Legislative Council

Thursday, 15 November 1990

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

PETITION - DUCK SHOOTING

Controlled Season Support

Hon Barry House presented a petition bearing the signatures of 94 citizens supporting the continuation of controlled duck shooting in Western Australia.

[See paper No 749.]

A similar petition was represented by Hon P.G. Pendal (721 persons).

[See paper No 750.]

PETITION - DUCK SHOOTING

Prohibition Legislation Support

Hon Reg Davies presented a petition bearing the signatures of 1 002 citizens of Western Australia urging Parliament not to declare a duck shooting season for 1991 and to legislate for the prohibition of any future duck shooting in this State.

[See paper No 751.]

AUDITOR GENERAL - NEW APPOINTMENT CONSULTATION

Attorney General's Letter Tabling

THE PRESIDENT (Hon Clive Griffiths): I wish to table the following letter from the Attorney General -

Dear Mr. President,

Appointment of Auditor General: Consultation

The Legislative Council's motion of 31 October 1990 was forwarded to the Premier on 6 November.

In response, the Premier has asked me to convey the content of question and answer No. 1747 in the Legislative Assembly on 25 October 1990.

This was as follows:

"Mr. Cowan to the Premier:

(1) Will the Premier be consulting the Leader of the Opposition and the Leader of the National Party before appointing the new Auditor General?

(2) If yes, when?

Dr. Lawrence replied:

(1) - (2)

The Auditor General is appointed by the Governor on advice from Cabinet. Such advice is not normally a matter for consultation with Opposition members, but I am prepared to discuss it with them on this occasion prior to consideration of the Auditor General's discussion paper on this issue."

I understand that in the course of the Legislative Assembly's consideration in

Committee of the Budget, the Premier again confirmed yesterday her willingness to discuss the appointment with the Leader of the Opposition and the Leader of the National Party.

Yours sincerely,

Joe Berinson, MLC,
Attorney General

[See paper No 752.]

MOTION - SITTINGS OF THE HOUSE

Bills - Management of Business Concern

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [2.37 pm]: I move -

> That it is contrary to the intent of the bicameral system and the interests of good government in this State that this House sit for the purpose of considering legislation when the Legislative Assembly has risen and is incapable of participating in the process of legislation and in particular inhibits this House from suggesting proper and necessary amendments to legislation by reason of the inability of amendments to be given effect by the Legislative Assembly.

Members, in concert with me, are concerned at the general management of the business of this House which at the end of each session results in a huge number of Bills being dumped on the Legislative Council for action. The action of the Government in putting this Legislative Council into a pressure cooker situation by requiring that certain Bills be dealt with before the House rises is, in fact, a contempt of this House and a poor way to conduct the legislative process of the Parliament. Opportunities exist for better management practices to be introduced into this place and for the use of the committee system during the period in which the House is in recess.

The Prorogation of Parliament Bill, introduced by Hon Norman Moore, successfully passed through this House earlier this session and I understand it is now an Order of the Day in the other place. That Bill will certainly result in better management of the business of the Parliament and will improve the flow of business through this House. Unless we are prepared to take a stand, it seems to me that the Legislative Council will be regarded as a rubber stamp by the other House, and that is something I am not prepared to stand by and let occur. I therefore propose, by way of this motion, to make it clear to the Government that the Opposition wants a better understanding of which legislative business the Government considers to be urgent and is in need of being dealt with this session. Certainly that information is required by the Liberal and National Parties within a very short time. Members will be aware that last year the Legislative Council sat for two weeks longer than the Legislative Assembly. In fact, the Legislative Assembly rose on 7 December and the Council rose on 21 December last year. That is an unsatisfactory situation. Members would be aware that we were told a need existed for the Council to sit and deal with the business before it. However, every time Council members talked of the need to amend legislation the Government threatened that it would abandon the legislation and not proceed with it. Inherent in that threat was the fact that the odium of the legislation's failing would fall on the Opposition rather than on the Government. That is not the way in which to run this Parliament. It is certainly something that I will not allow to continue.

I have checked through statistics of the past 10 sitting years to assess the time difference between the rising of the Legislative Assembly and the Legislative Council. I want these statistics included in the *Hansard* record because they are a handy reference to show that in previous years both Houses generally rose within a few hours of each other. In 1980 the Legislative Council rose at 3.47 am on Saturday, 29 November. It had adjourned twice during that day, from 8.48 pm on the Friday until 12.06 am on the Saturday and, after returning and another Bill having been introduced, from 12.19 am until 3.34 am that Saturday. The Legislative Assembly rose at 4.36 am on that Saturday. The Council adjourned during the Friday session while it waited for legislation from the Assembly. Having dealt with that legislation it was returned to the Assembly without amendment, and the Assembly having then received that message rose an hour or so after the Council.

In 1981 the Legislative Council rose on Tuesday, 1 December although in real terms it rose at 12.34 am on Wednesday, 2 December. The Assembly rose at 10.25 pm on Tuesday, 1 December. It can be seen from those times that the Assembly rose approximately two hours before the Council. The adjournment in both Houses was until Monday, 8 February 1982 at 8.00 pm. That clearly allowed certain business to be carried on during the recess.

In 1982 the Legislative Council adjourned at 11.24 pm on Wednesday, 22 December. The Legislative Assembly adjourned at 7.13 pm on the same day, a matter of four hours earlier than the Council.

In 1983 the Legislative Council adjourned at 3.02 pm on Wednesday, 21 December. On the same day, only five minutes later at 3.07 pm, the Legislative Assembly rose until a date to be fixed. Both Houses resumed business on 22 March 1984.

In 1984 the Legislative Council adjourned at 11.48 pm on Tuesday, 11 December. The Legislative Assembly sat for an additional two days, adjourning at 6.12 pm on Thursday, 13 December.

In 1985 both the Legislative Council and the Legislative Assembly adjourned on Tuesday, 26 November, the Council at 8.35 pm and the Assembly at 7.22 pm, the Council having sat for one hour longer than the Assembly.

In 1986 the Legislative Council adjourned at 9.56 pm on Thursday, 4 December, the Legislative Assembly having adjourned on Friday, 28 November at 5.30 am - technically it was Saturday, 29 November. The Legislative Council sat for one week longer than the Legislative Assembly. The *Hansard* record shows the reason why, so there is no need for me to go into detail about that.

In 1987 both the Legislative Assembly and the Legislative Council rose on Tuesday, 22 December, the Council at 3.51 pm and the Assembly at 4.34 pm, the Assembly having sat for nearly one hour longer than the Council.

In 1988 the Legislative Council adjourned at 6.28 pm on Thursday, 15 December and the Legislative Assembly at 7.00 pm on the same day, having sat for about 30 minutes longer than the Council.

In 1989 the Legislative Council adjourned on Thursday, 21 December at 3.01 am - technically, it was Friday, 22 December. Members will recall that that was two weeks after the Legislative Assembly adjourned on Thursday, 7 December at 4.34 am or what was, in fact, Friday, 8 December.

Hon Tom Stephens: One of the reasons might be that there have been so many urgency motions in the upper House that it has put the two Houses out of sequence.

Hon GEORGE CASH: Hon Tom Stephens may care to check the records. My research of the records of the past 10 years clearly indicates that that is not the situation. Therefore, Hon Tom Stephens is wrong in his assumption.

Hon N.F. Moore: Mr Dowding took up a fair bit of time of the House with those sorts of things, did he not?

Hon GEORGE CASH: He certainly did. The purpose of this motion is not to suggest that there should not be urgency motions in the Legislative Council or matters of public importance in the Legislative Assembly. I have raised this matter in a formal way to place on record the fact that members of the Liberal Party have discussed this unsatisfactory situation with the Leader of the National Party and his Legislative Council members and they clearly agree about the unsatisfactory situation that occurred last year.

Rather than Hon Eric Charlton and I merely approaching Hon Joe Berinson as Leader of the House to discuss this matter behind closed doors to get some sort of undertaking that in due course may not come to fruition, I thought it important this motion be moved so that a clear understanding exists that Liberal Party and National Party members in the Legislative Council are not satisfied with the present management of the House. We do not believe a need exists for the Legislative Council to sit beyond the time that the Legislative Assembly rises - other than a matter of hours of its rising - unless there is extremely urgent business demanding the attention of the House.

I have moved this motion to serve notice on the Government that a need exists for us to discuss this situation urgently. Members on this side of the House, and I am sure on the

Government's side, have programs, schedules and other arrangements they have put in place believing the House would rise on a certain day. They do not want those other matters or schedules disturbed because we in this House are unable to say that we can manage the business of this House in a proper and responsible manner. I urge members to support the motion.

HON E.J. CHARLTON (Agricultural) [2.50 pm]: I fully support the motion moved by the Leader of the Opposition, Hon George Cash, but I have a couple points to add. It is pointless carrying on in this House and amending legislation, seeing nothing can be done about it. I am sure the Attorney General and members of the Government would not want to continue under those circumstances. The Parliament is not operating in the manner intended. Only 50 per cent of the legislation before the Parliament is dealt with. If the Government does not agree that both Houses should finish at the same time, or close to it, the only thing to do, as far as we are concerned, is to adjourn the legislation, unless the Government would like it thrown out altogether. That should not be taken in an antagonistic way.

Hon J.M. Berinson: It doesn't sound too friendly, all the same.

Hon E.J. CHARLTON: It is a matter of good business. I am sure we will sort things out. It is a matter of letting everyone know, not just one or two members in the various parties in this place. That is the position we want to arrive at. I am sure a great many members on the other side of the House see the problem in this way.

Members debated the Estimates during the Committee stage, but when the report came back to this House we understood it would be dealt with efficiently without removing the rights or responsibilities of individual members to deal with that important issue. That is a responsibility that all members have. I want to see that mechanism put in place and carried out. We want to demonstrate our responsibility to the Government and to the Parliament. The Government must understand that we will not stay here after the Legislative Assembly rises.

HON PETER FOSS (East Metropolitan) [2.53 pm]: We have all had the experience of making an appointment with a doctor, and we know that no matter what time the appointment is made for, we will be seen two hours later.

Hon Reg Davies: What about lawyers?

Hon Mark Nevill: Do you charge waiting time, or do you give a discount?

Hon PETER FOSS: We get into the habit of always being late; that is one of the problems which may easily develop. If the other place knows that this House will rise at the same time as it rises, it will also know the latest time that it can send legislation here and expect it to be properly dealt with. It is important that the rules be known so that members have an opportunity to deal with legislation. If members do not know the rules, they may well find themselves caught out.

I endorse what the Leader of the Opposition and the Leader of the National Party have said. It is entirely unsatisfactory for us to continue to try to deal with Bills in the proper way when the other House has adjourned. Members may recall that at the end of the last session we had trouble dealing with the rebate on water charges for seniors. We thought we could not amend the Bill, although one clause did not make any sense at all. However, we had to pass it or the seniors would not have received their rebate. That is one example of the difficulties which spread throughout our legislation. We tend to deal with legislation a little too fast and with insufficient care, and that is not good for the legislation. As the Leader of the Opposition pointed out, legislation was not dealt with in that way previously; the habit is beginning to creep in. We should ensure that that practice does not continue in the future.

It is important for us on this side of the House not only to make the point informally with the Leader of the House, but also to put it on the record so that it applies also when we are in Government. As members of this House and as members of this Parliament we will have stated the principle. It is important that in Opposition we should make statements of principle, not just informally behind the Chair, but in motions before the House so that what is seen to be a correct principle is seen as such both for and against us. It is important, as far as members on the opposite side are concerned, that we should establish the principle so that they will be able to ensure that we abide by it when we are in Government.

Debate adjourned, on motion by Hon Fred McKenzie.

SOIL AND LAND CONSERVATION AMENDMENT BILL

Third Reading

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [2.57 pm]: I move -

That the Bill be read a third time.

On Tuesday evening a member for South West Region expressed concern that confusion could arise between a soil conservation reserve established under section 26 of the Soil and Land Conservation Act and a conservation covenant or an agreement to reserve to be introduced under clause 9 of the Bill being debated. I assure the House that while the words in each case are similar, the intent and provisions are entirely different.

In the first case - that of a soil conservation reserve - the Commissioner for Soil Conservation is the only person who can initiate action to set aside land which, in the commissioner's opinion, must be so set aside in the interests of conservation of the State's soil and land resources. There is a need to obtain the approval and proclamation of the Governor for this action, and he may revise such a proclamation on the recommendation of the Minister. If the commissioner intended to create a soil conservation reserve on private land, the provisions of the Public Works Act would apply. Such reserves are managed by the Minister in the interests of the State, a totally different situation from that which applies to land set aside under clause 9.

In this second case, action to set aside land can be initiated only by a land-holder, who has the sole right to determine the conditions of the covenant, which may, of course, be an irrevocable conservation covenant or a revokable agreement to reserve. In both circumstances, land so set aside will be managed by the land-holder without interference from the commissioner or the Minister.

However, I point out that should the land-holder give cause for the commissioner to believe that land degradation is occurring, a soil conservation notice could be applied, despite the existence of a covenant or agreement.

Members opposite have referred to the remnant vegetation protection scheme. As an example of the way in which an agreement to reserve would work, it is intended that land to be fenced under a grant from this scheme would be the subject of such an agreement. The 30 year fence maintenance and other provisions would be specified in the grant and, if the landowner accepted these, they would form part of the agreement. The point I am making is that the landowner will have the sole right to determine the existence of an agreement to reserve, even if this means that he or she cannot accept a grant under the scheme.

In summary, Mr President, while the words are similar, the intent and the legal position in each case is entirely different. However, I acknowledge the concern expressed by members opposite and I will ensure that their views are included in the next review of the Act, hopefully to make the meaning clearer.

I thank the House for the opportunity to make this statement.

HON W.N. STRETCH (South West) [3.02 pm]: It is very valuable that the Minister has clarified the relevant matters because it means that due to the difference between the two types of reserves the Minister has made absolutely clear that section 30(1) of the Act cannot take effect. In other words, there can be no dealing in that land by the Minister alone.

It is also valuable that it is spelt out clearly in writing that the owner of the land who is putting forward such land virtually has the right to set out the details of the agreement under which the reserve is created. Such attention to those issues will particularly put at rest the minds of people who are considering making available such pieces of land as reserves.

It is important that these matters have been clarified in this way as the situation was not clear from debate the other evening. I thank the Minister for going to the trouble of having the matter clarified by the personnel in his department, and for putting these issues in unequivocal terms before the House.

Question put and passed.

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

BILLS (3) - REPORT

1. Financial Administration and Audit Amendment Bill
2. Pearling Bill
3. Misuse of Drugs Amendment Bill

Reports of Committees adopted.

COMMUNITY CORRECTIONS LEGISLATION AMENDMENT BILL

Second Reading

Debate resumed from 13 November.

HON J.M. BERINSON (North Metropolitan - Minister for Corrective Services) [3.07 pm]: I thank the Opposition for its indication of support for this Bill. It is one of those occasions where that support is not only welcome but also not in any way surprising given the suggestions by Opposition members over recent times that a scheme of this nature should be introduced.

The Leader of the Opposition dealt very fully with the provisions of the Bill, and I do not think we need cover that same ground again. It is also fair to say that while his support was without reservation in respect of the principles of the scheme and its structure, he looked for some elaboration of those provisions which go to the exclusion of the rules of natural justice. I think his concern in that respect was very appropriate, and it goes without saying that a provision of this kind would not have been contemplated except for the most substantial reasons. I start by saying that the House has previously had the need to consider an identical provision in respect of the parole system. It was agreed at that time that a provision of the sort we are talking about now should be accepted and the reasons for providing that in respect of parole are really the same as apply in respect of the home detention program.

As I think the Leader of the Opposition suggested, the exclusion of the rules of natural justice are a means of emphasising that home detention, like parole, is a privilege and not a right. It might be saying the same thing in different words to add that it also helps to make clear that in both such cases there is no question of a person being at liberty. What is involved is the service of a part of the sentence while under supervision outside the prison system. So when we are talking about home detention, as in the case of parole, there is not a question of intruding into the liberty of a person but rather extending the liberty which would otherwise be further restricted by a custodial sentence proper.

As well as seeing this provision as fortifying the principle to which I have referred, I think I should say it is required for very practical reasons. The situation with home detention and parole always looks to the problem point where there has been a breach of conditions justifying or requiring the return of the offender to prison. It is in keeping with the general nature of these programs that that should be seen as a disciplinary measure and not one calling for judicial determination.

It is also essential that the remedy should be available in a summary way, because the most common reason for the decision to return an offender to prison will either be a serious breach of the conditions under which his parole or home detention program was authorised, or a view that the safety and security of the community could no longer be adequately safeguarded with that person out in the community at the time. In those circumstances, to look for rules which, for example, would require reasons to be given in advance of the disciplinary action and, as well as that, a right for the person involved to have an ability to argue his case - perhaps even by counsel, depending on the extent to which the rule was interpreted in the situation - is to cut across the disciplinary effectiveness of the move and largely to frustrate the need for prompt remedial action for a breach of sufficient seriousness.

As was pointed out in the case about parole considerations, we are dealing with a situation where there would be no reason to discourage any person from taking procedural points on every occasion and as extensively as possible. That itself was accepted as threatening to bring the parole board system to a halt when we moved to a situation like this where it is not a board but a chief executive officer being looked to for the disciplinary position, and we would reach a point where his effectiveness would be totally nullified and really, for practical purposes, we would not have the scheme in operation at all.

Nonetheless, we have provided safeguards against arbitrary decisions or decisions which involve an abuse of power. This relates to the requirement to provide reasons. For example, although proposed section 50H provides for the exclusion of the rules of natural justice where a home detention order is cancelled, that is to be understood in the context of proposed section 50E, which provides that in any case involving a cancellation or suspension of the home detention order the chief executive officer shall include a statement of his reasons for the cancellation. However, that is different from requiring reasons to be given in advance of the action, followed by appeal procedures and all manner of actions which could take up the remainder of the home detention time. It exists to prevent arbitrary action or an abuse of power by the responsible officer and again is in line with the safeguards which were built into the provisions of the Offenders Probation and Parole Act.

The same thing can be found in proposed section 50H. This relates to the revocation of a home detention order applying to bail. Once again, this is a case in which the rules of natural justice are excluded, but it is subject to the provisions of proposed section 50F(3), where the chief executive is once again required to provide a statement of reasons. That again is to provide for protection. The Leader of the Opposition emphasised especially the aspect of the exclusion of these rules in respect of bail that proposed section 50G provides for a prompt appearance of the defendant before the judicial officer so an application for bail can be renewed and considered again in the light of and including the circumstances outlined in the chief executive officer's reasons for cancellation.

I have gone to some length in explaining this because I accept, as we should all accept, that a provision of this nature should only be approached in exceptional circumstances and where these demand, in the interests of the system as a whole, that this limitation be provided. I thank members for their support of this Bill.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon J.M. Brown) in the Chair; Hon J.M. Berinson (Minister for Corrective Services) in charge of the Bill.

Clauses 1 to 10 put and passed.

Clause 11: Part VIA inserted -

Hon GEORGE CASH: I thank the Minister for his explanation of proposed section 50H, which deals with the exclusion of the rule of natural justice. As I said during the second reading debate, I had some considerable reservations about this proposed section and I was not happy with it until the Minister had given me certain assurances behind the Chair. I was pleased to see that he was prepared to outline those matters and put them on the record. I have now come to understand the reasons this proposed section had been inserted.

Clause put and passed.

Clauses 12 to 14 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon J.M. Berinson (Attorney General), and transmitted to the Assembly.

GERALDTON FORESHORE AND MARINA DEVELOPMENT BILL

Second Reading

Debate resumed from 16 October.

HON MARGARET McALEER (Agricultural) [3.23 pm]: The purpose of this Bill is to establish ownership of the land which is the site of Geraldton's new small boat harbour and

the foreshore development which is associated with it. It represents the culmination of a long process of interchange and reallocation of land at, and adjacent to, the site of the former railway marshalling yards, including reclaimed land. The land belonged to the City of Geraldton, the Department of Marine and Harbours and Westrail. It is a necessary step in the redevelopment of this area made possible in the first place by the relocation of railway operations to Narngulu some 12 or 13 kilometres outside Geraldton, and the consequent demolition of various sheds and railway buildings, and the removal of equipment which occupied this part of the foreshore. Since this was done residents of that part of Geraldton for the first time for an untold number of years have been able to get a view of the sea unimpeded by iron roofs and iron walls of sheds. I believe they have greatly enjoyed this, however, I am not sure this will continue for a very long time.

The plan to relocate the marshalling yards has been on the books for very many years and it is a great satisfaction that it has at last taken place. The project to develop a small boat harbour is a much more recent one, and one could say it is part of that wave of developments which have been progressing along the coast from Esperance, to Fremantle, to Hillarys, to Jurien, and to Dongara, though not in that order. The success of those developments, some associated with fishing but others simply for pleasure boats as this one is - since Geraldton already has a well established fishing boat harbour - encourages one to believe that this project will be a great asset to Geraldton. It will provide a suitable home for local craft, it will make Geraldton a more desirable destination for visiting boats and provide them with an attractive and comfortable base for local sailing and excursions to other points along the coast and to the Abrolhos Islands. At the same time it will provide a destination for those boats which are on long voyages around Australia.

The development of this foreshore, associated with the marina, has been and still is the subject of careful planning, and while the Mid-West Development Authority has been the coordinating authority, the actual development is the responsibility of the Geraldton Development Corporation, which was chosen for its good submission and for the promising plans it put forward. Pleasingly, it is a local venture, or largely so. Strict conformity with the plans of the developers will of course be required, but as I understand it, the role of the developers will be largely one of being instrumental in selling the various sites to other people for commercial developments such as a resort hotel with tourist and residential accommodation. There will also be land for recreation and other necessary facilities associated with these things. The passing of the Bill, while it will establish the necessary foundation for this development and will help to speed the process, will not of course finalise it. For instance, negotiations are still ongoing between the City of Geraldton and the developer in respect of drainage and the provision of a road or roads on the foreshore. The way in which residential accommodation will be provided has been subject to change and a number of details are yet to be finalised.

The project has been fairly costly up to date. Originally the Government proposed to provide approximately $13 million for it, and of that $8 million was involved in relocating the railway establishment. I believe it is money well spent, and it had to be spent sometime if Geraldton was to progress and realise the potential of its harbour and fine natural setting. I hope also that it will prove to be a timely development in these difficult economic times. Apart from the immediate employment provided by construction it should greatly assist in reconstituting Geraldton as a tourist destination in its own right, instead of being a transition point as it has tended to be in recent years. It will also provide an important amenity for Geraldton residents and make it an even more desirable town for many people who have the opportunity to work there, whether in banks, other commerce or business, Government departments, or as teachers.

I hope it will take its place in the hoped-for larger development pattern which is emerging for Geraldton with the possibility of a new deep water port and a heavy industrial area as centrepieces. I have much pleasure in supporting this Bill.

Question put and passed.

Bill read a second time.

Committee and Report

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Graham Edwards (Minister for Police), and passed.

DOOR TO DOOR TRADING AMENDMENT BILL

Second Reading

Debate resumed from 25 September.

HON MURIEL PATTERSON (South West) [3.30 pm]: Whenever we leave home to go shopping or make a purchase we generally take with us a wallet, cheque book or credit card. However, there is one further indispensable item we must always have with us on these occasions - or else there is no sale - and that is our personal freedom of choice. We ask ourselves the question, "To buy or not to buy" many times when we are shopping. The answer may take only a few moments, as when we must decide on whether to buy a paper at the newsstand, a minute or two if we are shopping for a woollen jumper, or it may even take days or weeks when deciding which brand or model of car to buy. However, whether our purchases take moments, minutes or months, until we choose to complete the transaction by putting cash, cheque, or credit on the counter, we still have the right to smile, shake our heads and say, "Thanks, but no thanks!"

Even after the customer's money has been banked by the shopkeeper a number of measures are still available if the item or service is defective or unsatisfactory. These range in scale from the entire body of law which defines fair trade, through the manufacturer's or supplier's guarantees, to the individual shopkeeper's sense of what is right and proper. One should never underestimate the value of that. My 14 years' experience as the owner/manager of a country retail shop has shown me that consumers have considerable protection when they choose to buy from a local business because reputation and goodwill are still the greatest assets of small business. Also, because small businesses operate from fixed locations, they will be there the following week, month or even year ready to listen and make due reparation if a customer needs to exchange a purchase or get a refund.

However, can as much be said about the salesperson who suddenly appears on the doorstep, or for that matter what of the telemarketer's soothing voice which insinuates itself into our lives the moment we say "Hello"? Where is that essential element of free, unhurried choice we were able to exercise when buying the newspaper, the woollen jumper, or the car? If, having bought goods or services from a personable stranger at the door, we discover a defect or doubt, can we always get satisfaction by returning the purchase to a fixed, convenient location such as a neighbourhood shop or store? At this point, all too often, the seller will invoke the predator's heartless principle, caveat emptor - let the buyer beware - since he buys without recourse or without assuming any liability upon it.

For this very sound reason Parliament, in its collective wisdom and judgment, passed the Door to Door Trading Act 1987 to provide a cooling-off period of 10 days, during which a client could decide whether to buy or not to buy. This necessary consumer protection was further extended in 1989 to give the client up to six months during which to rescind a contract if it were found that the trader had breached regulations by either accepting a consideration or providing services during the statutory cooling-off period.

However, under the existing legislation that right of recision exists only if the dealer or supplier is convicted of an offence under part III of the Act. But, who must bring the matter to court under civil law? Who else but the plaintiff, who may already be heavily out of pocket after his or her encounter at the doorstep? It appears that an oversight in the general drafting of the legislation resulted in this recommended provision not being included. Fortunately, the Door to Door Trading Amendment Bill of 1990 seeks to close this very inviting loophole by extending the right to revoke if conduct is engaged in which constitutes an infringement, whether or not it is brought before a civil court. An amendment is proposed to section 13(1)(b) of the Act which currently reads -

> if the supplier or dealer commits an offence against Part III in the course of, or in relation to, the negotiations leading to the formation of the contract.

The proposed amendment will delete that paragraph and insert, among other things, the following -

> engages in conduct prohibited by section 9 or by section 12;

Under this proposed amendment it will be sufficient for the action to be prohibited, rather than be tried as an offence, to give consumers the protection to which they are entitled under the law. I therefore commend this Bill to the House.

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [3.35 pm]: I thank Hon Muriel Patterson for her contribution to the debate, for the work and research she has put into the Bill, and for her support. I agree with the sentiments she expressed, and I thank the Opposition for its support.

Question put and passed.

Bill read a second time.

Committee and Report

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Graham Edwards (Minister for Police), and passed.

VIDEO TAPES CLASSIFICATION AND CONTROL AMENDMENT BILL

Second Reading

Debate resumed from 13 November.

HON J.N. CALDWELL (Agricultural) [3.39 pm]: It was not long ago that the Video Tapes Classification and Control Bill of 1987 was before this House. In view of the speech I made on that occasion, my contribution today could be described as an "I told you so" speech. At that time, the National and Liberal Parties had listed a number of amendments, but unfortunately one member on this side of the House resigned and we were able to carry only two of those amendments.

Hon John Halden: That was the first time this century!

Hon J.N. CALDWELL: Members opposite had it over us on that occasion. The first and the last of our 28 amendments were accepted. The first amendment defined a restricted area as an area of a public place set aside for the display of videotapes classified R and clearly identifiable as such. In 1987 the Government of the day did not think that amendment was necessary, although a few years earlier the Premier at the time had said he would consider that amendment if a Bill were proposed. That amendment has simplified the process of finding a videotape in a video outlet.

The second amendment was to clause 29A and was -

> A person shall not display, for the purposes of sale, a video tape that has a classification of "R", except in a restricted area.

The penalty was $500 in the case of a corporation, and $100 in any other case. That amendment has been of benefit to the public. I do not know whether the markings proposed in this Bill will allow videos to be displayed all over the place, regardless of their classification. I have taken a great interest in the display of video material in video outlets. The majority of proprietors have a restricted area, but when they promote new releases they sometimes slip up by putting R classification videos in the new releases area.

Hon John Halden: I have not seen them, but then I have not been looking.

Hon J.N. CALDWELL: The member may not have a video player.

Hon John Halden: I do.

Hon J.N. CALDWELL: The member must go in there with his eyes closed, and just pick out any video. The member has a child, and I am sure he would take a great interest were he to send that child to get a video for him. He may attempt to steer that child away from the R restricted area.

I asked the Minister yesterday whether the police have found it difficult to control this Act.

Sitting suspended from 3.45 to 4.00 pm

Hon J.N. CALDWELL: Prior to question time I was giving a resume of the provisions in the Act and the complications that were faced in getting the Bill through this House. It was approximately four months in Committee, which is a record time during the period I have been a member of this House. I believe almost all the National Party's amendments put forward at that time are implemented in the present Bill.

The first part of the Bill provides for clearer and more informative marketing, advertising and consumer advice for all future video releases. I well remember about three years ago arguing that Western Australia would be at the forefront of the classification of videos with the proposals we were putting forward for the classifications of violence, language and sexual content of videos. We wanted a graduated scale of severity of content for videos. I think the suggested scale was from one to 10, incorporating those three categories of violence, language and sexual content.

This Bill implements the amendments the National Party put forward three years ago. Had we been successful with our amendments at that time Western Australia would have been at the forefront of the classification of videos and the other States of Australia would probably have learnt a lesson and taken guidance from this State. But that was not to be as the Opposition did not have the numbers in this House; its amendments were lost. That is why I said at the outset that this Bill is an "I told you so" Bill.

I am pleased that censorship of videos is to be tightened, especially by requiring clearer markings so that consumers are informed exactly what is on a video. My wife took a video home the other night and got about a third of the way through it before turning it off because it was nothing like the video she had expected it to be. If the informative marks suggested in this Bill had been on that video it would have been much easier for her, or anybody else, to select an appropriate one.

The second part of the Bill will remove the requirement to publish classification decisions in the Commonwealth's *Government Gazette*. On previous occasions after a video was classified that classification was published in the Commonwealth's *Government Gazette* or the State's *Government Gazette*. In many cases it took a long time to reach the notice of video shopkeepers. In some cases a video was on the shelf before the purchaser or viewer knew what its classification was. I hope video outlets have a good look at some of their products. I have paid close attention to videos and found that many show no classification. I think the classification had previously been stuck on and had fallen off. I am not saying that unclassified videos were available in stores, but greater attention should be paid to this matter.

Yesterday I asked the Minister for Police whether the provisions of the Video Tapes Classification and Control Act were proving difficult for the police to control - I guess they really do not have a great deal of time to police such minor matters. However, the Minister answered inadequately. If a video store owner does not have an R rated video in its correct place he can be fined $100 and a corporation can be fined $500. The police have many things to do without having to visit video stores regularly. However, they should police these stores better than they do at present. As I said earlier, many videos are not in their correct place in these stores; that is, the restricted area.

Under this Bill the Censorship Board will be able to review a classification decision made by it or the review board. This will enable the board to react to public concern and to act where there has been a change in community attitudes. This is a rather complicated part of the Bill, but it seems it will be possible for people not to go along with decisions of the review board. They will be able to lodge complaints, but the way of reviewing and sending back decisions is complicated.

The clause dealing with the review of previous decisions has six paragraphs, and I hope the public will be able to understand it. In many areas the Bill is a little difficult to understand, but undoubtedly a review of video legislation must take place, especially where community attitudes have changed. The final small amendment in this Bill is significant in that it increases the protection of children. At present there is a six month limitation on proceedings involving child pornography. That is intolerable. This limitation will be lifted so that prosecutions involving child abuse video tapes may be brought at any time. When one considers videos in today's society, one can appreciate that the public should be protected in the best way possible. I am very pleased to see this Bill introduced in an effort to control the supply of videotapes to the public.

Can the Minister explain how the new system of classifying offensive language, sex and violence in videos will work? It has been proposed to introduce this provision for the benefit of potential hirers of videos. This Bill does not spell out precisely how that will be done with signs or symbols, and I wonder whether the Minister could give us some idea how that classification will be carried out. When the National Party put forward its amendments it suggested how this classification could be achieved by using a numerical scale of one to 10. A classification of 0 or 1 would mean that a video contained very little or no coarse language at all, whereas a classification of 10 would indicate that the language in the video was rather rough. I do not think any member of this House would use or wish to listen to language like that. Unfortunately, the makers of videos have the opportunity to include this sort of language, and it should not be tolerated. However, if that is the way the people want to make their videos, they should be classified as such.

Why is it that the Government supports this system of classification now when it voted against a similar move by the National Party when the video legislation was debated in this place some three years ago? The Opposition finds it very difficult to understand why, when we bring forward extremely good ideas such as the one put forward last night by Hon Barry House in respect of the pastoral land tenure Bill, the Government does not recognise them. The Government should have a more open mind when something like this comes forward.

The Labor Party accepted the Bill Monty House introduced to cover drivers' licences, which was well received by the people of Western Australia, not as a result of party politics but because it assisted the public whom we all represent. It is unfortunate that the Video Tapes Classification and Control Bill was not tightened up some three years ago. We would have had a much better scene from which to select videos. In general I support this Bill.

Hon Sam Piantadosi: We know that you like a good video.

Hon J.N. CALDWELL: I think the Bill is probably three years too late.

Debate adjourned, on motion by Hon Fred McKenzie.

INDUSTRIAL LANDS DEVELOPMENT AUTHORITY AMENDMENT BILL

Second Reading

Debate resumed from 27 September.

HON N.F. MOORE (Mining and Pastoral) [4.47 pm]: This Bill has been introduced for two reasons, basically. Firstly, it is designed to remove the definition of the word "Minister", which, under the current Act, means the Minister for Industrial Development, and thereby requires that in future the word "Minister" can refer to any Minister designated from time to time to take responsibility for the Act. I understand the reason for this to be that the Government has made a policy announcement to allow for the amalgamation of LandCorp, the land operations of the Department of Land Administration, and the Industrial Lands Development Authority. When they are amalgamated they will become the Office of Land Services. In line with the sort of language the Government has been using for naming its authorities, I would have expected a name like WestLand. We cannot use that word, of course, because as Hon Fred McKenzie will remember, that was the name of a very famous train. The responsibility of the new office of Land Services will come under the Minister for Lands.

The second reason for the Bill is to extend the sunset clause for another 12 months. Section 14 of the principal Act is a classic sunset clause; it provides that the authority's operations will terminate on a certain date, unless the Parliament decides otherwise. Over the years there has been a lot of debate about sunset clauses, and in general I have supported the concept. However, the inherent logistical problem with the classic sunset clause which requires an authority to terminate its operations at a particular date is that the Parliament must re-enact legislation if that authority wishes to continue its operations.

There are about 600 statutory authorities in Western Australia, and if they each had a sunset clause at the end of their five year term, this Parliament would do nothing but re-enact legislation to keep in operation those authorities. We need different types of sunset clauses for different types of operations. I have complimented the Government because in recent years it has included in legislation to establish new statutory authorities a review clause, but

what the Government is now doing, and what was done in the Act, represents two extremes, and somewhere in the middle lies a better system, which may be a review of authorities by an independent organisation rather than the inclusion of a sunset clause.

This Bill extends from 31 December 1990 to 31 December 1991, the date for expiration of this authority, in order to allow the authority to be combined with the proposed Office of Land Services. The current Leader of the Opposition, Hon Barry MacKinnon, was the Minister who introduced this sunset clause. The Government of the day was actively moving in the field of sunset clauses and regarded them as a good thing. That attitude has also been adopted by the current Government, although in a less severe way. I am concerned not so much about what is contained in this Bill, because in a sense it is a mechanical provision and serves only to keep the authority going for a period, but that the Industrial Lands Development Authority will become the responsibility of the Minister for Lands. ILDA was previously the responsibility of the Minister for Industrial Development.

The history of the former Department of Industrial Development and the Department of Land Administration indicates that they operated in different ways. In the days of the Court and Brand Governments, the Department of Industrial Development was a high flying, entrepreneurial department. It was involved in fast-tracking industrial developments and in getting industry off the ground. That department developed an excellent reputation as a bureaucratic organisation which could get things done quickly. It may be easy to say that in hindsight, and perhaps at the time it did not operate as quickly as it could have done, but it developed that reputation. The Department of Land Administration has traditionally been very slow, meticulous and bureaucratic. It may be a backward step to put ILDA into the same stable as the Department of Land Administration. We need more than anything else in this State and country industrial development which adds value and is oriented towards our export effort. That effort should not be constrained by the bureaucratic structure of the Department of Land Administration.

Hon Kay Hallahan: The Department of Land Administration has changed its operations dramatically.

Hon N.F. MOORE: The department does not have a very good record in getting things done quickly. One has only to look at its activities in the north of this State, where it is the sole land developer, to see that its activities have been very slow indeed. For many years the very slowness of its operation restricted development activities in the north of Western Australia. It has always seemed strange to me that in a State as large as Western Australia one of the major problems in many outlying areas is the inability of people to acquire land. That inability must be placed at the feet of the people in the Department of Land Administration. The Opposition is concerned that the proposed Office of Land Services may develop the same bureaucratic inertia traditionally demonstrated by the Department of Land Administration.

Hon Kay Hallahan: That will not be the case.

Hon N.F. MOORE: I am sure the Minister will not just say that but in her second reading response will tell me how the Office of Land Services will move more quickly than the Department of Land Administration, because if the Minister can do that she will achieve something that previous Ministers ad nauseam have never been able to achieve.

Hon Kay Hallahan: That has already been achieved.

Hon N.F. MOORE: The department has on the market 30 or 40 blocks at Point Salmon but only one block has been sold.

Hon Tom Stephens: That has nothing to do with delays in the department.

Hon N.F. MOORE: Why was that land developed? The department's brochure says that anyone who digs on that land has to wear respiratory equipment because of the presence of asbestos fibres. The department sold only one block at auction, and the upset price was $40 000. I asked the Minister a question on notice about what action had been taken to sell that land. Today I was fortuitously given an answer, and was told that the department is waiting for expressions of interest. The department should clean up the asbestos fibres, and reduce the price, and it may get some action. The Minister may indicate that a new broom is going through the Department of Land Administration, but that example suggests that the new broom does not have enough hair to do the job properly.

The Opposition supports this Bill because it is a technical measure and will have virtually no effect, but we are concerned that the removal of ILDA from the Minister for Industrial Development to the Minister for Lands may be detrimental to the need to provide - quickly, and on attractive terms - industrial land in Western Australia. I hope the Minister can assure us that will not be the case. How does the Minister intend to differentiate within the Office of Land Services between the different needs in different parts of the State? For example, some land can be provided by the Department of Land Administration in a way which takes longer, and there is no great hurry to provide it. On the other hand, with industrial land and some residential land there is a real need to do something very quickly. Probably the administration, bureaucracy and so on of the department in the past has not been capable of differentiating between areas requiring rapid development and areas of normal development. I hope I have managed to get my point across to the Minister for Lands.

Hon Kay Hallahan: You have just persuaded me that I should handle this Bill.

Hon N.F. MOORE: Is the Minister not handling it?

Hon Kay Hallahan: No, but I think I now might.

Hon P.G. Pendal: We would do anything to escape that fate.

Hon N.F. MOORE: Perhaps it would help if the Minister for Lands were actually to enter the debate, and there is nothing to stop her from doing that. As one result of this legislation will be that the Industrial Lands Development Authority will come within her jurisdiction, she might enter the debate and tell us, for our edification, how much better it will be when she gets her hands on it. I must say, without being too nasty, that the Minister's history indicates that we will not necessarily get a huge amount of forward momentum in the development of industrial land, bearing in mind that it has taken a long time for her to bring in a Bill relating to pastoral land, for example.

Hon Kay Hallahan: That is most unfair.

Hon N.F. MOORE: That is a Bill which will not be acceptable to anyone, I might add.

Hon Kay Hallahan: That is not true either.

Hon N.F. MOORE: I conclude by saying that we support this Bill because it does nothing in any practical sense, but we express concern about the future arrangements the Bill has instituted; that is, the setting up of the Office of Land Services and the inclusion within that of the Industrial Lands Development Authority. I look forward to hearing from either the Minister for Lands or the Minister for Resources how the Government will ensure that industrial land is made available readily and at a price people can afford in order to ensure that industrial development in Western Australia continues to go forward.

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

ABORIGINAL HERITAGE AMENDMENT BILL

Second Reading

Debate resumed from 30 October.

HON PETER FOSS (East Metropolitan) [5.02 pm]: This Bill is somewhat simplistically explained in the second reading speech. It does two things. Firstly, it honours the pledge that the Act binds the Crown. It is probably an unnecessary pledge because of the Bropho case, which says that the Act binds the Crown in any event, but the reason given for introducing this Bill is that it is shortly intended by this Government to proceed with the Interpretation Amendment Bill, which will seek to reverse the situation in the Bropho case. In view of the fact that we are not very keen on the Interpretation Amendment Bill we can say that that part of this Bill which provides for the Act to bind the Crown is unnecessary. That is the law now, and as far as I can see that is the way the law will remain.

The remainder of the Bill deals, on the face of it, with procedural matters relating to those actions which are brought by people seeking essentially to enforce the rights which are preserved under this Bill. Some doubts have been raised by, among others, the Law Society of Western Australia about the propriety of the changes that are being made, and those doubts are shared by the Opposition. To understand to some extent the problem, one really

needs to read the Bill because it is a procedural Bill, and to find out what problems there are with it one needs to understand the procedure.

The Bill inserts a new section 18, which provides that a person who wishes to use his land for purposes which would or would be likely to result in a contravention of the Act can initiate a procedure to get around that problem. The first step in that procedure is to cause to be published once in a newspaper published throughout the State a notice describing the land and stating that submissions in writing may be made within a period of 28 days. Those people who have listened to or read *The Hitch Hiker's Guide to the Galaxy* may recall the event when a Vogon destructor fleet appeared over Earth announcing that Earth was imminently to be cleared for a hyper space freeway. When the people of Earth complained that they did not know it was being cleared for a hyper space freeway the captain of the Vogon destructor fleet said that it had been published for 10 years in an office in Alpha Centauri, and it was their fault if they had not bothered to go and read it.

I suggest that when we are dealing with Aboriginal rights it is as relevant to publish something in a newspaper and expect it to be responded to within 28 days as it was for the captain of the Vogon destructor fleet to say to the people on Earth that the notice on Alpha Centauri had been there for 10 years and they should have read it. I cannot believe that the Government considers such a legalistic form of notice to be sufficient when dealing with Aboriginal rights. We know perfectly well that many Aborigines are illiterate, and for them to provide a submission in writing, provided they learn in one way or another that the submission is required, would be a difficult task. Therefore I do not really believe that this satisfies, in real terms, the requirement for notice, which is an essential part of natural justice; that is, if one is going to affect people's rights one must ensure they have real and proper notice. This is a legalistic form. Sure, it would be the law, but it cannot be said to be a genuine and realistic attempt to meet the problem.

The next thing is that the trustees will be required to consider the written submissions, but only those submissions which are received during the advertised period. Again, I think that is unfortunate. If someone does not get a submission in within that period, it is the end - that is it. Proposed new section 18(3) of the Bill says that nothing in subsection (2) obliges the trustees to grant a hearing to any person. Why have those provisions been put in? Why does the Government say the trustees are not obliged to grant a hearing to any person? The reason is very simple: When one is going to affect the rights of another person, the rules of natural justice normally require one to give a hearing to those people whose rights will be affected. This Bill moves from one element of the rules of natural justice to another, and each time it moves it removes one of those basic elements of the rules of natural justice. It is not an accident that these things are being done. This whole Bill is plainly directed to move from place to place, thereby removing the rights that a person would have under the ordinary rules of natural justice.

The next thing the trustees will be required to do is to form an opinion as to whether there is an Aboriginal site on the land; so they can make up their minds but they are not obliged to hear any person about it. Members should bear in mind that these people are of Aboriginal descent. I know many people of Aboriginal descent who have considerable education and learning, but we must remember that, generally speaking, Aboriginal people in our community are underprivileged, socially deprived, and undereducated in particular. That is certainly not the fault of Aboriginal people, but it is a fact of our society that they are in that position. They will be required to read a newspaper, and to respond within 28 days in writing; they cannot then put forward a verbal case. The trustees will then proceed to do a number of things which will affect significantly the rights of those persons. The trustees will send that information to the Minister. There is a lot of procedure here, as members will have noticed. It has the appearance of being extremely deliberative, with many people spending much time considering the matter in detail.

Proposed new subsection (6) states -

> Nothing in subsection (5) obliges the Minister to give any person an opportunity to make submissions to the Minister either orally or in writing, or prevents the Minister from so doing if he or she thinks fit.

That has, straight away, picked up one of the rules of natural justice and abolished it. How are the rules of natural justice normally enforced? It is one of my regrets that in this State the

rules of natural justice in this area are not administered through a court which deals with administrative law. I am pleased to say that in other States and in the Commonwealth such laws have been introduced to make for a simple, straightforward and easy process of administrative appeals. Despite a number of promises by this Government, there is still no easy process of administrative appeals. I asked the Attorney General recently about this but I have not received any indication of when we might expect such legislation. That would be important legislation for all Western Australians. I hope that would be a priority matter for the Government; but no, that is not the situation in Western Australia.

We in Western Australia must rely on what are called prerogative writs; that is, certiorari, mandamus and prohibition. We should have an administrative law provision because prerogative writs are highly technical in nature. They are written in a fairly ancient style which has not changed over the years. Because they are highly technical and governed by technical rules it is often difficult to get a case properly heard on its merits before a court because sometimes a court is obliged, by virtue of the law relating to prerogative writs, to deny relief even when the merits are on the side of the individual but have not been able to satisfy the technical requirements. More importantly, it is an expensive process because a prerogative writ is heard before a full bench of the Supreme Court. That is not to demean those writs. They have been the way in which the right of the individual to stand against Executive Government has been defended over centuries. Those writs have been very important civil rights. They should not in any way be seen to be completely lacking in power or purpose. Because they have been used for so long to defend the rights of a subject it is a matter of considerable concern when there is an attempt to prevent the courts from interfering because courts interfere only because they think it is necessary to protect the rights of the individual. One must always be extremely suspicious when it is suggested that prerogative writs be abolished.

Proposed new subsection (7) reads -

> Subject to sections 18A and 18B, a decision of the Minister under subsection (5)(b) is final and without appeal, and no writ of *certiorari*, mandamus or prohibition shall issue and no declaratory judgment shall be given in respect of, and no injunction shall be granted to restrain the implementation of, such a decision.

Another of the basic rights removed! This Bill is almost a catalogue of the rights of the individual, a catalogue in which each right is listed and removed.

Hon Derrick Tomlinson: But only for a particular group of the population.

Hon PETER FOSS: I have not reached that point. Hon Derrick Tomlinson has pointed to a particularly nasty part of the legislation.

In substitution for those rights, two statutory rights have been granted. This is the interesting part because one wonders why two statutory rights are provided. Proposed new section 18A gives the right of appeal; proposed new section 18B gives what is called an order for review. They are two different methods of review by courts. We debated that during the last session when we amended the Justices Act. Historically, the Justices Act had two provisions: The appeal provision and an appeal by way of order for review. We were urged to repeal one of those rights and to have one consolidated form of right of appeal. It was said that it was purely an historical accident that there were two kinds; and there was no real reason to continue to have two kinds of appeal. So why, one might ask, would we pick these two different forms of appeal, which we could choose between, and put them both in a new provision within the Bill? Why on earth would we choose to try to put in the two different forms of appeal which normally come about only because of historical accidents?

I suppose the answer can be found only by looking at the Bill. It is interesting that the answer is found there, because the difference between proposed new sections 18A and 18B is that 18A is available to the owner of any land; and 18B is available to a person who has made a submission in writing; that is, not just a person who has made a submission in writing but a person who has made a submission in writing and whose interest, being an interest greater than the interest of other members of the public, is affected directly or indirectly to a substantial degree by a decision. If we return to the beginning and work out who will bring those appeals, we realise that the people who will use 18B will be Aborigines, and the people who will use 18A will be non-Aborigines. In essence, as a matter of practical reality, 18A

will be the white appeal and 18B will be the black appeal. And this is Western Australia, not South Africa! That will be the effect of the Bill!

The important matter we should now consider is subsection (4) of proposed new section 18A which reads -

> In determining an appeal made under subsection (3), the Judge hearing that appeal may -
>
> (a) confirm or vary the decision of the Minister from which that appeal is made; or
>
> (b) quash the decision . . . and substitute his or her own decision . . .

The strange point about that is I would have thought in some ways that is an appeal by way of order for review. It will enable the court to substitute its own decisions. Under proposed new section 18B that will not be the case. All that will be allowed under this proposed new section is that the courts "may discharge the order for review or exercise all or any of the jurisdictions or powers and grant all of the remedies which might be exercised or granted in proceedings for relief or remedy in the nature of certiorari, mandamus or prohibition." It shall not exercise any other jurisdiction or power or grant any other remedy.

Essentially, under the new section 18B white persons' provision, the court can substitute its own view. However, under the 18B black persons' provision, the court may not do so. It gets worse: Under proposed new section 18B(2)(b) the test as to whether a person may appeal is that he must have an interest greater than the interest of other members of the public. The person must also be affected directly or indirectly to a substantial degree by a decision.

In the case of *Onus and Another v Alcoa of Australia Ltd*, reported on page 27 of the Commonwealth Law Reports No 149, the High Court considered the necessary preliminary case that a person had to establish in order to bring a case before the court. The term for this is "standing". The old term was "locus standi". A number of judges of the High Court were involved with that case and the judges each dealt with what was necessary to establish locus standi. The then Chief Justice, Justice Gibbs, said -

> It seems to me that the appellants have an interest in the subject matter of the present action which is greater than that of other members of the public and indeed greater than that of other persons of aboriginal descent who are not members of the Goumditch-jmara people.

He appears to be saying that the test for standing is that one needs merely to have an interest in the subject which is greater than that of other members of the public. This Bill contains such a provision but it has the additional condition that a person must be affected directly or indirectly to a substantial degree by a decision. So this Bill contains a stricter test than that outlined by the Chief Justice in that case.

On page 42 of the Commonwealth Law Reports Mr Justice Stephen said -

> What is more, the absence of mere material interest in that subject matter, in the sense of property or possessory rights, will not, as the law now stands, be in itself any bar to standing; this the present case attests.

The wording is slightly different to Mr Justice Gibbs' judgment, but it contains no suggestion that a person needs to be affected to a more substantial degree. Mr Justice Brennan said -

> The criterion of special interest is sufficiently broad to encompass a case where a breach of the law would not be productive of damage compensable by a pecuniary award.

Again, this contains no suggestion of being affected to a substantial degree. The only person who made this suggestion was Mr Justice Brennan. He stated on page 74 of the report-

> A plaintiff must show that he has been specially affected, that is, in comparison with the public at large he has been affected to a substantially greater degree or in a significantly different manner. It is not necessary to show that the plaintiff is uniquely affected.

So perhaps some support exists for this view proposed in this Bill in the decision of

Mr Justice Brennan, but not in the other decisions. An interesting hint is then implied in what Mr Justice Brennan then goes on to say -

> This will be the case where a statute protects the interests of a class, stopping short of conferring personal rights upon the members of the class.

Essentially, the Government is seeking to bring in some of the elements of class litigation. It is seeking to warn off all the members of a class. I do not object to that in basic principle, although the concept of class action is one that I do not wish to encourage generally in this State; the history of class actions in combination with contingency fees in the United States has been quite alarming. However, if the intent is to warn off a class, procedures are available to do so in courts which are less draconian than the procedures contained in this Bill. If one wishes to warn off a class, one should leave it to the court to decide when appropriate measures have been taken to give notice to members of that class so that all members are bound by a particular decision. To go through this form of mockery of almost repealing the rules of natural justice is not the way in which to effect the warning off of a class. I cannot support a Bill in those terms.

This legislation may also be invalid and this is indicated in the case of *Mabo and Another v The State of Queensland and Another*, which is reported on page 186 of the Commonwealth Law Report No 166 of 1988. This involves a joint judgment by Justices Brennan, Toohey, and Gaudron which states that the legislation mentioned there was offensive to the Commonwealth Racial Discrimination Act 1975. In that case the Queensland Coast Island Declaratory Act 1985 declared that the law of Queensland applied retrospectively. Section 3 of that Act stated -

> . . . upon the islands being annexed to and becoming part of Queensland and subject to the laws in force in Queensland - (a) the islands were vested in the Crown in right of Queensland freed from all other rights, interests and claims of any kind whatsoever and became wastelands of the Crown in Queensland for the purposes of sections 30 and 40 of the Constitution Act;

Further it states -

> Every disposal of the islands or part thereof purporting to be in pursuance of Crown lands legislation after the islands were annexed to and became part of Queensland shall be taken to have been validly made and to have had effect in law according to its tenor.

The net effect of all of this was that the claims by the Miriam people for land rights, which were derived from the traditional native title which applied at the time of the annexation to Queensland, and which should have been recognised by British law, had been removed by that Act. The case proceeded under a demurrer, and for that purpose it was conceded that this was the effect of the Act. For that purpose it was assumed that those land rights existed, and after dealing with the effects of a declaratory law, on page 214 the Justices said -

> The next question is whether the 1985 Act is inconsistent with the Racial Discrimination Act and is therefore ineffective by reason of s. 109 of the Constitution.

It continues -

> As we have seen, the 1985 Act extinguishes without compensation all traditional legal rights in or over the Murray Islands which would otherwise have survived annexation, and it confirms all rights in or over the Murray Islands which were purportedly disposed of under Crown lands legislation after annexation.

Further it states -

> The 1985 Act thus extinguishes all legal rights which take their origin from native law and custom while confirming all legal rights which take their origin from the relevant statutory law of Queensland, namely, Crown lands legislation.

Section 10 of the Commonwealth Act states -

> If, by reason of, or of a provision of, a law of the Commonwealth of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin,

> or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, or national or ethnic origin.

At page 216 it states -

> Section 10 relates to the enjoyment of a right, not the doing of an act. The "right" referred to in s. 10(1) is not, or is not necessarily, a legal right.

At page 218 it states -

> By extinguishing the traditional legal rights characteristically vested in the Miriam people, the 1985 Act abrogated the immunity of the Miriam people from arbitrary deprivation of their legal rights in and over the Murray Islands. The Act thus impaired their human rights while leaving unimpaired the corresponding human rights of those whose rights in and over the Murray Islands did not take their origin from the laws and customs of the Miriam people. If we accord to the traditional rights of the Miriam people the status of recognized legal rights under Queensland law (as we must in conformity with the assumption earlier made), the 1985 Act has the effect of precluding the Miriam people from enjoying some, if not all, of their legal rights in and over the Murray Islands while leaving all other persons unaffected in the enjoyment of their legal rights in and over the Murray Islands.

On page 219 it states -

> A State law which, by purporting to extinguish native title, would limit that immunity in the case of the native group cannot prevail over s. 10(1) of the *Racial Discrimination Act* which restores the immunity to the extent enjoyed by the general community. The attempt by the 1985 Act to extinguish the traditional legal rights of the Miriam people therefore fails.

What I said earlier was that the difference between proposed new sections 18A and 18B is that the essential effect of 18B is to deprive Aboriginal people of the rights they would have had under the law of Western Australia to natural justice, and to be able to obtain their right as a class of people who are affected by that decision. Even if that is not the case I do not believe this Parliament should be legislating in this manner so as to restrict the rights of Aborigines in such a discriminatory fashion. Furthermore I do not believe that, having done that, it should contain such a litany of rights that people have to natural justice just so as to abrogate them. I oppose the Bill.

Debate adjourned, on motion by Hon Fred McKenzie.

House adjourned at 5.33 pm

QUESTIONS ON NOTICE

SUNKEN GARDEN - OLD GRAYLANDS TEACHERS COLLEGE
Retention

1061. Hon N.F. MOORE to the Minister for Planning:

(1) Is the Minister aware that the sunken garden at the old Graylands Teachers College is to disappear when LandCorp carries out a residential development on the site?

(2) If so, will she give an undertaking to take action to ensure that the sunken garden is retained as part of the development so that it can remain as a perpetual monument to the old Graylands Teachers College?

Hon KAY HALLAHAN replied:

(1) Yes.

(2) The retention of the sunken garden - amphitheatre - would have compromised another objective of the subdivision design, that of retaining the maximum number of existing trees. Its retention was, moreover, not supported by the City of Nedlands, the councillors of which reached their decision following a site inspection.

I have indicated to the Graylands Alumni Association, who contacted me about this matter earlier this year, that I support the commemoration of the former teachers college through appropriately named streets in the subdivision.

ROADS - KAGOSHIMA PARK, VICTORIA PARK
Casino - New Road Approval

1099. Hon P.G. PENDAL to the Minister for Planning:

Has the Minister been involved in the decision to approve a new road through Kagoshima Park in Victoria Park to service the casino?

Hon KAY HALLAHAN replied:

The Minister for Racing and Gaming and the Burswood Park Board have the statutory responsibilities for any roads through Kagoshima Park, under the Casino (Burswood Island) Agreement Act.

ART - PUBLIC ART TASK FORCE
Members

1111. Hon J.N. CALDWELL to the Minister for The Arts:

Who are the members of the Joint Public Art Task Force?

Hon KAY HALLAHAN replied:

The members of the Public Art Task Force are -

Mr Hans Arkeveld
Mr Patrick Walker
Mayor Patricia Morris
Mr Ted Blythe
Mr Charles Johnson
Mr Tony Noakes
Mr Peter Smith
Mr Robert Allen
Mr Rob Burrows
Ms Di McAttee
Mr Max Poole
Ms Jenny Beahan
Mr Keith Sinclair

PEAT - MINING PROJECT, LAKE TORDIT GURRUP
Company Proposal Resubmission

1113. Hon W.N. STRETCH to the Minister for Resources:

I refer to question on notice 812 of 1990 and ask the Minister with reference to the proposed peat mining operation at Lake Tordit Gurrup near Manjimup -

(1) Has the proponent company resubmitted its proposal to the Environmental Protection Authority?

(2) Has the company told the Government that it is no longer interested in trying to get this revenue-positive and employment-positive project started up in Western Australia?

(3) Has the Minister or his department followed up the proposal with the company to examine ways in which it may see such a valuable industry set up in the area?

(4) If not, why has it not?

Hon J.M. BERINSON replied:

(1) No.

(2) I am informed that the proponent is in the hands of the liquidator. Consequently, there has been no constructive communication with Government regarding progress on this project.

(3)-(4) Not applicable.

RAILWAYS - NORTHERN SUBURBS RAIL LINE
Warwick Bus Station Ramp Removal

1115. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) What is the estimated cost of removing the on and off ramps for buses entering and leaving the Warwick bus station in order to make way for the northern suburbs rail link?

(2) What is the anticipated time span for the removal of these ramps?

(3) What are the alternative routes that will be utilised during the removal of these ramps?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Design of the Warwick bus/train interchange station is now in hand. The final estimate of cost of removing the bus on and off ramps is not yet completed.

(2) It is anticipated that direct access via the existing ramps from the freeway for buses will not be available after October 1991.

(3) Current planning is to travel via Beach Road and Erindale Road to the freeway.

POWER STATIONS - MEEKATHARRA POWER STATION
Private Operator Sale Consideration

1121. Hon N.F. MOORE to the Leader of the House representing the Minister for Mines:

(1) Is consideration being given to selling the Meekatharra power station to a private operator?

(2) If so, what is the rationale behind these considerations and when is a decision likely?

Hon J.M. BERINSON replied:

The Minister for Mines has provided the following reply -

(1) No.

(2) Not applicable.

LAND ADMINISTRATION DEPARTMENT - RESIDENTIAL BLOCKS
Point Samson - Sale

1124. Hon N.F. MOORE to the Minister for Lands:

(1) Have any of the residential blocks, recently offered for sale by the Department of Land Administration at Point Samson, been sold?

(2) If so, how many and at what price?

(3) Has consideration been given to reducing the price of the blocks?

(4) If not, why not?

Hon KAY HALLAHAN replied:

(1) Yes.

(2) One at $40 000.

(3)-(4)

Further to the response to question 865, the position is being monitored.

OBSCENE PUBLICATIONS LEGISLATION - RADIO AND AUDIO CASSETTES

1125. Hon P.G. PENDAL to the Minister for The Arts:

(1) Are songs played on radio and/or audio cassettes covered under the legislation dealing with obscene publications?

(2) If not, what avenue of protest and/or enforcement is available to a citizen who considers the contents of a song/audio tape obscene?

Hon KAY HALLAHAN replied:

(1)-(2)

Radio program standards are regulated by the Australian Broadcasting Tribunal in accordance with the Commonwealth Broadcasting and Television Act 1942.

ROADS - KWINANA FREEWAY EXTENSION, SOUTH STREET-THOMAS ROAD
Completion Timetable

1126. Hon P.G. PENDAL to the Minister for Police representing the Minister for Transport:

(1) What is the current timetable for the completion of the southern extension of the Kwinana Freeway from South Street to Thomas Road?

(2) Are there any hold-ups in the project?

(3) Has a report been received by the Federal and/or State Governments from the Environmental Protection Authority assessing the environmental impact of the extensions?

(4) If so, what adverse recommendations, if any, does this report contain?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Mid 1994.

(2)-(3)

No.

(4) Not applicable.

RAILWAYS - NORTHERN SUBURBS RAIL LINE
Stations - Washroom and Mothers' Room Facilities

1131. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) Will there be washroom and mothers' room facilities at all seven proposed rail stations along the northern suburbs rail line?

(2) If not, at which stations will the facilities be available?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1)-(2)

Public toilets will be provided at the major interchange stations of Stirling, Warwick, Whitford and Joondalup. Mothers' room facilities will not be provided.

RAILWAYS - NORTHERN SUBURBS RAIL LINE
Stations - Westrail Staff

1132. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) Will each of the proposed seven rail stations be manned by Westrail staff?

(2) If not, which stations will be manned by Westrail staff?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) It is proposed that all stations will be attended for some periods each day by Westrail staff.

(2) Not applicable.

RAILWAYS - NORTHERN SUBURBS RAIL LINE
Operating Hours

1133. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) Has any decision been made on the operating hours on the proposed northern suburbs rail line?

(2) If the answer is yes, what is the anticipated Monday to Friday commencement time from -

(a) Perth station to Burns station; and

(b) Burns station to Perth station?

(3) What is the anticipated time the last train will operate Monday to Friday from -

(a) Perth station to Burns station; and

(b) Burns station to Perth station?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Yes, approximate times have been considered.

(2) (a)-(b)
5.45 am.

(3) (a)-(b)
11.30 pm.

RAILWAYS - NORTHERN SUBURBS RAIL LINE
Whitford Station - Bus Facility

1134. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) As the proposed Whitford rail station will be a terminal station for some trains on the northern suburbs rail line, will there be a bus facility located at the station?

(2) If not, will the station become part of any bus route?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Yes.

(2) Not applicable.

RAILWAYS - PERTH-JOONDALUP RAILWAY
Master Plan Update

1135. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) Has there been any update to the Perth-Joondalup Railway master plan dated November 1989?

(2) If the answer is yes, will the Minister make the information available?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) No.

(2) Not applicable.

RAILWAYS - NORTHERN SUBURBS RAIL LINE
Barrack Street Bridge New Side Span, Perth Station - Building Platform 9 Construction

1136. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) What is the projected cost of building platform 9 and the new side span for the Barrack Street bridge at Perth station to accommodate the proposed northern suburbs railway?

(2) What is the estimated construction time?

(3) When will this work commence?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Design work has not been completed for platform 9 at Perth Station, nor for the new side span for the Barrack Street Bridge. Estimated final costs are not available at this stage.

(2)-(3) The estimated construction time for platform 9 is from February 1991 to the end of 1991. The estimated construction time for the new side span at Barrack Street Bridge is six months from July 1991.

RAILWAYS - NORTHERN SUBURBS RAIL LINE
Water and Sewerage Line Adjustment Costs

1137. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

What is the estimated cost of major and minor adjustments to water and sewerage lines in order to accommodate the northern suburbs railway?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

Adjustments to water and sewerage services are subject to individual examination and cost estimating progressively throughout the project. Definitive estimates of the cost of these service alterations are not available at this stage.

ROADS - MITCHELL FREEWAY
Northbound Lane, Loftus-Hutton Streets - Construction Cost

1138. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) What is the estimated cost of construction of another northbound carriageway between Loftus Street and Hutton Street?

(2) How many additional lanes will be constructed?

(3) What is the estimated construction time?

(4) When will construction of this additional freeway land/s commence?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Estimated at $15 million, excluding bridges.

(2) One lane.

(3) Twenty one months.

(4) Work on the freeway improvements is expected to commence within two weeks.

ROADS - MITCHELL FREEWAY
Northbound Lane, New Road Bridges - Powis and Vincent Streets, Scarborough Beach Road

1139. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

(1) What is the total estimated cost of constructing the new road bridges for the northbound freeway carriageway at Vincent Street, Powis Street and Scarborough Beach Road?

(2) What is the estimated construction time for this work?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) $4.6 million.

(2) Fifty seven weeks.

ROADS - TURKEY CREEK-WYNDHAM ROAD
Work Completion Date - Halls Creek-Kununurra Roadwork

1144. Hon P.H. LOCKYER to the Minister for Police representing the Minister for Transport:

(1) When will present work on the Turkey Creek to Wyndham road be completed?

(2) Is there any intention to carry out further work on any section of the road between Halls Creek and Kununurra?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) In December 1990.

(2) Yes. The current work is the first stage of a project to upgrade the Bow River to Victoria Highway section of Great Northern Highway.

WORLD HERITAGE LISTING - SHARK BAY MEETING
Gascoyne Regional Manager - Chairman, Minister's Disallowance

1145. Hon P.H. LOCKYER to the Minister for Police representing the Minister for Regional Development:

(1) Is the Minister aware that the Minister for the Environment did not allow the Gascoyne Regional Manager to chair a public meeting on world heritage listing at Shark Bay on Saturday, 17 November?

(2) Was the Minister aware of this decision?

(3) Is the Minister also aware that the officer concerned was the choice of the community of Shark Bay as an impartial chairman?

Hon GRAHAM EDWARDS replied:

The Minister for Regional Development has provided the following reply -

(1)-(2)
I am not aware that the Minister for the Environment did not allow the Gascoyne Regional Coordinator to chair the meeting. However, it would be inappropriate for a Government officer to chair a meeting of this kind.

(3) I am aware that the Gascoyne Regional Coordinator was approached by the Chairman of the Shark Bay Protection Group. I was not aware that the officer concerned was the choice of the Shark Bay community.

BURSWOOD RESORT CASINO - TWO-UP
Race Clubs Consideration

1161. Hon P.H. LOCKYER to the Minister for Police representing the Minister for Racing and Gaming:

(1) Has any discussion or consideration been given to altering the present arrangements with the Burswood Casino with a view to allowing two-up to be conducted by race clubs outside the area bounded by the Metropolitan Region Planning Authority?

(2) If not, will the Minister give an undertaking to raise the matter with a view to having the agreement altered to allow these race clubs to take advantage of arrangements presently enjoyed by other race clubs?

(3) If not, why not?

Hon GRAHAM EDWARDS replied:

The Minister for Racing and Gaming has provided the following response -

(1)-(3)
I have raised this matter with the Manager of the Burswood Property Trust and have been advised it is under consideration.

QUESTIONS WITHOUT NOTICE

CORPORATIONS ACT - AUSTRALIAN SECURITIES COMMISSION
Office Space, Perth

824. Hon GEORGE CASH to the Attorney General:

With reference to the article in the *Australian Financial Review* of Thursday, 15 November 1990 titled "Opposition washes its hands of new company law plan" -

(1) Has the Attorney General seen a draft of the new Corporations Act which was rammed through the House of Representatives after one hour of debate last night?

(2) Is he aware if the Australian Securities Commission has yet acquired furnished office space and sufficient staff to man any such office in Perth?

Hon J.M. BERINSON replied:

(1) I have not seen the *Financial Review* today so I am not aware of the contents of that article. However, I do not believe that that matters much for the purposes of this response.

I have so far read the outside front cover of the new Act but I have hardly had the opportunity to do more than that as it reached my desk only this morning. I was fascinated to see, by the way, that the explanatory memorandum which accompanied the new Act extends to over 300 pages, so we are not dealing with a minor piece of legislation here, and the speed at which this processing is required is rather daunting.

Having said that, I should also add that it may well be that the document was posted to my office a little earlier but, on my memory of it, the Bill was introduced in the Commonwealth Parliament only on about Thursday of last week. In other words, the Bill may have been in my office a day or so before it came to my attention, but certainly I have had no opportunity to consider its contents or to have any report on it.

Although the Leader of the Opposition has directed his question at the Act, I am bound to say that there is an associated very important and difficult question looming; that is, the separate Act required to give effect in each State to the provisions of the Corporations Act. This morning I found for the first time that those adopting provisions would in fact require two Acts and not one, and that these are both to be based on model Bills currently being drafted by Victorian Parliamentary Counsel, if I understand the position correctly, but in consultation with Parliamentary Counsel from each State.

The great problem with a 1 January implementation is that these State Acts have still not been finalised and on the latest advice which I have, which goes to as late as lunchtime today, there is serious doubt whether the model State Bills will be ready before Wednesday or Thursday of next week. Even if they are available, some attention will have to be given to them for purposes of meeting specific requirements by the separate States, including our own; so, all in all, the difficulties of timetable which I have earlier referred to are, if anything, getting worse rather than better.

(2) I understand that the Australian Securities Commission plans to take space at 66 St George's Terrace, and it would be our intention to locate the remaining State administration in the same building so that effectively there will be a one-stop shop for the professional and commercial communities involved. Therefore space is not a problem. I cannot say whether leases have been finalised, but certainly my understanding is that the ASC planning is well advanced.

Finally, the Leader of the Opposition asked whether the ASC has appointed staff. I feel the need to correct an impression which perhaps I gave yesterday in expressing the hope that remaining staff difficulties would be resolved within about the next week or so. What I was concentrating on yesterday was the question of the senior establishment of the Western Australian regional office of the ASC, and to that extent what I said yesterday still goes: We are hopeful that within a short time the structure at the senior level should be capable of being agreed. However, that is a different matter from a resolution. The matter of the personnel who will be appointed both to the senior levels and to the rest of the regional office of the ASC is a matter of great concern in that offers have still not gone out from the ASC to staff in our present Corporate Affairs Department. These staff are entitled to first priority in appointment under existing agreements. The whole position is further complicated by the Commonwealth's need to adjust the level of officers

coming from State services into an order which meets the Commonwealth structure. I indicated earlier that most of the offers will be on the basis that officers transferring from the State department will be expected to accept a lower level than that which they are on now. A salary maintenance arrangement will be put in place, and that will continue for some time. Even so, the prospects are very worrying.

It is worrying from two points of view: Unless this changeover of staff is organised in a satisfactory way the State will be left with officers who the State is committed to continue to employ but who are outside its area of speciality. Equally, if not more, important is the problem the Commonwealth will face with the officers who do not transfer, in that it will then be in the position of establishing a very important office without experienced staff.

I am sorry, Mr President, that this reply has been so lengthy. Even though the question was short, I hope members will agree that this is a serious matter which we need to understand properly if we are to pursue it in the current session.

CORPORATIONS BILL - COMPLEMENTARY STATE LEGISLATION
Presentation Arrangement

825. Hon GEORGE CASH to the Attorney General:

This is a supplementary question. I remind the Attorney of our previously stated opposition to the establishment of the Australian Securities Commission, and having regard for the motion I moved in the House this afternoon regarding the ramming of legislation at the end of a session, I ask: How does the Government plan to have the complementary Bill properly considered by this House prior to the expected rising of the Legislative Council on 6 December?

Hon J.M. BERINSON replied:

I do not believe that the State Bill will be a complicated measure. The proposed Commonwealth Corporations Bill has been publicly available for some months. Therefore, the question of the content of the legislation does not apply because it will be well known. My current feel for the position is that as long as I can move the notice of motion for the State Bill by the end of next week, the usual period of one week should be enough for the Legislative Council to be in a position to make up its mind on the content of the Bill. At the time of introduction of the Bill I will certainly ensure that all available detail regarding the logistical arrangements to which I have referred will be presented simultaneously. Again, I do not believe it will take long to make a judgment on the arrangement.

PROSTITUTION - REPORT TABLING

826. Hon B.L. JONES to the Minister for Police:

(1) Has the report on prostitution been released yet?

(2) Who was on the panel?

(3) What was contained in the report?

Hon GRAHAM EDWARDS replied:

(1)-(3)

I am pleased that this question has been asked. The subject was raised yesterday and I indicated that I wanted to be in a position to table the report - at the end of my answer I will seek leave to do so.

The PRESIDENT: Order! The Minister can seek leave to table the report when he finishes answering, which I assume will be reasonably soon.

Hon GRAHAM EDWARDS: I can assure you, Mr President, I do not intend to read the report. However, it is important that I mention the members of the panel. The panel operated under the chairmanship of Miss Beryl Grant, OBE, and

comprised Dr Jim McNulty, AO, Ms Michelle Kosky, Mr Laurie Gibson, APM, and Mayor John D'Orazio. Its executive officer was Ms Caren Irwin. Miss Beryl Grant is well known for the outstanding contribution she continues to make to the Western Australian community. Apart from her involvement in the panel, Miss Grant is currently the Chairperson of the Child Care Services Board and a member of the Ngal-A implementation committee. She is a former Moderator of the Uniting Church in Western Australia, she was a matron of Ngal-A from 1959 until 1980, she is a past President of the Royal Australian Nursing Federation and a former special magistrate of the Children's Court. These achievements have been recognised in a variety of ways, including a Churchill Fellowship in 1967; Miss Grant was made an officer of the Order of the British Empire in 1976; and she was awarded the Queen's Jubilee Medal in 1977.

I now refer to some of the comments made in the letter of transmittal, and I quote -

> Although the Panel does not wish to promote prostitution we realised that it has existed throughout history and will remain in our society in the future. In the opinion of the Panel, decriminalisation with regulation will address the concerns and issues that have been raised with us.

The PRESIDENT: Order! The member who asked the question cannot possibly hear the answer if she is carrying on a conversation.

Hon GRAHAM EDWARDS: The letter continues -

> Consequently we have made a recommendation that the Government appoint a Licensing Board to regulate the industry.

I ask members to inform themselves of the content of the report. It will be available for public discussion until the end of January 1991. From there I will take the matter back to Cabinet where we will decide the future direction of this matter. We now have a tremendous opportunity to consider the future direction of prostitution in this State, and it is appropriate and responsible to do so. I seek leave to table the report.

[See paper No 753.]

STIRLING CITY COUNCIL - CORRUPTION ALLEGATIONS
Police Commissioner Bull's Announcement

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

Can he inform the House of the nature of the content of the Press announcement made today by Police Commissioner Bull on the matter of the Stirling City Council affair?

Hon GRAHAM EDWARDS replied:

No.

RESERVES - LOCAL GOVERNMENT
Reassessment - Income Maximisation

828. Hon BARRY HOUSE to the Minister for Lands:

Is it the current Government policy to reassess all reserves vested in local government in Western Australia with a view to maximising income from these sources?

Hon KAY HALLAHAN replied:

A discussion paper and a policy position has been distributed to local government throughout the State as a result of some debate which followed the question of suitable land tenure on places like the Blue Duck Cafe in North Cottesloe. Considerable debate ensued regarding the suitability of the tenure of the land on that site. A great deal of history in decision making and litigation suggests that activities complementary to creating recreation reserves should be allowed while commercial enterprises are not appropriate.

If an enterprise is a commercial enterprise in its own right, it is not regarded as being complementary to a public reserve. There has been much discussion between the Department of Land Administration and local government authorities. I guess members of the Western Australian Municipal Association will read this answer, but the discussion paper prepared by it has regrettably focused not on the broad question of reserves and their vestings, but on the problem that was encountered at Cottesloe. In my view that has distorted a useful debate on this matter.

There is a need to address this matter. It is certainly not driven by a need to maximise income. One could make the counterclaim that local government wants to maximise its revenue earning capacity through reserves also. I have not said that, but it is a counterclaim that could be made just as legitimately as the one that has been made erroneously about the State Government.

RESERVE 28199 - COTTESLOE TOWN COUNCIL
North Cottesloe Cafe and Blue Duck Restaurant

829. Hon BARRY HOUSE to the Minister for Planning:

(1) Has the Minister begun formal proceedings against the Town of Cottesloe to divest reserve 28199 which contains the North Cottesloe Cafe and the Blue Duck Restaurant along with other facilities of public open space?

(2) Does the Minister intend carving this reserve into three portions?

(3) Why?

Hon KAY HALLAHAN replied:

(1)-(3)

I indicated in my earlier response to a question that there has been much debate and exchange of positions about this matter. It would be useful for the member to put his question on the Notice Paper and I will provide him with the latest information.

SMITH, MR ROBERT - ASLAN TELEPHONE TAPPING PAYMENTS
Government Department or Agency - Police Inquiry

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

I raised this matter with the Minister yesterday. Have police inquiries begun to determine whether the payments made to Robert Smith in the case of the Aslan telephone tapping were made by a Government department or agency?

Hon GRAHAM EDWARDS replied:

I am not in a position to comment about active police investigations.

BUILDERS' REGISTRATION AMENDMENT BILL - DELAY

831. Hon MARGARET McALEER to the Minister for Planning:

Is there any reason for the Minister's sidestepping Order of the Day No 13, as she has done on a couple of occasions?

Hon KAY HALLAHAN replied:

I have not sidestepped anything. Negotiations are continuing between parties who want to see the Builders' Registration Amendment Bill progress. Those negotiations have been in progress and I understand it will be possible to deal with this Bill on Tuesday of next week.

STIRLING CITY COUNCIL - CORRUPTION ALLEGATIONS
Police Inquiry - Rapid Progress Compliment

832. Hon P.G. PENDAL to the Minister for Planning:

(1) Will the Minister accept my congratulations on the rapid progress now known to have occurred in the case touching on the Stirling City Council?

(2) What miraculous breakthrough occurred in the last 24 hours to allow such rapid progress after two years of inaction?

Hon GRAHAM EDWARDS replied:

(1)-(2)

That is a pretty stupid question; the answer is self-evident.

DEFAMATION - PUBLIC FIGURES IN NEWSPAPERS
Truthful Information - Legislation Adequacy

833. Hon J.N. CALDWELL to the Attorney General:

Is the Attorney General satisfied that the law in relation to the defamation of a public figure in a newspaper report is adequate and upholds the right of the public to know the truth behind a political controversy?

Hon Fred McKenzie: It asks for an opinion.

The PRESIDENT: I have a feeling that that question asks for an opinion first and an illegal opinion second. If the member rephrases the question, I will give him the call after Hon Fred McKenzie.

MV "CAPE DON" - LIGHTHOUSE TENDER
Historical Items Retrieval

834. Hon FRED McKENZIE to the Minister for The Arts:

My question involves the decommissioning by the Federal Government of the lighthouse tender MV *Cape Don*. Have any steps been taken to retrieve the historical items from that vessel?

Hon KAY HALLAHAN replied:

I am pleased to advise the member that the State Government has had some success in its efforts to acquire several of the historical items on the ship. As we all know, the ship was closely associated with the Western Australian coastline from 1963. Members will appreciate that the era of lighthouse keepers and lighthouse tender vessels has passed. They were a significant part of the lifestyles of many Western Australians in coastal communities and a very interesting part of our cultural heritage. The *Cape Don* in particular played a very important role in our maritime history. The Federal Government has recognised that in response to my request and has agreed to the long term loan of several items from the ship including a work boat, an officer's uniform, a plan of the vessel, sets of crockery, manchester and cutlery. All of that will be displayed at the Western Australian Museum. A decision has yet to be made on plaques and other memorabilia associated with the vessel that we hope to secure.

The vessel was built in New South Wales in 1963 specifically to serve lighthouses along the Western Australian coast. It was home ported at Fremantle.

DEFAMATION - PUBLIC FIGURES IN NEWSPAPERS
Truthful Information - Legislation Adequacy

835. Hon J.N. CALDWELL to the Attorney General:

Are the laws in relation to defamation of a public figure in a newspaper adequate for the public to know the truth?

Hon J.M. BERINSON replied:

The short answer is yes. It might help for me to elaborate and point out that the ability of any person, whether a public figure or not, in this State to seek redress for defamatory comment is more limited than in a number of other jurisdictions. The main reason for that is that, in this State, truth is an absolute defence so that, provided what is said or printed about a person, public figure or private person is true, it is open to people to make such comment as they wish. I believe that most people accept that that makes our laws satisfactory. It is one of the reasons, by the way, why there has been so much difficulty in obtaining a uniform defamation law in Australia. Our law is more restrictive on people's capacity to sue for defamation than elsewhere.

BRITTON, MR - FIRE BRIGADE
Employment

836. Hon PETER FOSS to the Minister for Emergency Services:

(1) Is Mr Britton still employed by the Fire Brigade?

(2) If so, is his departure for the Philippines in any way connected with his employment?

Hon GRAHAM EDWARDS replied:

(1)-(2)

I am not sure to whom the member is referring. If he gives me some details about the person, I will check him out and, if it is appropriate, answer the question.

CORPORATIONS ACT - COMPLEMENTARY STATE LEGISLATION
Separation of Powers - Companies Incorporation

837. Hon DERRICK TOMLINSON to the Attorney General:

In an earlier answer to Hon George Cash the Attorney General said about the new Commonwealth Corporations Act that the complementary State legislation would not be complicated. If that is so, will he indicate how the proposed State legislation will handle the separation of powers between the Commonwealth and the State, particularly with regard to the incorporation of companies?

Hon J.M. BERINSON replied:

It will operate in much the same way as the present cooperative scheme; that is, it will ensure that the Securities Industry Act has constitutional effect in this State by enactment of the State.

CORPORATIONS ACT - COMPLEMENTARY STATE LEGISLATION
Referral of Powers

838. Hon DERRICK TOMLINSON to the Attorney General:

Does that involve a referral of powers?

Hon J.M. BERINSON replied:

I think we have had this question before. The question is the same, and so is the answer; this does not constitute a referral of powers as that term is understood. The first time I was asked that question I replied in that way, saying it was subject to my checking further from wiser and more experienced professionals than I. That check served to confirm that the first answer was correct and accordingly it stands.