LEGISLATIVE COUNCIL

Wednesday, 6 May 1992

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

MOTION

Road Traffic (Infringements) Amendment Regulations (No 2), Road Traffic Code Amendment Regulations (No 4), Road Traffic (Drivers' Licences) Amendment Regulations (No 4) - Disallowance

Order of the Day read for the resumption of debate from 5 May.

Debate adjourned, on motion by Hon J.N. Caldwell.

MOTION - DISALLOWANCE

State Energy Commission (Electricity and Gas Charges) Amendment By-laws (No 2) and State Energy Commission (Electricity and Gas Charges) Amendment By-laws

Order of the Day read for the resumption of debate from 5 May.

Debate adjourned, on motion by Hon J.N. Caldwell.

MINES REGULATION AMENDMENT BILL 1991

Second Reading

Debate resumed from 18 March.

HON MARK NEVILL (Mining and Pastoral - Parliamentary Secretary) [2.38 pm]: The Government opposes the Mines Regulation Amendment Bill, which was introduced by Hon Norman Moore.

Hon George Cash: Is that because the Bill was introduced by the Opposition or is it for some other reason?

Hon MARK NEVILL: If the Leader of the Opposition listens he will find out. The Government opposes the Bill because the Government is in the process of putting together legislation to implement the changes contained in this Bill. I will go into the detail of the Government's proposed legislation a little later.

This Bill seeks to repeal division 5 of the Mines Regulation Act relating to conditions of employment, basically of winder drivers. Their occupation is one of importance in mines because whoever is in charge of the winder has the safety of many people in his hands. Division 5 of the principal Act allows winder drivers to work extra hours if an emergency occurs; it also places a limitation on the number of hours and days that can be worked, but that limitation does not apply to surface plants such as screening and crushing plants. Division 5 covers the hours of employment that a person may work underground. At the moment that is limited to 7.5 hours a day and not more than six shifts in any week, and work on that sixth shift requires the consent of the worker involved. That division also requires workers to speak English and the foreman and people in authority at the mine are required to speak, read and write English. The last provision in that division limits the age at which people can work underground. A worker must be 18 years of age unless he is an apprentice or a cadet of some description and is usually required to work with someone who is more responsible such as a tradesperson. The Bill proposes to repeal division 6 which prohibits Sunday labour underground, but in exceptional circumstances allows a person to work.

Hon Norman Moore seeks to abolish those two divisions and to amend section 61 of the Act, which is the section outlining the regulations that can be made under the Act, and proposes to add the power to make regulations dealing with some of those items which will be deleted under divisions 5 and 6. There is no power in the regulations he is proposing that will stop people under 18 working in mines and that is a serious omission from his Bill. The situation will be that mines may employ anyone under 18, particularly in underground mines; and that

is unacceptable. In this modern age many of these sorts of provisions should be found in awards. It is strange to see them in an Act, but I point out to members that working underground, which was the predominant form of mining in Western Australia up until the last two decades, is extremely dangerous. The conditions under which underground miners now work have been very hard fought for and that group is not about to have those conditions relinquished without great scrutiny. Under the present Act section 5(2) gives the Minister the capacity to grant exemptions to any company from any provisions of the Act. That has been traditionally the way that circumstances at individual mines have been accommodated, particularly in recent years with the popularity of fly in, fly out operations.

Kambalda does not have a fly in, fly out operation and the proposed changes will certainly have a very disruptive effect on the lifestyle of people at Kambalda. Very serious health and safety issues relate to miners working 12 hour shifts. Anecdotal evidence indicates that these long shifts in isolated mining sites can result in a lot of boredom in those camps and that generates other problems. A fly in, fly out operation where workers leave home and come back a fortnight later is very different from someone who is living at home and working shifts of up to 12 hours. If one starts at 8.00 am one will not get home until after 8.00 pm. In that situation, considering the strenuous nature of mining, an employee may be very tired and have very little time to be with his family; so it is quite clear that these sorts of shifts will be very disruptive to people working in mines where they come home every night. When I was a geologist my daughters found it easier to adapt to my being away for two or three weeks and then coming home than to the situation when I was first elected to Parliament and I was home for two days, gone for two days, home for two days and gone for four days. They never really knew where they stood and whether I was leaving the next day or staying home. Even today it is still unsettling for them. One cannot equate the situation at Kambalda directly with the fly in, fly out operation in terms of its disruptive effect on the internal life of the family let alone the other things that families are involved in such as sport. It is not surprising there has been a lot of debate over this issue. There are real concerns about health and safety issues. They are probably more manageable at remote sites than they are within communities where people are working long hours and on a seven day rotation of shifts.

The other very important thing about this legislation is that all it does is transfer what is in the Act to the regulations. An article in the *Kalgoorlie Miner* only a couple of days ago referred to the agreement between Western Mining Corp Ltd and the Australian Workers' Union on the Kambalda nickel operations and stated -

> However, AWU official Mick Baker said the workers' acceptance of the agreement was not the end of the issue. He said how continuous mining was implemented still depended on separate negotiations at each of KNO's nine shafts.

That article indicated that those regulations need to be thrashed out in the first instance between Western Mining Corp and the AWU to make sure they agree what should go into those regulations; because the regulations will obviously deal with winder drivers, the hours that people work underground, what time they have their crib breaks, whether they come to the surface after a normal shift before they engage in any overtime a requirement to speak English and all these sorts of things, including whether juveniles can work underground.

Those matters must be sorted out before this Bill can achieve anything. However we must look wider than that, because when regulations are changed they are changed to the benefit of not only the Australian Workers Union and Western Mining Corp Ltd but also other companies in the State which must also operate under those regulations. While it may suit Western Mining to adopt a certain practice it may not suit Argyle Diamond Mines Pty Ltd or another mining company to adopt that practice. We must refer to section 5(2) of the Mines Regulation Act, which deals with companies seeking exemptions from the Minister. The style of operation varies considerably from one mine to another - even with the nine or 10 mines in Kambalda - let alone from one mining company to another. Some mines are shafts and some are declines; some are very deep and others are not. Certain companies will face the old situation of having to seek exemptions to do certain things if the regulations are written in a way which is suitable for all mining companies. Therefore the issue of the regulations in particular is much wider than how they affect the AWU and Western Mining. Any Bill that seeks to amend this Act must address the regulations at the same time. We will get nowhere unless agreement is reached on the two issues. What is amended in the Act and what is included in the regulations may or may not go into an award.

Western Mining insists on an amendment to the Act rather than being granted an exemption because it wants to invest $105 million in Kambalda. I can understand that. The unions are also insisting that the amendment to the Act be reflected in changes to the regulations because they want certain conditions reserved to ensure that workers' health and safety are protected and that they receive fresh air after seven hours underground. One of the conditions that the unions are concerned about is that which ensures that any underground worker has a half hour on the surface after a seven hour shift. If that is implemented workers may require 20 or 30 minutes travelling time before and after that half hour break to get to the surface. That may not be required by other mines. It is those sorts of issues which must be resolved.

Western Mining could have achieved the productivity it has been looking for by just changing its current mode of management. Western Mining seems to be a company driven by an ideology. Although I have great faith in the capacity of many of its senior officers to negotiate and deal with its workers and the unions, I have little faith in the capacity of some people in Western Mining to deal with its work force sensibly. One of Western Mining's problems has been the cross-currents in the dispute which has been continuing for the past 12 months or more. It is interesting to note that many other companies do not seem to face the same problems that are confronting Western Mining. Kalgoorlie Consolidated Gold Mines Pty Ltd seems to have no problems, and other companies are very happy with the system of exemptions that are granted by the Minister. Western Mining is opposed to that and because of that these changes are being recommended to the Mines Regulation Act.

Hon N.F. Moore: This is not a Western Mining Bill; it is an Opposition Bill. Get your facts right.

Hon MARK NEVILL: Did I suggest that it was not?

Hon N.F. Moore: You are suggesting that Western Mining, not the Opposition, is changing the set of circumstances. It is not a representation of Western Mining's position, although it may agree with it.

Hon MARK NEVILL: Would the member agree that the Bill has been presented in response to the problems in Kambalda?

Hon N.F. Moore: Of course it has, but it is not a Western Mining preferred position. The Opposition is putting forward a position.

Hon MARK NEVILL: Does the member know of any other company that is actively seeking a change?

Hon N.F. Moore: You misunderstand what I am saying. The Bill is not a Western Mining sponsored Bill simply because it deals with the problems at Western Mining.

Hon MARK NEVILL: If it makes the member feel better I will accept what he says.

Hon N.F. Moore: I am getting it straight.

Hon MARK NEVILL: I merely suggested that the Bill was put forward in response to the problems at Kambalda. I have not suggested that it is a Western Mining sponsored Bill. Western Mining could have achieved the productivity it was seeking by developing a better relationship with its workers and tapping into the resources of its own work force, which, in my view, it has not done in the past 10 years. In many other systems the work force decides such things as daily working hours, breaks, overtime work, the fixing of job piece rates, pay systems and many of those issues which companies such as Western Mining regard as management prerogatives. In many countries that sort of decision making is being delegated to the workers. They work out the best system of operation and their suggestions are usually incorporated by their company as long as they lead to greater productivity. Western Mining has never tapped that valuable source. The productivity it is looking for can be achieved without resorting to Sunday work and miners' having to work 12 hour shifts. There is a capacity to do that but, obviously, the company is not of a like mind.

Another problem arises when the law is changed but the two parties do not agree to work under that system. That has been a problem in this current dispute. Last November negotiations were undertaken by Western Mining and the AWU and an agreement was reached. That was followed by a mass meeting at Kambalda Oval. I attended that meeting to see what was the reaction of the workers. The agreement was not popular with the work

force, but Bruce Wilson convinced the workers that it was in their interests to accept it. The first time the vote on whether to implement the continuous roster system was taken the result was fairly even, and following a further vote the result was 60:40 and the resolution was carried. However, the whole issue fell down over clause 6 of the agreement, which stated that an application was to be considered by the State Industrial Relations Commission on 20 November. The union understood that three items would go before the commission, but Western Mining understood there would be only one. After that meeting Bruce Wilson was accused of not doing the right thing by convincing the work force that it was a good resolution to the dispute, when, in fact, it was not in his interests to be selling the agreement but he did so. It was very unpopular with the work force and he did a damned good job in having the agreement accepted. Throughout the dispute each side claimed to have hit a brick wall when trying to achieve a change.

The Government has deliberately not introduced legislation into the Parliament prior to seeing the matter resolved by Western Mining and the union. Serious issues are at stake and the company and the union must sort them out. I will not attribute blame to anyone, but it seems that whenever a solution was close to hand something happened to disrupt it. I was informed that recently the parties were close to agreement but the piece work negotiations became an issue with the underground miners at Longshaft. It would have been more sensible to reach agreement on the continuous roster before negotiating piece rates with the underground miners at Longshaft. At times I wonder whether this dispute will ever end.

The industry recognises that changes are required to the Mines Regulation Act, which is rather archaic. I spent my spare time over six weeks rescheming and rewriting the Act because in the middle of last year I could foresee a lot of problems looming for the industry. I believed that if a rewritten Act could be presented to the two parties it might help them to focus their attention on reaching an agreement. The industry considers that the Act should be rewritten. I agree; it should not simply be amended in a piecemeal way. Ample opportunity is available under this Act to grant exemptions when an agreement is reached between the two parties.

The general consensus within the industry is that Western Mining has not handled this dispute very well. Other mining companies do not seem to have the sorts of problems with the Australian Workers Union as Western Mining Corp Ltd has had.

Another reason the Government is opposing this Bill is that although it will probably introduce a similar Bill it will not be exactly the same. To start with, the Government's Bill will include a clause relating to the employment underground of people under the age of 18 years. In addition, other issues may be raised during the discussions on the regulations and the necessary amendments may need to be included in the Bill.

It is premature to be considering this Bill, because it involves a sensitive area and we must be very clear about what should be included in the regulations. The legislation must satisfy every section of the industry, otherwise we will have another amending Bill in this place to amend the regulations. If this Bill is passed and a satisfactory agreement is not reached on the regulations, and although the regulations may be suitable to the unions, it is quite possible the regulations will be disallowed in this place. The Government is not prepared to amend regulations in a way which is not acceptable to both parties; therefore, we must ascertain what changes are required to the regulations before a Bill of this kind is passed. Over the years similar provisions have been included in Bills because of the unique nature of underground mining. Hon Norman Moore said in his second reading speech that it used to be harder work in the early days. That may be correct, but it is still very hard work.

Hon N.F. Moore: I did not say that. I said that the sort of work has changed.

Hon MARK NEVILL: I will quote the member. He said -

> Mining conditions at the time were greatly different from today; at that time horses -

I do not know what horses had to do with it. To continue -

> - were still used in some mines and the work was physically very demanding for all concerned.

I will not make an issue of it, but I repeat that the work is still very strenuous. The miners are working in very hot conditions and the air around them is never fresh. In many cases the

ventilation is not the best. Miners work in a very dangerous environment and in confined spaces. They have operating around them diesel equipment which is very noisy. They must carry heavy equipment, such as air legs, drill steel and explosives, often up and down ladders. The work certainly is not as strenuous as it used to be, but it is still a dangerous occupation for the majority of people who work underground. It is important that the regulations ensure that both their health and safety are well looked after.

The Government is opposed to this Bill, which is premature. Other issues must be considered before consideration is given to it. We are confronted with the situation that if the Government's Bill were to be similar to this Bill it would not be allowed to be dealt with by this House and that would result in this whole process running off the rails again. I am not saying that this is a Western Mining Bill, but it does reflect the changes that Western Mining wants. We need to work through those issues related to what should be in the regulations before we bring another Bill into this House.

I urge members not to support this Bill as the Government will introduce legislation in the other place to deal with this matter as soon as it is drafted and the other matters I have mentioned have been sorted out. We now have agreement between the two parties in the dispute at Kambalda on continuous rosters. The detail needs to be sorted out. We should take a cautious approach to the matter to ensure that the productivity gains that come from this change are sensible, that the disruption to people's lifestyles is minimised, and that people are not put at any greater risk in their occupation. I ask honourable members to be fairly cautious in their approach to this Bill or we could end up going through this process without achieving any reforms. I urge members to oppose the Bill.

HON N.F. MOORE (Mining and Pastoral) [3.11 pm]: I thank the Government for its support for the Bill, even though it is opposing it; an extraordinary state of affairs! We have been told that the Government will introduce a Bill which will be largely the same as the one introduced by the Opposition, yet it asks this House to reject the Opposition's Bill.

Hon George Cash: That probably explains the lack of inspiration in Hon Mark Nevill's speech. I don't think he believed what he was talking about.

The PRESIDENT: Order!

Hon N.F. MOORE: The Opposition first introduced this Bill into the Legislative Assembly last year where it was read a second time. It did so in the hope that the Government would deal with a problem that is most evident at Western Mining. However, it chose not to do so. The Opposition therefore decided that at the earliest possible time during this parliamentary sitting it would introduce the Bill into this place in an attempt to get debate going on the matter. I am glad we achieved that. It brings out the cynic in me when, having suggested we would use our numbers to bring this Bill to the top of the Notice Paper so that a decision would be made about it, the Government decides to introduce its own Bill on the subject.

Hon Mark Nevill: Agreement was reached only last week.

Hon N.F. MOORE: Hon Mark Nevill and I both know that the agreement reached was a small step in a long and tortuous path aimed at achieving total agreement. It is not an agreement supported totally by either side, as Hon Mark Nevill said in his comments. The purpose of this Bill is to allow the Industrial Relations Commission to make decisions about certain aspects of employment in underground mines. Hon Mark Nevill is quite right; it takes out of the Act those divisions which apply to employment related activities. That is the intent of the Bill; that is, instead of having an Act of Parliament determining working conditions in underground mines, relevant decisions will be made by the Industrial Relations Commission and be a part of the award structure. The Government obviously agrees with that.

Hon Mark Nevill: What are you putting in the regulations?

Hon N.F. MOORE: I will be seeking to amend the Bill to remove one aspect of the regulation making powers that I originally anticipated putting in the legislation. That amendment obviously has not yet been circulated. I intend to delete paragraph (d) of clause 6, the last paragraph relating to regulations. I will come to that shortly.

Hon Mark Nevill: Did you just decide that today?

Hon N.F. MOORE: No.

Hon Mark Nevill: It is the first I have seen of it.

Hon N.F. MOORE: I gave notice of it today. I have been thinking about this for some time. The intent of the Bill initially was to remove from the Act certain conditions applying to employment in underground mines and put them in the regulations. That is still the intent but, as I said a minute ago, I do not intend to go as far as I had decided originally. Some of the provisions that have been taken out of the Act will go into the regulations. I will argue shortly that we should leave out of the regulations the maximum length of any shift, for reasons that I will explain shortly. Hon Mark Nevill said something to the effect that we would be removing from the Act the requirement for people in mines to speak English. He argued quite rightly about the necessity for people to speak English in underground mines.

Hon Mark Nevill: I said that you are putting it in the regulations.

Hon N.F. MOORE: I am not putting it in the regulations as it is already in them. Section 61(e) of the Act says that regulations can be made dealing with the age limit of workers for certain areas of employment. Hon Mark Nevill is right that the requirement to speak English should appear in the regulations. He also raised the matter of 18 year olds not being permitted to work underground and said that is an important issue. He is quite correct; age limits of workers in categories of employment can be dealt with in the regulations. Even though I have not listed that fact in the Bill, it is already part of the regulations, so no need exists to put it in again. It is taken out of the Act and put in to the regulations. Does Hon Mark Nevill understand what I am saying?

Hon Mark Nevill: I am thinking on my feet; where does that capacity to make a regulation appear in the Act now?

Hon N.F. MOORE: It appears under section 61 of the Act, which says that no person under 18 years of age is to be employed underground. I am seeking to have that requirement repealed, along with all other sections of division 5. That would remove from the Act the restriction on persons under the age of 18 years working underground. I was concerned, as was Hon Mark Nevill, when I saw that coming out of the Act because I do not believe that people under the age of 18 years should work underground. However, in the regulation making powers under section 61 at page 54 it is possible for regulations to be made dealing with age limits on workers in certain classes of employment. Therefore, it is quite possible for the Government, if it has not already done so, to have a regulation restricting those under the age of 18 years from working underground. I support that approach. I do not see the removal of that provision from the Act as creating a problem.

Another issue raised by Hon Mark Nevill related to 12 hour shifts. One of the reasons for wanting to change the Act is to allow mining companies to operate 12 hour shifts. I do not support 12 hour underground shifts as I believe they are too long. I spent all of my youth living in a goldmining town where conditions were probably more dangerous than they are today. However, everybody in the community was concerned about the safety of workers underground. I remember clearly that the man who lived next door to us in Bullfinch was killed in an explosion underground so the danger of working underground was very real to people living in the town. I remember that with great clarity. Although I am not keen on 12 hour shifts, it is not for me to tell somebody how many hours he should work if he is prepared to go down the path of 12 hour shifts by agreement with his employer. I am opposed to fly in, fly out arrangements and many of the things that go with that arrangement, including 12 hour shifts seven days a week.

Hon Mark Nevill: I agree.

Hon N.F. MOORE: Those things need to be sorted out by the employers and employees in an enterprise bargaining arrangement rather than our sitting here and legislating that nobody will work for more than seven and a half hours underground or on a Sunday. What we really need in this country is some flexibility so that companies and employees can make the best arrangements for the requirements of both of them and increase productivity at the same time. I am arguing that we should take this out of the Mines Regulation Act and put it into awards which are agreed to by both parties or which are brought down by the Industrial Relations Commission as a result of submissions by both parties.

Hon Mark Nevill raised a good point about family life in goldfields towns. As one who was brought up in a goldfields town I know that sports and all sorts of other activities were held

on Sundays. He is quite right, and I would like us to be able to return to that kind of life. The problem is that the rest of the world does not work like that. We live in a very competitive world. If we want to survive economically we must become competitive with people in other parts of the world who produce the products we do, because we are competing on markets that do not care whether people work on Sundays, Saturday nights or at any other time. The buyers do not care what hours are worked but how much it costs to buy a product. As it is necessary for us to be competitive and to increase productivity we need flexible working hours. That is a simple and I often think unfortunate fact of life. We must remember that the mining industry is much more capital intensive than ever before. These days, with a huge amount of capital sitting idle for fairly long periods, we are not getting the sort of productivity we need. It comes down to whether we can sell our products on international markets, and we cannot do that if our productivity is low and we are not getting the best utilisation of our capital and our labour force.

I am therefore quite happy to say that I do not like the trends that are taking place in the mining industry with longer and longer shifts, with fly in, fly out work forces, and with the changes occurring in mining towns. I like the old system but it is just not a viable system now, given the competitive nature of the mining industry around the world.

Hon Mark Nevill: With the work practices Western Mining Corporation has adopted at the Revenge mine it has continuous rosters. It is a bit of an experiment and I do not know why the company has not expanded it.

Hon N.F. MOORE: I think it would like to.

Hon Mark Nevill: The work force there is working out its own system. The productivity is far greater than in other mines and I think it is the route the company should go to develop a better relationship with the work force.

Hon N.F. MOORE: That idea came from Western Mining management - from a mine in Canada, if my memory serves me correctly. It is a proposition the company is trying. However, Hon Mark Nevill must remember that in the current dispute the miners in Kambalda had virtually reached agreement on the continuous shift arrangements; after a long gestation period they had virtually reached agreement with the company when onto the scene arrived one Bruce Wilson, about whom Hon Mark Nevill spoke a moment ago. He was out to make a name for himself in the world of union politics and he descended upon a mass meeting in Kambalda. To give him his due, he is obviously a good talker; he talked them out of all the arrangements they had made up to that point.

Hon Mark Nevill: No; he wanted to be included on the negotiating team.

Hon N.F. MOORE: The result of his efforts was to completely upset the arrangements that had been made up to that point, and the negotiations that had been carefully and quietly worked out between union leaders, the work force and the company were set back virtually 10 years. Bruce Wilson - who has a history of fairly aggressive union activities and is regarded on the North West Shelf as nothing to write home about - for reasons best known to himself and perhaps others outside the House, went in there as the new Secretary of the Australian Workers Union and changed all of the practices of the previous leaders of the AWU, who I suppose were old-fashioned goldfielders.

Hon Mark Nevill: It was overdue.

Hon N.F. MOORE: The member can argue that if he wishes.

Hon Mark Nevill: I will say it publicly.

Hon N.F. MOORE: The bottom line is that Bruce Wilson turned upside down the virtual agreement that had been reached at that stage and, for reasons best known to him - and I think they may be political - he has continued to cause problem after problem at Kambalda. And it is not just Kambalda which has a problem with continuous shifts; there is also a problem at Leinster, where Western Mining runs a very successful nickel operation. That operation cannot have continuous shifts either, because Western Mining cannot get an exemption under the Act. So it is not just Kambalda; it is Western Mining in total. It is one company with two mining operations.

Hon Mark Nevill: Western Mining made a big mistake when it tried to exclude him from negotiations.

Hon N.F. MOORE: If I were Western Mining I would have excluded him too. It is the same as if Hon Mark Nevill and I were to sit down and do a deal, and when we were virtually prepared to make a decision Hon Tom Stephens turned up and said he wanted to be involved. Of course the agreement would break down, because we would know where he was coming from. There would be no hope of agreement. That is a very simple analogy.

The Mines Regulation Act provides for exemptions from the Act. It says in section 5(2) -

> The Governor may from time to time exempt from the operation of this Act, or any of the provisions thereof, any mine or class of mines, for such period and on such conditions (if any) as he may think fit.

In other words, it is competent for the Government to exempt anybody from any of the provisions of that Act. That exemption is provided to just about every company in the State that seeks an exemption, except Western Mining Corporation.

Hon Mark Nevill: It has had exemptions before.

Hon N.F. MOORE: Of course, it may have had, but why should a company of that magnitude, with the investments it has in the goldfields of Western Australia, have to rely on the whim of the Minister every time it wants to get an exemption for anything, whereas most other companies are given an exemption without any questions being asked?

Hon Mark Nevill: Western Mining has had exemptions in the past. It has them now.

Hon Max Evans: Whereabouts?

Hon Mark Nevill: At the Revenge mine.

Hon N.F. MOORE: Then why will the Government not give the company an exemption in Leinster or Kambalda?

Hon Mark Nevill: There is a particular problem with this dispute that needs to be solved.

Hon N.F. MOORE: The reason is that the union is telling the Government not to give Western Mining an exemption. It comes back to the fact that in 1991 the Premier and the Deputy Premier, who happens to be the Minister for Goldfields, publicly stated that they would amend the Mines Regulation Act to allow for companies to operate continuous shifts. Then the ALP State Conference was held, and it decided - I suspect at the instigation of the Australian Workers Union - that it would not go along with that proposition, so the conference voted against it. So the union movement, through the Labor Party State Conference, told the Government it should not go down that path, and that is what happened. Because of the dispute with Western Mining Corporation the Government caved in to the unions and would not go ahead with the decision to amend the Act.

Hon Mark Nevill: If that is correct why are we amending the Act?

Hon N.F. MOORE: The Government is doing it now because it has no choice. The time has come for it to be amended. That is why I suggest Hon Mark Nevill support the Bill before the House. It would be quite simple and would save a good deal of time and energy.

Hon Mark Nevill: I think you might be creating more problems than you are solving.

Hon N.F. MOORE: Any suggestion by the Government that we should back off from proceeding with this Bill because it might in some way interfere with the Government's plans is absolute nonsense and almost akin to blackmail.

Hon Mark Nevill: I have not seen the Government's Bill yet. It will depend on what goes into the regulations.

Hon N.F. MOORE: In his speech on behalf of the Government Hon Mark Nevill said that the Government would be bringing in its own Bill and that it might be similar to, or not too different from, the Opposition's Bill; he did not quite know. However, he said that if it were similar enough it might be ruled out of order because of the rule that says one cannot bring in the same legislation twice in one session. That is what I understood Hon Mark Nevill to say when suggesting that my Bill might cause more trouble than it solved. That is not blackmail, but it is a funny type of threat, suggesting that I should back off with this Bill because some time down the track the Government may introduce its own legislation. However, we have no idea what will be in that Bill, as Hon Mark Nevill admitted. Why should I back off from continuing with desperately needed legislation for the goldfields simply because the

Government may introduce legislation some time down the track? I reject that proposition. This Bill will be won or lost on its merits and not on some notion that the Government may introduce a Bill when the union movement is prepared to go along with it.

Hon Mark Nevill: The Bill will come to grief when the regulations are drawn up.

Hon N.F. MOORE: Very few regulations will need to be drawn up as a result of this Bill because I will amend it to delete some of its regulation making power. Hon Mark Nevill believes that the Act needs to be changed. I agree entirely. Here is an opportunity for the Government to agree to long overdue changes which are necessary if we are to see companies such as Western Mining continue to operate productively and effectively in the eastern goldfields. I was disappointed to hear Hon Mark Nevill condemn Western Mining. At one stage he said it could not get on with the Australian Workers Union and therefore the problems were the company's fault.

Hon Mark Nevill: That is a simplification of what I said.

Hon N.F. MOORE: I wrote down the member's comments. Having read about Bruce Wilson, along with some other people in the AWU, it appears that anybody who could not get on with him would be doing the right thing. The man has an extraordinary record in union politics, most of which is not good.

Western Mining, in Kambalda and elsewhere in the eastern goldfields, wants to spend a great deal of money on development. This is a massive company by international standards, and, as with many other Australian companies, it is thinking of taking its money elsewhere. The conditions applying in Western Australia to these operations are such that the company is thinking of investing elsewhere. Even BHP is considering potential for mining in South America and Africa.

Hon Mark Nevill: It has been in South America for years.

Hon N.F. MOORE: The company is spending money there which it is not spending here. These companies are not investing in this State as a result of the award system in operation.

Hon T.G. Butler: Of course!

Hon N.F. MOORE: Members opposite seem to forget that somebody has to pay the wages at the end of the day. Members opposite believe that people have a right to earn a salary but also that other people should be directed to pay that salary regardless of their ability to do so. Therefore, some of these companies are investing elsewhere.

Several members interjected.

Hon N.F. MOORE: Members opposite cannot understand the basic fact that if a company invests elsewhere or has insufficient money, its workers cannot be paid. If these companies do not spend money on development with capital equipment for expansion, they cannot employ more people. The harder it is made for a company to invest in this State the fewer people whom members opposite purport to represent will have a job; it is as simple as that.

Several members interjected.

Hon N.F. MOORE: The company said to the union that if it did not go along with its proposal, it would sack 120 people. The union said, "Sack them." The union does not represent unemployed people; it is interested only in people with a job. Fewer people are involved with the union movement because fewer people are employed. Members opposite do not represent unemployed people.

Hon T.G. Butler: What rot!

Hon N.F. MOORE: Members opposite stand for people receiving wages and conditions in circumstances in which they cannot be afforded, and in so doing they allow people to lose their jobs. Members opposite do not say to the unemployed that if we all took a pay cut or a change in our conditions or allowed some changes which would increase productivity, more people could get a job.

Hon Tom Helm: I will follow you, Mr Moore.

The DEPUTY PRESIDENT: Order! If members interjecting want to make speeches, they should make contributions during the Committee stage.

Hon N.F. MOORE: Hon Mark Nevill suggested that this Bill was premature.

Hon Tom Helm: It is more pregnant than premature.

Hon N.F. MOORE: That is a pretty smart comment! The member said that the Bill was premature because for some strange reason this problem does not exist and did not need solving. The member indicated that at some time in the future the Government would legislate on this matter. However, the fact is that this Bill was introduced last year and, if it had been passed then, many of the problems at Kambalda and Leinster would not have arisen.

Hon Mark Nevill: I do not agree.

Hon N.F. MOORE: If the employers and the employees had the capacity to draw up a flexible award, many problems would not have arisen.

Hon Mark Nevill: The current strike rate is one-tenth of that when you were in Government.

Hon N.F. MOORE: That is a furphy. The Government has changed the way that strikes are recorded. If a stop work meeting is held - such as the one held by the Minister for Productivity and Labour Relations at Dampier - that is not now regarded as a strike; it is a union meeting. The criteria for recording such activities by the union movement have changed. Members opposite will never be able to expunge the legacy of the Government's term in office: One million of the people they purport to represent are without jobs. If the union movement could bend with the times and allow for flexibility, resulting in increased productivity and increased employment, this situation could have been averted. Members opposite still stand up for the people who have their heads in the sand, and have done so for years.

Hon T.G. Butler: In 1984 the electors in your electorate did that, Mr Moore.

Hon N.F. MOORE: I have indicated that I will move to amend proposed new paragraph (zd) in my Bill. This deals with regulation making powers, to which I shall refer during the Committee stage.

I agree with Hon Mark Nevill's comment that underground mining is demanding work. Members would not find me working there for quids.

Hon Mark Nevill: Why not?

Hon N.F. MOORE: The member may like it, but I do not. It is claustrophobic and dark.

Hon Mark Nevill: I worked underground for six years.

Hon N.F. MOORE: That is the member's problem.

The DEPUTY PRESIDENT: Order! Hon Norman Moore has the floor. If we hear him in silence he will finish his remarks much more quickly.

Hon N.F. MOORE: I will finish my remarks when I am ready. I agree with the member that working underground is onerous, and I would not like to do such work, having been underground on several occasions. However, some people like it - as we were told - and these people are paid good salaries. The conditions under which these people work can be negotiated at an enterprise level between those working underground and those operating the mines. That is where the decision should be made. It should not be determined in this House, where Hon Mark Nevill thinks it is all right to work underground and I think it is terrible.

Hon T.G. Butler: Would you guarantee the right to strike in such a procedure?

Hon N.F. MOORE: If the member agrees to the right to a lock out - it is a quid pro quo. But I do not wish to discuss strikes; I wish to discuss decisions regarding working conditions in gold and nickel mines. This Bill has been introduced to overcome serious problems in the eastern goldfields in particular, and to sort out who makes decisions regarding working conditions in Western Australia once and for all.

Hon Mark Nevill: It won't solve some of the problems in Kambalda.

Hon N.F. MOORE: I am not suggesting that this Bill will solve the problems in Kambalda. If Hon Mark Nevill does not think it will solve the problems, why does he propose to amend it?

Hon Mark Nevill: Because I said we needed an agreed package.

Hon N.F. MOORE: My motivation is to provide a set of circumstances in which we may solve the problems at Kambalda and Leinster. When the Minister gets rid of his ideological blinkers, and stops giving exemptions to everybody but Western Mining, maybe we can solve some of the problems.

Hon Mark Nevill: You are the one with the blinkers.

Hon N.F. MOORE: I take great exception to Hon Mark Nevill's derogatory comments about Western Mining.

Hon T.G. Butler: We take exception to the derogatory remarks you made about unions.

Hon Tom Stephens: And about union officials.

Hon N.F. MOORE: That is the right of members opposite. They can say that as often as they like, and I will say what I like about unions as often as I like. I am now saying what I think about Western Mining Corporation, which is my right. Hon Mark Nevill in his speech talked about Western Mining Corporation's being out of date and said something to the effect that it had not done very well in the last few years.

Hon Tom Stephens: I was in Kambalda. I can tell you that it demonstrated how out of touch it was as a company on that occasion.

Hon N.F. MOORE: Members opposite are the people who are regrettably running the State at present. They are the people who, for some strange reason, put the interests of their union mates ahead of the requirements of a major company -

Hon Tom Stephens: Not at all. It is in the interest of the Australian community.

Hon N.F. MOORE: - which has invested hundreds of millions - probably even billions - of dollars into this State's economy over many years. If my memory serves me correctly, Western Mining goes back to the 1930s. It is not a fly by night company. It has had mines in Kalgoorlie, Bullfinch and Koolanooka, and has been involved in iron ore, gas and oil exploration. It is a major company and its investment in Western Australia has provided employment for thousands of people, including my father.

Hon Mark Nevill: I worked for them for 10 years.

Hon N.F. MOORE: That is quite right. Western Mining is a very competent company.

A nickel mine in Leinster was previously operated by Agnew mining company, which was a joint venture between Mt Isa Mines and BP Minerals, but it went broke. It could not make a quid; however, the company did not operate it very well. It could not operate that mine at Leinster with the biggest nickel ore body in the southern hemisphere. There was another massive ore body right alongside the mine - about the same distance as Tom Stephens is from me; however, the nickel mine went broke and was closed down. Two years later Western Mining bought the whole project. There are now more houses in Leinster than ever and the population is increasing. Western Mining has had a massive underground operation at the major ore body for the last two years; it is producing two million tonnes a year from its underground mine, and is employing more and more people.

Western Mining is a no-nonsense company which takes the approach that a company cannot afford frills in these economic times and must get on and do the job. It has done that in Leinster, albeit with problems with the Government which will not allow it the flexibility it needs. However, even with the constraints the Government is placing on it, Western Mining has still been able to turn the Leinster nickel operation from a loss making situation into one of the most profitable nickel mines in the world. It is now going to expand that operation by expending another $100 million to increase the size of its production plant and to increase the tonnage from that mine. This is the sort of company that Hon Mark Nevill, by supporting his union mates such as Bruce Wilson, will jeopardise. The company wants to spend not millions of dollars, but hundreds of millions of dollars in Western Australia at its nickel refineries, one at Kambalda and one at Leinster. It asked the Government to change this old Act that Hon Mark Nevill said was anachronistic - and I agree with him - to take out some of the old fashioned requirements and allow the enterprise bargaining system to work. However, what does the Government do? It stands Western Mining up every time. Then, when Hon Mark Nevill and Hon Tom Stephens, who should both know better, get up in this

House, they decide to give the company a serve on the way through. That is not good enough. The Bill is very worthy; it should be supported by the House because this country, as we all know, desperately needs a major change to the way in which it does business. This Bill represents a significant change for a company that is providing a massive input into the Western Australian economy, and the company needs all the help this House can give it.

Question put and passed.

Bill read a second time.

Sitting suspended from 3.45 to 4.00 pm

Committee

The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon N.F. Moore in charge of the Bill.

Clauses 1 to 5 put and passed.

Clause 6: Section 61 amended -

Hon N.F. MOORE: I move -

Page 3, lines 1 to 5 - To delete paragraph (zd).

Section 61 of the Act contains the regulation making powers. I am seeking to include in the regulation making powers the ability of the Governor or the Government to make regulations about, first, the maximum number of consecutive days on which a person may work in or about a mine. The reason it should go into the regulations is that it has been taken out of the Act and I believe it is of such significance that it should be part of the legislation. Secondly, the Government may make regulations dealing with the requirement for persons to be able to speak English. That will also be taken out of the Act if this Bill is passed. I seek to put that in the regulation making powers so that regulations can be made about the speaking of English in mines. I had intended to include the ability to make regulations to deal with the maximum length of a shift, which is the guts of the whole issue. When the Bill was first drafted, I believed that the Government could be trusted to bring in regulations which might satisfy the requirements of all parties in this matter. However, there has been a considerable amount of procrastination and argument and temporary agreements, if I can call them that, between unions and employers along the way in respect of this issue. I have come to the conclusion, therefore, that it would be better to delete paragraph (zd) and allow the award making process to decide on these issues.

As I said in my response to the second reading, the aim of the Bill is to allow the Industrial Relations Commission, after taking evidence from all parties involved, to make a decision about the working conditions that apply. If we proceeded with this clause we would still give the Government the power to make regulations in respect of the maximum length of a working shift, but by regulation rather than by inclusion in the Act. That would be more flexible than having it in the Act. However, I believe that, upon reflection, it would be far better if left out altogether and we allowed the Industrial Relations Commission to make decisions on these issues.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with an amendment.

ACTS AMENDMENT (CONFISCATION OF CRIMINAL PROFITS) BILL

Second Reading

Debate resumed from 5 May.

HON J.M. BERINSON (North Metropolitan - Attorney General) [4.06 pm]: First, I welcome the indication by Hon Derrick Tomlinson of the Opposition's support of this measure. I also welcome Mr Tomlinson's constructive approach to related issues, even though that involved him in expressing some reservations about some aspects of this Bill. If I were to echo one of Mr Tomlinson's opening comments yesterday, I would say that that is

all that needs to be said and I should quit while I am ahead, given the indication of support. I think it is desirable in this case, however, to deal with a couple of matters which Mr Tomlinson introduced into the debate because I suspect that he has, in some cases, taken the effect of the Bill further than it actually goes or, alternatively, I have not properly understood the point he was making. In the first place, I refer to Mr Tomlinson's comment about the provision of this Bill which specifically permits a warrant to be sought on the basis of hearsay evidence. Mr Tomlinson, as I understood him, had two things to say in this respect which I would question on the basis that I indicated a moment ago. In the first place, he said that this was an amendment to the Criminal Code and related to applications for orders and search warrants for any offence. He also said -

> . . . the proposed amendment will reverse a fundamental principle of law relating to hearsay evidence and hearsay information in a way which has universal application to search warrants and restraining orders.

It is, of course, true to say that there is a fundamental principle relating to the exclusion of hearsay evidence in relation to an actual trial. That can be accepted as a general statement, although there are a number of well recognised exceptions to that rule. However, with regard to the warrant, two things should be clarified: In the first place, it is not correct to suggest that this question of hearsay evidence for the purpose of founding a warrant applies to the Criminal Code generally. The provision about which we are talking appears in part 2 of the Bill which relates only to the Crimes (Confiscation of Profits) Act. As members will know, part 3 of the Bill deals with the Criminal Code and it is only in the event of that provision being in part 3 that the new provision would apply to all Criminal Code offences. Also, it is not correct to suggest that the acceptance of hearsay evidence for the purpose of founding a search warrant reverses a fundamentally accepted current practice. The position is that as a matter of practical application hearsay evidence is very often provided as the basis for the issuing of a warrant. I believe Hon Derrick Tomlinson was referring to that when he indicated fairly enough that this part of the Bill is more of a clarifying provision than a new provision. I emphasise that that is the case.

The reason that a specific provision is suggested in the Crimes (Confiscation of Profits) Act is that a particular question has arisen in the courts in relation to search warrants issued for the purpose of this Act. As I understand the position, the judges, given the very stringent nature of the parent Act, have tended to look in a very strict way at the warrant provisions. It is for the purpose of putting that question beyond doubt that the specific reference to the acceptability of hearsay evidence is included in this Bill. I have said that its acceptability has come into question; I am not aware of any definitive ruling on that. The long and short of the current position is that the importance of the matter which the parent Act covers is such that the Government accepts that the issue should be put beyond doubt.

The second major matter raised by Hon Derrick Tomlinson was in respect of new money laundering offences. In this case the offence is included in the Criminal Code. Despite that, however, it is again incorrect, strictly speaking, to say that the money laundering provisions will apply to all proceeds of all offences. They are, in fact, applicable only to indictable offences and, of course, that covers a narrower field than might have been thought. It is also relevant to point out in respect of this part of the Bill that there is no reason in principle to separate the laundering offences with regard to proceeds of drugs, for example, as opposed to proceeds of a bank robbery. The real test of the need for this new offence relates to the seriousness of it, and that is generally indicated by its restriction to indictable matters.

I have only one or two further comments which may be of some help in respect of the discussion yesterday. I turn first to the point in the debate at which there was an interchange about clean and dirty money and laundering and laundries. Hon Derrick Tomlinson said that the defence to a charge of the new offence of laundering money is to demonstrate that the money involved in the alleged laundering was not dirty money and was not the proceeds from an illicit activity, but was clean money. Although I may have taken that comment too literally, if it were taken literally it would also go beyond the scope of this provision. It would mean that it would be necessary to demonstrate that the money was clean throughout the whole process being investigated or pursued. Therefore, if it were clean at the outset, it would be clean at the end. Once that were proved, there would be no problems. That is one way, but it is very far from the only way and it would, in fact, make this defence very difficult to plead in most situations. The distinction I am trying to draw is that it is not

necessary to show that the money was always clean, but only that it is clean in the hands of the person who now holds it. That appears from proposed new section 563A(2) which indicates that it is enough for the defendant to prove that he did not know and did not believe or suspect and did not have reasonable grounds to believe or suspect that the relevant money was the proceeds of an offence. That is a much broader defence than would apply if the defendant had to prove that the money was always clean, no matter whose hands it had passed through before it reached him. I may be taking Hon Derrick Tomlinson's comment too far in dealing with it literally, but I thought I should clarify it in any event.

One of Hon Derrick Tomlinson's recurring themes - he expressed this in spite of acceptance and support of the Bill itself - was that we were somehow moving from a position where attention was directed at drug offences in particular to an area of broader application where the special difficulties of proving drug offences in many cases did not apply. I suggest that by the introduction of the new laundering offence, we are not moving to any change from a limited drug offence to a broader offence. The confiscation of profits Act, as I have indicated already, will apply to all indictable offences, and the laundering provision will extend to the laundering process the application of offences caught by the confiscation of profits Act if the proceeds or profits of the illegal act are passed through other hands. I confess that some of the distinctions are not easy to indicate precisely, but I wanted to make that attempt and to clarify some of the matters which were raised in the hope that that would meet the reservations expressed by Hon Derrick Tomlinson, in spite of his and the Opposition's general acceptance of the Bill as a whole. I commend the Bill to the House.

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.

Clauses 1 to 10 put and passed.

Clause 11: Section 563A inserted -

Hon J.M. BERINSON: I move -

> Page 8, line 2 - To delete "commits an indictable offence" and substitute "is guilty of a crime".
>
> Page 8, lines 4 and 5 - To delete "an indictable offence" and substitute "a crime".
>
> Page 8, lines 15 and 16 - To delete "the indictable offence" and substitute "that crime".

These amendments all involve the same issue. The reason for the amendments is that clause 11 of the Bill contains a proposed new section 563A of the Criminal Code which will create the "indictable offence" of property laundering. Indictable offences, which are offences that are usually tried by a jury, are often created outside the Criminal Code by Acts of Parliament. However, section 3 divides indictable offences into crimes and misdemeanours, and indictable offences created by the Criminal Code are characterised as either crimes or misdemeanours. One therefore finds references in the Criminal Code to a person being guilty of "a crime" or "a misdemeanour" instead of to a person committing "an indictable offence"; for example, sections 380 to 383, and 398 to 399.

It can be important in certain circumstances to know whether an indictable offence is a crime or a misdemeanour, as illustrated by the following example: Section 32(b) of the Constitution Acts Amendment Act 1899 disqualifies a person from membership of the Legislature if that person has been in any part of Her Majesty's dominions attainted or convicted of treason or felony. Section 3(1) of the Criminal Code Act 1913, which is the Act to which the Criminal Code is scheduled, provides that references to felonies in legislation and in certain instruments are to be taken to be references to offences which are crimes under the Criminal Code. The amendments from "indictable" to "crime" sought to be made to the Bill are therefore desirable not only because they will bring proposed new section 563A into conformity with the general pattern of the Criminal Code, but also because they will make it clear that section 32(b) of the Constitution Acts Amendment Act 1899 will apply to property

laundering, because that offence will be a crime and, therefore, by section 3 of the Criminal Code is clearly a felony, and an offence with a penalty of 20 years - as is proposed in clause 11 for money laundering - should clearly give rise to a disqualification within section 32(b).

Amendments put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

LIMITED PARTNERSHIPS BILL

Second Reading

Debate resumed from 19 March.

HON PETER FOSS (East Metropolitan) [4.28 pm]: Before I deal with the provisions of the Bill I should deal briefly with the concept of a limited partnership. Members are all familiar with the idea of a partnership where two or more people get together in order to carry out a business enterprise and have joint liabilities and responsibilities both between themselves and to the outside world. A limited partnership differs from an ordinary partnership in that usually there is one general partner, who has the same unlimited liability that a partner in an ordinary partnership has, and the remainder of the partners are limited partners; their liability is limited to the actual contribution that they make to the capital of the partnership. The previous Act which set up the concept was a very well drafted and clear Act. However, it appears that we need a new Act simply because some problems have emerged with the old Act. Six clear problems exist. The first is that in creating a limited partnership there is an ad valorem duty on all capital contributions of 0.25 per cent irrespective of whether a transfer of property is involved. If a person is merely contributing cash to the partnership, 0.25 per cent ad valorem is still applicable. This is a substantial discouragement to people forming limited partnerships. Secondly, there is a cap of 20 possible partners. There has been no way to go beyond that, unlike with ordinary partnerships - which also have a cap but have a method to go beyond 20. Attempts have been made to solve the cap of 20 partners by having strings of partnerships, but this has been extremely awkward to administer and appears to involve serious legal difficulties as well.

The third reason is that the Act does not clearly state that the general partner can be a limited liability company. In fact, there were dicta in Western Australia from District Court Judge Heenan in Gibbs Bright & Co v Pacind Pty Ltd and Others, which definitely cast doubts. Judge Heenan said -

> (The Act) contemplates, I believe, that the general partner shall be a person of substance and, in the ordinary course of events, able to meet the obligations of the partnership. Of course, if the one general partner is a proprietary limited company the liability of all of the partners is limited. That, in my opinion, is quite contrary to public policy and to the spirit of the legislation - even if those dealing with the firm know that it is a limited partnership. But if they do not know that it is a limited partnership the element of risk, which is present in any commercial enterprise, becomes immeasurably greater because the true nature of the risk is concealed.

So there is a suggestion - although it was only dicta by Judge Heenan - that the general partner should not be a limited liability company.

The fourth problem is that limited partners face unlimited liability if they are involved in the management of a partnership. In other words, they must detach themselves from the management of the partnership, or if there is a return of capital to them. There have been some very worrying cases in the United States on what "involved in the management" of the partnership means. It is not defined in the present Act. The concerns have been about using this as a fund raising vehicle if "involved in the management" means that the partners might have been taking some sort of interest in determining what is being done with their money. Obviously if one were to use this as a means to contribute money to a joint venture one would want some ability to ensure that the money was not being frittered away.

The fifth problem is that there is no statement that the partnership is in fact a limited

partnership. When dealing with companies we have always had "Ltd" at the end of the company name so that people are warned that they are dealing with a limited liability body, or that the members of that company are limited in liability. There has been no such requirement in the past for limited partnerships to similarly disclose to the public that they are limited.

The sixth problem with the current Act is that, although it is specifically stated that the debts and obligations of limited partners are limited, it does not mention the word "liabilities". It could very well be read that debts and obligations means contractual debts and obligations, whereas liabilities would extend to tortious liabilities and perhaps statutory liabilities where they are imposed in a manner similar to tort. The problem we face is that one may be limited in liability under the contractual aspects of the partnership but may not be limited in liability under the negligent acts of the general partner.

In Australia the changes to the concept of a limited liability partnership started in Queensland. That State had its mercantile Acts which allowed limited partnerships with unlimited numbers of people, but the way of forming those limited partnerships was somewhat awkward. It needed two general partners instead of one and it required very expensive advertising of changes whenever there was a change in the limited partnership. It also denied limited liability if there were certain minor technical slips. Members might see in this the same problems as we experienced with the Associations Incorporations Act, which again denied the validity of an incorporated association if certain minor, technical steps were not taken. Perhaps members of the National Party might be conscious of that as a case in which the National Party was involved established that particular point.

The other problem that came out of Queensland is that the limited partnership was established by having the partners sign an application. The problem is that to have any substantial number of partners - and there could be several thousand people in a limited partnership - it is necessary to have the one application form signed individually by the people involved. One could end up with an extremely difficult way of forming a limited partnership. The piece of paper must be sent to each of the 3 000 partners for signature. Obviously a better way would be to send to the people an application form which constituted the general partner the attorney for everyone else; the general partner would sign the application to start the limited partnership as attorney for everyone else.

Most of the problems were fixed by Queensland's Partnership, Limited Liability, Act of 1988, which brought that State generally into line with our 1909 Partnership Act but kept the unlimited number of partners and, interestingly, spoke of limited liabilities. Generally speaking, I would say it is a good Act.

The next legislation came from New South Wales and picked up some of the ideas of Queensland and also dealt with the meaning of the words "involved in the management". It required an appropriate name to show that the partnership was limited. Again, it did not pick up the liability. To that extent, it went backwards from the Queensland position instead of forwards. The Western Australian Bill appears to be based principally on the New South Wales Act, and its drafting appears to be generally good. The idea of partnerships is a very old one; certainly it was mentioned in Hammurabi's Code of 1760 BC. The idea of limited partnerships is also quite old.

Hon Derrick Tomlinson: Mr Berinson is very familiar with that, having practised under that law.

Hon PETER FOSS: The idea of limited partnerships is also a very old idea. The first limited partnerships were in the Middle Ages in Italy in what was called a commenda.

Hon J.M. Berinson: Do you think that we would have had it right by now?

Hon PETER FOSS: One would think we would have. The commenda stood for a partnership in which certain partners contributed the capital but were not responsible for the partnership's losses and received a larger part of the profits while other partners managed the partnership business, were liable for its losses and received a smaller part of its profits. It sounds like a fairly good arrangement. I quote now from Ames v Downing, 1 Bradford, 321 in 1850 -

> In the Middle Ages [the *commenda*] was one of the most frequent combinations of trade and was the basis of active and widely extended

> commerce of the opulent maritime cities of Italy. At a period when capital was in the hands of nobles and clergy, who, from pride of caste, or canonical regulations, could not engage directly in trade, it afforded the means of secretly embarking in commercial enterprises, and reaping the profits of such lucrative pursuits, without personal risk.
>
> England and the continental nations of Europe, through their trade with Italian merchants, adopted the Italian rules which were modified and extended by caste, statute and codification.

The partnership texts refer to that. The quote continues -

> At first, the courts were reluctant to recognize the concept of limited liability, but later held that the intent of the partners as expressed in their agreement, to the extent not disallowed by law, should prevail.

The present use of limited partnerships in the United States is immense. The US has uniform limited partnership Acts and billions of dollars are raised through limited partnerships. Its main appeal as a means of raising money is that it is tax transparent. It enables losses to be brought into account in the year in which they are incurred. This is especially important in high risk areas and in places where there is a high front end cost. The reason for that is that if there is high risk one may never make a profit, so if one has a corporation the expenditure of establishing it is incurred by the company and the losses incurred may never come to one as a tax advantage because one never has a profit on which to offset them. Similarly, if there is a high front end cost, one does not wish to have the problem of waiting years and years before one has the benefit of those tax losses. Some of the areas in which limited partnerships have been used are oil and gas, hard rock mining, leveraged leasing, forestry and agriculture, high tech industries, research and development, management buy-outs, property development and film. It is especially useful where there are high start-up costs with early losses with or without high risk. The Disney Corporation recently raised $US600 million in Japan to produce films using this method. The United States has amended its tax laws to some extent to quarantine losses from limited partnerships, but even with that restriction in the tax laws it is still a huge money raiser. It is estimated that this year in the United States $48 billion will be raised in this manner. Similar tax amendments have taken place in New Zealand for limited partnerships.

Australia has no such limitation and so it would be a very efficient and effective form of raising funds for high risk or high start up industries, especially in the areas I mentioned earlier. The good thing about it I suppose from the point of view of Western Australia is that even though we can provide a very good vehicle to encourage the sort of development we have all been saying should be encouraged in Western Australia, it will not involve the State in any extra cost by way of supervision because limited partnerships will come under the scrutiny of the Australian Securities Commission in the same way as any other fund raising does - in fact in a more strict way because there is very limited avoidance of ASC regulations. The only sort of situation where ASC regulations might be avoided as far as partnerships are concerned would be if someone were advertising for a lawn mowing round partner. Most other situations would fall under the ASC regulations.

Special requirements which are attached to partnerships and limited partnerships are, firstly, that a prospectus must be produced before people can raise funds. Secondly, the general partner must be a public company or the manager must be a public company. Thirdly, there must be a trust deed in a form approved by the ASC with statutory covenants to protect partners. Fourthly, there must be an approved trustee who holds the trust property, who publishes accounts and carries out other duties. Fifthly, the approval of trustees is not given lightly. It does not include what we would call an authorised trustee investment type trust; it requires the type of trustee such as WA Trustees, the standard mainline trustee company. Finally, the ASC has a continuing monitoring role over the involvement of managers and the general partner of the partnership. We may not be satisfied about the way the ASC handles regulatory control, but as a State we can be sure that it has been handed to the ASC and that the ASC retains the responsibility and has the power to deal with the supervision of partnerships. The new Bill proposed by the Attorney General does address most of the problems. First there is a minimal registration cost and the stamp duty will be just the ordinary duty under the Stamp Act provisions. If cash is contributed of course no stamp duty

will be payable. It removes the cap on numbers. It states that the general partner can be a company and there is some definition of that being "involved in management". However, that is one area with which the Opposition has some difficulties. The Opposition believes it is not a satisfactory resolution of the problems that were previously experienced in the definitions of the words "involved in management". Clause 20(3) still leaves some doubts in that area. The Opposition suggests it should be amended to make it satisfactory so that we have a purposive rather than an objective test. It does have a public statement required of the name so people know they are dealing with a limited partnership but it does not - and this is another area of problem - address the question of liability. It deals with debts and obligations but not the question of the limit of partners.

Hon J.M. Berinson: Are you foreshadowing an amendment or simply proposing that one should be made?

Hon PETER FOSS: I will foreshadow that the Bill be sent to the Legislation Committee. It could be dealt with quite quickly.

Other problems have emerged as a result of the experience with the other Act and some are modern problems that I suppose already apply with the current Act. The first is in the New South Wales Act and it is repeated in this Bill: It does not address the question of liability for agents under Federal Acts. For instance, if one looks at section 84 of the Trade Practices Act one will see obligations are placed upon people for the acts of their agents. It would be properly outside the competence of this Legislature to go directly to that liability and seek to limit it. What will probably need to be done instead is to limit the liability of the limited partners for the acts of the general partner. In other words, to deal with the consequences of partnership law rather than the consequences of agencies. I believe the way to deal with this would be to say that for this particular purpose the limited partners are not in the position of having the general partner acting as their agent. Again, it is probably within the general concept of the Limited Partnerships Bill and quite easily phrased to enable some sort of change to be made to deal with that point. I do not think it can be dealt with by directly limiting the liability. Although the liability purports to be dealt with, I do not think it is. The second point is the question of application for registration. It is not absolutely clear whether it needs to be signed by each partner individually. If, as the Opposition sees, this Bill provides a very sensible capital raising method for the type of ventures that I mentioned, it is likely that with the removal of the cap we would be dealing with many thousands of partners.

Although it does not say that applications must be signed individually, it is sufficiently important that it be made clear that the partners do not have to sign it individually and that they can constitute the general partner to be their attorney for the purpose of the signing of the registration application. That should be included as a minor amendment as it would result in a considerable degree of comfort for those people likely to be involved in this area, because they would then, with some certainty, know that the partnership was a limited partnership and had been properly constituted. There would be nothing worse than having 3 000 people who thought they were part of a limited liability partnership being faced with the terrible problem when somebody was suing them of having to have the limited liability set aside because they had not complied with the technical requirements of the Act. Of course, we must remember that in following the technicalities of setting up a limited company the ability of the registrar to issue a certificate is conclusive evidence of the separate entity of the limited liability company. A limited partnership does not set up a separate entity. The possibility of going directly to partners where the technicalities have not been complied with would be greater than is the case with a limited liability company.

The Opposition welcomes these changes. They appear to be directed towards a sensible commercial vehicle for the raising of money in Western Australia for much needed development which we have all supported. However, a number of problems have been raised by practitioners which could be better dealt with by the Standing Committee on Legislation, especially as that committee seems to be clearing its list of legislation and in the light of the limited nature of the problems. The public could make submissions and the Bill could be returned and dealt with effectively in the House. The Liberal Party supports the Bill and will be moving that it be referred to the Standing Committee on Legislation.

HON J.M. BERINSON (North Metropolitan - Attorney General) [4.52 pm]: I thank Hon Peter Foss for the support he has expressed on behalf of the Opposition and, not least, for his interesting introduction to the prehistory of partnership arrangements.

Hon Derrick Tomlinson: It is not that far back.

Hon J.M. BERINSON: I thought Hon Derrick Tomlinson was unkind in suggesting that I might have been there at the time.

Hon Derrick Tomlinson: Prehistory belongs to the Neanderthal.

Hon J.M. BERINSON: I will not take that matter any further. Nothing has emerged from the debate which requires an extensive reply. The three matters Hon Peter Foss referred to are obviously suitable for consideration by the Standing Committee on Legislation. Since he has signalled his intention to move in that regard and as I have no objection in principle to it, I restrict myself at this time to welcoming that support. However, I remind members of the committee's ability to provide its reports within a suitable time. A discussion of that will be more appropriate during debate on the reference motion. I commend the second reading to the House.

Question put and passed.

Bill read a second time.

Referral to Standing Committee on Legislation

HON PETER FOSS (East Metropolitan) [4.54 pm]: I move -

> That the Bill be referred to the Standing Committee on Legislation for consideration and report.

When the Bill was originally introduced the Attorney General indicated that it should lie on the Table for two months and that people who wanted to comment on the Bill were asked to do that by 20 May. However, it would now be appropriate that they appear before the Legislation Committee to comment on the legislation.

HON J.M. BERINSON (North Metropolitan - Attorney General) [4.55 pm]: I have no objection to this course being followed; however, I urge the Standing Committee on Legislation to return the Bill to the House as soon as possible and preferably in time to allow this House to conclude its consideration of the Bill before this session ends. I am aware of the difficulties which the Legislation Committee was presented with when the House referred to it the Crime (Serious and Repeat Offenders) Sentencing Act. That report is due next week and I expect that it will be a comprehensive report which will justify the amount of effort that has been devoted to it. On the other hand, one by-product of the need for substantial work on that particular legislation has been a significant delay in the timetable for the return of earlier references. For example, only today are we in a position to proceed with the Acts Amendment (Evidence of Children and Others) Bill and the Acts Amendment (Sexual Offences) Bill although they were referred to the committee as long ago as 5 December 1991. I understand that Hon Peter Foss has a proposal that will allow the Legislation Committee to establish subcommittees. I am not clear about whether that will involve more members being appointed to that committee or whether some other process may be required.

Hon Peter Foss: It is in the report which we submitted last August.

Hon J.M. BERINSON: I am sure it was, but my memory of the report is not clear. I urge the people sponsoring a move of this sort to take the initiative in bringing it to the House's attention. This is not a problem that can be solved by only increasing the days available to the committee or reducing House sitting hours - which is another prospect that has been explored. It comes down to the manpower available where a particular issue involves the extraordinary circumstances which the juvenile repeat offender legislation raised.

As I said before when I referred to this problem in another context, there is nothing in what I am saying that is critical of the Legislation Committee. I continue to regard it as the most successful of all the Council's Standing Committees, but our most recent experience has illustrated well the problem to which the report referred.

Hon George Cash: The report slipped off the Notice Paper, but perhaps we can have it reinstated so it can be discussed.

Hon J.M. BERINSON: I will undertake to examine that again. If I can take the initiative I will be happy to do that, but one way or another we must ensure that the quality of work from this committee is also matched by its quantity, and in good time.

Question put and passed.

[Questions without notice taken.]

ACTS AMENDMENT (EVIDENCE OF CHILDREN AND OTHERS) BILL 1991

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [5.20 pm]: I move -

That the Bill be now read a second time.

In April 1991 the Law Reform Commission of Western Australia published a report on the evidence of children and other vulnerable witnesses. This Bill implements a number of the commission's recommendations and in doing so seeks to overcome the major difficulties which occur when children and other vulnerable witnesses give evidence in court. Particular care has also been taken in drafting the Bill to ensure that accused persons retain their rights, particularly the right to a fair trial.

Children and other vulnerable witnesses, when asked to give evidence in court, may be unable to do so for several reasons. Among the most common is the stress or trauma children experience in having to speak in the formal setting of a courtroom. This problem can arise in any case. However, it most often occurs where children are the alleged victims of sexual abuse. In relation to other witnesses, problems most commonly arise where the witness has a severe physical or mental disability. To meet such difficulties the Bill contains proposals for closed circuit television, the video taping of children's statements and pre-trial hearings. Additionally, there are new provisions on the competency of young children to give sworn or unsworn evidence in judicial proceedings.

Sworn evidence of children: Currently, before children are accepted as competent to give evidence on oath they must demonstrate to the judge or magistrate that they have a belief in God and in the divine sanction attached to taking an oath. They must have more than just an understanding of the ordinary duty to tell the truth. They must also realise that the solemnity of the occasion imposes an added responsibility to tell the truth. The Law Reform Commission considered that, particularly for very young children, this test of competency to give sworn evidence is too stringent. Proposed new section 106B of the Evidence Act will enable children to give such evidence when they satisfy the court that they understand that the giving of evidence is a serious matter, and that they have an obligation to tell the truth which is greater than the ordinary duty to tell the truth.

Unsworn evidence of children: Currently, children under 12 are not competent to take an oath but may give unsworn evidence. They can do so only if they possess sufficient intelligence to justify the reception of their evidence and understand the duty of speaking the truth. These requirements are not imposed on older children or adults who give unsworn evidence. There may be circumstances where children under 12, who are now unable to give either unsworn or sworn evidence, may nevertheless be able to give effective evidence. The commission recommended that such children should be permitted to give unsworn evidence if they are able to give an intelligible account of events which they have observed or experienced. Proposed new section 106C of the Evidence Act implements this recommendation.

Corroboration of unsworn evidence: The law now requires that unsworn evidence of a child under 12 must be corroborated by independent evidence before there can be a conviction based on the child's evidence. As a result, child sexual abuse complaints may not be prosecuted because the abuse occurred in private or in the presence only of other young children. Corroboration in such circumstances is not available. Current research indicates that children's evidence is not inherently unreliable. In view of these matters, and following the commission's recommendations, clause 7 abolishes the current requirement that the unsworn evidence of children under 12 must be corroborated.

Corroboration warning: Currently, judges may issue a warning to the jury when young children give evidence on oath. This warning is to the effect that because the witness is a child his or her evidence is less reliable than an adult's. Proposed new section 106D will prohibit warnings on that generalised basis. However, judges will retain the ability to warn juries about the reliability of the evidence of a particular child witness who has appeared in court.

Admission of children's out of court statements: Out of court statements made by children may be the best available evidence in cases involving alleged child abuse. However, existing rules of evidence may prevent the admission into court of such statements, despite their relevance to the issues being tried. When that occurs, children must present their evidence in court. This may be extremely traumatic for the child and may result in the child's being unable to give any evidence at all. Proposed section 106H will permit such statements to be admitted in child abuse and assault cases if specified conditions are satisfied. The child must be present in the court or available to be called as a witness. The accused must be given a copy of the child's out of court statement or, if the statement has not been recorded, details of the statement. This will ensure that the accused is given a sufficient opportunity to prepare a response to the statement.

Committal proceedings: The commission recommended that steps should be taken to avoid children being unnecessarily examined and cross-examined at committal proceedings and at the trial. Proposed amendments to the Justices Act 1902 in part 3 of the Bill will permit courts to allow children's evidence to be given at committal proceedings in the form of a previous out of court statement. The child would be called for cross-examination only if the magistrate is satisfied that there is good cause to do so.

Video taped children's evidence: Proposed new section 106I deals with the video taping of out of court children's evidence and the presentation of that evidence in court. Two procedures are available under section 106I. First, a child's evidence in chief may be presented to the court in the form of a previously recorded video tape. Second, all of a child's evidence, including evidence in chief, cross-examination and re-examination, may be taken at a separate pre-trial hearing which is to be video taped. The prosecution may apply to the judge or magistrate for either procedure to be followed. In relation to the first alternative, the court may give directions as to the procedure to be followed in the video taping of the evidence in chief, the presentation of the tape to the court and, if necessary, the deletion of portions of the tape. The court can also give directions as to the manner in which the cross-examination or re-examination of the child is to be conducted at the trial. In relation to the second alternative, which is a pre-trial hearing, proposed section 106K sets out such matters as who may be present. By virtue of proposed section 106K(3)(e), the defendant would not be permitted to be in the same room as the child. The defendant will be able to observe the proceedings, which will include examination in chief and cross-examination by means of closed circuit television. As this is a pre-trial procedure there will be no jury and no public present. Proposed section 106I provides that the video tape of this pre-trial proceeding will subsequently be presented to the court and be viewed by the jury. This will avoid the child's having to give oral evidence in court or be present at the trial. These two procedures, which can be used where a child would otherwise be unable to give evidence, will provide courts with a more accurate account of events and will be less traumatic for the child. They also ensure that the rights of the defendant are protected.

Protecting the rights of the accused: The Bill includes safeguards to protect the accused's right to a fair trial; for example, by ensuring to the accused the right to view and participate by way of cross-examination in the pre-trial video taped hearing. Unauthorised editing or altering of video taped statements is forbidden by proposed section 106M. Furthermore, the child will be available for cross-examination at committal proceedings, at the pre-trial and, where appropriate, at trial.

Closed circuit television: The Law Reform Commission recommended that courts should have power to order that closed circuit television be used to facilitate the giving of children's evidence in child abuse cases. This proposal is also designed to reduce children's stress. Without this procedure, some children would not be able to give any evidence. Closed circuit television will help to ensure that courts have all the relevant evidence. Proposed new section 106N implements the commission's closed circuit television recommendations. Where available, closed circuit television is to be routine. However, under proposed section 106O, on the application of the prosecution closed circuit television will not be used when the court is satisfied that the child is able and wishes to give evidence in the presence of the accused. Proposed section 106N specifies that pursuant to a judge's order either the accused or the child is to be out of the courtroom when closed circuit television is used.

Screens: Where closed circuit television is appropriate but is not available in a particular court, the Bill provides that a screen, one way glass, or other device must be used to prevent

the child witness from seeing the accused. However, the judge, jury, defendant and lawyers must be able to see the child while the child is giving evidence.

Child's support person: It is desirable that child witnesses have an adult with whom they feel comfortable present with them during court proceedings. Proposed new section 106E of the Evidence Act provides that with the court's approval such a person can be near the child.

Person assisting in communicating with the child: Children often have difficulty in understanding questions when examined or cross-examined in court. Research and other evidence received by the Law Reform Commission indicated that judges and lawyers may also need assistance in understanding what children say in court. To assist court personnel and children to understand each other, proposed section 106F authorises courts to appoint a communicator where a child witness is under 16 years of age.

Cross-examination by unrepresented accused: The Law Reform Commission recommended that unrepresented defendants should not be permitted to directly cross-examine children under 16 years of age. Members may recall a case last year in which an unrepresented defendant cross-examined his 13 year old daughter. Proposed section 106G provides that where an accused person is unrepresented, the accused's questions to the child must be accurately put to the child by the judge or by another person approved by the court. I interpolate at this point to advise the House that the provision allowing the judge to put the cross-examining questions is the subject of an amendment which will be circulated shortly.

Other vulnerable witnesses: The commission made several recommendations to allow "vulnerable" witnesses - for example, persons with mental or physical disabilities - to give evidence in judicial proceedings or to improve the quality of the evidence by such witnesses. Proposed new section 106R implements these recommendations.

Courts will be able to declare a witness a special witness. Once declared a special witness, a variety of procedures will be available to assist courts to obtain the best evidence, and to reduce the trauma those people would otherwise experience when giving evidence. Courts will be able to declare a person a special witness if, by reason of intellectual or other mental or physiological disorder or physical handicap, he or she is likely to be unable to give evidence in accordance with regular procedures. Persons can also be declared to be special witnesses if the court is satisfied that they are likely to suffer severe emotional trauma, or would be so intimidated or stressed as to be unable to give evidence in the normal way. Proposed new section 106R indicates that this must be due to factors, such as age, cultural background or relationship to any party to the proceedings.

The special procedures available to special witnesses depend on the circumstances in each case. These procedures include, the presence in court of a support person; the use of closed circuit television or screens; and allowing special witnesses to give evidence in pre-trial video taped hearings.

Pre-trial procedural hearings: Proposed section 106S provides that all matters relevant to procedure in cases involving children and other vulnerable witnesses - whether at committal proceedings, at trial on indictment, or summary trial - are to be dealt with at pre-trial hearings. Similar procedural hearings are already widely used in civil cases. Pre-trial hearings in criminal cases have also been introduced into the Perth sittings of the Supreme Court. Matters to be dealt with at pre-trial hearings will include applications to declare a witness a special witness; the identity of suitable support persons; the use of a communicator; video taped pre-trial procedures; procedures relating to the use of video taped statements; and applications for closed circuit television not to be used.

Matters not in the Bill: The Law Reform Commission made several recommendations which do not require legislation, and these are already being implemented. An inter-agency committee is being established to develop a code of practice for the making and the use of video tapes of children's evidence. That committee will utilise the work which has already been undertaken by the Advisory and Coordinating Committee on Child Abuse. In response to the commission's report, the Chief Justice's criminal practice and procedure review committee has suggested that a code of practice in relation to closed circuit television be developed. That will occur after experience has been gained in the use of this procedure.

The commission also recommended that consideration be given to holding seminars for judicial officers on changes in the law and practice affecting children and other vulnerable

witnesses. The criminal practice and procedure committee has enthusiastically supported this proposal. Seminars will cover such matters as the development of guidelines to assist judges and magistrates in dealing with children and other vulnerable witnesses. The Law Reform Commission also suggested guidelines be developed as to the exercise of the judicial discretion to close courts to the public when children give evidence.

The criminal practice and procedure review committee has proposed that this matter be discussed at the judicial seminars, to which I have already referred. The commission recommended that regular seminars be held for the legal profession to assist lawyers in dealing with child witnesses, and the Law Society's continuing legal education committee has already acted upon this recommendation. In conjunction with the Advisory and Coordinating Committee on Child Abuse, it has conducted a major seminar entitled, "Sex, Lies and Videotapes - Children in the Witness-Box". Other seminars are under consideration.

Implementation of the Law Reform Commissions recommendations relating to preparation and support of child witnesses is being undertaken in conjunction with the Minister for Community Services. This Bill deals with matters of major community concern, particularly in the area of child abuse.

As members will be aware, the Bill has already been the subject of consideration by the Legislation Committee, and I welcome the support which was indicated in the committee's report. However, the committee raised one question in paragraph 17 of the report in the following terms -

> The Committee does however recommend that consideration be given to the applicability of section 23E of the New Zealand Evidence Amendment Act 1989, a copy of which is attached to this Report, as a basis for procedural regulations covering the use of video-taped evidence.

The position in this respect is, firstly, that the Western Australian Law Reform Commission report on the evidence of children dealt with this New Zealand position. Secondly, proposed new sections 106I to 106M of the Bill before the House deal with the matters in the New Zealand provisions. Thirdly, the code of practice to which I refer as being recommended by the Law Reform Commission is in the process of being developed.

Also, as a result of further considerations of this Bill, a small number of amendments have been drafted. I will ensure that these are tabled tonight, if possible, and certainly tomorrow at the latest. I do not believe the amendments will be contentious and I hope we can finalise our consideration of the Bill next week. I commend the Bill to the House.

Debate adjourned, on motion by Hon Derrick Tomlinson.

ACTS AMENDMENT (SEXUAL OFFENCES) BILL 1991

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [5.38 pm]: I move -

> That the Bill be now read a second time.

This Bill is to implement some outstanding recommendations of the Child Sexual Abuse Task Force and to extend the laws on child pornography to ensure that children are protected by appropriate sexual assault laws. The Child Sexual Abuse Task Force was chaired by Dr Carmen Lawrence, and comprised representatives from the Department for Community Services, Princess Margaret Hospital for Children, The Law Reform Commission, the Crown Law Department, the Incest Survivors Association Incorporated, the Police Department and the Health Department.

Among the terms of reference was the requirement to investigate and report on child sexual abuse, with particular reference, inter alia, to the "adequacy of laws relevant to the protection of children from sexual abuse and, in particular ... the substantive and procedural law relating to the prosecution, trial and disposition of cases of child sexual assault ..." This Bill seeks to implement the recommendations as part of the comprehensive revision of the Criminal Code, which has followed from the general review of the Criminal Code by Mr Michael Murray, QC - now Mr Justice Murray - in June 1983.

An important aim of the Bill is to clarify the issue of consent in the prosecution of people who commit sexual offences against children. It also proposes to broaden the categories of people who are considered to be in a position of authority over a child, and provides that they can be charged with sexual offences against a child under the age of 18 years. Also, consequential amendments will be required to the Evidence Act and the Bail Act. A summary of the proposed amendments follows.

Clause 4 defines a child to mean any boy or girl under the age of 18 years, and in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years. Clause 5 creates a new offence of showing offensive material to a child under the age of 16 years with intent to commit a crime. The police and Crown prosecutors have found that adults sometimes use offensive material to encourage children into committing crimes or into becoming victims of criminal acts. This may be pornographic material where a sexual offence is contemplated but may also involve pictures on drugs, cruelty or violence.

Clause 6 inserts a special chapter on sexual offences in the Criminal Code. This will bring together all the provisions relating to sexual offences. This is achieved in the legislation by grouping together offences relating to victims in particular age groups. Within the section relating to each age group, there is a range of offences to cover all types of sexual misconduct in relation to children of the particular age. In each age group category, new offences have been added as follows -

(1) Engaging in sexual behaviour: This is to cover the case where the accused -

causes the child to sexually penetrate any person;

causes the child to sexually penetrate himself or herself;

causes the child to have carnal knowledge of an animal.

(2) Causing a child to do an indecent act: This is defined to mean an indecent act committed in the presence of another or which is photographed, video taped or recorded; and

(3) To indecently record a child: This is defined to mean the taking of an indecent photograph, film, video tape, sound, or other recording.

The definition of the term "to sexually penetrate" has been widened to include penetration of the urethra and the act of fellatio, while the term "vagina" has been defined to include the labia majora to make it clear that penetration of the labia is sufficient for the offence of sexual penetration.

The new sections 320 and 321 prohibit sexual abuse of children. Section 320 relates to offences on children who are under 13, and section 321 relates to offences committed on children who are between the ages of 13 and 16. While the offences in each category are duplicated in each section, a different penalty range applies for each category and, in some cases, the penalties have been increased. For example, the offence of indecently dealing with a child under 13 now carries a penalty of 10 years. The existing penalty under section 189(3) is seven years. For the 13 to 16 year age category the offence carries a base penalty of seven years. The existing base penalty under section 189(1) is four years. The question of consent in the case of a victim under 13 has been specifically addressed. Proposed section 319(2) provides that -

> A child under the age of 13 years is incapable of consenting to an act which constitutes an offence.

Thus, where the victim is under the age of 13 years, it will no longer be possible to defend a charge on the basis that the victim consented to the sexual act. In addition, the issue of consent will not be open in relation to sentence. On enactment of this Bill it will no longer be necessary for the prosecuting authorities to lay a charge of aggravated sexual assault where the victim is under 13 and was clearly not consenting. All sexual penetration offences in this category will now be charged under section 320(2) or 320(3). In relation to an offence of sexual penetration of a child over 13 and under 16, the maximum penalty has been increased from a maximum of five years' imprisonment to 14 years' imprisonment. The intention is to create an appropriate penalty for offences against children who come into this category, whether the offences are committed with or without the consent of that child.

There have been many complaints about the pressure put on young girls in sexual abuse cases to make them say that they have consented to the offence. The new section 321 is designed so that an adequate penalty can be imposed in a serious case without the need to prove that the child did not consent. Because of the increased penalty, prosecuting authorities will now be able to charge under the new section 321 where consent is not an element, thus altering the current practice of charging under section 324E and having to prove the absence of consent. The intention is to make it clear to the courts that the offence under section 321 is intended to be of equal gravity to section 325. However, in a case where lack of consent is clearly evident, the prosecuting authority will still have the option of preferring a charge under section 326 in order to attract the 20 year penalty under that section. Where a charge is laid under the new section 321, the offence would cover both consensual and non-consensual acts, but the question of consent would only be relevant to the issue of penalty. These provisions will considerably reduce the trauma for child witnesses, and remove any need for questioning them about intimate details of what actually occurred. In most cases it will be sufficient to prove that sexual penetration or some other form of sexual abuse occurred to the victim in order to obtain a conviction.

In relation to the 13-16 year old age group, the new approach means that the offence of sexual penetration covers a wide range of conduct, all of which is viewed very seriously by the community, but some of which is considered to be of less gravity. To give some examples: For a 40 year old man to have sexual intercourse with a 14 year old girl who is not consenting, a severe penalty would be expected. However, where two young people, say a boy of 17 and a girl of 15, who had been going out for some time had sexual intercourse, many people would accept that a penalty at the lower end of the range would be appropriate. The Bill addresses these problems by reducing the maximum penalty in relation to a victim aged between 13 and 16 years where the offender is under 18 years, and increasing the maximum penalty where the child is under the care, supervision, or authority of the offender. In the ordinary way, the courts will exercise their discretion in choosing an appropriate penalty within the wider range now available to fit the circumstances of each case.

New section 321A seeks to address a very serious problem which has arisen in prosecuting adults who sexually abuse children repeatedly over a period. In most cases they are children who live in the same household. The problem arises because of the decision of the High Court in S. v R. - generally referred to as Shaw's case - where a new trial was ordered in a case in which there was uncertainty as to the dates and the circumstances surrounding each of the particular incidents of abuse. The accused was charged with three counts of carnal knowledge of his daughter. Each count charged one act of carnal knowledge on a date unknown within a specified period of 12 months. The daughter was able to describe the initial act of a sexual kind which the defendant had committed with her and also the first occasion he had sexual intercourse with her. Her evidence was in general terms and she could not specify the dates or circumstances of particular acts.

The issues were described by the Chief Justice in the later case of Podirski as follows -

> There is no doubt that, in cases such as Shaw and the present case, allegations of repeated acts of intercourse over an extended period, without sufficient particularity as to time, place or occasion so as to identify any particular act relied upon to constitute the offence charged, makes it extremely difficult for an accused to mount a proper defence.
>
> While the indictment may be regularly framed to allege a particular act of intercourse without specification of time and place, evidence of a series of acts, any of which could constitute the offence on the basis that the evidence of the other acts was admissible as similar fact evidence or evidence of the relationship between the accused and the complainant, creates a significant problem.
>
> The act relied upon to constitute the offence cannot be identified. Consequently, with respect to any particular act it cannot be said whether it constituted the offence, or was part of the similar fact evidence or was otherwise relevant and admissible in relation to the offence charged.
>
> The situation carries with it a potential for injustice to the accused. It also carries with it a potential for injustice to the complainant and generally because one effect of the decision in Shaw's case is that notwithstanding clear and cogent evidence a

course of conduct involving repeated acts of sexual intercourse in the relevant period, any one of which could have caused conception, the Crown have found it impossible to identify any particular act with sufficient precision to enable any one offence to be charged. This means that unless the law is changed there is a possibility that the more acts of intercourse or other acts of sexual abuse and the greater the length of time over which they occur, the more difficult it may be to establish that any one of a series of multiple offences has been committed. Some reform would seem desirable to cover cases where there is evidence of such a course of conduct.

The Shaw decision has made it very difficult to successfully prosecute a sexual assault case under the existing law where -

(1) The victim is very young at the commencement of the period of the violations; and/or

(2) Those violations have occurred regularly over an extended period; and

(3) There is no distinction between the separate violations; and

(4) No complaint has been made for some time after the commencement of the series of events.

There has been a great deal of criticism of this decision and the new section is intended to deal with the problems which have been identified. A person is said to have a sexual relationship with a child under the age of 16 years if that person, on three or more occasions on three different days, does acts which would constitute particular offences under the Criminal Code. Such a person will be guilty of a crime. It will not be necessary to specify the times or the dates or circumstances of the acts. Because this offence will only be used where the particular offence cannot be established because of the lack of precision as to the time, dates and circumstances, an indictment must be approved of and signed by the Director or Deputy Director of Public Prosecutions. This is to safeguard against abuse of this provision. Proposed new section 322 replaces the present section 190 of the Criminal Code. The present offence is directed to guardians, employers or teachers and makes such people who have sexual intercourse with girls under the age of 17 guilty of an offence.

The child sexual abuse task force recommended that this section should include teachers, employers, supervisors, guardians or counsellors and should apply to all children. Rather than specifying particular classes of people it is proposed to have a more general offence committed by people who actually have the child in their care or supervision, or under their authority, so that baby-sitters, scout masters, camp supervisors and the like, are included in this category. The category of offences that apply to this particular group of offenders has been extended. These offences are serious because the abuse of the victim is made easier by the position of trust which the offender occupies in relation to the victim. New section 322A includes the current law on sexual offences against males under 21. The new sections 323, 324, 325 and 326 are identical to existing sections 324B, 324C, 324D and 324E. Because of the proposed definition of "circumstances of aggravation" in section 319, only the 13-16 year old victim category now comes within the offences in section 324 and 326 to make it clear that the appropriate charge, where the victim is under the age of 13 years, is under section 320. The definition of circumstance of aggravation has been extended to include cases where the offender threatens to kill the victim.

Sections 327 and 328 are new offences and refer to the definition of engaging in "sexual behaviour" set out in clause 6 of section 319(4). They deal with cases where the offender compels the victim to either sexually penetrate the offender, a third party, have carnal knowledge of an animal, or penetrate the victim himself, or herself. Section 329 reforms the law on incest. The Criminal Code already makes it an offence to have sexual relations with a lineal relative. In today's society there are many children being brought up in households where there is a step parent or a de facto partner of the parent living in the household. Children are just as vulnerable to exploitation by such people as they are to exploitation by blood relatives and the new provision extends the prohibition on sexual misconduct to these people. The new section also creates offences of indecently dealing with children in such cases. Section 330 applies to sexual offences against people who are mentally disabled or intellectually handicapped. The section covers not only sexual intercourse, but also indecent dealing and procuring or encouraging a person to engage in sexual behaviour and the

indecent recording of sexual behaviour. The penalty is more severe where the incapable person is under the care, supervision or authority of the offender. This section is intended to protect such people against exploitation and not intended to prevent them voluntarily entering into sexual relationships if they are capable of and wish to do so. Consequently, the offence is only committed in cases where the person is incapable of understanding the nature of the act or of guarding himself or herself against sexual exploitation.

Proposed new section 596 provides a wider range of alternative verdicts. Where a person is charged with a serious offence the Criminal Code frequently provides that the person may be convicted of a less serious offence. For example, if a person is charged with sexual penetration of a child under 13, the jury may be satisfied that indecent dealing occurred, but it may not be satisfied that there was penetration. The jury can then convict on a lesser charge. The amendments are intended to ensure that juries can convict on an appropriate charge, thereby avoiding the possibility of an acquittal on a serious charge and the need for a further trial on a less serious charge. Clause 8 amends the Criminal Code to ensure that the courts are generally open to the public. The circumstances in which the court may be closed have been set out to ensure that where appropriate all or some classes of persons may be excluded from the courtroom or that publication of the proceedings may be prohibited. It is anticipated that courts will exercise their discretion to clear the court of inappropriate people in cases where a child is required to give evidence about a sexual offence against him or her, and order that if there is any report of the evidence in the media the identity of the child will not be disclosed.

One of the problems in a case where a person is charged with a sexual offence against a child who lives in his or her household, is where the alleged offender will live while the trial is pending. Clause 11 amends the Bail Act to ensure that one of the issues which must be addressed by the person considering a bail application by an alleged offender, is whether a condition should be imposed requiring the defendant to reside at a place other than the place where the child is living. These orders are sometimes made now, but the judge, magistrate or justice of the peace is not obliged to consider the issue, and the amendment is designed to direct the attention of the bail granting authority to that issue.

Clauses 12, 13, 14 and 15 amend the Evidence Act to introduce the corresponding changes in the Evidence Act that result from these amendments and to extend the protection to all categories of sexual offences. For example, the rule preventing evidence relating to the sexual reputation of the complainant, the sexual disposition of the complainant or the sexual experience of the complainant being brought without leave of the court, is extended to all sexual offences, not just to sexual assault and indecent assault. Section 38 of the Evidence Act has been repealed. That section dealt with evidence in relation to incest charges and those provisions now appear in the new section 329(2).

Part 5 of the Bill amends the Indecent Publications and Articles Act 1902. There is considerable concern in the community about child pornography. The purpose of this amendment is to bring the law on indecent articles, pictures, photographs, lithographs and drawings and films into line with existing law on pornographic video tapes. Up to now there has been no equivalent for such material to the offence of selling, exhibiting or possessing child abuse video tapes under the Video Tapes Classification and Control Act 1987.

New section 2A makes it an offence to publish or cause to be published an advertisement for child pornography. The maximum offence in the case of a corporation is a fine not exceeding $15 000, or in the case of a person a fine not exceeding $4 000, or imprisonment for up to 12 months. Similar fines are available for a person who has possession of child pornography, and a person who exhibits child pornography in a public place or a school. Severe penalties of $100 000 maximum fine in the case of a corporation, or a $25 000 fine or five years' imprisonment in the case of an individual, are available for a person who has possession of child pornography with intent to sell it or supply it to another, or who actually sells or supplies it to another, or who causes or permits child pornography to be sold, supplied, or so offered. There is a protection in the section for officers of the Department for Community Services who are in possession of the material in the course of their duties. Police officers and officers of the Crown Law Department who are in possession of such material in the course of their duties are already exempt from prosecution because of their duties.

Part 6 amends the Justices Act to include similar provisions on access to the court to those which are being inserted in the Criminal Code. In general, the courts will be open, but justices may order all persons or any class of persons to be excluded from a courtroom and make an order prohibiting or restricting publication of the proceedings.

Part 7 amends the Video Tapes Classification and Control Act 1987 by transferring to the Criminal Code the offence of procuring a child for the making of a child abuse video. It also inserts the protection for officers of the Department for Community Services acting in the course of their duties to this Act. The Bill also contains consequential amendments to other Acts. The Bill effects major changes to legislation covering child sexual abuse, and strengthens the law by introducing more severe penalties and affording a more comprehensive scheme to protect children and other vulnerable persons against all forms of sexual assault.

As was the case with the Acts Amendment (Evidence of Children and Others) Bill, this Bill also had the attention of the Legislation Committee and I welcome the committee's expression of support. Also in common with my comments on the Acts Amendment (Evidence of Children and Others) Bill, a need for a small number of limited amendments has emerged very recently and these will also be circulated as soon as possible.

I commend the Bill to the House.

Debate adjourned, on motion by Hon Derrick Tomlinson.

DECLARATIONS AND ATTESTATIONS AMENDMENT BILL 1990

Report

Report of Committee adopted.

Sitting suspended from 5.57 to 7.30 pm

TOWN PLANNING (OLD BREWERY) BILL 1991

Second Reading

Debate resumed from 5 November 1991.

HON KAY HALLAHAN (East Metropolitan - Minister for Education) [7.30 pm]: In my view we are tonight considering a very important Bill which, if passed by this House and by another place, would destroy a significant part of our heritage and culture. That is a very sad comment on the Opposition parties and indeed on the Independent member, Hon Reg Davies. It is time that the community recognised and valued the history and heritage of this State, and I cannot support any argument for demolishing the old Swan Brewery.

Hon Reg Davies: Have you read both my speeches?

Hon KAY HALLAHAN: I understand that the Bill proposes the demolition of the old Swan Brewery building.

Hon Reg Davies: In the second reading speech I outlined the reasons that the brewery should not be standing.

Hon KAY HALLAHAN: Hon Reg Davies informs us that he has outlined his reasons for the proposed demolition. His arguments are absolutely inconsistent, and they are not in keeping with the values of the community these days. He is seriously challenging the whole concept of the Heritage of Western Australia Act, upon which members deliberated at great length in both this House and in another place in order to provide Western Australia with an Act that would protect its heritage and culture. As a Parliament, we believed there was a need to protect that heritage and culture. Hon Reg Davies is under considerable pressure as an Independent member because we on this side of the House would like to persuade him to our point of view and the Opposition parties would like to persuade him to their point of view. Who would envy the position of an Independent member of Parliament? Hon Reg Davies knows that he has the balance of power in this place, and that he is in a position to destroy our heritage. I believe he intends to do that through the passage of this Bill.

Hon Reg Davies: You are the only person saying it is a heritage building; it has not been classified or listed.

Hon KAY HALLAHAN: That interjection confirms absolutely that Hon Reg Davies has not listened to or read all the material on this matter. I heard him on a radio program today and I believe he has lost his way on this issue altogether. He is the victim and captive of a few people who want to see a building of heritage value demolished. Such demolition would destroy for all time a significant industrial building on the banks of the Swan River. No other buildings can be compared with that building and once it is demolished, it will be gone forever. All members should recognise that. I ask Hon Reg Davies to reconsider this matter. He made a number of points in his speech, some of which the community would be very responsive towards. Among other things, he referred to the condition of the road in the vicinity of the brewery building. The facts do not support the assertions he made on that subject in his speech. That means Hon Reg Davies, who is under pressure from many groups in the community, sees some hope of advancing his argument -

Hon Derrick Tomlinson: Stop being so patronising.

Hon KAY HALLAHAN: This is fact. Would Hon Derrick Tomlinson like to be an Independent member of Parliament? Hon Reg Davies said that many hundreds of people have been hospitalised, and others have become paraplegics following accidents on that treacherous stretch of road near the brewery. The problem is that Hon Reg Davies is out of touch with recent events. His information is completely out of date and even the people most concerned about and critical of the condition of that stretch of road have come to the view that the changes to the road have improved its safety, and that that aspect is no longer a relevant concern. Between 1 January 1985 and 15 August 1991 no fatal accidents occurred in the vicinity of the brewery. A total of 25 accidents occurred in that period - an average of less than four a year.

Hon Derrick Tomlinson: How often is the Multanova set up?

Hon KAY HALLAHAN: Hon Derrick Tomlinson should not interject unless he has something sensible to say. The figures refer only to the number of accidents in which injuries occurred, and not to the number of persons who have been injured. That number could be higher. I think it was a group of surgeons that came out in the early days against the redevelopment of the old Swan Brewery. However, they are no longer to be seen in the public forum on this matter because they can see that the changes made to the road nearby have removed the risks that were earlier causing concern.

Hon Derrick Tomlinson: Then why is it so heavily policed?

Hon KAY HALLAHAN: Hon Derrick Tomlinson is an absolute chump to say that, because many metropolitan areas are heavily policed. I would like to hear him substantiate what he says.

Hon Derrick Tomlinson: I will produce that evidence for you.

Hon KAY HALLAHAN: I drive around the river frequently. It is a fantastic drive. I rarely see it being policed. I do not know what anecdotal evidence Hon Derrick Tomlinson can put forward to support his case.

Hon Derrick Tomlinson: I can produce more than anecdotal evidence.

Hon KAY HALLAHAN: Such evidence would have to come from the Police Department's records of the deployment of its forces. I do not think Hon Derrick Tomlinson has access to that information. If he did, he would find that it does not support his point of view.

Several members interjected.

The PRESIDENT: Order! The Minister should talk about the Bill before the House and stop speaking to Hon Derrick Tomlinson. Hon Derrick Tomlinson should cease interjecting and wait until the Minister sits down before he makes his contribution on this Bill. If the Minister does not stick to the Bill I will see that she sits down.

Hon KAY HALLAHAN: Mr President, this Bill is about our history and our culture.

The PRESIDENT: I know what the Bill is about.

Hon KAY HALLAHAN: I am not instructing you, Mr President, merely making a poignant point that we have a long history in this State of destroying our past. That is damaging culturally. It is time that we came to the understanding that a community cannot have

maturity unless it appreciates and protects its past and knows from whence it came. This is an opportunity to protect something from our past, and we have little of it left. I am sure no member would challenge that statement.

Several members interjected.

The PRESIDENT: Order!

Hon KAY HALLAHAN: One can look at a long, long list of demolitions in this State. When I speak to members of Parliament at any forum outside this one they agree that we have been very careless with our past and have let beautiful buildings be demolished. It is time we protected such buildings and that is why the Government addressed the matter in the complex debate related to the Heritage Act of Western Australia. I thought we had reached community maturity at that time, yet tonight we have a Bill before us seeking to set us back beyond that Bill.

Hon Reg Davies: What have you got against parklands?

Hon KAY HALLAHAN: An example is the 1863 Barracks Arch outside this place where some semblance of the past is still represented but where the rest of the building was demolished. There was no reason not to retain the whole of that building except no appreciation existed at the time of the need to retain it.

Hon Peter Foss interjected.

Hon KAY HALLAHAN: I cannot hear Hon Peter Foss. He should either speak up and say something sensible or be quiet until he has the floor. The Esplanade Hotel was demolished. All members would concede that it was a beautiful old hotel. The Metro Theatre is gone. The 1897 Perth Synagogue is gone. I have a long list of buildings that are no longer here. The Temperance League building is gone along with the 1867 Legislative Assembly building.

Several members interjected.

Hon KAY HALLAHAN: Hon Philip Lockyer should not worry about the activities of the inhabitants but should think about the building and its representation of the era in which it was built. It is shocking that we have lost all that history. Perth is a beautiful city with a beautiful river and yet we have turned St George's Terrace into the wind tunnel we all know so well. Many beautiful buildings have been demolished over the years.

I turn to the remarks made by Hon Reg Davies that I feel obliged to address otherwise it will appear that his points are legitimate. The fact is that the National Trust made an assessment and resolved not to enter the extant buildings into the register but merely to classify the whole precinct as an historic one. One needs to understand that that decision was taken contrary to the advice of the National Trust's own expert advisory committee - the landscape and conservation committee. The historic sites committee of the National Trust reported that the original buildings were important for their association with Sir Talbot Hobbs and said that the complex was an imposing landmark blending sympathetically with that part of the Swan River and Mt Eliza. It also said that it remained one of the few important pieces of industrial architecture in the State showing the development of the brewing industry. In my view if members were to consider nothing else they should consider that statement.

Hon D.J. Wordsworth: On what date was that made?

Hon KAY HALLAHAN: I do not have the report with me. There are a number of reports. The National Trust went through a period of upheaval during which there was great dissension about such matters.

Hon D.J. Wordsworth: Because your department and others got stuck into it. I know, I go to the annual meeting.

Hon KAY HALLAHAN: Hon David Wordsworth interjects stupidly and does not know what he is saying. I was the Minister for Heritage -

Hon P.H. Lockyer: He is one person who knows what he is saying, unlike you!

Several members interjected.

The PRESIDENT: Order!

Hon KAY HALLAHAN: Executive members of the National Trust came to see me and acknowledged that they had internal difficulties that they would sort out. They did that. At that time I gave an undertaking that I would leave them to sort out their problems because I believed they had the capacity to do so. I did not want to score political points on this issue even though I was very disillusioned and dismayed at their decision making, as were many other people. It has taken the National Trust some time to overcome that period in its history.

Hon D.J. Wordsworth: I know who the people were. They all held clipboards and were at the back of the meeting.

Hon KAY HALLAHAN: If Hon David Wordsworth did not exert some constructive influence he stands condemned by his actions if he supports all the rubbish that went on at the National Trust. We do not wish to get into any difficult areas.

The PRESIDENT: Order! I suggest to the Minister that if she sticks to the Bill we will not get into any difficulties. If she talks about other things I will cease listening to her. We are talking about a specific Bill and not about the structure of an organisation that had internal rows. That has nothing to do with this Bill. I suggest that the Minister's argument would have more effect if she talked about the Bill.

Hon KAY HALLAHAN: This is a subject of some passion which will draw in people like those interjecting. You would not want a sterile debate, Mr President, and we cannot have such a debate on something so important. I want members to understand the importance of this debate.

Several members interjected.

The PRESIDENT: Order! I do not care what form the debate takes provided it is about the Bill.

Hon KAY HALLAHAN: This debate is about the old Swan Brewery and about our history and preserving something for the future. The problem some people have is that conservation of our heritage is not just about grand old beautiful mansions. We are looking here at something which is industrial and represents the working past of this colony and State.

Hon D.J. Wordsworth: What about the stables? They were a good working past.

Hon KAY HALLAHAN: That is a ridiculous interjection. There was a fire in the old stables which weakened the bricks because of the way they were made, and the stables were demolished on safety grounds. I do not want to draw in the member, because he has been remarkably constrained, and I think he will take on the debate after me, but Hon Phil Pendal has constantly been critical in this place of a former Planning Minister for the demolition of the stables. The stables became unsafe because of the effect of the fire on the brickwork.

The National Trust has had a significant influence in this State, and in some ways it is sad that the National Trust did not preserve, as it should have done, the history for which this State should rightly have seen that body advocate. The Chairman of the Council of the National Trust drew attention to the traffic problems with regard to the old Swan Brewery. Therefore, the expert committees were disregarded, and the traffic problems were focused on. Traffic problems are not the concern of the National Trust, and that indicates again that the National Trust -

Hon Reg Davies: That shows how responsible the National Trust is.

Hon KAY HALLAHAN: That period will go down in history as a dark period for the National Trust. I believe the National Trust is doing a good job and is in good hands, but it went through a period when it lost its way. For a National Trust to focus on traffic problems rather than on the heritage value of a building says it all.

Hon Reg Davies was very selective in his second reading speech. He quoted various people of substance and failed to quote other bodies of substantial authority. The Australian Heritage Commission, which is this nation's premier professional heritage body, has assessed the old Swan Brewery and entered it into the Register of the National Estate. In the AHC's assessment, all of the extant buildings are significant, despite the loss of the stables.

Hon Reg Davies: What date was that?

Hon KAY HALLAHAN: That is an extraordinary interjection from Hon Reg Davies, who has introduced this Bill. I think that listing took place in 1990 when I was Minister for Heritage.

Hon Derrick Tomlinson: You do not know!

Hon Reg Davies: You were the Minister!

Hon KAY HALLAHAN: It was two years ago.

The PRESIDENT: Order! Ignore them, please.

Hon Derrick Tomlinson: I was not the Minister.

The PRESIDENT: Order! If Hon Derrick Tomlinson interjects again, he will not be here to listen to the balance of the debate.

Hon KAY HALLAHAN: The concerning aspect of Hon Reg Davies' speech was that he suggested that there should be a cut off point where we say that a building is of significance before a certain year and after that year it is not of significance. It has been suggested that 1897 is a significant date; I do not know for what reason. The fact is that all of our heritage has to be assessed. The Parliament has established the Heritage Council of Western Australia to conduct that assessment on its behalf. The Parliament has enacted legislation to which all members agreed. I have checked the situation, and Hon Reg Davies was present on the day that Bill was passed by both Houses as a result of long debate and negotiation so that we could reach agreement about that significant legislation. It seems to me that we nevertheless have a somewhat undeveloped sense of what heritage is.

The Royal Australian Institute of Architects assessed the building and stated in its report dated January 1986 that, "The old Swan Brewery on Mounts Bay Road is an outstanding example of industrial architecture in the Victorian and Edwardian tradition. That would be significant were it situated anywhere in the world. Given its magnificent setting, and the rarity of such buildings in this State, it is exceptional, and its preservation is of the highest importance and should be irrespective of any immediate use being found." It is patently untrue to claim that these buildings have no heritage value, even on the basis of all the documentation that is currently available to us. However, we are not limited to current documentary evidence because Western Australia's cultural heritage custodian, the Heritage Council of Western Australia, has assessed the cultural and heritage significance of the brewery. That body was established by this Parliament not long ago.

Hon Reg Davies: That listing is just new, is it not? It has only just happened.

Hon KAY HALLAHAN: Is Hon Reg Davies saying that he will reconsider his position as a result of the consideration of the Heritage Council?

Hon Reg Davies: This Bill is six months and one day old. When was this listed?

Hon KAY HALLAHAN: Perhaps we can suspend the debate here and have it debated formally outside the Chamber if Hon Reg Davies is suggesting that the deliberations of the Heritage Council affect his view of the value of this building.

Hon Reg Davies: Has it been listed? That is all I ask.

Hon KAY HALLAHAN: As I understand it, Hon Reg Davies is not a stupid man. He knows that it has not been listed because a process has to be gone through, and the Minister for Heritage has indicated that, given the report that has been done, it is most likely to be listed. We have ensured that there are a number of safeguards, and a long and complex process has to be undertaken. Hon Reg Davies knows that the assessment of this building is well advanced and that all the signs are that it should be protected, yet he has a Bill -

Hon Reg Davies: I do not know that. I am only reading Press reports.

Hon KAY HALLAHAN: I will deal with that in a minute. I am disappointed because today Hon Reg Davies entered into a debate on a radio station and indicated that he had not read the report of the recent assessment that has gone to the Heritage Council. I understand that report was done by a respected heritage expert, the Clive Lucas and Ian Stapleton partnership of Sydney.

Hon Reg Davies: And it cost us $50 000.

Hon KAY HALLAHAN: It cost money because it was a significant task. I understand that the report has been available. The member has not availed himself of that report, yet he is pressing on with this Bill.

Hon Reg Davies: I did say that I am a very busy man.

Hon KAY HALLAHAN: Hon Reg Davies is not so busy that he has time to be so irresponsible with this significant Bill as not to acquaint himself with a report.

Hon Reg Davies: Will you send me a copy of the report?

Hon KAY HALLAHAN: If Hon Reg Davies is interested in processing legislation through this Council and the other place, wants to destroy our history, and cannot get someone to get him a copy of that report, he really is very disappointing.

Hon N.F. Moore: Money is no object.

Hon KAY HALLAHAN: I remind Hon Norman Moore that this House debated the Heritage of Western Australia Bill, which became the Heritage of Western Australia Act. We all agreed to that, yet I suspect the member will vote for the Bill before the House tonight and destroy all the consideration we gave to the previous Bill, all the safeguards we put in place and all the thorough assessment we said must take place. He will support an Independent member because at some time it might be handy for him to support an Independent member and destroy our history.

The PRESIDENT: Order! The Minister is getting dangerously close to my having to ask her to withdraw some statements. I suggest that she would have a better chance of convincing people to agree to her point of view if she actually spoke about the measure they are going to vote on. If I have to ask the Minister again to return to the point it will be the completion of her contribution, and I do not think she is doing her cause any good by ignoring the advice I am giving her. The Minister may not want to take it seriously, but I do. I suggest she heed what I am saying, because I certainly do not want to take the action she is obviously determined to ensure that I take.

Hon KAY HALLAHAN: I make it very clear to the House that I think we are debating a very important Bill and I am determined that this House should understand the seriousness of the matter before it tonight. There is no way I want to minimise or reduce my opportunity to persuade the House that to agree to this Bill would be to do nothing other than make a monumental mistake from which we cannot retreat.

The PRESIDENT: I am endeavouring to assist the Minister to do that by suggesting that the approach she should take is to talk about the Bill. I think that is incredibly good advice and indicates how tolerant and full of goodwill I am. I repeat that if the Minister takes that advice I am sure she will make far more progress than she appears to be making at the moment.

Hon KAY HALLAHAN: Thank you, Mr President. I do not need to say that the Bill before us is very important. It has come to this House after the Government, through the Premier, signified that the grandiose plans for that site would be abandoned. She said that at a Press conference; I was with her at the time and it received very wide coverage on television and in the newspapers. Therefore, Hon Reg Davies should have known that the grandiose plans had been abandoned and that the Government's commitment was to a restoration of a very significant building. I will read part of the statement made by the Premier at that Press conference on 25 November 1990.

Hon Reg Davies: I should have been aware of it.

Hon KAY HALLAHAN: If Hon Reg Davies had been really interested and not driven by some narrow interest groups he would have been aware of this. It seems to me that he has not had a genuine interest in it, because he is a member who acquaints himself with a wide range of community concerns; but on this matter somebody has convinced him he should do this thing to destroy our past, and he has not had an ability to understand what was happening. I will read the first part of the Premier's Press statement of 25 November 1990 -

> The State Government is to scrap ambitious and expensive redevelopment plans for the Old Swan Brewery on Mounts Bay Road and instead restore the buildings as an important heritage precinct.

> Premier Carmen Lawrence today announced the Government would apply to lift an injunction preventing work on the site so conservation of the historic industrial buildings could begin.
>
> "As Minister for Aboriginal Affairs I have decided, in the interests of the whole community, to exercise my right under the Aboriginal Heritage Act to reject the recommendation by the Aboriginal Cultural Materials Committee against work on the site," the Premier said.
>
> "The Government respects the Aboriginal significance of the area but it is equally important to recognise arguments for the preservation of buildings that are national heritage assets.
>
> "Consequently, the Government has decided to scale down the project by dropping plans for a replica of the old stables, a boardwalk, a formal courtyard and an internal fitout of the buildings.
>
> "There will certainly be no tavern or multi-storey carpark.

Today on the radio, despite that Press statement having been made 18 months ago, Hon Reg Davies confounded everybody in the heritage movement by indicating that he did not know there had been a changed commitment. He was still with the original plans, and very grandiose plans they were.

Hon D.J. Wordsworth: What size is the car park now?

Hon KAY HALLAHAN: As members who have taken an interest in this development would know, the tunnel is already under Mounts Bay Road and there is a flat area on the other side of Mounts Bay Road, but the Premier has said there will be no multistorey car park. Hon Reg Davies did not know that the Premier of this State had given that commitment 18 months ago. It makes one absolutely despair about this Bill before us, because perhaps Hon Reg Davies, given time to seriously consider the action he is taking and knowing the commitments the Government has given to move away from that original plan - which I must say was quite exotic - back to a position of restoring and preserving a part of our history and culture, would not have come forward with this Bill. However, he is now locked into a position, for whatever reason. He is not usually a destructive man, so why should he be so destructive now? This is something we can never replace, never repair and never regain, and members should understand that.

Hon N.F. Moore: What are you going to use it for?

Hon KAY HALLAHAN: The member asks what are our plans for the site. The plans were indeed to be quite modest, to be worked out by the community. For those members who do not know, the expansive areas there are really something to behold. They do not have to be developed tomorrow but over the years they could be developed for enormously diverse activities and that could be budgeted for. We do not have to draw on State coffers in large amounts immediately. What we need to do is to preserve the fabric of that building, get rid of the very ugly site that it is, and let future years decide what those uses will be, although we could move immediately into some initial ones.

Hon Reg Davies: In other words, you do not have a clue what you are going to do with it.

Hon KAY HALLAHAN: A member who sits there and says that does not have a clue about the community's concerns. The community is showing huge interest in what could be done with that place.

Hon N.F. Moore: Like what?

Hon KAY HALLAHAN: There are many ideas. However, the President has asked me not to respond to inane interjections, and I will not.

Hon N.F. Moore: Give us just one example.

Hon KAY HALLAHAN: Hon Phillip Pendal will probably make an outrageous speech and I want to deal with him in a minute. Even he as shadow Minister for The Arts knows that many interests in the community could be accommodated harmoniously in a restored old Swan Brewery. Similar restoration has occurred in other cities of the world. Many members have had the opportunity to travel and have seen the magnificent restoration of buildings in

other places. We do not need to go far to see what other States in Australia have done. One area of note is The Rocks in Sydney. Is the old Swan Brewery situation comparable with the controversy that surrounded The Rocks when some people thought that area should be demolished? As a result of great community concern the area was preserved. Everyone now thinks that is a most interesting and wonderful place to visit, and we thank God that someone had the vision to save it. In 10 years, will we be thanking the deities here for their wisdom in preserving some of our past for future generations?

In the local newspapers, in colour, we have seen published time and time again the Opposition's view about the old Treasury building. I must hand it to Hon Phillip Pendal; he certainly has a way of persuading *The West Australian* to publish what he wants - even if it is the same old story that comes up every six months. Not only is that story printed over and over again but also it appears with colour photographs. Hon Phillip Pendal has even been photographed with his leader. It is an extraordinary thing to see! It is not even newsworthy because it is old news - although it is printed in colour. That is a sign that the Liberal Opposition in this State wants to establish its credentials in relation to the preservation of history at the same time as its members vote for the demolition of part of our history. That is a sad indictment of the Opposition. The Western Australian community will not forgive the Opposition -

Hon George Cash: For what?

Hon KAY HALLAHAN: For destroying our past. Hon George Cash looks supercilious and silly. He should not interject in that way because it is silly. Tonight members must seriously think about the issue before us. I know that concerns have been expressed about road safety. Those concerns have been addressed, and road safety is no longer an issue.

Hon George Cash: How did you address that? With cement blocks!

The PRESIDENT: Order!

Hon KAY HALLAHAN: Concerns have been expressed about the cost of the preservation of the building. Members should understand that we do not need to undertake that work all at once. However, we must protect the fabric of the building, and that we can afford to do.

Hon N.F. Moore: How much will it cost?

Hon KAY HALLAHAN: We can develop the area over time into a whole range of uses that will enhance this community. It could be part of the cultural tourism promotion of the State upon which the Government has embarked under the Premier's WA Advantage economic statement. There is a great case for us to do that. Other States have done it. We have neglected the promotion of Western Australia; we cannot promote the State if we continually set ourselves on the path of destruction of our culture, past and present. The old Swan Brewery is part of our present and part of our past; it must be preserved for the future.

Hon Reg Davies: It is an eyesore.

The PRESIDENT: Order! I will not tolerate the constant barrage of interjections. Hon Reg Davies should be aware that one of the prerequisites for responding to debate on a Bill that a member introduces is that the member must be in the Chamber. Hon Reg Davies is going the right way to ensure that he will not be able to do that. I suggest he keep his comments about what the Minister is saying for when he responds to all of the speeches that are made on this Bill.

Hon KAY HALLAHAN: I have reached the closing stages of my speech but the last interjection deserves some attention. I refer to the comment that the old Swan Brewery is an eyesore. Many Western Australians think the place is an eyesore, and that is a fair comment, but it does not have to be an eyesore. I understand from discussions I have had with professional people that they believe that if we can give Western Australians a view of the beauty and majesty of the building, if we can remove some of the ugliness, the opinion which Hon Reg Davies thinks he is faithfully representing would shift markedly. People would start to see the building as having a beauty of its own with the tradesmanship involved in its construction. The brickwork is extraordinary and attractive at this end of the building. People would see the position of the building in relation to the river. Imagine the outings that Western Australian families could have with a ferry service. Members should imagine travelling from the Barrack Street jetty, to the Mends Street jetty, to the old Swan Brewery

and back to the Barrack Street jetty. What an inexpensive and wonderful outing for Western Australian families. People cycle in hundreds along the river shore, and people walk along the same route. A bus bay and some parking is already available, and much of the infrastructure has already been paid for by Western Australians at this stage. Why would we not want to go one step further and protect the building for the future? In that way we would protect the enjoyment of many Western Australians as well as the attractions that it would provide for many visitors to Western Australia.

I have tried my best to understand the arguments against the preservation of the building. However, I do not understand the argument that seeks to destroy the building. I do understand concerns about finance, but we do not have to tackle this exercise tomorrow. We can plan for it over a number of years. I also understand the concerns about the ugliness of the building. However, we can achieve a change in that aspect in the short term. We should preserve such a significant building, one which exists nowhere else in Western Australia, one which would give us a wonderful facility for the future. I ask members to rethink the position that they may have firmly adopted, so that they may see this as one of the rare debates which results in a significant outcome. I ask all members to vote against the Bill.

HON P.G. PENDAL (South Metropolitan) [8.18 pm]: Five hundred and fifty metres from the site of the old Swan Brewery exists the most important piece of industrial heritage in Western Australia. I refer to the Old Mill which was built in South Perth in 1835. The mill is deteriorating daily because the State Government that has been so intent on wasting $21 million on the old Swan Brewery site refuses to spend any money on the Old Mill. That indicates the hypocrisy of the Government's view that we must restore a building 550 metres to the west which has never been classified by the National Trust, a building on which the Government is prepared to spend $21 million in preference to a building which is arguably the most priceless piece of industrial heritage in the State - namely the Old Mill in South Perth. That says everything about the misplaced priorities of the current Government. The Old Mill was maintained for nearly 40 years - as you will know, Mr President, as it is in your electorate - not by the Government or by a local authority, but by the private sector. Bristile Ltd has maintained the Old Mill for all those years, but in 1991, as a result of the recession, Bristile simply ran out of money. It could no longer afford to spend $30 000 a year to maintain the Old Mill, and the Government, which is so intent on saving the old Swan Brewery - which has never received a National Trust listing - refused to pick up the bill.

Hon Peter Foss: It could have used some of the $2.1 million.

Hon Kay Hallahan: You should get *The West Australian* to run a colour photograph of you and the Old Mill.

Hon P.G. PENDAL: We are not discussing colour photographs.

Hon George Cash: *The West Australian* will probably agree to that suggestion; it is a good idea. I will talk to them later.

Hon Kay Hallahan: I am full of good ideas - like preserving the old Swan Brewery.

Hon P.G. PENDAL: We are discussing the difference in attitude to buildings separated by a narrow neck of the Swan River of approximately 550 metres. In all those years the Old Mill has been vested in the Department of Conservation and Land Management, or its predecessor the National Parks Authority, yet this department does not want to have anything to do with the mill because it is in the process of being vested in the National Trust of Australia. In that case, how can the Government come to the Parliament and say that it is serious about saving pre-eminent pieces of our heritage?

Hon Kay Hallahan: Are you selecting which ones are pre-eminent?

Hon P.G. PENDAL: I am not.

Hon Kay Hallahan: It sounds like you are.

Hon P.G. PENDAL: The National Trust listings have already done that! As the Minister acknowledged, the National Trust has never classified the old Swan Brewery site.

Hon Kay Hallahan: But every other significant heritage body has, and the National Trust stands condemned for that period in its history.

The PRESIDENT: Order, Minister!

Hon P.G. PENDAL: The Minister interjected that every other significant heritage body has listed the old Swan Brewery site; however, the Heritage Council of Western Australia, established by this Parliament, has not classified it.

Hon Kay Hallahan: It is well on the way to doing so.

Hon P.G. PENDAL: If that site is so important, why did the current Minister for Heritage choose last November to make the first nomination with the council - which is an indication of priorities, surely - not the old Swan Brewery, but the old Fremantle Prison, which was not under threat?

Hon Kay Hallahan: We are not so deficient; we have a number of places which deserve preservation.

The PRESIDENT: Order! I ask the Minister not to interject.

Hon Kay Hallahan: I will try hard.

Hon P.G. PENDAL: The Minister told us in this debate - and these are her words or close to them - that, "The community cannot have a maturity unless it protects its heritage." I asked a series of questions regarding this issue, such as why did the Government demolish the stables.

Hon Kay Hallahan: I have told you, Mr Pendal, but you won't listen!

Hon P.G. PENDAL: I will tell the Chamber why the Government pulled down the stables.

Hon Kay Hallahan: They were unsafe.

Hon P.G. PENDAL: The stables had a National Trust listing, yet the Government pulled them down not because they could not be restored after the fire but because it wanted to build a car park.

Hon Kay Hallahan: That is rubbish! It is not a lie - that is unparliamentary - but it is infamy to say that.

Hon P.G. PENDAL: My second question to the Minister is: If she believes what she said - that is, that a community cannot have a maturity unless it protects its heritage - can she explain why she was the Minister who decided to demolish the Crematorium Chapel at Karrakatta?

Hon Kay Hallahan: A good report was done on that which did not recommend its retention.

The PRESIDENT: Order! I give the Minister the same warning I gave Hon Reg Davies and Hon Derrick Tomlinson: If she persists in ignoring the rules of this House and the requests of the President, unfortunately she will be listening to the rest of the debate on the loud speaker in her office.

Hon P.G. PENDAL: My third question to the Minister is: If she believes her words that a community cannot have maturity until it protects its heritage, why did the Government allow the demolition of St George's Hall in Hay Street but permit the retention of a facade, which has been sitting in splendid isolation over the past five years?

Hon Kay Hallahan: It follows the tradition of the Barracks; your Government set the precedent.

The PRESIDENT: Order! I suggest that the Minister take some advice from her colleagues; obviously she has no intention of taking my advice. I suggest that she does so.

Hon P.G. PENDAL: For those members who do not know, St George's Hall was owned by the Government and was demolished by this Government. St George's Hall was the first theatre in colonial Perth and dated back, I believe, to the 1840s, yet it was pulled down by this Government in order to build a new Department of Land Administration. The Government's having decided for some reason or other that it did not have the money to proceed with that venture, we are left with a car park on the St George's Hall site! This Government is obsessed with creating car parks on Western Australia's most precious heritage sites. One can go down Hay Street today and see the facade of St George's Hall held up by scaffolding, with a weed covered car park occupying the rest of the site.

I ask another question: If the Minister believes her words - that a community cannot have maturity unless it protects its heritage - why has the Government -

Hon Doug Wenn: It is not a question and answer time; you should do this during question time.

Hon P.G. PENDAL: - allowed the neglect, to the point of ruin, of Montgomery Hall and Swanbourne Hospital at Mt Claremont? A good time has been had not only by vandals but also by some entrepreneurs at the Swanbourne Hospital. Someone stole the main jarrah staircase!

Hon Kay Hallahan: That is because you kept advertising the place.

Hon P.G. PENDAL: We advertise the place because the Government neglects it and does nothing to restore it; it does not even keep the vandals out.

Hon George Cash: It is almost a case of being able to predict where the next fire will be.

Hon Doug Wenn: That is a hell of an accusation.

Hon P.G. PENDAL: I could go on and list the buildings treated in this way, yet the Government is so wedded to saving the old Swan Brewery, which has never been classified. The Government was going to sell the old Cottesloe Police Station until the Opposition kicked up a fuss about it. The Government then agreed to sell it with a caveat on the title that said the new buyer of the old Cottesloe Police Station must restore it. I take a lot of pride in that, as do other members of the Opposition, because today when we drive down Stirling Highway the old Cottesloe Police Station has been restored to its former glory. Why is the Government so intent on spending $20 million on the old Swan Brewery which has never had a listing yet point blank refuses to spend the money to save the Old Mill in South Perth from going to rack and ruin?

Hon E.J. Charlton: Yosse!

Hon P.G. PENDAL: What Mr Charlton said is correct and I will come to that in a minute. The Old Mill at South Perth is important not just to Western Australia but also to Australia. It was built 40 years after the European settlement of the whole of Australia; that is how significant it is. I can tell members that the Old Mill is in a serious state of disrepair. Its sails are due to fall off because of lack of maintenance, and other parts of the building have been allowed to deteriorate very seriously. Yet I keep asking, and I know it is repetitive, but I cannot understand why it is the Government will not spend money on that building but commits more than $20 million to the old Swan Brewery site that we are debating tonight.

Hon Tom Stephens: What vesting would you give the Old Mill if it were to receive Government funding?

Hon P.G. PENDAL: I do not believe that it matters in the ultimate what vesting is given to that heritage building. I happen to think that we should put our heritage buildings to use. I would not mind seeing Montgomery Hall - I do not know its listing - used for cultural or community purposes.

Hon Doug Wenn: Why does your party want to knock down the old silos in Bunbury?

Hon Barry House: Because 58 per cent of the population of Bunbury want that.

Hon P.G. PENDAL: The big difference between what Hon Doug Wenn has interjected about and all the buildings we have talked about so far is that they are Government owned buildings. Whatever the merit or demerit of the old silos in Bunbury may be, they are not publicly owned buildings but are owned privately. I refer to the 177th edition of the *Trust News* dated April 1992 which makes a plea for important heritage buildings in Western Australia that are falling into a state of disrepair because there is no money. It states -

> The Trust is asking the State Government for an allocation of $350,000 for urgent conservation work on four of our regional properties: Warden Finnerty's at Coolgardie, old Blythewood at Pinjarra, Dongara Flour Mill and Mangowine Homestead near Nungarin.

Hon Eric Charlton should listen to this because I know he takes an interest in these things. All the buildings I have mentioned, according to the National Trust of Australia (WA), are in desperate need of restoration. The trust wants a miserable $350 000. That is something like one-sixtieth of what the Government has already spent on a building the National Trust and the Heritage Council of Western Australia have refused to classify. Why is the Government

doing that? The Minister in her remarks - I hope she does not believe it, but in case she does - referred to the Australian Heritage Commission as the premier heritage body in Australia. The Minister has not read the Australian Heritage Act if she believes that because the Australian Heritage Commission has no power over the matter with which we are dealing tonight. More than that, the Australian Heritage Commission is failing dismally in its job of protecting those parts of the National Estate that are owned by the Commonwealth Government. Principally, the responsibility of the Australian Heritage Commission lies with Commonwealth owned property. What is my basis for saying that it is neglecting the real task for which it was set up? I nominated the South Perth Post Office to the Australian Heritage Commission 20 months ago. It is a Commonwealth owned building and it sits in Mends Street, South Perth, and is part of an historic precinct idea put forward by me in 1984.

Hon John Halden: Are you sure it is? You have claimed glory before today and you have been wrong.

Hon P.G. PENDAL: I nominated that building to the Australian Heritage Commission 20 months ago. In the meantime the Australian Heritage Commission has frightened farmers witless in the south west by running around and listing their properties, over which it had no control. I telephoned the Heritage Commission in Canberra a month ago and I asked, without identifying myself, whether they would mind telling me the status of any nomination for the South Perth Post Office. Given that the commission is spending all its resources running around the south west nominating farming properties that are not subject to the Act anyway, what was the answer? The woman at the Australian Heritage Commission called the South Perth Post Office up on the computer and said, "Yes, it has been nominated", which of course I knew because I had nominated it. She then told me the date upon which it was nominated, which I also knew. I asked her what had happened since it had been nominated. She said, "Sir, we have not had the resources to assess it."

Hon Peter Foss: Disgraceful!

Hon P.G. PENDAL: This allegedly premier Australian Heritage Commission has spent 20 months frightening farmers over property over which it has no control, but when it comes to a property which is within its power to protect it has not had the time to do the job that I asked of it 20 months ago. At the start of this debate we should have sung "Happy Birthday" as it is the seventh birthday of the old Swan Brewery controversy. It has been seven and a half years last month since the matter first became entwined into the very dubious business dealings of the Burke Government. Can members recall that this brewery building was owned by the private sector but it was the Burke Government that said, "You are not going to have permission to develop it"?

Hon Reg Davies: That is right.

Hon P.G. PENDAL: If I remember correctly, the Government paid that well known Western Australian patriot, Yosse Goldberg, $4.5 million.

Hon P.H. Lockyer: What was the sling?

Hon P.G. PENDAL: The Government bought Yosse Goldberg out in order that he did not, as a private owner, develop that site. What did the Government do the minute it paid its good friend and great Western Australian patriot the $4.5 million? The Government said, "We are going to develop the site." Having denied Yosse Goldberg the right to develop the site the Government took that right upon itself. If ever anyone's property rights - and I do not hold a brief for Mr Goldberg - were interfered with, his were, and for that matter so were those of the previous owner of the Swan Brewery.

Hon E.J. Charlton: I don't think they interfered with their rights.

Hon P.G. PENDAL: Perhaps not. Hon Eric Charlton is more charitable about those things than I am.

It is history repeating itself. Absolutely nothing has changed since the motion in the other place condemning the Government for its proposal to redevelop the old Swan Brewery to include a major tavern complex - I think that was in June 1988. Nothing has changed because the Opposition on that occasion said that the Government should be condemned for wanting to do that for a number of reasons; for example, the Government of the day had ignored proper planning procedures. It was the casino debate all over again. If the

Government wanted to do something on Government land and it had friends in the business world - who have turned out to be mighty dubious friends - it said to them, "We will cut all of the planning procedures and override the local authorities." That is what happened with both the Swan Brewery site and the casino site.

The other thing that puzzles me is the Government's insistence on developing this site in the face of the most vociferous opposition from Aboriginal people. Those people have said for many years - I have seen cuttings, for the information of those who feel dubious about Aboriginal sacred sites, from I think the *Perth Gazette* going back to 1838 - that that site was important to Aboriginal people.

Hon P.H. Lockyer: It would be interesting to hear Hon Tom Stephens' views on this because he claims to be the champion of Aboriginal causes.

Hon P.G. PENDAL: Hon Phil Lockyer took the words out of my mouth. This Government, which claims to be the champions of the Aboriginal people, has ground them into the earth over this issue so that they have become more disillusioned about the Government on this matter then on almost every other matter. What the Government has succeeded in doing is not just to neglect all of those other worthy heritage projects in Western Australia on which money should be spent, but also to turn an issue on which there was consensus into an issue about which there is a deep and bitter division. In April 1985 there was broad consensus and unanimity in the community about what to do with that site. Is is not funny how in every disaster involving this Government Mr Pearce bobs up? If there have been disasters in planning, Mr Pearce has been there. Who mucked up education in the 1980s? Mr Pearce. He is now involved in environmental matters, desperately running around with his duck shooting Bill to re-establish his credentials with the environmental movement that no longer believes in him.

Hon P.H. Lockyer: With his franking machine in his back pocket.

Hon P.G. PENDAL: In 1985, Mr Pearce said that the Swan Brewery site should be used as a park. That has been the Opposition's policy since 1986. I do not think Hon Reg Davies will mind my saying that the Bill is an expression of the precise views of the Liberal Party, of which Hon Reg Davies was a worthy part until 12 months ago. The Liberal Party has held the view since 1986 that the buildings on site which require heritage protection were the stables. It decided that the buildings on the eastern side of Mounts Bay Road should be demolished and the land incorporated into Kings Park. Effectively, that is the purpose of the Bill which Mr Davies has brought into the Parliament.

I do not know what happened to that consensus or to the unanimity which existed a few years ago. However, I can only tell members that the person at the forefront of ensuring that that consensus disappeared was Mr Pearce. On 27 June 1985, he said in *The West Australian* that he did not think that Mr Goldberg would be able to sell the site to anyone else for more than $4.5 million because of public pressure to ensure there was no development of it. Therefore, even on 27 June 1985, Mr Pearce agreed with us that that site should not be developed. However, something happened in the couple of months following that which changed it all, because on 19 November 1985 we saw the first of those fuzzy advertisements which we have come to expect from the current Government. When all else fails, revert to the warm and fuzzy advertising! One of those advertisements appeared with the words - members should listen because these words have come back to haunt the Government - "The old Swan Brewery belongs to you. Now we want your ideas on how it should be used." Of course, the Government got the views, but it did not like what it heard and decided to ignore them as it did on most other things. It turned 180 degrees from not wanting to see the site developed and preventing Mr Goldberg from developing it by giving him $4.5 million of our money to ensure that he did not develop it, to having this obsessive fixation of wanting to develop it. What is sad is that $21 million and seven years later we still have absolutely nothing to show, while the Old Mill goes begging for funds, Montgomery Hall is in a terrible state of disrepair and those buildings listed by the National Trust in rural Western Australia are calling out for a mere $350 000. As if that were not bad enough, someone came up with the idea of turning the old brewery into an Aboriginal art museum. Mr Parker, that other great Western Australian patriot who has left for shores elsewhere, not wanting to be outdone by Mr Pearce, decided on another coup. He bought the Louis Allen art collection from California and said that he would bung that in there and that that would be a good reason to do up the Swan Brewery.

Hon D.J. Wordsworth: Where is that now?

Hon P.G. PENDAL: Hon David Wordsworth may well ask. It cost $2 million and it was not worth that. The proof of that was that Robert Holmes a Court told me that he had turned down the opportunity to buy it because it was too expensive. The person working as his art adviser by then had got to know all of the Government's art advisers, although not the ones at the Art Gallery, including the Betty Churchers and others who were not consulted and who were horrified. However, these people got the Government to do what Mr Holmes a Court was not prepared to do; that is, to spend $2 million on a very fine art collection but one which Mr Holmes a Court said was too expensive.

Hon Peter Foss: It was a Western Australian Aboriginal art collection.

Hon P.G. PENDAL: No, it was from Arnhem land.

The brewery is like "Blue Hills"; it has been around in its present state for almost as long. If nothing else, the Government has been consistent in the madness it has applied to the Swan Brewery debate. I want to read into the record a letter written on 20 February 1990 by the Kings Park and Swan River Preservation Society.

The society wrote to the present Premier in glowing terms in the hope that on her assumption of office she might see some sense where former Premiers Dowding and Burke had seen only madness. It is an important letter which proves once again that nothing has changed. The letter states in part -

> We are hopeful that one of your priorities will be to support the majority of Western Australians in their opposition to any commercial development of the old Swan Brewery site.
>
> When our Society wrote to the then Premier, Mr Brian Burke, on August 19, 1985, we congratulated him on the decision to buy back the site. We understood his idea was to return the riverfront area to its owners - the people - as an essential part of their heritage.
>
> We understood, too, that he would listen to, and be influenced by, submissions on future developments. However, to our great disappointment, petitions signed by 16,000 on one occasion and by 12,000 on another, plus numerous letters to the Press and politicians were completely ignored. Another victory for the developers!

Mrs Hodgson, the president of the society, also wrote -

> As you know so well Mounts Bay Road is narrow, winding and highly dangerous. In October 1986 the Main Roads Department estimated that between 37,000 and 41,000 motorists used the road daily.

These figures are relevant because the Minister - who is not in the Chamber to listen to the debate, which is an indication of her interest in it - made light of the remarks of Hon Reg Davies tonight when he had the so-called temerity to refer to what the Royal Automobile Club of WA and leading orthopaedic surgeons had described as -

Hon J.M. Berinson: She did not make light of that, she said they were no longer pursuing that argument.

Hon P.G. PENDAL: The Minister made light of everything, as the Attorney General would have known had he been in the Chamber at the time. The Minister conducted herself disgracefully. The letter continued -

> If the $30 million development (including a liquor outlet) goes ahead an in-built lethal weapon will be created. Many doctors, who see the casualty wards, the dead and injured, have warned that any development aggravating the present dangers will create more accidents waiting to happen.

Hon J.M. Berinson: When was that letter written?

Hon P.G. PENDAL: On 20 February 1990, by the Kings Park and Swan River Preservation Society.

Hon J.M. Berinson: You do not deny Mrs Hallahan's comment that the surgeons are no longer raising that concern in that respect?

Hon P.G. PENDAL: I do not dispute that because I do not think it is relevant, because the Government is ploughing ahead.

Hon J.M. Berinson: Because it does not suit your purposes.

Hon P.G. PENDAL: It has nothing to do with the road safety element, and the Government says that it has everything to do with the heritage element. I repeat to the Attorney General, because he was not in the Chamber to hear this comment earlier but was elsewhere on urgent business, that the Government's Heritage Council has refused to classify a building on which the Government has squandered $21 million. Most of that money was squandered when he was Minister for Budget Management, and he should be forever ashamed of himself for that.

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

The DEPUTY PRESIDENT (Hon Doug Wenn): Order! Order!

Hon P.G. PENDAL: I know exactly what I am talking about.

Hon J.M. Berinson: If you knew what you were talking about you would not say that the Minister for Budget Management was responsible for that development.

The DEPUTY PRESIDENT: Order! Order!

Hon P.G. PENDAL: The more I am in this Parliament and hear what the Minister for Budget Management was not responsible for, the more I am absolutely astonished.

The DEPUTY PRESIDENT: Order! I ask the honourable member to address the final part of his speech to the Chair.

Hon P.G. PENDAL: I will, and I am sure you, Mr Deputy President, will call on the Attorney General not to interject further.

The DEPUTY PRESIDENT: Order! It can be said of the President that he is a very wise person. When he noticed that a member was starting to become rather involved in the debate he put that member in the Chair, and in so doing gave him the same power to control the House that the President has. He indicated that if any more interjections were made some members would be having an early night. I ask Hon Phillip Pendal to address his remarks to the Chair.

Hon P.G. PENDAL: Perhaps we should put the Attorney General in the Chair.

The DEPUTY PRESIDENT: Order!

Hon P.G. PENDAL: Of all the heritage buildings I have listed tonight as having been neglected by the Government, I add a final name to that list which is relevant to legislation dealt with in the last part of the session. For example, the Government resisted attempts by this Opposition - although the Opposition was successful in the end - to write into the East Perth Redevelopment Bill a clause to encourage the East Perth Redevelopment Authority to spend public funds on the restoration of the East Perth cemetery and even, if necessary, on the historic Anglican church that sits within that precinct. The Government opposed the Opposition's proposal and it has also opposed the Opposition's proposal for the Old Mill. It has committed the miserable and miserly sum of $15 000 to the Old Mill on a couple of recent interpretation exercises.

Hon Kay Hallahan: Try $30 000.

Hon P.G. PENDAL: The Government has committed $15 000 to the Old Mill and $21 million to a building that even the Government has refused to classify. I finish on that note; the Opposition has a pretty good record in respect of raising issues connected with heritage.

Hon George Cash: It puts the Minister for Heritage to shame.

Hon P.G. PENDAL: That does not take much doing. The Government does not have the correct priorities. For example, it recently received $1 million from the Federal Government for heritage matters. What did it do with those funds? It committed every dollar to the old Fremantle Gaol which has recently been vacated. That building is not, and never has been, under threat; no-one wants to pull it down.

Hon J.M. Berinson: It is under threat of falling down.

Hon P.G. PENDAL: If so, that is because of the lack of maintenance to that building while it was used as a prison until November last year.

Hon J.M. Berinson: It is because the building is 140 years old.

Hon P.G. PENDAL: I use the occasion of supporting Hon Reg Davies' Bill to make the plea to the Government to redirect scarce heritage funds to the projects that deserve and warrant those funds, those which are listed by the National Trust and those which are generally regarded by society as worthy of preservation. Many people have observed the obsession that has taken hold of the Government with regard to the old Swan Brewery, and the Government has played along with the emotions of a number of people who want to retain the old Swan Brewery. It has used those people in a cynical political exercise which brings it no credit. My plea to the House is not just to pass this Bill and thereby prevent further work on the old brewery site, because a far greater principle is at stake; we should insist that the Government spend money on all those things I have listed, such as Montgomery Hall, Swanbourne Hospital, the Old Mill at South Perth, Fremantle Gaol, Warden Finnerty's property at Coolgardie, Old Blythewood at Pinjarra, the Dongara Flour Mill and the Mangowine Homestead. There is a never-ending list of buildings that could have been restored 100 times over with $21 million. I urge the Government not only to support this Bill but also to redirect heritage funding so that buildings of real priority receive that funding.

HON J.N. CALDWELL (Agricultural) [8.59 pm]: From the outset, the House should know exactly where the National Party stands on the Town Planning (Old Brewery) Bill. The position of the National Party has not been arrived at as a result of an enormous amount of research, such as that done by Hon Phillip Pendal. I congratulate him on the amount of research he has done. I do not know whether his information has been obtained from the enormous pile of books in front of him. If the pile becomes much higher the President will not be able to see him and he will be able to interject without being seen, although I do not think that is a good idea.

Hon J.M. Berinson: That is a very good argument for more books.

Hon J.N. CALDWELL: Hon Phillip Pendal has provided a great deal of historical background on the old Swan Brewery. I do not intend to do that. My comments will relate specifically to what is happening and what one can see today. I base my remarks on public opinion, safety, cost to the community and saving Western Australians any embarrassment. I turn first to public opinion. I do not think that an opinion poll has ever been taken on whether this building should be saved. My understanding is that people are in favour of knocking it down. I have not seen the results of any public opinion poll, but people from all walks of life are against saving this eyesore.

Hon Reg Davies: Around 80 per cent.

Hon J.N. CALDWELL: We knocked out daylight saving with a lower vote than that, so we should have this building knocked over if 80 per cent of the people are in favour of getting rid of it.

I turn now to the safety factor. I can remember commenting a couple of years ago on a Bill to do with land revestment. That was at a time when the Government wanted to eliminate Bernies hamburger bar on Mounts Bay Road by withdrawing its lease. I can remember when speaking to that Bill saying how important it was that that business stay where it was because it had more heritage value than the Swan Brewery around the corner. I pointed out that the Government was attempting to get rid of Bernies so that it could extend the Mount Hospital. I suggested that so many accidents were happening on the Swan Brewery bend that the hospital probably needed to be extended.

Hon Tom Stephens: No accidents are occurring there now.

Hon J.N. CALDWELL: Hon Tom Stephens is quite right, but what has been done to prevent accidents occurring?

Hon Tom Stephens: Chicago barriers have been erected.

Hon J.N. CALDWELL: Yes. They are an enormous eyesore and look absolutely hideous. I hate them. The quicker the Government gets rid of those concrete forms the better for the beauty of the city. The safety factor must be taken into account when considering this area. Many accidents have occurred on Mounts Bay Road, most of them near the Swan Brewery.

An unbelievable $20 million has been spent on this building, yet it looks dreadful. To put the matter into some form that people can appreciate will involve a further unbelievable cost, particularly the way costs escalate nowadays. I come to Parliament House along the South Perth foreshore and I get pretty down in the dumps when I look across the Narrows Bridge and see the building as it is now. I can remember when it looked attractive; with its lights on it was something to see! I can remember seeing the boats when travelling up the river. The brewery lights were pointed out to people and were something to look at. The Old Mill was also something to look at, but I believe its lights have gone out, as well.

Hon E.J. Charlton: The lights might go out on the Government, too, in a few months.

Hon J.N. CALDWELL: We do not want the lights to go out on the Old Mill, but there is something to be said for them going out on the Swan Brewery. Public opinion is that the building should be torn down. Mounts Bay Road is one of the more appealing drives in Perth until one comes to the Swan Brewery eyesore, which grabs one's eye as one comes around the corner. It is probably drivers looking at the derelict state of that building and thinking of how wasteful our Government has been with its money who run into the person in front resulting in the towball on the car in front going through their radiator. That is where the safety factor comes in. Costs associated with this building will continue to grow. The embarrassment caused to the State by the cost associated with the old brewery is something we could have well done without.

The National Party supports the Bill and says that the building should be torn down as soon as possible.

HON PETER FOSS (East Metropolitan) [9.06 pm]: I had an opportunity while Hon Phillip Pendal was speaking to make a calculation using the figures he gave to the House. He mentioned that $21 million had been spent on the brewery. If one takes merely 10 per cent as the amount of holding interest costs on that money, which is fairly conservative, an amount of $2.1 million a year comes up. One-seventieth of that interest charge is required to maintain the Old Mill; that is, 1.4 per cent of the interest paid on what has been spent on the brewery. That gives some idea of the mismanagement of Government funds and not just the hypocrisy involved. If the Government had diverted one small part of that money to other areas a serious attempt could have been made to conserve some of the industrial history of this State.

I congratulate all speakers except the Minister on their contributions to this debate. Hon Reg Davies set out well the history of the building.

One could perhaps believe this Government if it were not for the fact that it discovered the building's heritage value late in the day. The first thing it did was treat the building as a commercial asset and use it for the benefit of its mates. It is only now, as a result of public demand, that it has reversed its spending approach and not spent any more money on this building. The Government has suddenly found a heritage excuse to keep the building and has spent $50 000 in an attempt to find a reason to justify saving it. This Government is unbelievable! It has decided this building has a heritage value late in the day when its previous treatment of it was quite to the contrary.

Hon Phillip Pendal pointed out that the Minister made a big show of mentioning buildings that have been knocked down. In particular, she spoke of the Barracks Arch and the barracks building. I very much regret the loss of the barracks. It was a terrible loss. I remember thinking that at the time. However, one can understand that the attitude of people in the 1950s and the 1960s to heritage matters was different. That was an age when people were knocking down heritage buildings. The excuse for that happening was that that was the way people thought at the time. What possible excuse does this Government have for what it has done since it has been in power and since that attitude changed? Hon Phillip Pendal mentioned a number of buildings this Government has destroyed. One that disturbed me was the crematorium chapel, which was a marvellous piece of art deco architecture classified by the National Trust which the Government knocked down. Hon Kay Hallahan was the Minister for Heritage at that time and took no measures to stop that demolition; and the speed with which the Government knocked it down before there could be any dispute about it was quite disgraceful.

The signal box at the corner of Beaufort and Wellington Streets was classified by the

National Trust and was knocked down. The excuse given for that demolition was that it had to go in order to allow a cultural centre to replace it. Do members know what is there now? Our cultural centre comprises a car park and a tavern. It is probably a fairly appropriate description of what this Government thinks is the culture of Western Australia that it knocked down a signal box that was classified by the National Trust and replaced it with a car park and a tavern!

St George's Hall was knocked down in order to build the magistrates' building. It is often forgotten that St George's Hall was the first purpose built theatre in Perth, and that next door to it was an office building that was built by the same people who built St George's Hall and that was to be used in conjunction with it. I know about that because the firm of Stone and Stone built that office and theatre. That firm of lawyers was my firm, and they thought they would be entrepreneurial and also own the theatre next door to the office.

The worst example is the stables, which were knocked down. This Government can spend $21 million to rebuild a building that has no heritage value, yet it could not spend one cent to rebuild the only building in that area that actually had some heritage value and was classified by the National Trust. The reason that the Government was not able to put a bit of money into rebuilding the stables was that it wanted to put in a car park. This Government, which is now telling us that it values heritage, and which has the hypocrisy to state that we are the ones who wish to destroy heritage, would not even spend a cent to restore the stables and to prevent them from being burnt so that it would have an excuse to knock them down. The Government cannot be believed because its actions indicate that heritage means nothing to it. We see the typical Burke-Dowding-Lawrence Governments' trick of looking around for another excuse once all the other excuses have run out. Time after time Labor Governments have operated by putting up an excuse, and when the public have said, "We do not believe that; you are lying", they have put up another excuse, and the public have said, "We do not believe that one either." I can tell members opposite that the public do not believe that the Government is a born again believer in heritage when it comes to the old Swan Brewery because the Government has demonstrated that it has no interest in heritage. It is the Opposition which has been endeavouring to require the Government to observe this State's heritage, I am pleased to say with some success, as Hon Phil Pendal has pointed out with regard to the Cottesloe Police Station and the Earlsferry building. It is unfortunate that in respect of all too many buildings, the Government has not lived up to its rhetoric.

I take considerable pride in the fact that I moved an amendment to the Heritage of Western Australia Bill to provide that if the Heritage Council recommended the listing of a building owned by the Government, that building would be automatically placed on the register without the Minister's having any say in the matter. I do not trust this Government. I must say that I do not trust any Government when it comes to heritage matters in respect of its own buildings. One of the reasons that I do not trust this Government is that it has had an abysmal record in heritage matters since it has been in office. I am proud that this Parliament makes the decisions.

I have foreshadowed some amendments on the Notice Paper which reflect the distrust that I have for this Government. Members may recall that both Houses of the Parliament passed motions calling on the Government to knock down the old Swan Brewery. This Government chose to ignore the representatives of the people. Members may recall that this Parliament passed a Bill with regard to the Fitzgerald Street bus bridge. The Government looked at that Bill and sought, if not to avoid the wording of that Bill, to avoid its intent. Therefore, I believe that the amendments I have put on the Notice Paper are necessary if there is to be any chance that the Government will observe this Bill. I do not believe that, given half a chance, the Government will observe this Bill. The amendments propose to impose a penalty of $10 000 a day on anyone who owns that land if the building is not removed by 1 July 1993. That will give the Government adequate time to do what is necessary to knock down the building. Furthermore, I propose that the funds from the penalty be placed under the control of the Kings Park Board and used, firstly, to knock down the building, and, secondly, for the purposes of the Kings Park Board generally. That is the only way that I believe the Government will do what it is supposed to do, because I suspect that if we do not do something like that, the Government will ignore the provisions of this Bill.

Hon J.M. Berinson: We are used to your being enthusiastic, but you are really over the top with this one. It goes beyond all reasonable limits, even for you.

Hon PETER FOSS: I must say that I did not believe when the Bill was first introduced that anything like this would be necessary. I would have thought that once a Bill were passed, the Government would reasonably carry out the intent of it. However, I have seen the behaviour of this Government in respect of the Fitzgerald Street Bus Bridge Act, and I would have thought that a responsible Government would pay attention to the clear intention of the Parliament and the clearly expressed sentiments of the members and give effect to the intent of the Bill, rather than behave like a tax evader and try to find some way out of the clear obligations of the Bill.

Hon J.M. Berinson: Hon Reg Davies did not purport to require the demolition of the building. You are introducing an entirely new element and one which is quite astonishing.

Hon PETER FOSS: Hon Joe Berinson knows perfectly well that prior to the introduction of this Bill, Hon Reg Davies introduced a Bill which required the demolition of the building.

Hon J.M. Berinson: But he did not reintroduce it.

Hon PETER FOSS: Hon Joe Berinson may have forgotten the reason that he did not proceed with it and did not reintroduce it. It was phrased in such a way that unfortunately it breached section 46 of the Constitution Acts Amendment Act, and there was a slight technical hitch so far as he was concerned in that the Government was not prepared to give a message and to introduce the matter in the lower House. Therefore, it is obvious that Hon Reg Davies could not do anything of that nature; so to say that he has not done it is rather missing the point.

Hon J.M. Berinson: It is strange that you should be able to express that point better than he can himself.

Hon Reg Davies: I have been warned not to keep interjecting, otherwise I will be tossed out.

Hon George Cash: Is it not interesting how much Hon Joe Berinson is prepared to contribute to this debate by way of interjection only?

Hon Kay Hallahan: That is a snide remark.

Hon PETER FOSS: I have had the benefit of listening to the debates of Hon Reg Davies when he spoke originally and I have also had the privilege of reading the debates again this evening. I must say, as I said at the beginning of my speech, that I congratulate Hon Reg Davies on his contribution. I recommend to the Attorney General that he read the second reading speeches of Hon Reg Davies on both these Bills because he will find that the answers to what I am saying are well contained in Hon Reg Davies' speeches, and that is why I am so easily able to acquaint Hon Joe Berinson with Hon Reg Davies' reasons.

I have proposed the amendments. It may very well be that Hon Joe Berinson will be able to give us the assurance that the Government will do the things Hon Reg Davies would like to have done with the old Swan Brewery, if in fact this Bill passes this Parliament; and if that were the case perhaps it would not be necessary to include this measure.

Hon J.M. Berinson: It is sad to see such a young man over the top.

Hon PETER FOSS: What the Attorney General should be saddened to see is such a young man disillusioned and cynical about this Government. It is also sad that over a period I have come to the conclusion that this Government is not capable of paying the slightest attention to the wishes of this Parliament. I can say that with some considerable confidence because I know that both Houses of this Parliament have passed resolutions calling on the Government to demolish the old Swan Brewery. I know that is the intent not only of Hon Reg Davies but also of both Houses, because both Houses have passed resolutions to that effect.

Hon J.M. Berinson: That will be a matter to test again if and when this Bill goes to that House.

Hon PETER FOSS: We will see what happens, and if members in another place pass it the Attorney General will know again that both Houses still want the old Swan Brewery demolished.

Hon J.M. Berinson: It depends in what form it goes to the other House.

Hon PETER FOSS: My problem is that I suspect that the Government would pay just as little attention to the wishes of both Houses as it did the last time the Houses expressed to the Government that they wished the old Swan Brewery to be demolished.

Hon J.M. Berinson: There is a difference between an expression of a view and an Act of Parliament. I would have thought that even you would not suggest that the Government would ignore a requirement of an Act of Parliament.

Hon PETER FOSS: No, I believe the Government would do exactly what it did with the Fitzgerald Street Bus Bridge Act. It would look at it as closely as it possibly could to see whether there was any way of avoiding doing what the Parliament wanted it to do.

Hon J.M. Berinson: You mean what you want it to do.

Hon PETER FOSS: What I am trying to do is to ensure that the Government does not have such an opportunity again.

Hon J.M. Berinson: You are trying to inflate your own views into being those of the Parliament.

The DEPUTY PRESIDENT (Hon Garry Kelly): Order!

Hon J.M. Berinson: The Fitzgerald Street Bus Bridge Act is specific and it is being acceded to.

The DEPUTY PRESIDENT: Order! I ask the Attorney General to refrain from interjecting and I ask Hon Peter Foss to direct his comments to the Chair. Perhaps then he will be able to finish his contribution a little more quickly.

Hon PETER FOSS: I think I am quite justified in saying that I know what the views of the House are, not by forming those views myself but merely by knowing what members have said through the course of the debate as to what they hoped would happen with regard to the Fitzgerald Street bus bridge.

Hon J.M. Berinson: Hoping is one thing, passing an Act is another.

Hon George Cash: If you thought you could have got away with it you would have, Mr Berinson. You were stopped in this House and you know it.

The DEPUTY PRESIDENT: Order!

Hon PETER FOSS: Hon Joe Berinson has very cleverly and succinctly indicated the Government's attitude: It is not enough for the Parliament to express its views generally in the course of debate. If the Parliament's views are not put down word by word in an Act the Government, quite rightly, will disregard what members have said about what they hope will happen. The Government will look at the words to see whether it is absolutely bound to do anything.

I make quite clear to the Attorney General the intent of the amendments I wish to move. Firstly, this House wants the old brewery demolished. Secondly, this House would like to see punished people who do not demolish the brewery when called upon to do so. Thirdly, this House would like to see that the fee from that punishment is appropriately used to ensure that the brewery is demolished. That seems a perfectly logical sequence of events. It has a certain simplicity because it not only requires it to be done but also allows the funds to be provided to enable it to be done. I hope that there will not be any need for a penalty. Perhaps if only part of my amendment were passed, which said it is illegal to maintain the building there, the Government would comply with it. I do not know that it would, but in any event the amendment I have proposed certainly makes it possible for that to be carried out. It also gives any person the opportunity to enforce this legislation, whether by civil or criminal remedies. Again, that is important.

I support the Bill. I believe the objections that have been raised by the Government are rather latter-day objections inconsistent with its earlier attitude and its behaviour on heritage generally. I hope the Government will take the sensible measures advocated by Hon Reg Davies, Hon Phillip Pendal, and Hon John Caldwell.

Debate adjourned, on motion by Hon Tom Stephens (Parliamentary Secretary).

NURSES BILL 1991

Second Reading

Debate resumed from 28 April.

HON BARRY HOUSE (South West) [9.26 pm]: The Opposition supports the Nurses

Bill. It will move some amendments during the Committee stage but, if agreed to, they will not substantially alter the intent of the legislation.

This process was first initiated in 1987 to give legislative backing to health professionals. The Nurses Bill is the first cab off the rank in this process, and I can understand some of the difficulties in the early days relating to frustrations, delays and so on. Consultation in those days was not all it could have been, either, with some key players complaining they did not get the first Bill until after its introduction into the Parliament. Draft Nurses Bills were introduced in 1988, 1989 and 1990 and were followed by submissions. I understand the whole process involved eight drafts of the Bill being drawn up, amended and reinterpreted; so it has been a fairly lengthy process. The last time we saw the Bill was in the dying days of the spring session of the Parliament in 1991 when, just prior to Christmas, an attempt was made to put it through the Legislative Council. I am sure that after that exhaustive process all the interested parties are grateful to see this Bill at this advanced stage and look forward to its progress tonight.

The impetus for the new Nurses Bill comes first of all from the need to update registration and professional recognition for the nursing profession. The old Nurses Act did not fit new developments, either, in the world of health care. I will quote the obvious from a paragraph of the Minister's second reading speech -

> The role of nurses has been expanding over the years to keep pace with the advances in medical science and technology. In the past 10 years particularly, more complex patient care has demanded greater responsibility and training for nurses. New community activities and expectations, the introduction of highly sophisticated medical technology, changing medical practices and higher educational standards have all created a very different environment from that which existed previously.

These obvious changes go hand in hand with a move away from the hospital based training of nurses on which the old Nurses Act was modelled. While institution based training may provide better training in many ways, because of the more complex and ever-changing technical aspects of nursing, there must not be a diminution in the role of patient care.

The DEPUTY PRESIDENT: Order! There is too much audible conversation in the Chamber.

Hon BARRY HOUSE: Some regrets and certainly some concerns have arisen that not enough emphasis is given to patient care aspects of nursing these days; many people are prepared to blame for that the move away from hospital based training to institution based training. Like most members, I am familiar with numerous complaints from constituents about a lack of basic care in this field. Examples which come to mind are people complaining about being kept waiting in hospitals, particularly in emergency care situations, without any assistance and seemingly little care provided.

We all hear examples of patients in need of care in hospitals, which does not relate to complex, technical medical aspects but to these people's simple needs receiving little attention or "TLC"; that is, basic comforts. I am sure all members hear examples of patients receiving adequate medical attention, but not receiving further attention, even if it is something as simple as having their pillows puffed up. Such attention does not necessarily require a nurse with a university degree, but one with humanity and empathy with the patient. In the drive for professional recognition and technical proficiency, I hope the new crop of nurses pay attention to some of the traditional and, if I may use the term, old fashioned aspects of nursing.

Hon E.J. Charlton: I am totally in favour of it.

Hon John Halden: You love the words more than anything.

Hon BARRY HOUSE: This legislation has been the subject of long ranging debate in the Parliament for about five years. Extensive consultation has taken place, and three issues present themselves as matters of concern. These are in relation to psychiatric nursing, midwifery and the structure of the proposed Nurses Board. These difficulties have been largely overcome through protracted negotiation and the amendments moved by the Opposition in the Legislative Assembly during the passage of the Bill through that Chamber.

At this point I commend the Minister for Health, Mr Wilson, the shadow Minister for Health,

Mr Minson, and the National Party spokesperson on health, Dr Hilda Turnbull, for the spirit of cooperation shown in the handling of this legislation in the other place. They were able to solve many differences to the satisfaction of all parties. Late yesterday it seemed to me that all the major differences seemed to have been resolved through negotiations over a long period. However, about 12.30 pm yesterday the Opposition was briefed by the Australian Medical Association, which stressed its concern over several issues in regard to midwifery in particular. This eleventh hour approach appeared to stem from the AMA's fears that the clear intention of Mr Wilson, as expressed in the Legislative Assembly *Hansard*, in regard to the need for supervision by medical practitioners during births would not be adequately reflected in the Bill if it passed unamended through this House. Consequently, the AMA suggested several amendments and we were faced with this hurdle in the home straight. Since then we have discussed the issue extensively with many different individuals and groups, and predictably we were lobbied hard, particularly by the midwives. I found myself trying to cut through the legal jargon in trying to address the principal issues to resolve the situation.

The Opposition regards the principal issues as what degree of medical supervision should we, as a society, require to be present during birth, and who is qualified to provide that supervision. We had to consider whether the AMA's concerns were legitimate and whether the Bill had obvious deficiencies. On the other hand we had to ask whether the AMA's fears were unfounded and whether it would be satisfied by statements or amendments made to the Bill during this debate. The third consideration was whether the AMA was merely attempting to retain the status quo, or regain ground it claims to have lost in recent years.

Let us for a moment consider extremes in the debate: Firstly, we would have completely independent and unsupervised and unregulated midwives. In that case, almost anyone could hang up a shingle and practise as a midwife. That is undesirable and it would not be supported by any thinking person. The other extreme would be the complete supervision of all aspects of birth by a medical practitioner. That situation is not necessary, and is not the current situation anyway. It seems that mistakes can occur as we move closer to each extreme. Doctors have claimed at times that there is a danger of rising morbidity and mortality rates as a result of a growing trend to home births, independent midwifery and birthing centres independent of hospital and medical cover. However, I am unaware of any statistics to support that concern; therefore we must ask whether those concerns are legitimate. Where is the evidence to support it?

Near the other extreme, my wife, who is a nurse, can cite examples of babies being born in the presence of numerous medically qualified people, yet the babies' lives were saved by the midwives who resuscitated them when they stopped breathing. During this time the doctor, in most cases young and inexperienced, looked on helplessly not knowing what to do. In such cases it was clear that a midwife was better equipped to handle the situation than the doctor. Therefore, the happy medium lies somewhere between the extremes. This would be the situation in which, firstly, the foetus and the baby have maximum protection and, secondly, the wishes of both parents are met with the availability of an adequate degree of medical supervision; that is, that the professional status of a midwife and a medical practitioner is acknowledged and used in the appropriate situation. The happy medium is the situation where standards are maintained to prevent an escalation of the morbidity and mortality figures.

My understanding of the Bill is that, as closely as possible, it reflects the status quo, which currently is that the overwhelming majority - in the vicinity of 90 per cent or more - of births are under the supervision of a medical practitioner anyhow. However, currently enough scope exists in the system to cater for, firstly, emergencies and births in remote locations where it is not possible for a medical practitioner to be present, and, secondly, the wishes of people who want to have home births with an independent midwife. I understand that approximately 92 per cent of women in Western Australia are content with the quality of medical attention they received during pregnancy and birth. Western Australia has the lowest morbidity and mortality rates in Australia and, it has been claimed, in the world. This is a pretty enviable record and something of which the medical profession and health industry can be proud. I respect and understand their wishes to maintain that sort of record. The Opposition's inclinations are that this current very commendable state of affairs will not be placed in jeopardy by the proposed Nurses Bill 1991.

Nevertheless, during his reply to the debate, the Opposition would like from the Parliamentary Secretary who is handling the Bill assurances about midwifery and the related issues of supervision, liability, and codes of practice. Specifically, I hope the Parliamentary Secretary will address the following questions: Firstly, schedule 4 clause 3 subclauses (3), (4) and (5) proposes to delete sections 332, 333 and 334 of the Health Act, but should not these provisions be retained in order to preserve the current capacity to regulate the practice of midwifery? Secondly, does the Bill need to provide that any person undertaking midwifery practice, or midwifery nursing for gain, shall do so only under the professional direction of a medical practitioner? The Australian Medical Association has raised concerns about the legal liability of medical practitioners for negligence by midwives. Thirdly, should a code of practice for nursing, which is proposed in this Bill, be able to be developed by the Nurses Board without any accountability and in isolation from any other body? If this is a problem, what checks and accountability procedures on this power of the board will be provided before the code comes into operation or is changed? I understand there is an amendment on the Notice Paper to cover that situation but I would be interested in the Government's response. Fourthly, does clause 46 have the potential to be used as a vehicle to unreasonably require medical practitioners who utilise staff under their direct supervision and control, who may sometimes assist in the management of patients for some proportion of their time while working at a doctor's practice principally as a secretary or receptionist or for a defined duty, such as the collection of blood, to employ or remunerate only nurses? I am confident that these concerns will be addressed by the Parliamentary Secretary during his reply. I am also confident that the AMA's concerns about these matters can be allayed. I support the Bill subject to satisfactory responses on those important issues.

HON J.N. CALDWELL (Agricultural) [9.44 pm]: The purpose of the Nurses Bill 1991 is to replace the 1968 legislation with a new Act to regulate the nursing profession. The Bill has five specific aims: To repeal the Nurses Act 1968; to establish a 12 member Nurses Board; to establish a registration review committee and a professional standards committee; to set minimum qualifications for registration; and to replace the 10 division nursing register with a two division register, one for tertiary qualified nurses and one for enrolled and mothercraft nurses. Hon Barry House has brought to the attention of this Parliament some of the problems of concern to the Australian Medical Association. The National Party's Dr Hilda Turnbull had a big input when the major concerns about this Bill were considered in the other place. She has first hand knowledge of the health system and of the cooperation between the nursing profession and doctors. She was completely satisfied with the legislation passed in the other place. I sometimes wonder why people contact parliamentarians to suggest alterations at the last minute before the legislation comes into this place when they have had some three or four years to consider what they see as the problems. To my knowledge neither National Party member in the upper House was contacted by the AMA with its concerns and it was only by coincidence that I saw the suggestion that there should be some alteration to this Bill. The Parliamentary Secretary briefed members on what the Bill was attempting to do and I also listened to some of the fears of the AMA and midwives. As a matter of fact a large number of midwives contacted me today because they thought some major changes were to be made to this Bill at the last minute.

Hon John Halden: That will teach you to even consider wavering.

Hon J.N. CALDWELL: My office was littered with pink telephone message slips requesting me to return certain people's calls. That goes to show that midwives were concerned that there were to be some alterations to the Bill. I hope the Parliamentary Secretary can allay their fears on most issues. Hon Barry House was talking about midwives and how this Bill will regulate their profession by a code of practice. Undoubtedly the way that code of practice is set up will have some checks and balances. It would probably be best if that were set up by regulation. The National Party will be waiting with great interest to hear what the Parliamentary Secretary says. The nursing profession is one to be admired and its members are certainly held in higher esteem than are politicians. Nurses are at the everyone's beck and call and their hours are similar to ours and sometimes maybe worse. It is a profession to be admired and I hope the passing of this Bill will go some way towards bettering the position of nurses and their profession.

HON PETER FOSS (East Metropolitan) [9.49 pm]: I congratulate Hon Barry House on

the able way he set out the philosophical and ethical problems of this legislation. He has said how the necessary balance must be achieved. I will speak mainly on the question of midwives. I have an interest in midwifery in that three of my children were born at home with an independent midwife attending. A doctor was also attending. The important thing was that the midwife did the midwife's work and the doctor did the doctor's work. They must be recognised as two separate roles and that the midwife is better at being a midwife than a doctor, and the doctor is better at being a doctor than a midwife. Sticking to their roles is the ideal way for things to proceed.

There is a legal problem in that which has been suggested by the Australian Medical Association as to what we might make by way of amendments to the Bill that has come from the other place. First of all, it is incorrect to say that the regime for the control of midwives is less than that which was included in previous legislation. The combination of the ability to pass rules and have codes of practice covers equally, if not more strictly, the areas covered by the two previous Acts. The only real difference is that the code of practice would be imposed by the nurses themselves and I think that is a good thing. It is a mark of professionalism and a mark of proper conduct of a profession for peers to suggest the appropriate rules to apply. It has been suggested that the Bill include the provision that a midwife be permitted only to carry on her practice under the supervision of a doctor. Strangely, I think that would have the reverse effect of what doctors are suggesting should happen. They are seeking to avoid having to be responsible for negligence by a midwife whereas, if we said in the Bill that a midwife had to operate under the supervision of a doctor, if the doctor were there the presumption would be that he was supervising all that the midwife was doing, even those midwifery type things, and if anything went wrong he would be responsible. Under the present circumstances with the midwife doing the midwifery things and the doctor doing the medical things, the ideal situation would be for each to apply his or her skills to what is happening and the doctor would not be responsible for the negligence of the midwife. People like my wife and I would continue to employ a doctor for the things we need a doctor for, but would have a midwife for the ordinary delivery of a baby.

The second point raised by the AMA referred to the employment of people in their own practices who may not be entirely devoted to being secretaries and who may help out at times. If the person is essentially doing nursing work and regularly engaging in the practice of nursing, he or she should not be doing that work unless registered. There should not be an exemption to people in doctors' surgeries if they regularly act as nurses merely because they happen also to be the receptionist or the secretary. The interpretation as to how that provision would work is that it will not be the practice of nursing if the person merely occasionally helps out and it will not become the practice of nursing unless that person is actually carrying on the practice of nursing. The occasional assistance by a secretary or receptionist in minor tasks which might otherwise be carried out by a nurse would not be the conduct of oneself in the practice of nursing. If they go beyond that - it is a matter of fact how far beyond that becomes the practice of nursing - so that they are carrying out the practice of nursing, they should be registered nurses. I am surprised that doctors, who have been so insistent upon people carrying on the practice of medicine being registered medical practitioners, could even suggest that that people who carry on the practice of nursing should not be registered nurses.

I do not believe that doctors' intervention in midwifery would lead to any great decline in our infant mortality rates in Western Australia. I remember reading the last report of the Health Department on health statistics in Western Australia which interestingly showed an increasing intervention by doctors in births over the years, particularly in Caesarean sections. It is interesting to note that notwithstanding the increasing intervention by doctors in births and the increasing use of Caesarean sections, it did not result in any improvement in the birth statistics. Therefore, it does not necessarily add anything to the result by having increasing intervention by doctors. I believe that intervention should be confined to those instances where intervention is necessary.

I support the Bill and the proposed amendments.

HON JOHN HALDEN (South Metropolitan - Parliamentary Secretary) [9.56 pm]: I thank members for their contribution to this Bill and for their support, although at this stage it may be qualified until questions that have been raised are answered by me. It is true that the

Nurses Bill has a long history. It has, as Hon Barry House said, gone through at least eight formal drafts beginning four or five years ago. The Bill has been to the Parliament at least twice and, as Hon Barry House said, it does not change anything dramatically. It reflects the status quo, makes very few changes and places into legislation the changes that have occurred in the nursing industry over recent years. The Bill does not in any way diminish the role and importance of patient care in nursing. I believe that, with the construction of a new board and hopefully with the code of practice that is to be developed, we will see that the care of patients will be of higher importance and will be far more clearly documented under this legislation than ever before.

Hon Barry House was again correct in saying that there will be two classes of nurses under this Bill and not 10 as was the case in the previous Act. Those two classes are basically nurses who are tertiary trained and nurses who have been institutionally trained. Hon Barry House referred to psychiatric nursing. I did not understand the point, but my understanding is that psychiatric nursing also is about to change from being solely institutionally based training to becoming tertiary based and will be based in one WA College of Advanced Education from now on.

The success rate of births in this State is reflected very clearly in the statistics to which the member referred. To the best of my knowledge, those statistics are accurate. In excess of 90 per cent of births are medically supervised and I understand that well over 90 per cent of women are happy with the medical attention and care they receive antenatally, postnatally and during the birthing process. There is no doubt that a high standard of medical care is obtained by women during the birthing process.

In relation to the matters raised by Hon Peter Foss and the Australian Medical Association's letter of concern, this is one of those rare occasions on which I, the Government and the Minister actually agree with everything the member said.

Hon Barry House asked four questions to which I will now try to give answers that will result in his being prepared to support the passage of this Bill through the House. The first question he asked was: The Nurses Bill, in schedule (4), clause 3, subclauses (3), (4), and (5) proposes to delete sections 332, 333 and 334 of the Health Act. Should these provisions be retained in order to preserve the current capacity to regulate the practice of midwifery?

The answer to the question is that schedule 4 clause 3(3) relates to the repeal of section 332 of the Health Act which requires that only registered midwives can practise midwifery. The legislation before this House, under clause 48 makes it an offence for a person who is not registered by the board in a specialty area to practise that specialty. Therefore, a person who is not a registered midwife cannot legally practise midwifery. Schedule 4, clause 3(4) provides for the repeal of section 333 of the Health Act which enables the Governor to make regulations for supervising, and restricting within due limits, the practice of midwives. This part of the section is covered by clause 82(2)(g) of the Nurses Bill which provides for the board with the approval of the Governor to make rules for regulating the practice of nursing by registered persons and the conduct of that practice. The amendment to the Health Act in this Bill in schedule 4, clause 3(4) also retains the power of the Governor to regulate to protect mothers and babies. Schedule 4, clause 3(5) repeals section 334 of the Health Act 1911. This section empowers the Nurses Board to impose penalties for breaches of the regulations. This power is now provided for in clause 82(3) of the Nurses Bill. A penalty of up to $1 000 can be imposed for contravention of a rule or a provision of the rule under the new Bill.

The second question asked by Hon Barry House was: Does the Bill need to provide that any person undertaking midwifery practice or midwifery nursing for gain shall do so only under the professional direction of a medical practitioner? The answer is no. Currently, under the provisions of the Health Act midwives are practising independently without being under the control or supervision of medical practitioners, and they have been able to do so for at least the past 16 years. However, the Health Act provides for regulations to be passed in relation to supervising or restricting midwifery practice. Present regulations require medical intervention in certain risk circumstances; they do not generally prevent midwives practising without the supervision of a medical practitioner. The provision that the member is suggesting would, if adopted, take the practice of midwifery back decades and, in fact, would repeal the Health Act provisions and remove the general capacity midwives generally have to practise independently.

The provisions of the Nurses Bill repeal the Health Act provisions in relation to the practice of midwifery, and locates them where they belong - in the Act which regulates all nursing, including all nursing specialities. As I have already stated, the Nurses Board will have the power to pass rules and codes of practice under the provisions of clauses 9 and 82 to regulate nursing practice, including midwifery as a nursing specialty. These will enable restrictions and requirements of supervision by a medical practitioner in specific circumstances where this is appropriate. However, it does so by maintaining the principle of self-regulation and peer review which is part of all professional regulation Acts; that is, the Nurses Board will decide what standards should apply to nurses. As an extra safeguard, the Minister may direct the board and, in addition, rules and codes of practice must be tabled in Parliament and may be disallowed.

The Australian Medical Association has also expressed concern as to the legal liability of medical practitioners for negligence by midwives. Medical practitioners would have no liability for the actions of the midwife if she were not acting under the practitioner's direction or in his employ. However, if there were a legal requirement for all midwives to be supervised by a medical practitioner, this would impose legal liability on the practitioner.

The third question asked by Hon Barry House was: Should the Nurses Board be able to develop a code of practice for nursing without any accountability and in isolation from any other body? If this is a problem, what checks and accountability procedures on this power of the Nurses Board will be provided before the code comes into operation or is changed? The answer is that a code of practice is inherently a matter for the nursing profession to determine. It follows the principle of self-regulation, which is fundamental to professional regulation. To ensure that the code is not developed without some accountability procedure, I propose to move an amendment to clause 9 that will ensure the code of practice will be tabled in Parliament and will be subject to disallowance procedures as provided for in the Interpretation Act 1984.

The fourth question asked by Hon Barry House was: Does clause 46 have the potential to be used as a vehicle to unreasonably require medical practitioners who utilise staff under their direct supervision and control - and who may sometimes assist in the management of patients for some proportion of their time while working at a doctor's practice principally as a secretary or a receptionist, or for a defined duty, such as collection of blood - to employ or remunerate only nurses? The answer is no. The Nurses Board has a responsibility to ensure that qualified nursing personnel provide nursing services in Western Australia, and clause 46 quite properly enforces this by creating an offence where unqualified people are paid or employed in relation to the practice of nursing. The use of the phrase "in connection with the practice of nursing" is wide, and could perhaps be read to mean that medical practitioners should not employ non-nurses, such as receptionists or blood collectors, because their activities are "in connection with the practice of nursing". However, Crown Law Department advises that the meaning of this phrase would be interpreted narrowly, in line with the purpose of the Bill, to prevent unregistered persons from being employed to practise nursing. It would not include within its scope employees who sometimes assisted in nursing type activities without actually practising nursing. I hope that those answers will also answer the matters raised by Hon Peter Foss.

In conclusion, I thank members opposite for their support. I know they have been under pressure from the Australian Medical Association in recent days, but all members have responded in an appropriate way and have considered issues raised at the eleventh hour, as Hon John Caldwell described it. The assurances given by the Government adequately cover the concerns of members of the Opposition, the Government and the AMA. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

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

Clauses 1 to 5 put and passed.

Clause 6: Membership of Board -

Hon BARRY HOUSE: I move -

Page 4, lines 13 to 21 - To delete paragraphs (a) and (b) and substitute the following -

(a) 2 shall be persons nominated by the Australian Nursing Federation, Industrial Union of Workers, Perth, who have knowledge of and experience in clinical nursing practice and are registered in division 1 of the register;

(b) one shall be a person nominated by the Australian College of Midwives (Western Australian Division) who has knowledge of and experience in midwifery and is registered in division 1 of the register;

This is merely a drafting amendment which alters a couple of words in the Bill which I believe were not grammatically correct.

Hon JOHN HALDEN: The Government has no objection whatsoever to the amendment proposed by Hon Barry House.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Codes of practice -

Hon JOHN HALDEN: I move -

Page 7, lines 1 and 2 - To delete subclause (2) and substitute the following subclause -

(2) The Board may, with the approval of the Governor, by publication in the *Gazette* -

(a) amend;

(b) revoke; or

(c) revoke and replace,

a code of practice.

Proposed subclause (2) clarifies the powers of the board and the fact that with the approval of the Governor certain actions can be taken by the board regarding the code of conduct. As the amendment states, the board may amend, revoke or revoke and replace clauses within a code of practice. The subsequent amendment will show how it will be a requirement of the code of practice that it comes before the Parliament as if it were a regulation.

Amendment put and passed.

Hon JOHN HALDEN: I move -

Page 7, after line 16 - To insert the following subclause -

(6) Section 42 of the *Interpretation Act 1984* applies to a code of practice as if it were a regulation, and to anything done under subsection (2) as if it were an amendment of a regulation.

This amendment makes the code of practice subject to regulation and therefore to the scrutiny of the Parliament. Members of the Opposition discussed this matter with me this afternoon. I hope this amendment is what they require. The rules of the code of conduct will also be subject to the scrutiny of the Parliament.

Hon BARRY HOUSE: The Opposition supports the amendment believing it responds adequately to questions raised about the code of practice. It also responds adequately to concerns raised by the Australian Medical Association and should allay its fears in relation to this aspect of the Bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 10 to 85 put and passed.

Schedules 1 to 4 put and passed.

Title -

Hon BARRY HOUSE: The Australian Medical Association is concerned about independent midwives being eligible for Medicare rebates at some time in the future.

Hon JOHN HALDEN: The member would be aware that Medicare rebates are a Commonwealth matter not covered by this Bill. As I understand, midwifery is not covered by Medicare, although small payments are made by private health insurers. The purpose of the Bill is to retain the present status quo of nursing. No need arises for the Bill to open that door, which is currently closed. The Bill maintains the status quo.

Title put and passed.

Bill reported, with amendments.

STATUTORY CORPORATIONS (DIRECTOR'S DUTIES) BILL

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss, and read a first time.

Second Reading

HON PETER FOSS (East Metropolitan) [10.19 pm]: I move -

That the Bill be now read a second time.

Purpose: This Bill seeks to ensure that the duties and liability to prosecution of directors of statutory corporations in the public sector is similar to that of directors of corporations in the private sector. It is similar in form to two Bills which I introduced in the previous sessions of Parliament but which lapsed upon prorogation. This liability to account already exists at law but there has been far greater development in the case law relating to the private sector. This is in part probably due to the inadequacy of methods by which the accountability of public sector directors can be enforced. Unlike the case in the private sector presently no criminal penalties are provided for directors in the public sector who fail to meet the appropriate fiduciary standards. In addition to the matters which I included in the last Bills I have expanded on what I see as the proper legal consequences of a Minister giving the directors of a statutory corporation a direction which he is not lawfully able to give.

Historical background: It has long been accepted that directors of companies owe a fiduciary duty to those companies. They may owe a wider duty, and I refer members to Baxt's *The Duties of Directors - "To Whom Are They Owed?"*, Monash 1986. Fiduciary duties were imposed on individuals in a number of circumstances, and were invented and elaborated on in the Court of Chancery in the eighteenth and nineteenth centuries. These duties are to ensure that persons who hold assets or exercise functions in a representative capacity for the benefit of other people act in good faith and conscientiously protect the interests of those whom they represent.

The best known and easiest example of the imposition of these duties is in respect of trustees of property. However, in the nineteenth century it was extended to others who acted in a representative capacity, such as agents, company promoters and directors of companies. In the cases dealing with these duties, the directors are often metaphorically described as "trustees". It was made clear that they were bound to use fair and reasonable diligence in the management of their company's affairs and to act honestly. The law developed over the years, with the duties of directors being defined more closely as the courts worked out the appropriate measures. In due course, the duties of directors were also included in Statute law. For instance, section 124(1) of the Companies Act 1961 of this Parliament provided that "A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office", and subsection (2) provided that "An officer of a company" - which included director - "shall not make use of any information required by virtue of his position as an officer to gain directly or indirectly an improper advantage for himself or to cause detriment of the company"; and penalties were prescribed under subsection (3). Subsection (4) provided also that the section "is in addition to and not in derogation of any other enactment or rule of law related to duty or liability of directors or officers of a company".

This section was taken from the 1958 Victorian Act. The explanatory memorandum presented to the Victorian Parliament for consideration of the Bill which became the Companies Act 1958 of Victoria stated that this section is new "and so far as is known is not to be found in any other legislation relating to companies in the English speaking world". It was "introduced as a result of consideration of the Statute Law Revision Committee's report" on the inquiry into the affairs of Freighters Ltd by an inspector appointed pursuant to the provisions of the Companies (Special Investigations) Act 1940 of Victoria. The explanatory memorandum stated also that "It was decided to introduce this provision rather than the particular provisions suggested by the Statute Law Revision Committee as it was thought that a more general provision would be more effective. To a large extent the section is declaratory of the existing law, but it is believed that a restatement of the principles of honesty and good faith should govern directors' conduct clearly set out in the Act will be an effective deterrent to misconduct or free the courts from the technicalities of the existing law in dealing with all forms of dishonesty and impropriety by directors." That is also the intention of this Bill.

The Companies Act 1961 was replaced by the Companies (Western Australia) Code. This code, while repeating in section 229 the general duty to act honestly in the exercise of powers and discharge of office, went further and provided in subsection (2) that "An officer of a corporation shall at all times exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties". There are many other more specific provisions in that code in relation to the duties of directors and officers. The Companies Code has been replaced by the Corporations Law pursuant to the Corporations (Western Australia) Act 1990. This Act substantially re-enacted those provisions but with different language which has been picked up in this Bill.

The introduction of the code has had a salutary effect. Whereas up to that time people had been prepared to lend their names as directors on the payment of a fee, without any real regard for carrying out their duties, a greater degree of circumspection developed among respectable members of the community about the companies to which they loaned their names. That is not to say that the abuse of a director's position disappeared overnight. It did mean that those persons who took on the duty of director were more diligent to ensure that they carried out those duties, and in particular people with special skills realised that those special skills had to be devoted to the benefit of the company. That was a good and much applauded result of the tightening of the legislation. It is arguable that the enacting of this legislation did not in fact change the law all that much, but it did have the result that was foreshadowed in the explanatory memorandum to the Victorian Parliament in 1958; namely, that it was an effective deterrent to misconduct and freed the courts from the technicalities in existing law in dealing with all forms of dishonesty and impropriety by directors.

I have made the point that the original development of the law with regard to the fiduciary duties of directors did not rely upon Statute. Furthermore, the principles which were applied arose not out of the fact that they were officers of a company incorporated under the various joint stock company Acts but out of the relationship between the director and the corporate body for which he was responsible. Therefore, those principles would apply equally well to any other corporation, no matter how formed. Support for this is found in the report of the Burt Commission on Accountability. The commission states at the end of part four that there are fundamental differences between the ideas of accountability and public scrutiny when applied to the investment activities of individuals, partnerships and companies incorporated under the Companies Code on the one hand and the investment activities of Government agencies on the other, and indicates in part five that, if anything, there is a greater need for accountability in public sector corporations because of the fact that taxpayers are involuntary participants whereas shareholders are voluntary participants.

Page 16 of the report sets out the escalating degrees of necessary accountability as follows -

> The sole trader is accountable from himself as manager to himself as owner. There has been no need for Parliament to legislate to facilitate this accountability.
>
> Partners are accountable amongst themselves as owners with the Parliament having enacted legislation detailing rights and obligations amongst partners, including joint or joint and several liability for the actions of the partners to the community at large.
>
> The Companies Code provides a means for a number of persons to voluntarily come

> together and share in the ownership and profits of a business venture with some limits to their liability. It codifies the rights of shareholders and the responsibilities of both those elected to direct the ventures and persons employed to manage the operations. While detailing relations between the corporate entities so created and the community at large it also provides for accountability to the shareholders through general meetings and annual reports. The auditor of the company is appointed by the shareholders in general meeting.
>
> Those who participate in business ventures as sole traders, partners or shareholders in companies do so voluntarily. It is their capital which they are putting at risk.
>
> By contrast, government has the power to compulsorily acquire financial resources and uses this power to tax members of the community. Except where the revenue streams have been otherwise appropriated by the legislature, the taxes and charges are required to be paid into and form one Consolidated Revenue Fund.

The report states at page 17 that -

> These differences are embodied in the procedures for parliamentary control of the "public purse", reflecting the demands for representation with taxation. They have been developed over the centuries, converging in Gladstone's "circle of control".

The report states at page 18 that -

> Greater access to information is likely to be required for this purpose than is normally provided to shareholders as owners.
>
> Companies are reporting to shareholders who have invested voluntarily and who can exercise a choice to realise upon their investment. Government is reporting to persons who have compulsorily provided resources and who are "locked-in". The standard required in the latter case should be no less than the standard prescribed in the Financial Administration and Audit Act and Treasurer's Instructions.

It is plain that the Burt Commission on Accountability saw an increasing degree of responsibility from sole trader through to Government corporation - from the person who is responsible only to himself to the person who is responsible to a public who have involuntarily invested in the Government corporation. The proposition of this Bill is to apply with regard to public corporations the same principle as was embodied in the Companies Act 1958 of Victoria when it was initially introduced and which has been embraced successively by Australian Parliaments with great effect. It appears to be an omission that, when the law was brought up to date for private sector companies in Western Australia, nothing was done about public sector corporations.

I have just mentioned the Financial Administration and Audit Act, and it is probably appropriate at this time to say that that Act, to some extent, recognises this concept in part II, division 10, which is headed "Write-offs and Recoveries". That is somewhat limited in its scope and imposes on an officer who, by his misconduct or performance of duties in a grossly negligent manner, causes or contributes to a loss, deficiency, destruction or damage, an obligation to pay to the State a certain amount. That Act, of course, is broader in its application because of the definition of "officer" in it. Section 47 of the Financial Administration and Audit Act gives authority to the Auditor General, the Under Treasurer or an accountable officer to take proceedings to bring back to the State the deficiency which has occurred. Interestingly, section 49 places on the officer the burden of satisfying the court or person conducting an inquiry that he is not liable. Section 50 recognises that, quite apart from the Act, there may be proceedings at law to recover the loss, and provides that there are not to be two recoveries. However, that is a much more limited area of recovery and is probably directed more towards the little man who may be responsible for the minor destruction or damage of property than it is to the persons who, by the misapplication of their skills and knowledge, have caused serious financial loss to a public corporation. It does, however, set the precedent for the involvement of the Auditor General.

History of the previous Bills: The Statutory Corporations (Directors' Liability) Bill 1989 received qualified support from the Government. It raised some objections to the Bill, with which I will deal specifically later in the speech. The Auditor General states in Volume 1 of the Report of the Auditor General 1990, at pages 6 and 7, that -

In the private sector directors of a company have a fiduciary responsibility to shareholders. It is my view that in the public sector Ministers charged with the administration of a department or statutory authority have a similar responsibility to the taxpayer. They are charged by the electorate to govern in a manner so as to ensure the electors' social well-being.

Similarly the accountable authority of a statutory authority has a fiduciary responsibility with respect to that authority and must act with prudence and probity. I now believe that there is a strong case for the *Financial Administration and Audit Act* to mirror the provisions of section 229 of the *Companies Code* thereby requiring the management of public sector agencies to act honestly and with reasonable diligence in the discharge of their functions, and for an appropriate penalty be prescribed for breach of such duties. Recognition would need to be given to the accountability structure and a 'defence' provision included so that management would not be a risk where a direction from a Minister is given in writing.

I note that the Standing Committee on Government Agencies, after examination of a private member's *Statutory Corporations (Directors Liability) Bill*, have recommended:

"1. That the Bill in its present form proceed no further, and be discharged from the Notice Paper.

2. That the State Government, in consultation with the proposer of the Bill, taking into consideration the principles of the Statutory Corporations (Directors Liability) Bill and the issues raised in this report, prepare a Bill for presentation to the Standing Committee on Government Agencies.

3. That the Standing Committee on Government Agencies consider this Bill during its proposed future inquiry into the establishment and scrutiny of Government agencies in Western Australia, which may include the development of a Statutory Corporations Act or Code relating to Government agencies."

Recommendation

The State Government pursue the recommendations of the Committee.

That final recommendation, of course, is the Auditor General's.

It is interesting to note that the most vigorous criticism of the Bill came from the State Government Insurance Commission and the Government Employees Superannuation Board. The unfolding of the facts surrounding their investments leaves little doubt that the then directors had good reason to fear the Bill.

A further matter that I believe ought to be recognised is the publication of the McCusker report, because it became quite apparent from reading this report that the directors of various statutory corporations had entered into contracts and made investments which were of such an imprudent nature that had they been entered into by directors of private sector corporations the directors would have found themselves liable in damages to the corporation for their breach of duty. The McCusker report indicated that this was all part of a Government rescue plan for Rothwells Limited. Quite plainly the directors of the corporations allowed themselves, in breach of their duty to the corporation, to apply the funds of the corporation in a manner which was not in its best interests. The Opposition has been making this point for some time but it is pleasing to see it independently corroborated by the McCusker report.

Since that time we have also had the proceedings in the Royal Commission. Putting it mildly, the behaviour of various officers of statutory corporations and the directions that were given from time to time were nothing short of extraordinary. If nothing else, legislation such as this may be educational.

A further event with regard to this legislation was an undertaking given by the Government when I moved in this House to disallow two regulations under the State Government Insurance Commission Act to increase the authorised capital of the State Government Insurance Corporation. The Opposition was concerned that further funds of those corporations would be wasted, especially as the management structure of those corporations

remained unchanged. The Government, in order to prevent those resolutions being passed, because it would cause the State Government Insurance Corporation to close its doors by reason of its not meeting its prudential solvency requirements, gave a written undertaking to the Opposition inter alia to do two things: To incorporate the provisions of the Statutory Corporations (Directors' Liability) Bill into the State Government Insurance Commission Act; and to give consideration to bringing in such a Bill itself.

Although I am pleased to say that there has been an almost complete change of management at those corporations, the honouring of those undertakings appears not to be a priority with the Government. In fact, the Government seems so little concerned with honouring its undertakings that it has left it to me to raise the matter repeatedly in order to find out what it is doing about them. I would have thought that to honour its undertakings the Government would have been expeditious in its dealing with the matters and would of its own accord have brought before the Parliament any causes for delay and sought the consent of Parliament to postpone the carrying out of its undertaking. Obviously the members of the Government and I have a different attitude towards written - or, for that matter, verbal - undertakings. Anyway, because of the delay I introduced the Bill again last year. In due course it fell off the Notice Paper, so I have introduced it again in order that the matter be proceeded with as soon as possible.

I understand that the Standing Committee on Government Agencies is considering the broad principle of a Statutory Corporations Act, which I support, but I do not see that a consideration of that legislation should in any way put off what appears to me to be an urgently required piece of legislation with regard to the specific area of directors' duties.

Scheme of the Bill: The Bill, essentially, does four things. The first two things are contained in part 1 dealing with civil liability. First, it declares the duties of a director of a statutory corporation. This is intended to be a declaratory Act in the true sense of the word. It does, I believe, truly state the law as it presently stands; but in any event, it puts the law beyond doubt as to a minimum standard. This minimum is defined by reference to the duties of a director of a company which is incorporated under the Corporations Law. This is, of course, subject to such further development in that area of the law that the courts may from time to time reveal. In my opinion the Bill does not widen the current duties of a statutory corporation director.

It is also left to the court to determine whether by reason of the special relationship which exists between involuntary shareholders and statutory corporations - as adverted to in the report of the Burt Commission on Accountability - there is some greater duty than that owed by directors of companies under the Corporations Law and it is open for them to so find and for the procedure under this Bill to be used for recovery of any loss. It can be said that the Bill does not precisely frame those duties but that is the case now, with the duties of both a private sector director and a public sector director. Any lack of provision does not arise from the Bill itself. The Bill does at least give some certainty by referring to a well known body of law.

Also in part 1 of the Bill is a mechanism by which the liability for damages is likely to be enforced. I will deal with the mechanism when dealing with the particular clauses, but at this stage I will say that I have tried throughout this Bill to adhere to the principles which I outlined in my maiden speech to this Parliament with regard to the drafting of legislation. The Bill is drafted in broad terms. They are terms which are reasonably readily understandable by laymen and concepts which are readily amenable to opinion by lawyers. It has not been attempted to go into intricate detail. It has been intended to try to make the Bill self-enforcing.

Part 2 of the Bill is part of the self-enforcement but also goes into more detail as to the effect of directions given by a relevant Minister and how the board of a corporation should respond to them. I would have preferred not to include this detail. I believe that, again, much of what is being stated is what is already the law. The procedure that is set out seems to be what should be a sensible procedure where a corporation is of the opinion that the Minister is requiring it to do something which he should not be requiring it to do. If Parliament decides to set up a corporation, consequences follow from creating that separate legal person. That legal person has only the powers and the purposes given to it by its creating Statute. In some ways it is like an appropriation. Giving the Minister a power of direction allows him to

overbear the will of the corporation but cannot alter the Statute which dictates what it is within power of the corporation to do. Nor can it give the Minister the opportunity to spend the money or apply the assets of the corporation in any manner the Minister thinks fit where that is outside the purposes of the corporation.

Part 3 of the Bill is to impose penalties upon directors. As members will appreciate, the usual result of the imposition of a duty is to give rise to an action for damages for its breach; but it has been thought appropriate, in addition to imposing a liability in damages, for it to be open to the State to proceed by way of prosecution against the directors who have failed in their duties. For this purpose, particular provisions of the Corporations Law have been written into this Bill.

I now deal with the particular provisions. Clause 2 sets out the interpretation. The definition of "Corporations Law" and "company" are, I believe, quite clear. I have retained the name "company" instead of using the term "corporation" as is used in the Corporations Law to make a clear distinction between the words used for public and private sector entities. The definition of "corporation" requires it to be public, it must be an authority, an instrumentality or agency of the Crown, and it must be a body corporate. This definition is slightly different from that contained in the Statutory Corporations (Directors' Liability) Bill in that the words "of the Crown" have been added after the word "agency" so that the words follow more closely the definition of "exempt public authority" under the Corporations Law. There was some criticism of this definition by commentators on the previous Bill but I would have thought that if it is sufficient for section 9 of the Corporations Law and is sufficiently clear there, it should be regarded as being sufficiently clear here. Obviously this definition does not direct itself to any other body that may be set up which does not have a corporate existence. It may very well be that after some period of experience of this as an Act it will be possible to contemplate looking at other persons who stand in a fiduciary duty with regard to the State. For the time being it applies only to bodies corporate and only to those which are of a public nature. Furthermore, the corporation must be established under a written law. It does not apply to corporations which are established "pursuant to" a written law; that is, to corporations under the Corporations Law or the Associations Incorporation Act, or under the Credit Unions Act or the like where a mechanism is provided by which incorporation will occur but where the Act does not actually establish the corporation. As I have previously said, I believe it would be a sensible idea for there to be a statutory corporations Act pursuant to which statutory corporations may be incorporated. This could lead to a more uniform law relating to statutory corporations and to the better development of a body of law as to the proper conduct and accountability of those corporations.

On the previous Bill I commended the Government on the Financial Administration and Audit Act amendments and I am pleased to be able to commend it on the further amendments which were made - especially after we had contributed to them. I see this as a useful starting point, although a lot more still needs to be done in order to meet the standards required by the Burt Commission on Accountability and to meet the expectations of the people of Western Australia for proper Government.

Under the previous Bill the only persons who were affected by the Bill were those who are directors; that is, as that term is defined members of the "governing authority by whatever name". The latest Bill also applies in certain places to "officers" and employees of the corporation. The definition follows the definition in the Corporations Law of an "executive officer" and is not as broad as the definition of officer in the Corporations Law.

I have also added a definition of "relevant Minister" purely because of the expanded sections relating to what a corporation must do when it receives a direction from the Minister who is empowered to give them directions.

Part 1 - Civil Liability: Clause 3, as I mentioned, is the clause which declares that a director owes to a statutory corporation no lesser duty than a director of a company owes to that company. The wording is different from the Statutory Corporations (Directors' Liability) Bill in a number of respects. It omits the words "under the code" which were at the end of that clause. It is not intended to confine the duties to those duties which are owed by virtue of the Criminal Code, or in this case the Corporations Law; it is intended to apply to all those duties which a corporations law company director owes to that company whether imposed by Statute or otherwise. This makes it even more clear that it is not exclusive of any other duty

which may be imposed by law on statutory corporations, nor necessarily is it novel. Whatever else may be the duty that is owed by a director of a statutory corporation, he owes no less a duty than a company director owes. Furthermore, the section is declaratory. Regardless of whether I am right in saying that this has always been the law, this puts it beyond doubt.

The Bill refers to the duties that a director owes to a company "and the shareholders of the company". Arguments have arisen that the duty of a director is owed only to the company and not to the shareholders - I make no comment on this. I had at one time contemplated that the Bill should provide that the director owed a duty also to the people of Western Australia, but I have not included this in this Bill. This is not to say that they may not owe a duty to the people of Western Australia, but for the time being I wish to keep the procedure under the Bill simple and straightforward. There was some criticism of the earlier Bill that it was creating a duty to some indefinable shareholders of the corporation. A careful reading shows that it deals only with duties to the corporation. The duty to the corporation is a combination of the duties that a director owes to a company, and, if any, to the shareholders. Whatever duty that may be owed to a shareholder is now owed to the corporation.

Clause 4(1) provides for the recovery of damages, and they can be recovered in three possible ways. The most conventional way is that the corporation should itself sue for damages. This is the usual way with companies under the Corporations Law. There is a greater possibility of that occurring with companies under the Corporations Law because the shareholders may cause a change in the board of directors; therefore, a possibility arises of the company being directed by its board to sue former directors. It does not take a great deal of imagination to realise that current directors of a corporation are unlikely to commence action against themselves.

It is not usual for shareholders of a company to be able to bring action directly against the directors for their breach of duty. There are, of course, exceptions to that rule. The rule relating to this is set out in a case called Foss v Harbottle. This involved a decision of the Court of Chancery in 1843 in which a Mr Foss and a Mr Turton brought an action on behalf of themselves and all other shareholders against the defendants, who consisted of five directors, a solicitor and an architect of the company, alleging that by concerted and illegal transactions they had caused the company's property to be lost. The court held that the action would not lie at the suit of the shareholders but there was nothing to prevent the company itself bringing the action. There were exceptions to that rule. It is because of the nature of statutory corporations, where there is little possibility of the "shareholders" actually doing anything to motivate the board to take action against itself, that there is ample reason to make an exception in this particular case.

The first such exception is that, as well as the corporation, it has been provided that the Auditor General may bring action, and when he does so he does it in the name of the statutory corporation. Thus the idea that the corporation itself should bring the action is preserved - it is merely that the Auditor General has the right to take over and move the corporation where he believes that there has been a breach of duty. I understand that the Auditor General is not all that thrilled with the role, but I believe that it is necessary and is consistent with the approach that has been followed in the Financial Administration and Audit Act. It is probably the only practical way in which it could be carried out. The Auditor General is responsible to Parliament, and Parliament itself is responsible to the people, who are the "shareholders" of the corporation. The Executive, by reason of the power of a Minister to direct corporations, is really at one with the board and therefore cannot be expected necessarily to take the appropriate action. Of course, if the Executive is so minded, it can either change the board of the corporation, or the responsible Minister could give a direction to the corporation to bring proceedings to recover the damages; thus the right of the statutory corporation to bring its own action is preserved. If, in the opinion of the Auditor General, it is failing in its duty to act, he has the power to move the corporation to bring that action and, as members will see from clause 4(1)(a), the action is brought on behalf of and in the name of the statutory corporation.

Clause 4(1)(b) contains the second exception which allows a "shareholder" to bring an action. This action is brought in his own name but for the benefit of the statutory corporation; that is, all proceeds from the action are held in trust for the corporation. However, he does so at his own risk as to costs. If he secures an order for costs, that is his

order for costs. If an order for costs is made against him, he must meet that order for costs. If he wishes to seek an injunction and is required to give an undertaking as to damages, he must personally satisfy the court that he is able to give that undertaking and he must take responsibility for it.

The idea of individual members of the public being able to bring action on behalf of public interest is one which is growing in application. There is an extensive use of section 52 of the Commonwealth Trade Practices Act by public interest groups seeking to prevent trading corporations making statements which they believe are incorrect. Examples of this are in the conservation movement and the anti-tobacco lobby. In these cases plaintiffs who themselves have not suffered any particular damage bring action to restrain companies from making public claims in advertising that the plaintiffs consider to be false. There has always been the power to permit individuals to bring actions to enforce what would normally be considered to be a public right by what is known as a relator action, which can only be commenced with the fiat of the Attorney General. That is probably not directly analogous to the present proposition, but there is ample precedent of enforcement of the public interest by private litigation.

An individual is not at complete liberty to commence an action; he must obtain the leave of the court. The Bill does not fetter the discretion of the court as to the grounds for giving that leave. This lack of definition caused some concern on the part of critics of the earlier Bill. Personally, I think that this is an area in which courts excel. The courts have had enormous experience in developing appropriate rules for the granting of leave for all manner of things, and it would be foolish for Parliament to seek to set the machinery and the criteria to be used by the court. However, the intent is to set some sort of barrier to be overcome before a writ can be issued in the name of the individual.

It is intended that the barrier to be crossed should not be as great as that in the case of Foss v Harbottle. It may very well be appropriate for the court to say that, if the action is not whimsical, then if the Auditor General and the corporation have not indicated their intention to commence the action, an individual should be allowed to proceed. After all, he faces a considerable risk in commencing his action and the only benefit that he can receive is the satisfaction of seeing the coffers of the State appropriately restored. In those circumstances I would not wish to see too great an obstacle placed in the way of a public-minded citizen. On the other hand, it should not become a means for distracting or annoying a corporation where there is no initial indication that the action is justified.

Clause 4(2) allows the Auditor General to take over and continue in the name of a corporation an action which has been brought by the corporation or which has been brought by a person. The reason for this is that the corporation may commence an action against a director but the Auditor General may not be satisfied with the manner in which it is being pursued. It is obviously appropriate that he should be able to take it over, rather than be shut out by the commencement of a half-hearted action by the corporation. On the other hand, an action may be commenced by an individual as a dummy, or the Auditor General may come to the opinion that it is a highly meritorious decision and one in which the individual person should not have to bear the liability, and that it should actually be carried on by the corporation. In either case, or in any case where he thinks fit, he can take over and conduct the action which would thenceforth be continued in the name of the corporation.

Clause 4(3) allows the litigant in person to apply to the court for the action to be continued in the name of the statutory corporation. Again the grounds for the basis of leave are not stated in the Bill, and I have confidence that the judges of the court would be able to devise appropriate rules to govern the exercise of this discretion. However, I see the application being granted where the court is of the opinion that the case is of sufficient strength that quite plainly it ought to be brought, that there is a public interest to be served, and that it is no longer appropriate that the individual should bear the cost of bringing the action. I would expect that the court would, before making such an order, require the Auditor General and the statutory corporation to be served and for them to explain to the court why an order should not be made. I hope that in most cases the matter would then become sufficiently clear so that, if an order were suitable to be made, the Auditor General would most likely take over the action under clause 4(2). However, it would still be open to the court - notwithstanding any reluctance on the part of the Auditor General - to order that the case continue in the name of the corporation. The Auditor General could of course then, even at a

later stage, take over the conduct himself. The consequence of the action being continued in the name of the corporation is that any order for costs against the corporation or for undertakings as to damages would be given by the corporation.

Clause 4(4) provides the circumstances under which a person who has brought an action may be indemnified for the costs of the action, including an allowance for his time. This is not intended to be limited to what are called party-party costs. This is intended to be an indemnification for all of the costs that the person has incurred, including remuneration for his own time. This is because it is appropriate under these circumstances that the public-minded citizen who has commenced this action should be fully indemnified for all the effort he has put into it. There are four circumstances under which the person is to be indemnified. The first is that the action is successful. Obviously, if the action is successful, it should have been brought and the public-minded citizen should be indemnified. The second circumstance is if the court orders that the action be continued in the name of the statutory corporation. This is logical because at that stage it is the statutory corporation's action and once again the public-minded citizen has been justified. The same applies to the third case which is when the Auditor General takes over the action. The fourth case is again a discretion in the court, and again no attempt is made to fetter that discretion. Likewise, the court has had immense experience in the case of costs as to what is a fair order to make, and I am sure that it does not even need an indication from me as to how this discretion should be exercised.

Clause 4(5) prevents more than one action from being current at any one time in respect of any one breach of duty without leave of the court. This is a practical measure so that there is not a multiplicity of actions. There is nothing to stop a number of plaintiffs combining in the one action, or being joined even at a later stage in the one action; but, essentially, there should be either an action brought in the name of the statutory corporation, or an action in the name of one or more persons, and the action brought in the name of the statutory corporation can be directed either by the corporation itself or by the Auditor General. However, there will generally be only one action.

Part 2 - Ministerial Directions: I have totally revised this part. I believe that some of the criticism of the previous Bill and its provisions were misguided. The previous Bill gave the directors the option, when they thought that a direction was improper, of resigning or staying on and taking responsibility for acting on it. It was said that this avoided the concept of ministerial responsibility. This misses the point that it did not relieve the Minister of responsibility - it made the directors liable along with the Minister. The concept of several people being liable is not an unusual one. In any event I have followed a different scheme.

Clause 5(1) is perhaps another step in providing a general code for corporations. It applies to all corporations presently existing or to be created. We have over the years developed a medley of provisions and this clause is intended to rationalise them. It makes provisions for three things -

(1) Directions must be in writing and must be laid before Parliament within 14 days of being given.

(2) The direction must be published in the annual report of the corporation.

(3) The direction does not permit the Minister to direct the corporation to do anything that is unlawful, or ultra vires.

The first two of these have in one way or another been incorporated in all recent legislation. This will extend it to all corporations. The last I believe to be the law anyway, but I do not think that it hurts to make it quite clear in a law such as this - especially because there seems to have been some considerable lack of understanding of the point in recent years. Clause 5(2) is a simple mechanism that has also been used quite a lot lately. It is to ensure that there is no delay in publishing a direction by reason of the Houses not sitting.

Clause 6: The intention of the remaining provisions of this part is to force the parties to think about the ramifications of the direction and to bring any dispute about their legality or appropriateness into the open. A board has to think about each direction that it receives and decide whether it is lawful and within power and also whether it is in the interest of the corporation. Board members may not act on it until they have done so. I believe that they have this duty already and that many corporations already do this. The State Energy

Commission plainly did so over the Western Collieries Ltd advance purchase. This clause puts that duty beyond argument. A board would obviously have to record in its minutes its opinion of the direction and its reasons for that opinion if it wished later to be able to satisfy a court that it had acted properly. The clause then requires the board to refrain from acting on the direction if it is not satisfied on all counts and to notify the Minister.

Clause 7: The next step is by the Minister. He must consider the response from the board and he may tell it to go ahead. Whatever happens, the response must be sent to Parliament and published in the annual report in the same way as the original direction. So also must any confirmation of the direction. Even then the board is not required to act on the direction until it has lain before both Houses for not less than seven sitting days. Moreover, it gains no greater legality by having been through this process. It must still be lawful and within power to be a valid direction.

Clause 8: Where a direction is unlawful or outside power it is important that something be done to challenge it and this clause gives the directors standing and incentive to go to court and to have the matter decided there. If the directors are right in their opinion that a direction is unlawful or ultra vires it is, of course, not a direction and they are at risk if they act on it. If they are wrong in their opinion they would be in breach of their duty in not acting on it. This is unsatisfactory if unresolved and would necessitate an urgent application to the court. Subclause (2) relieves the board of liability for acting on a confirmed direction, but that means a lawful direction. It cannot relieve them where there is no power to give a direction and that direction is a nullity. This is to protect them where the direction is lawful and within power but not, in their opinion, in the best interests of the corporation. It also protects them only where they have responded and the direction has been confirmed.

Part 3 - Criminal Liability: In the previous Bill the various provisions of the code were incorporated by reference. This is a time honoured method and in fact is the scheme of the Corporations (Western Australia) Act 1990. However, in view of the objections that were raised to that method this Bill has its own specific provisions. Clause 9 is a preamble for the rest of the part. It has been suggested that this area of the law and some others too, is better handled by broad statements of intent and "fuzzy" law. I have taken the wording from a paper on directors' duties which recommends this approach. Subclause (1) is fairly straightforward. Subclause (2) is a common sort of provision. What is different about it is that it is stated in broad terms and it is certainly intended that it be interpreted purposively and broadly. As it states, the part sets up a scheme for the prosecution of directors, officers and employees without derogating from other means of prosecution or civil liability. It is intended to cut through the form of arrangements to arrive at their substance.

Clause 10 requires a director to act honestly in the exercise of his powers. I do not believe this to be contentious. It is equivalent to section 232(2) of the Corporations Law. Clause 11 requires a director to use a reasonable degree of care, skill and diligence. This is equivalent to Corporations Law section 232(4) except that it anticipates the addition of the word "skill". Skill is already implied in the civil duty. Clause 12 requires an officer or employee not to make improper use of information acquired by virtue of his position to gain advantage for himself or any other person or to disadvantage the corporation. This follows Corporations Law section 232(5). Clause 13 similarly provides with regard to improper use of position. It follows Corporations Law section 232(6).

Clause 14 prevents a director from obtaining any financial benefit from the corporation other than a payment which is substantially for services rendered or to be rendered or for reimbursement of actual expenses of office. This is a new duty. It is justified by the fact that we are dealing here with public moneys. Persons employed directly by the Government are not entitled to take financial benefit except in these circumstances. There seems to be no reason why this should not also apply to directors of corporations. It seems that it could logically be extended beyond directors but for the time being it has not been drafted to do so. Subclause (2) requires disclosure of these benefits.

Clause 15(1) requires disclosure of interests in a contract. We had the disgraceful behaviour with the management of the Totalisator Agency Board over computer contracts and services and this would be required to be disclosed and would in any event by its blatant nature, probably also be prevented by the previous clause. Clause 15(2) requires conflicts in interest to be disclosed. This clause also requires an affected director not to participate in the

decision or decision making and he cannot contribute to a quorum. There is also a requirement for public disclosure. Section 237 of the Corporations Law should be looked at for comparison.

Clause 16 is a lot less wordy than the Corporations Law equivalent section 234. This is because it is hoped that clause 9 should supplement any inadequacy on its part. The term "interest or advantage" referred to in clause 9 would extend to a loan referred to under this clause. Loans are absolutely forbidden to directors. They are also forbidden to officers and employees, except where the corporation is a bank. Because of the blatant evasion of similar loan provisions in the Companies Code by the directors of Rothwells who used bills of exchange there is a wider definition of "loan" and "borrow".

Clause 17 is a concept that has been incorporated in the Stock Exchange rules for some time. They have long required stockholder approval for the disposal of the undertaking of a company. It has been triggered here by the extraordinary purchase by the State Government Insurance Commission of the assets of Mr R. Holmes a Court as part of the Rothwells rescue. The SGIC invested nearly all its assets available for investment - some would say more than its available assets; it had to borrow to do so - in the purchase of a limited number of investments of Mr Holmes a Court. The purchase turned Mr Holmes a Court from being massively deficient in assets into a wealthy man again. This inexplicable largesse and $400 million gift unfortunately had the reverse effect on the SGIC - an effect which is still haunting the SGIC and SGIO and which will have to be paid for by taxpayers of this State for many years to come. I hope that such foolishness will never be repeated but at least if it is it will be plainly sheeted home to the Cabinet, and it will not be able to cry off from the responsibility as it has tried to do in this case.

Clause 18 provides a general penalty for breach of any provisions of the part. There is no point in penalising the corporation itself where the corporation has acted in breach; so that in that case the penalty is imposed on the directors who caused the corporation to act in that way. Of course, individuals who breach the part will also be prosecuted. There is no time limit on prosecutions. This is made necessary because it may take a change in Government for there to be any real chance of offences being actually prosecuted. This would be the case where there has been blatant and wholesale ignoring of the interest of the corporations inspired by the Government, as was the case under the Burke and Dowding Governments. This is the case even where there is an independent director of public prosecutions because the knowledge and information relating to these matters which is necessary to enable a prosecutor to bring such a prosecution would not be available to an independent prosecutor.

In conclusion, I believe that we are in advance of the rest of Australia in bringing this legislation forward and I hope that it will be dealt with expeditiously by the Parliament because of the failure of the Government to act on the recommendation of the Standing Committee on Government Agencies, the Auditor General or its own undertakings. I commend the Bill to the House.

Debate adjourned, on motion by Hon Fred McKenzie.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON JOHN HALDEN (South Metropolitan - Parliamentary Secretary) [10.57 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Laptop Computer, Outside Council Chamber

HON MAX EVANS (North Metropolitan) [10.58 pm]: I want to take a few minutes to notify members that a computer has been placed in the passageway behind me. The members of the Standing Committee on Estimates and Financial Operations had a special lesson from Malcolm Peacock on how to use our laptop computers. Members will be able to take time with Malcolm to learn how to use the computer. It is linked into State Print and the Parliament House library. Later on members will be able to get their electorate office computers hooked into a telephone modem for direct access. The computer has information available on all Statutes of Western Australia. Members can get experience accessing this computer, looking up Statutes, scrolling them and printing out certain sections. Members would have realised that often when they get Statutes from the Papers Office there may be

about 20 amendments and it is hard to know what is the final Act. The computer will hold the most up to date Act and members will be able to see it on screen and, in the near future, be able to print a copy of the required section or of the whole Act. Members will also be able to access the last two years of *Hansard* and I hope as time goes on that previous years' *Hansards* will be available for members. That would not be a very hard job. Questions and answers for the last two years are also available and members can scroll them by keying in their name and the Minister's name, and the questions which have been asked will come up on the screen with the answers.

The Program Statements for 1991-92 are also on the computer and we understand that, very soon, the Estimates for the Consolidated Revenue Fund and the General Loan and Capital Works Fund will also be on it. The *Government Gazette* is also on it. Country members will be able to use their computers to obtain information for constituents who may want to know something about the Dog Act or the Residential Tenancies Act. A member will be able to use his modem to get the Act up on his screen and print out the relevant sections. Sometimes constituents approach members about infringement notices which contain references to sections of Acts to which members will be able to refer. Members will also be able to refer to the Notice Paper for the day's sitting.

The move for laptop computers has been pushed by the Estimates and Financial Operations Committee and I hope all members will learn how to use them. There is a lot more to be done. The computers have been made available for all members of the House to take the opportunity to learn the simple fundamentals, including how to open the computer and obtain the information.

Hon George Cash: How is it proposed that members should learn how to access the computer?

Hon MAX EVANS: A handbook has been supplied by Malcolm Peacock and it is not hard to follow. A few call signals will bring up a menu on the screen which will enable members to contact State Print. They will then tell it whether they want a copy of the *Government Gazette* or of *Hansard*. The idea of putting the computer outside the Chamber is so that members can watch other people using it. It is far better than having it locked away in an office in another part of Parliament House.

I thank the President and the Clerks for making this facility available to members. It is an important step forward in information technology and it will eventually follow through to members in the other place. Members who want to know more can either see me or Malcolm Peacock or even other members of the staff who know how to use the computer.

Question put and passed.

House adjourned at 11.02 pm

QUESTIONS ON NOTICE

EXMOUTH - MARINA PROPOSAL
Construction Intention

257. Hon P.H. LOCKYER to Hon Tom Stephens representing the Minister for State Development:

(1) Is it the Government's intention to construct a marina in Exmouth to fulfil a promise given to the people of Exmouth by previous Premiers Burke and Dowding?

(2) If the Government is not going to fulfil this election promise what arrangements are being made for a marine facility in Exmouth?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1) The Government remains committed to proceeding with the development of a marina in Exmouth. Negotiations are continuing with interested developers on an integrated marina/leisure resort development.

(2) Not applicable.

STEPHENS, THOMAS AND ANNE - ELECTORAL ENROLMENT
Northern Rivers to Ashburton Transfer, Pre-Ashburton By-election

263. Hon N.F. MOORE to the Leader of the House representing the Minister for Parliamentary and Electoral Reform:

(1) Is it correct that Thomas Stephens and Anne Stephens of 4 Cullen Street, Shenton Park, changed their electoral enrolment from Northern Rivers to Ashburton prior to the recent Ashburton by-election?

(2) If so,

(a) when did the transfer take place; and

(b) what reasons were put forward by the electors to change their enrolment?

Hon J.M. BERINSON replied:

The Minister for Parliamentary and Electoral Reform has provided the following reply -

(1) Yes.

(2) (a) 12 March 1992.

(b) The two electors availed themselves of the opportunity provided under the Electoral Act 1907 to change their enrolment. Under section 17(4) of that Act, a member of the Legislative Council and his spouse may claim to be enrolled for a district that forms part of the region which that member represents and when so enrolled shall be deemed to live in that region or district.

SHARK BAY - WORLD HERITAGE LISTING
Bilateral Management Agreement

270. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

(1) Has the bilateral agreement between the Commonwealth and State Governments for the management of the Shark Bay World Heritage area been completed?

(2) If not, when does the Minister expect the agreement to be completed?

(3) What funds has the State allocated for the management of the Shark Bay World Heritage area?

(4) What proportion of the management costs will be contributed by the Federal Government?

(5) Will the local community be given an opportunity, through the Shark Bay Shire Council, to see the agreement before it is ratified by the two Governments?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(2) Yes. The agreement was executed in October 1990.

(3) In 1991-92 - $177 000 approximately.

(4) There are no plans at this stage for the Commonwealth to assist with management costs. However, the Commonwealth has indicated that it will provide funds for activities such as the preparation of management plans, the provision of recreation facilities and biological surveys.

(5) A copy of the executed agreement was provided to the Shire of Shark Bay in October 1990.

LANDCORP - HEPBURN HEIGHTS RESIDENTIAL DEVELOPMENT, PADBURY
Tenders, "Australian Construction Report"

282. Hon GEORGE CASH to the Minister for Education representing the Minister for Planning:

(1) Is the Minister aware of a notice of an entry in the issue of "Australian Construction Report" dated 13 April 1992 in which LandCorp has called for tenders for the development of 391 housing blocks at Hepburn Heights, Padbury?

(2) What is the location of this development?

(3) Which planning and other approvals have been granted in respect of this land and on which date were such approvals granted?

(4) Is it the intention of the Government to ignore the listing of this land by the National Trust and the Heritage Commission, and if so, for what reason?

(5) Did the Minister for Planning state last year that he would recommend to Cabinet that the Government should not proceed with the development, and if so, was such a recommendation made to Cabinet?

Hon KAY HALLAHAN replied:

The Minister for Planning has provided the following reply -

(1) The Minister had no prior knowledge of the entry in the "Australian Construction Report". On further investigation it was found that the report stated that for stage 1 of Hepburn Heights, pending the granting of appropriate approvals, selected tenders would be called in the latter part of 1992. I am told the report does not state that LandCorp has called tenders.

(2) Hepburn Heights is at the corner of the Mitchell Freeway and Hepburn Avenue.

(3) The metropolitan region scheme amendment has been advertised for public comment, and a report to the Minister for Planning is expected shortly from the town planning appeals committee.

(4) Both the National Trust and the Australian Heritage Commission have made it clear that their listing was not meant to exclude development.

LandCorp has taken due consideration of the listings by the National Trust and the Australian Heritage Commission. It has also taken into account the various environmental reports and the EPA's decision on the site. The EPA and the environmental reports do not support the protection of the site on an environmental basis. As such it is intended that some development will proceed on planning grounds.

(5) When the listings were announced it seemed that the position of the trust and the Australian Heritage Commission would be that no development should proceed. They have since made it clear that this was not their intention. The matter has since been discussed by Cabinet but the final position will depend on the outcome of the statutory procedures which are still developing.

QUESTIONS WITHOUT NOTICE

MUSICIANS - UNFAIR CONTRACTS
Trades and Labor Council's Claims

153. Hon P.G. PENDAL to the Minister for The Arts:

(1) Is the Minister aware of the Trades and Labor Council's claims that musicians are the victims of a variety of unfair or unconscionable contracting arrangements?

(2) If so, what does the Government intend to do to rectify any such valid claims?

Hon KAY HALLAHAN replied:

(1)-(2)

I am certainly aware that the Musicians Union is very concerned about its membership and I have had discussions with representatives from that union. I understand there is a need for a review of the legislation and that is currently being considered by the relevant committees. Members may have noticed a number of billboard posters around which inform the public of musicians' concerns and indicate that they are not getting a fair go. There are a couple of angles to this issue. On the one hand the musicians feel that when contracts are entered into often groups like school orchestras displace them from events in which they previously took part. On the other hand, there is some concern about the use of compact disks, and that matter will be taken up by Ministerial Council.

Hon P.G. Pendal: What are they concerned about?

Hon KAY HALLAHAN: They are concerned about CD libraries. I understand we are on the brink of a spread of CD libraries, similar to video libraries, but mechanisms are not in place to reward those people whose talents have been used in making the CDs. The advances in technology have a lot to do with displacing sources of income which traditionally musicians have counted on.

The matter is receiving some attention and I hope that as a result musicians will receive better recompense. We have given an undertaking that the music used on the telephone answering system at my office in the Capita building will feature local musicians' works. People who phone and are put on hold will have the opportunity to listen to a wide range of local musicians's works. If members have a similar facility on their answering system, I ask them to consider using local musicians' works. It would be very much appreciated by our local musicians.

MUSICIANS - UNFAIR CONTRACTS
Example Tabling - Industrial Relations Act Provision

154. Hon P.G. PENDAL to the Minister for The Arts:

(1) Is the Minister prepared to table for the information of members an example of what is claimed to be a harsh and unconscionable contract?

(2) Does the Minister support the insertion into the Industrial Relations Act of a provision dealing with unfair contracts as requested by the Musicians Union?

(3) If not, why not?

Hon KAY HALLAHAN replied:

I ask the member to put his question on notice. The issue he is raising is handled by the Minister for Productivity and Labour Relations and the response should come from her.

ANGEL, JEANNIE - GOVERNMENT COMPENSATION

155. Hon DERRICK TOMLINSON to the Attorney General:

Some notice of my question has been given to the Attorney General. Is the Government considering the payment of compensation to Jeannie Angel, who on 8 October 1991 had her conviction quashed by the Court of Criminal Appeal after she had served two and a half years of a life sentence for a murder which the Crown conceded it could not prove she had committed?

Hon J.M. BERINSON replied:

I thank the member for advance notice of the question. Yes. However, I am unable to provide a timetable for a decision as Ms Angel's solicitors are still to provide a requested supplementary submission.

NOONGAR ALCOHOL AND SUBSTANCE ABUSE SERVICE INCORPORATED, MUCHEA - GOVERNMENT FUNDING

156. Hon MURIEL PATTERSON to the Minister for Education representing the Minister for Aboriginal Affairs:

(1) What Government funding will be available for the Noongar Alcohol and Substance Abuse Service Incorporated at Muchea?

(2) How many residents will be occupants of the farm at any one time?

(3) What professional support will be given at the farm?

The PRESIDENT: Has some notice been given of this question?

Hon MURIEL PATTERSON: Yes.

Hon KAY HALLAHAN replied:

(1)-(3)

Unfortunately, I am not in a position to answer the question now, but I understand someone is trying to have the answer cleared by the Minister in the other place to enable me to deliver the answer I have in front of me. I advise the member of the correct pronunciation of Muchea, where I lived for six and a half years. It has been the subject of different pronunciations over the years.

SCHOOLS - GIRRAWHEEN SENIOR HIGH
Trip Award to America

157. Hon J.N. CALDWELL to the Minister for Education:

Is it correct that a student from the Girrawheen Senior High School has been awarded a trip to America to study the environment? Perhaps the Minister would like to make a few comments about the Girrawheen Senior High School because it does not receive the recognition it deserves.

The PRESIDENT: Order! The member must ask a question, not discuss the merits of something.

Hon KAY HALLAHAN replied:

A Girrawheen Senior High School student has been awarded a trip to America. The award was made at the school last Friday to Lisa McEnaney, who won the Doe Scholarship awarded by the Science Foundation of Physics. It was an outstanding achievement for Lisa McEnaney and her family, and for the Girrawheen Senior High School. Only six such fellowships are awarded

throughout Australia each year. It was an outstanding achievement.

The second point to which the member alluded related to his concern that the Girrawheen Senior High School sometimes gets adverse publicity. He believes that a feeling exists that the achievements of its students go unrecognised. Members will be interested to know that Damien Martyn, who won cricketer of the year; Michael Hall, now a State and regional baseball player playing in the United States; Tina Altieri, a news reader and sound reporter with Channel 9; Darren Hall, who graduated with honours as a mining engineer and is now in the United States of America; and Dr Sandra Eads, the first Aboriginal doctor at Sir Charles Gairdner Hospital were also students of Girrawheen Senior High School. A young blind student, Belihar Ishell, was the subject of an interview by Jana Wendt last Friday night, the interview focusing on her achievements at that school. That was made possible by the collegial support of students and staff.

I note Hon John Caldwell's concern that greater publicity be given to this great achievement by Lisa McEnaney, who hopes to be a veterinarian and who will go to the United States for two weeks in July to attend Oak Ridge University in Tennessee. I am sure that her career prospects and life experience will be greatly enhanced by that wonderful opportunity. As I said last Friday, I am sure she will come back and share with other students the great experience that that trip will provide her. It is a great achievement for Lisa and for the Girrawheen Senior High School.

KINGSLAKE DEVELOPMENT - SEPTIC TANKS
No Deep Sewerage

158. Hon PETER FOSS to the Minister for Education representing the Minister for Planning:

I refer to the article in the *Wanneroo Times* headed "Lakes threatened" -

(1) Is it correct that the Kingslake development is not deep sewered?

(2) If so, on what basis was that development permitted to use septic tanks?

(3) Is it intended that any further development in this area be permitted without deep sewerage?

Hon KAY HALLAHAN replied:

The Minister for planning has provided the following response -

(1) Yes.

(2) In its assessment during the rezoning process the Health Department found the site conditions to be suitable for long term on-site effluent disposal as it consisted of highly permeable soils with adequate clearance to the groundwater table and on this basis the development was supported with septic tanks.

(3) There are no current plans for further developments in this area without connection to deep sewerage. However, with recent technological improvements in effluent disposal there is a possibility that, should a low density residential development be proposed, an alternative means of on-site effluent disposal may be acceptable. The acceptance of any effluent disposal other than reticulated sewerage would require approval from the Health Department and the Environmental Protection Authority.

KINGSLAKE DEVELOPMENT - SEPTIC TANKS
Leaching Tests

159. Hon PETER FOSS to the Minister for Education representing the Minister for the Environment:

I refer to the article in the *Wanneroo Times* headed "Lakes threatened" -

(1) Have any tests been made to determine whether there has been leaching from these septic tanks?

(2) If so, what was the result of those tests?

(3) Is the development in any way connected to an aquifer from which public water is drawn?

(4) What does the Minister for the Environment say regarding further development in this area being permitted without deep sewerage?

Hon KAY HALLAHAN replied:

I answered the wrong question previously. These answers do not match what the member has just asked.

SCHOOLS - COSMO NEWBERY
Teacher and Transportable Classroom Decision

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

Has a final decision been made whether a teacher and/or a transportable classroom will be operational at the Cosmo Newbery school prior to the end of this school term?

Hon KAY HALLAHAN replied:

My memory is that I have written to the member about this matter indicating that a number of things need to be examined. Some difficulties exist at the location. A determination is needed about the permanency of the settlement.

Hon P.H. Lockyer: The settlement has been there for nearly 50 years.

Hon KAY HALLAHAN: That is incorrect. Some time ago a classroom was situated there along with facilities but the community moved away and the facilities were removed from the area. Now another settlement has been established and it is a question of putting the facilities back. We have certainly given an undertaking to provide assistance to the people who are at present running classes for the local students. Am I not correct in thinking that I have written to the member outlining the situation?

Hon P.H. Lockyer: Not to my knowledge. I do not have a letter.

Hon KAY HALLAHAN: I will follow up on this matter as I believe I signed the letter last week. I would have thought the member had received it by now, so I will follow up on this matter.

KINGSLAKE DEVELOPMENT - SEPTIC TANKS
Leaching Tests

161. Hon PETER FOSS to the Minister for Education representing the Minister for the Environment:

I have asked a question to which I have not received an answer and which was directed to the Minister for Education representing the Minister for the Environment.

The PRESIDENT: I took it that the Minister was not able to answer the question.

Hon PETER FOSS: The Minister could not find the answer, Mr President.

Hon Kay Hallahan: The member has asked three questions, one directed to the Minister for the Environment, one to the Minister for Health and one to the Minister for Planning. I think I gave a response to the one directed to the Minister for Planning and am in a position to give a response to the question directed to the Minister for Health. However, the answer to the question directed to the Minister for the Environment is not available.

Hon PETER FOSS: My question is -

(1) Have any tests been made to determine whether there is leaching from the septic tanks at Kingslake development?

(2) If so, what was the result of those tests?

(3) If there is leaching from the septic tanks, what will be the resultant effect of that on public health.

The PRESIDENT: Order! Is that not the question Hon Peter Foss asked previously.

Hon PETER FOSS: No; the Minister does not have the answer to that question. This is a different question dealing with public health. The other question dealt with the environment and septic tanks. I had to ask three questions of three different Ministers responsible for septic tanks.

Hon KAY HALLAHAN replied:

(1)-(3)

You can see why there was difficulty with this matter, Mr President. In answer to the question whether there has been any leaching from these septic tanks, the Minister for Health advises, not the Health Department of Western Australia -

Hon George Cash: Are you taking responsibility for the answer or are you implying that the Minister for Health is?

Hon KAY HALLAHAN: The Minister for Health has provided these answers.

Hon George Cash: It is a question of responsibility.

Hon KAY HALLAHAN: Then I will not provide the answer to the question.

QUESTION 119 - SCHOOL BUSES COMMITTEE

Answer

162. Hon MARGARET McALEER to the Minister for Education:

Is it possible for the Minister to provide an answer to question 119 which I asked on 31 March about the results of an interdepartmental committee dealing with school buses which was due to report at the end of last year?

Hon KAY HALLAHAN replied:

If the member is referring to the very big review that is being undertaken with the West Australian Road Transport Association and the Ministry of Education I have not yet received the work of that committee. However, I will follow the matter up because when I spoke at the annual general meeting of the association I thought those parties were reaching agreement then.