these confidential documents are. What has happened with documents from previous Royal Commissions? Why was material from previous Royal Commissions not handed to the archives? If the Attorney General answers my questions we might be able to reach a conclusion.

Hon J.M. BERINSON: The first thing I want to say, which will not make any difference to the votes which have been taken and those that will be taken, is that there was certainly no intention on my part to insult Hon Reg Davies. I indicated to him that the Government was accepting the Opposition's amendment which preserved the privilege of section 20 of the Royal Commission Act. I advised him of that because I was aware that that was an issue in which he had an interest.

I take Hon David Wordsworth's suggestion at face value and it does involve some repetition of what has been said. The position has always been that the material of a Royal Commission is at the discretion of the Royal Commission during its life in respect of retention, disposal, return to various parties or destruction. That has always been the case. There has been no obligation on a Royal Commission as such to either provide this material directly to the archives or to preserve any particular material for the archives.

Hon P.G. Pental: We agree on that much.

Hon J.M. BERINSON: That has always been the position.

Hon D.J. Wordsworth: Why is that the case?

Hon J.M. BERINSON: There are a number of reasons. With certain material, such as seized documents, people have the right to have them returned after the purpose of the subpoena under which they have been seized has been served. We are cutting across that in this Bill so that even documents that have been seized are not amenable to a claim for return, but must go to the DPP.

Hon D.J. Wordsworth: Then what?

Hon J.M. BERINSON: At the end of the DPP period we are providing that they go to the archives, but that applies only to this Royal Commission. It is not an amendment to the general structure of Royal Commission procedures, but is a recognition of the highly significant and special circumstances attached to this Royal Commission in particular.

Hon D.J. Wordsworth: Is it the proportion of the papers that the commission considers are important for the charges to be laid?

Hon J.M. BERINSON: No, all papers which may have any relevance.

Hon P.G. Pental: Not all papers are to be sent to the DPP.

Hon J.M. BERINSON: All that would be of relevance to the DPP, whether or not used for prosecution. In those circumstances there are documents which are to be made available to the Crown for civil purposes which would not otherwise be available in this way. The major category that the commission has sought to have removed from the retention requirements is material which is invariably destroyed by Royal Commissions; that is, its working documents. It is not material which is necessary for conclusions. It may be mere speculation at various times, but mere speculation which in five or 10 years, if made available, could give a very damaging and entirely wrong impression to a researcher. It is possible in theory to protect against that by having the commission label every such document; for example, "This document has references which the commission rejected as untenable." However, one cannot realistically expect it to do that sort of job when it is dealing with two to three million pieces of paper. The Royal Commission has accordingly said that those documents which are not conclusive of anything but, on the contrary, could give a very wrong and misleading and, at the same time, damaging impression, should be left to it to destroy if it believes that is the appropriate way to go. That is the main provision. There are other lesser provisions which relate to undertakings by the Royal Commission that material would be held confidential. As I indicated in the second reading speech, the Royal Commissioners pointed out that although they have a capacity to subpoena documents, it does not apply outside Australia. Similarly, they have not been able necessarily to demand evidence of certain kinds. In a number of cases apparently - I do not have the details precisely because it was dealt with in camera and confidentially - the commission has given assurances of confidentiality. It did so not only in good faith but also on the basis of the established law. No-one ever questioned that it had that capacity.

Hon D.J. Wordsworth: It seems there are five different grades of papers.

Hon J.M. BERINSON: There is a considerable range but the vast majority of them will be made available to the DPP and/or the archives. The proportion the commissioners still would like left to their discretion, after this very lengthy process of negotiation with the Solicitor General and the DPP, is a relatively small part of the whole. However, to the commission it is an important part, and it is important in principle. If, in some way, I have not so far been able to indicate clearly enough the cause of the commissioners' concern, that is my problem and my responsibility but not theirs. I believe that their submissions and undertakings in good faith should not be cut across in the way that this amendment would do.

Hon GEORGE CASH: As I read Hon Phillip Pental's amendment, and after listening to his comments, it seems he is keen to ensure that no documents are destroyed.

Hon P.G. Pental: Until assessed by the State Archives.

Hon GEORGE CASH: He does not want documents to be destroyed until after they have been assessed. For the last hour or so the Attorney General has not been arguing that no

document should be destroyed, but that the State Archivist should not be a party to the assessment of those documents.

Hon J.M. Berinson: I stress that I am not arguing about his being a party but about the Library Board rather than the commissioners being the final arbiter.

Hon GEORGE CASH: I take back the point that the Attorney General objected to the State Archivist being a party to the matter. His objection is to its role as the final arbiter. If the amendment were to stand alone, perhaps the Attorney General could advance the argument that he does not have confidence in the standing committee on public records established by the Library Board. If he argued that point, the Committee could decide whether it agreed with the argument. However, the amendment should be read in conjunction with other clauses of the Bill - specifically clause 11 which deals with the disposal of records in the custody of the DPP and sets out certain provisions to enable the DPP in due course to dispose of certain documents. If the Attorney General be so keen that the standing committee on public records should not play a part in determining the classification of certain documents, it seems that the Royal Commission could, in fact, grant custody of all the documents to the DPP. Under clause 11 the Director of Public Prosecutions would make a determination whether civil or criminal proceedings were likely to be instituted in relation to the events the subject of the terms of reference if they had been completed; that is to say, the DPP could also determine that no civil or criminal proceedings were likely and as such custody of the documents was no longer required. There are also provisions that allow the DPP to dispose of the documents in accordance with clause 11. Some of them are able to be transferred to the custody of the Library Board and others could be disposed of in some other way.

Hon J.M. Berinson: Not by destruction. I see no capacity in the DPP to destroy any document.

Hon GEORGE CASH: My point is that the DPP, under clause 11, has the right to dispose of a record so long as he is satisfied it is not needed for any civil or criminal proceeding. He has the right to dispose of the record or release it to any person who appears to him to be entitled to possession of it.

Hon J.M. Berinson: There would be no particular person entitled to possession.

Hon GEORGE CASH: I take the Attorney General's point. However, much of the documentation could be disposed of, particularly the internal documents the Attorney General is so concerned about.

Hon J.M. Berinson: Which the commission is so concerned about; I keep stressing that.

Hon GEORGE CASH: I say that if a problem arises with Mr Pandal's amendment it seems to me the course of action that can be taken is for the DPP to retain custody of the documents.

Hon J.M. Berinson: He cannot.

Hon GEORGE CASH: Why? If all the documents are transferred to him, it is up to the DPP to decide when he believes they are no longer necessary.

Hon J.M. Berinson: That only applies to parts A to D of section 112 and does not apply to the generality.

Hon GEORGE CASH: The fact is that custody can reside in the DPP. If he wants to dispose of certain documents he certainly starts looking at the other provisions of that clause.

Hon J.M. Berinson: They will not cover the Royal Commission's working documents.

Hon GEORGE CASH: In that case, the DPP has custody of the documents. Does the Attorney General agree we can give custody of all the documents to the DPP? I invite the Attorney General to work through that process because it seems to me that as much as he does not want the standing committee on public records to have any interest at all -

Hon J.M. Berinson: This is not a proposition - that they have some input with the commission making a final determination.

Hon GEORGE CASH: I will rephrase it; that the standing committee on public records not be the final arbiter.

Hon J.M. Berinson: That is right.

Hon GEORGE CASH: It seems to me that there are other provisions of the Bill that could be used to avoid that committee's becoming involved.

Hon J.M. BERINSON: First, there are not. Secondly, a major part of this whole question has arisen from the view of the Royal Commission that certain material should not go to the DPP.

Division

New clause put and a division called for.

Bells rung and the Committee divided.

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

Division resulted as follows -

Ayes (12)

Hon J.N. Caldwell
Hon George Cash
Hon Reg Davies
Hon Max Evans
Hon Peter Foss

Hon Barry House
Hon P.H. Lockyer
Hon N.F. Moore
Hon P.G. Pendal
Hon R.G. Pike

Hon D.J. Wordsworth
Hon Margaret McAleer
(Teller)

Noes (11)

Hon J.M. Berinson
Hon T.G. Butler
Hon Cheryl Davenport
Hon Graham Edwards

Hon John Halden
Hon Tom Helm
Hon B.L. Jones
Hon Garry Kelly

Hon Sam Piantadosi
Hon Tom Stephens
Hon Fred McKenzie
(Teller)

Pairs

Hon Muriel Patterson
Hon Derrick Tomlinson
Hon W.N. Stretch
Hon E.J. Charlton
Hon Murray Montgomery

Hon Kim Chance
Hon Mark Nevill
Hon Doug Wenn
Hon Kay Hallahan
Hon Bob Thomas

New clause thus passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [6.38 pm]: I move -

That the Bill be now read a third time.

As members know this is mainly a procedural question so I will not detain the House on this matter. Nonetheless, the least I can do is to again express my great concern at the approach taken to this important piece of legislation and the way in which the very serious concerns of the Royal Commission have been entirely rejected. That is a bad way to go. I hope that even at this late stage some members of this House may be prepared to again consider the implications of the direction we have taken.

HON P.G. PENDAL (South Metropolitan) [6.40 pm]: I will be as brief as the Attorney General and leave this final request with members: I ask members to set aside what the Attorney General said about what the Royal Commissioners want because what is more important than what the Royal Commissioners want is that this Parliament do the job of scrutiny which it was criticised as recently as two days ago for not doing.

Hon J.M. Berinson: Does fairness not count?

Hon P.G. PENDAL: Fairness has been achieved today by the inclusion of new clause 10, because the new powers of the Director of Public Prosecutions that Hon Joe Berinson stated

he wanted to see strengthened have been strengthened. We have agreed to do that. However, we do not strengthen the powers of the DPP by weakening the powers of the State Archivist, and we have achieved both of those objectives today.

HON PETER FOSS (East Metropolitan) [6.41 pm]: The Bill should be passed in its present form because it has had some consideration from this House. I know that I sat in this House and listened to the arguments; I know that I stood in this House and argued in favour of the amendments that were made; and I know that the arguments put by the Royal Commissioners were listened to, thought about and dealt with. I am not so certain that the arguments that were put forward by Hon Phil Pandal, Hon Reg Davies, Hon George Cash, Hon David Wordsworth and me were thought about by the people who listened to them. They are important arguments, and I hope those members who did not listen to those arguments in the House will take the opportunity to read them.

HON TOM STEPHENS (Mining and Pastoral - Parliamentary Secretary) [6.42 pm]: It is the nature of the life of a member of Parliament that one has the opportunity of hearing arguments that are sometimes put for the first time, and one has to try to listen to those arguments and make decisions about them on the basis of what are sometimes short time frames. It is ironic that in the context of a debate about a Royal Commission which has criticised this Parliament and my colleagues who have formed a Cabinet and who are Government members because at times they appeared to make the wrong decision when under pressure and had to evaluate issues in the light of the available information, we are now faced with exactly the situation with which we on this side of the House have been faced many times over the last 10 years.

Hon P.G. Pandal: The difference is that we protested and you did not.

Hon TOM STEPHENS: The difference is that we heard the information, and we listened to all of the arguments within the constraints of the time frames that we had available to us on previous occasions and also on this occasion. It is ironic that, as I understand it, the pressure on this occasion is coming from the very Royal Commission that criticised this Government for its previous decisions that were made by accepting those time frames. We are now accepting another time frame, and on the basis of the information that is available to us and of the time frame with which we are faced, we are making decisions, be they right or wrong, but to the best of our ability.

Hon D.J. Wordsworth: Hon Max Evans tried to get this Bill before us months ago.

Hon George Cash: Exactly. Hon Max Evans should be given great credit for coming before this Parliament months ago and stating that we must do something about the custody of these documents.

Hon TOM STEPHENS: That is a good point. However, what we have before us now is a Bill that we must debate within a short time frame, and members on both sides of the House, with the exception of the point that members opposite have argued out with the Attorney General, have tried to address themselves to this issue to the best of their ability and have made decisions within a short time frame, as happened frequently to those of us on this side of the House, both in Cabinet and in Caucus. I hope the irony of this situation is not lost on the Royal Commissioners.

HON D.J. WORDSWORTH (Agricultural) [6.44 pm]: It would simplify the argument to state that the House had to choose whether to have documents destroyed or not destroyed, and it chose to have them not destroyed.

Opposition members: Hear, hear!

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.

STANDING COMMITTEE ON LEGISLATION

Port Kennedy Development Agreement Bill Report - Report Tabling, Extension of Time

HON GARRY KELLY (South Metropolitan) [6.45 pm]: I present a report from the Standing Committee on Legislation. The Standing Committee has resolved that it is not possible to table its report on the Port Kennedy Development Agreement Bill 1992 at this

day's sitting. The committee is mindful that this report is awaited with considerable interest, and advises that although the report is essentially completed it has not had adequate time to check the contents for inaccuracies. The committee does not wish to bring the House into disrepute by tabling an inaccurate report, merely for the sake of a few days. The committee recommends that in lieu of presenting the report on the Port Kennedy Development Agreement Bill 1992 at this day's sitting, the chairman be authorised to present the report to the President on or before Wednesday, 28 October, and that upon receipt of that report the President be authorised to publish it and, therefore, the report be deemed to be tabled and ordered to be printed. I move -

That the report do lie upon the Table and be adopted and agreed to.

Question put and passed. [See paper No 475.]

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Interim Report No 3 - Report Tabling

HON N.F. MOORE (Mining and Pastoral) [6.46 pm]: I am directed to present Standing Committee on Government Agencies' interim report No 3, titled The Identification and Parliamentary Oversight of Government Agencies, concerning the establishment, role and scrutiny of Government agencies. I move -

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

Question put and passed.

[See paper No 476.]

Hon N.F. MOORE: I seek leave to table the documents listed in appendix 2 of the report.

Leave granted. [See paper No 479.]

SELECT COMMITTEE ON PROFESSIONAL AND OTHER OCCUPATIONAL LIABILITY

Report Tabling - Extension of Time

HON MAX EVANS (North Metropolitan) [6.47 pm]: I am directed to report that the Select Committee on Professional and Other Occupational Liability requests that the date fixed for the presentation of its report be extended from 22 October 1992 to 26 November 1992. I move -

That the report do lie upon the Table and be adopted and agreed to.

Question put and passed. [See paper No 477.]

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Report Tabling - Extension of Time

HON MAX EVANS (North Metropolitan) [6.48 pm]: The Standing Committee on Estimates and Financial Operations conducted its hearings of the 1992-93 Estimates of Expenditure during last week and reviewed the Legislative Council budget this morning. Consequently, it has not been possible for the committee to complete its consideration of all the Estimates within the time specified by its terms of reference. It therefore seeks an extension of time within which to report to Thursday, 12 November 1992. I move -

That the report do lie upon the Table and be adopted and agreed to.

Question put and passed. [See paper No 478.]

MOTION - SITTING SUSPENSION

HON J.M. BERINSON (North Metropolitan - Leader of the House) [6.48 pm]: Mr President, after some brief discussion with other members, it was suggested that it might be desirable for you to leave the Chair until the ringing of the bells, but that because we are not in a position to know how long it will take the Legislative Assembly to return the Bill with which we have just dealt, we might also set a time of 8.15 pm when the bells would be rung

even if the Legislative Assembly had not completed its considerations. It would then be my intention to proceed with an appropriate Order of the Day until such time as any message from the Legislative Assembly is returned. I move -

That the President leave the Chair until the ringing of the bells at 8.15 pm.

Question put and passed.

Sitting suspended from 6.49 to 8.15 pm

HON J.M. BERINSON (North Metropolitan - Leader of the House) [8.15 pm]: Mr President, I suggest that you leave the Chair until the ringing of the bells. I am advised that it will take some time for the Assembly to complete its consideration of our message.

Sitting suspended from 8.16 to 11.27 pm

ROYAL COMMISSION (CUSTODY OF RECORDS) BILL

Assembly's Message

Message from the Assembly received and read notifying that it had agreed to amendments Nos 1 and 3 made by the Council, and had disagreed to No 2.

Amendment No 2 made by the Council, to which amendment the Assembly had disagreed, was as follows -

No 2.

Clause 10, page 7 after line 15 - To insert a new subclause (4) -

- (4) Where a record of the Royal Commission is made available to the State for the purposes of civil litigation, then the State shall make a copy of the record available to all other parties to the litigation at the earliest opportunity.

The Assembly's reasons for disagreeing to the Council's amendment were as follows -

- (1) The amendment is unnecessary in view of the availability of the discovery and inspection of documents process in the civil courts;
- (2) it confers some advantage which would not be available to other litigants with the State;
- (3) it is open to abuse by persons who may be the subject of criminal prosecution or investigation;
- (4) because of the substantial additional costs that could be caused for the State.

HON J.M. BERINSON (North Metropolitan - Attorney General) [11.30 pm]: I move -

That the Council do not insist on amendment No 2.

Objections to amendment No 2 have been widely canvassed already and I will not do so again. Further advice which I have received since our original discussions has pointed to very serious and much worse consequences than were originally indicated if this amendment were to remain in effect. To the extent then that the Legislative Assembly has rejected that amendment, its decision is welcome. On the other hand, its support for what I might call the Pandal amendment which removes the Royal Commission's discretion to dispose of a small category of documents is a great shame. I stress again that the Pandal amendment is not a rebuff to the Government because clauses (7) and (8) are not Government initiatives; they are provisions which directly reflect the very strong views of the Royal Commissioners themselves and, it should be acknowledged, the correct, proper and fair views of the commissioners themselves.

It follows from that fact that the Pandal amendment to these clauses is a direct and totally unwarranted affront to the Royal Commissioners. In pursuing clauses (7) and (8) in their present form, the commissioners have not been capricious or arbitrary. They have been operating on very clear principles. They have been concerned with the concepts of fairness and fair dealing in a way which the Opposition has completely ignored and repudiated. The point has been made already that under existing law and all past precedent, the Royal Commission could have already destroyed all the material which it now seeks the authority

to deal with under clauses (7) and (8). Indeed, Hon Reg Davies has acknowledged that it still remains open to the commission to destroy those documents. They could do it tomorrow or at any time before the Bill is assented to and they would be acting not only legally but quite properly if they did. How absurd then are so many of the Opposition's arguments when considered in that light. While it is essential that the Bill pass tonight and while the Government in those circumstances has no alternative but to accept the Pental amendment now, I for one have no intention of letting the matter rest at that point. In my view there should be further efforts to bring back clauses 7 and 8 to the original version. I will certainly recommend that that course be pursued and if that is not possible in what remains of this Parliament, then in the next Parliament.

Hon D.J. Wordsworth: Will you be here in the next Parliament?

Hon J.M. BERINSON: No, but I will look from afar and from wherever I am the course I am now indicating will be the proper one.

Point of Order

Hon D.J. WORDSWORTH: I understand the other place has accepted the amendment about which the Leader of the House is talking and this is not the clause we should be debating.

The PRESIDENT: Order! There is no point of order.

Debate Resumed

Hon J.M. BERINSON: This has been an unedifying exercise by the Opposition; it has been much more about muscle flexing than the merits of the Bill, and that is a very great pity.

HON P.G. PENDAL (South Metropolitan) [11.34 pm]: I am delighted at the outcome. I realise it has caused a lot of inconvenience to many people on both sides of the House and to officers and staff. I apologise for that but we have been dealing with a matter of the most fundamental importance to this State and the Parliament. When Hon David Wordsworth spoke briefly at the Committee stage, he said it all: The choice that this Parliament faced tonight was between destroying or preserving public documents. The Parliament has chosen to preserve those public documents. It is a nonsense that this decision represents a rebuff to the Royal Commission. The Royal Commission does not legislate in this State; that is the role of the Parliament. If the Royal Commission were to proceed to do as Hon J.M. Berinson suggested - that is, destroy the documents in a capricious manner before the proclamation established the Act - it would be acting against the spirit of what this House has done tonight.

Hon J.M. Berinson: I did not suggest that.

Hon P.G. PENDAL: I do not believe the Royal Commission would even consider doing that. It has better things to do and it knows that when Parliament speaks it should respect it. I do no more than thank all members who have helped get this amendment through, but I especially thank the Independent members of this House and the other House for their support, along with the Liberal Party and National Party members who tonight have made a stand to preserve public records and not have them destroyed.

Question put and passed; the Council's amendment not insisted on.

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 Tuesday, 3 November 1992.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON J.M. BERINSON (North Metropolitan - Leader of the House) [11.36 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Petition on Fishing Industry

HON R.G. PIKE (North Metropolitan) [11.37 pm]: I am sorry to take the time of the House but since the House is rising for a week's break, I need to make a statement which I endeavoured to do earlier without success. It deals with the petition lodged by Hon Peter Foss today with regard to the fishing industry. The House needs to be aware that all petitions

are referred to the Standing Committee on Constitutional Affairs and Statutes Revision. However, the work commitment of that committee at the moment is such that I will recommend to the committee, as its chairman, that there is no way it can properly and in a constructive result-producing way in the time available even begin to pursue that petition. I think that should be drawn to the attention of the House. My recommendation to the committee will be that it appoint a Select Committee for that purpose.

I make the following brief explanation. The committee has between 13 and 15 petitions being finalised. It has a system of digesting petitions which brings matters forward. These are quite separate from its responsibilities in the Western Women group inquiry. With regard to the staffing, other than three competent staff members who have been employed particularly to pursue the Western Women inquiry, the committee has less than half a clerk to do its other work. In other words, that clerk does work for other committees. At the moment the committee is meeting for half of each Wednesday and the whole of each Friday, and it is not possible to meet more frequently. I make no apology for that. I will not go into further explanations except to say it would be irresponsible of me as chairman, having read this petition which is of significant urgency, not to indicate to the House at the earliest possible time that I will recommend that the committee returns it to the House. I say to the petitioner and others that that will be the best way to pursue the problem.

Question put and passed.

House adjourned at 11.39 pm

QUESTIONS ON NOTICE

POLICE - DALWALLINU STATION

Manpower and Capital Works Budget

683. Hon GEORGE CASH to the Minister for Police:

- (1) What is the current establishment of the Dalwallinu Police Station?
- (2) When was this establishment last reviewed?
- (3) Is it intended to increase the number of police officers in the Dalwallinu Police Station during the next 12 months?
- (4) Does the current Budget provide for any capital work in the Dalwallinu Police Station during the current year, and if so, will the Minister provide details?

Hon GRAHAM EDWARDS replied:

- (1) General operations - one senior constable and one constable. Traffic operations - one constable.
- (2) The last full workload analysis was conducted in 1982. However, all stations are monitored through a work study system every three months.

(3)-(4)
No.

SWAN BREWERY SITE - TRUCK LOADS OF EARTH

Breach of Police Act Section 105

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

- (1) Is the Minister aware that nine truck loads of material was excavated from the site of the old Swan Brewery on Wednesday 16 September 1992 and taken away in convoy?
- (2) Will the Minister request an urgent police investigation as to whether section 105 of the Police Act has been breached, in that public property has been damaged at a time when this site is the subject of archaeological excavation?

Hon GRAHAM EDWARDS replied:

- (1) No.
- (2) Police are not aware of any breach of section 105 of the Police Act. If the member has reason to believe that an offence has been committed then he should refer any information to the Commissioner of Police.

POLICE - HELICOPTER

Former Helicopter Insurance and Payout

701. Hon GEORGE CASH to the Minister for Police:

Given that the capital works program in the Police budget for the year ending 30 June 1993 indicates that an amount of \$1 345 000 is to be allocated for the replacement of the police helicopter, was the previous helicopter that crashed insured and, if so, what payout did the police receive in respect of that helicopter?

Hon GRAHAM EDWARDS replied:

- (1) Yes.
- (2) \$1 140 000.

**WESTERN AUSTRALIAN ROAD SAFETY STRATEGY - DIRECTIONS
TOWARDS 2000 - PRINTINGS AND COSTS**

751. Hon PETER FOSS to the Minister for Police:

- (1) How many copies have been printed of the publication "A Western Australian Road Safety Strategy - Directions towards 2000"?

(2) What were the production and printing costs?

Hon GRAHAM EDWARDS replied:

(1) 1 000.

(2) \$15 495.03.

STATE EMERGENCY SERVICE - MOORA UNIT

Equipment and Training Support

754. Hon GEORGE CASH to the Minister for Emergency Services:

(1) What specific support was provided to the Moora unit of the State Emergency Service during the past financial year and what assistance will be provided in this financial year?

(2) What is the State Emergency Service policy on the provision of replacement tarpaulins and equipment?

Hon GRAHAM EDWARDS replied:

(1) In the past financial year, the Moora State Emergency Service unit was provided with equipment and training support. Equipment issued included personal items such as boots, overalls and water bottles together with one generator, one marquee tent and a winch. Training support involved basic voice procedure, and map reading and navigation course. The unit has submitted an equipment bid to the value of \$6 000 which it is anticipated will be met from the Commonwealth equipment support program. The training support planned for this financial year is outlined in answer to question 757.

(2) The State Emergency Service policy on the provision of replacement tarpaulins and equipment is as follows -

- (a) A tarpaulin or item of equipment must be first assessed as being beyond economic repair before it can be considered for replacement.
- (b) Replacement of such items is then provided from reserve stocks held at regional or State headquarters.

POLICE - REPEATER STATIONS ESTABLISHMENT, CENTRAL MIDLAND AREA

755. Hon GEORGE CASH to the Minister for Police:

(1) What repeater stations are required to be established to improve the communications reception for police stations and police vehicles operating within the Central Midlands area?

(2) When are these improvements to be provided?

Hon GRAHAM EDWARDS replied:

(1) Repeater stations at Bindoon, Jurien and Dalwallinu.

(2) During the radio conversion UHF/VHF program to be completed before July 1993.

POLICE DEPARTMENT - RELIEF OFFICERS POLICY

756. Hon GEORGE CASH to the Minister for Police:

What is the current Police Department policy in respect of the provision of relief officers to replace those officers who take long service leave, annual leave or sick leave from police stations in country Western Australia?

Hon GRAHAM EDWARDS replied:

Reliefs are provided subject to availability of staff, with due regard given to the provision of an adequate service and the safety of policy and the public.

STATE EMERGENCY SERVICE - MOORA UNIT
Training Programs

757. Hon GEORGE CASH to the Minister for Emergency Services:

Given that the status of the emergency service unit at Moora covers an area of approximately 900 square kilometres and comprises approximately 42 000 people, what training programs will be provided to State Emergency Service personnel at Moora this financial year?

Hon GRAHAM EDWARDS replied:

The State Emergency Service unit at Moora is responsible for the Shire of Moora, which has a population of 3 100. It may also be called upon to assist in neighbouring shires. The Moora State Emergency Service unit will be provided with the necessary training support to maintain the level of training required to carry out its responsibilities.

POLICE - MOORA STATION
Break and Enter Offences Concern - Manpower and Resources

761. Hon GEORGE CASH to the Minister for Police:

- (1) Is the Minister aware of the concern expressed by the Shire of Moora and the Moora Chamber of Commerce on the number of breaking and entering offences in Moora during the past six months?
- (2) What action is the Government taking to ensure that the Moora Police Station is adequately manned and resourced to enable a continuous afternoon shift to operate from the station?

Hon GRAHAM EDWARDS replied:

- (1) No.
- (2) Moora Police Station is manned in accordance with the policing requirement of the community. Staff levels are constantly monitored to ensure they meet the workload, which does not justify the implementation of a continuous afternoon relief at this stage.

UNIVERSITY OF NOTRE DAME AUSTRALIA - LAND ENDOWMENT
PROPOSAL

Tannock Dr, Letter Requesting Support

770. Hon GEORGE CASH to the Attorney General:

I refer to the recently publicised report titled "Inquiry Into the Proposed Grant of Land at Alkimos to the University of Notre Dame", and particularly to that part of it that refers to a letter dated 15 March 1988 from Dr Tannock to the Attorney requesting support relating to the introduction of the legislation to create the university, exempting the university from as many State taxes as possible, granting several sites of Crown land in Fremantle, State Government guarantees on loans taken by the university, and a \$5 million grant -

- (1) Did the Attorney General respond in writing to the letter?
- (2) If so, on how many occasions did the Attorney General raise these matters in writing with Dr Tannock and/or other representatives of the university?
- (3) Did the Attorney General raise the matter of this request for support from Dr Tannock with the then Minister for Education in writing or by other means?
- (4) Did the Attorney General raise this request for support by Dr Tannock in discussions at a Cabinet meeting?
- (5) If so, on how many occasions?

Hon J.M. BERINSON replied:

- (1) No.
- (2),(5) Not applicable.
- (3)-(4) I have no record or recollection of having taken any action on the basis of Dr Tannock's letter to me.

**UNIVERSITY OF NOTRE DAME AUSTRALIA - "PROPOSED
ENABLING LEGISLATION-UNIVERSITY OF NOTRE DAME" CABINET MINUTE**
Government Guarantee

779. Hon N.F. MOORE to the Attorney General:

- (1) Did the Attorney General, as the Acting Treasurer, submit on 1 October 1989 a minute to Cabinet entitled "Proposed Enabling Legislation - University of Notre Dame"?
- (2) Is he aware that the broad drafting instructions for this Cabinet minute referred to "No direct or implied commitment to financial support other than Government guarantee"?
- (3) What were the details of the Government guarantee referred to in the board drafting instructions?

Hon J.M. BERINSON replied:

- (1) Yes.
- (2) So far as I am aware, I first saw the broad drafting instructions on 24 September 1992 when a copy was tabled in the Legislative Council by Hon George Cash.
- (3) To the best of my recollection, no such details existed. On my understanding of the position, any reference to "Government guarantee" in the drafting instructions would have been limited to leaving open that possibility.

UNIVERSITY OF NOTRE DAME AUSTRALIA - WORKING PARTY
Minister for Budget Management's Membership; Government Guarantee Discussions

780. Hon N.F. MOORE to the Attorney General:

On 10 July 1989, Cabinet set up a ministerial working party to give some focus to the discussions and negotiations relating to the proposed Notre Dame University -

- (1) Is it correct that you, as the then Minister for Budget Management, were a member of this working party?
- (2) How often did the working party meet?
- (3) What matters were considered by the working party?
- (4) Did Dr Lawrence take an active role in the activities of the working party?
- (5) Did the working party discuss a Government guarantee or other similar financial assistance with the proponents of the Notre Dame University and, if so, what was the substance of the discussion?
- (6) What did the working party recommend to Cabinet?

Hon J.M. BERINSON replied:

- (1) Yes.
- (2) To the best of my knowledge, twice.
- (3) General issues raised by the Notre Dame application.
- (4) I understand that Dr Lawrence attended one of the above two meetings. I was not present.
- (5)-(6) The university's request for a guarantee was considered, but as I recall the

position, no recommendation on that issue was submitted to Cabinet, except in terms of allowing the legislation to leave open that possibility.

FIRE BRIGADE - JANDAKOT AIRPORT; JOONDALUP AREA
No Fire Protection Services

782. Hon P.G. PENDAL to the Minister for Emergency Services:

- (1) Is it correct that no fire protection services exist -
 - (a) at the Jandakot Airport; and
 - (b) in the Joondalup area?
- (2) If so, how are these areas protected at present?
- (3) What plans are there to protect these areas, in the future, with fire brigade stations?
- (4) When are such stations likely to be set up?

Hon GRAHAM EDWARDS replied:

- (1)-(2) The provision of fire protection services at Jandakot Airport is the responsibility of the Federal Airports Corporation and the Cockburn Town Council. The Joondalup area is serviced by bush fire brigades or by the Western Australian Fire Brigade's Wangara permanent brigade or Yanchep volunteers.
- (3) The Western Australian Fire Brigades Board has no responsibility for firefighting services at airports and therefore has no plans for Jandakot Airport. The provision of a fire station at Joondalup is planned for the future.
- (4) Subject to budgetary considerations, a station will be provided at Joondalup during 1993-94.

FIRE BRIGADE - THREE NEW TRUCKS PURCHASE

786. Hon BARRY HOUSE to the Minister for Emergency Services:

- (1) Has the Fire Brigade Board of Western Australia recently purchased three new trucks?
- (2) If so, were these purchases put to tender?
- (3) Where were they purchased from?

Hon GRAHAM EDWARDS replied:

- (1)-(3) The Western Australian Fire Brigades Board has not made any recent purchases other than the normal non-firefighting vehicle replacements. However, for the member's information, the Western Australian Fire Brigades Board purchases its appliances via a tendering system.

UNIVERSITY OF NOTRE DAME AUSTRALIA - LAND ENDOWMENT PROPOSAL

Meeting 1 September 1989; Government Guarantee

790. Hon GEORGE CASH to the Attorney General:

- (1) Did the Attorney General, in his capacity as Minister for Budget Management, attend a meeting on September 1 1989, with Denis Horgan, Peter Tannock and Des O'Sullivan of the University of Notre Dame?
- (2) If yes, was the subject of a Government guarantee to the University of Notre Dame discussed?
- (3) As the Minister for Budget Management, did he support the guarantee to the University of Notre Dame?

Hon J.M. BERINSON replied:

(1)-(2) Yes.

- (3) On my recollection and available records of that meeting, I did not go beyond an attempt to understand the nature and extent of the university's guarantee submission.

QUESTIONS WITHOUT NOTICE

CORRECTIVE SERVICES, DEPARTMENT OF - BUILDING SERVICES DIVISION

Report Completion

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

Can the Minister provide the House with an update on when the report into the building services division of the Department of Corrective Services is likely to be completed?

Hon J.M. BERINSON replied:

I think the last time we had this general matter before us I indicated that it was recognised that the affected officers must be given the opportunity to comment. I am aware that the draft has been provided for that purpose, but I have not been advised of the likely timetable for either the completion of that comment or for the further consideration by the executive director which might be made necessary by that comment. I would not expect it to involve a process going over any extensive period, and if I might anticipate a further question I would certainly expect it to be completed and available for tabling well this side of the end of the session.

CORRECTIVE SERVICES, DEPARTMENT OF - BUILDING SERVICES DIVISION *Draft Report*

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

Is the Minister aware of any reluctance by any officer of the Department of Corrective Services to comment on relevant parts of the draft report and, if so, can he indicate the nature of that reluctance and whether that is holding up the completion of the report?

Hon J.M. BERINSON replied:

It would probably meet the point of the question if I answer the last part first by saying, no.

CORRECTIVE SERVICES, DEPARTMENT OF - BUILDING SERVICES DIVISION *Draft Report*

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

As the answer to question 544 is no, what is the reason for the delay?

Hon J.M. BERINSON replied:

There is no delay. We are dealing with draft material which has taken over two months to prepare. So far as I know the officers would have had that material available for less than two weeks, perhaps even substantially less than two weeks. Therefore, there is no delay, simply a proper process of providing fair opportunities for appropriate comment.

CORRECTIVE SERVICES, DEPARTMENT OF - BUILDING SERVICES DIVISION *Draft Report*

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

What are the names of the officers who are still required to report on the matters contained in what the Minister has described as the draft report?

Hon J.M. BERINSON replied:

It would not be fair to give names. Any officers affected who wish to comment will be known in the course of the subsequent report.

JOHN DEERE LTD - FORWARD ENGINEERS PTY LTD
Machinery Operations Transfer Assistance

547. Hon MARGARET McALEER to the Parliamentary Secretary:

Some notice of this question has been given. What steps have been taken to safeguard the agricultural industry in respect of the withdrawal of the machinery company, John Deere Ltd, and the transfer of the manufacture and distribution of its machinery to Forward Engineers Pty Ltd, a transfer which is limited to two years?

Hon TOM STEPHENS replied:

I undertake to pass the answer to that question to the member. I had the answer with me this afternoon, but I do not have it with me now. I was not expecting question time to come forward.

The PRESIDENT: That is an unsatisfactory response because the record of the answer needs to go into *Hansard*.

Hon TOM STEPHENS: Would it be satisfactory if I arranged for the member to receive the answer to the question and at the same time to place the question on notice? In that way the answer will be on the official record and passed to the member at the same time.

The PRESIDENT: I will work out the rules in this place. If the honourable member were not running around disregarding Standing Order No 79 he may well have avoided the position he is in. However, the point is that question time is not over and I suggest that an easy solution would be to delay that question until later; that is assuming that the honourable member has got it and that it will take only five minutes to find it.

Hon TOM STEPHENS: Thank you for your advice, Mr President. It will not be necessary to delay the answer any further. The Minister for State Development has provided me with a response to the member's question: The Department of State Development has for some time been attempting to negotiate an assistance package for a Forward Engineers Pty Ltd proposal to purchase the John Deere facility at Welshpool. The company has been advised of the level of support that could be made available subject to a financial assessment and Cabinet approval. The support is consistent with investment attraction guidelines. It was reported in *The West Australian* of today that the company was having difficulty raising finance for the project. This is an area which is clearly between the two companies involved and their financiers. As far as the agricultural industry is concerned I understand that a licensing agreement has been entered into whereby Forward Engineers will continue to manufacture and market John Deere equipment.

ROEBOURNE - SWIMMING POOL
Funding Sources

548. Hon N.F. MOORE to the Minister for Sport and Recreation:

I refer the Minister to question 671 which was answered on yesterday's Supplementary Notice Paper concerning the Roebourne swimming pool. The Minister advised that 25 per cent of the pool's operating costs would be provided by the Shire of Roebourne and that the remainder would be met by other sources such as entry fees.

- (1) What are the other sources?
- (2) What proportion of operating cost will be met by entry fees?
- (3) Is Hamersley Iron Pty Ltd contributing to the capital and/or operating costs of the Roebourne swimming pool?

Hon GRAHAM EDWARDS replied:

(1)-(3)

I ask that the question be placed on notice.

PERRY LAKES STADIUM - MAJOR SOCCER GAMES RECOMMENDATION
Lighting Towers Installation

549. Hon GEORGE CASH to the Minister for Sport and Recreation:

- (1) Is it correct that Perry Lakes stadium has been recommended as a suitable ground for major soccer games?
- (2) Does the Government intend to erect lighting towers similar to those installed at the WACA ground?

Hon GRAHAM EDWARDS replied:

- (1) Yes.
 - (2) No.
-