

Legislative Council

Thursday, 27 December 1990

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

VISITOR IN PRESIDENT'S GALLERY

THE PRESIDENT: I bring to the attention of members the presence in the President's Gallery of Senator Malcolm Colston, who is the Deputy President and Chairman of Committees of the Senate of Australia. I welcome the senator.

Members: Hear, hear!

TELEVISION CAMERA IN CHAMBER

THE PRESIDENT: I have given approval for the Channel 10 television station to use a television camera in the Chamber today, without the normal 24 hours' notice I give to members when such events occur. As members will be aware, I was not in a position to give 24 hours' notice on this occasion because Parliament has not been sitting. Channel 10 wants some film footage for its news programs and it is taking this film without sound.

BILLS (35) – ASSENT

Messages from the Governor received and read notifying assent to the following Bills –

1. Pay-roll Tax Amendment Bill
2. Pay-roll Tax Assessment Amendment Bill
3. WAGH Financial Obligations Bill
4. Debits Tax Bill
5. Debits Tax Assessment Bill
6. Acts Amendment (Betting Tax and Stamp Duty) Bill (No 2)
7. Bookmakers Betting Tax Amendment Bill
8. Road Traffic Amendment Bill (No 3)
9. Community Corrections Legislation Amendment Bill
10. Judges' Salaries and Pensions Amendment Bill
11. Western Australian College of Advanced Education Amendment Bill
12. Family Court Amendment Bill
13. Loan Bill
14. Electoral Amendment Bill
15. Housing Agreement (Commonwealth and State) Bill
16. Mental Health Amendment Bill
17. Employers Indemnity Policies (Premium Rates) Bill
18. Government Railways Amendment Bill (No 2)
19. Occupational Health, Safety and Welfare Amendment Bill
20. Acts Amendment (Contributions to Legal Aid Funding) Bill
21. Government Railways Amendment Bill
22. Pearling Bill
23. Soil and Land Conservation Amendment Bill
24. Builders' Registration Amendment Bill
25. Royal Commissions Amendment Bill
26. R & I Bank Bill

27. Building and Construction Industry Training Levy Bill
28. Building and Construction Industry Training Fund and Levy Collection Bill
29. The Western Australian Turf Club Amendment Bill
30. Appropriation (Consolidated Revenue Fund) Bill
31. Appropriation (General Loan and Capital Works Fund) Bill
32. Child Welfare Amendment Bill
33. Stipendiary Magistrates Amendment Bill (No 2)
34. Financial Administration and Audit Amendment Bill
35. Criminal Law Amendment Bill

CORPORATIONS (WESTERN AUSTRALIA) BILL

Standing Orders Suspension – Motion

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

That Standing Orders be suspended so far as will enable a motion to be moved at this day's sitting to rescind the vote on the second reading of the Corporations (Western Australia) Bill 1990, and thereafter proceed with the Bill.

Second Reading – Recision of Vote

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

That the vote on the second reading of the Corporations (Western Australia) Bill 1990 be, and is hereby, rescinded.

Second Reading

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 (Attorney General) in charge of the Bill.

Clause 1: Short title and purposes –

Hon DERRICK TOMLINSON: When this Bill was debated in the House a little over three weeks ago the Liberal Party indicated that it stood by an important principle of the Federal system and therefore rejected the legislation. The Liberal Party still stands by that principle which, stated simply, is that where the legislative authority for an Act rests with one level of government of the Federal system so that same level of government should exercise all Executive authority for that Act. We believe that to be an important principle of government. Any Federal system in which there is a separation of Executive authority and legislative power between the two levels of Government is a thoroughly unsound system. In pursuit of that principle, the Liberal Party voted against the passage of the legislation. Since that time, the impracticalities which would be imposed upon any alternative system have led us to the position, as we have already indicated in voting for the second reading, where we will not oppose passage of this Bill. We oppose the principle of the Bill, but we are not prepared, in our pursuit of that principle, to throw into disarray the Western Australian economy and commercial system.

In the three weeks between today and our rejecting the second reading, we put to the Government a series of amendments, which would have three principal effects. First, by repealing clause 2, Commencement, and substituting another commencement clause, the commencement of the Bill would be deferred from 1 January 1991 to 1 July 1991, the beginning of the next financial year; or, alternatively, until such time as the Attorney General was prepared to signify that the Australian Securities Commission could be established in this State in order to properly carry out its functions; or until the ministerial agreement had

been completed and formalised; or, finally, until the regulations had sat upon the Table of the Federal Parliament and been passed by resolution of both Houses. The Commonwealth Government decided to have the legislation proclaimed before our amendments were submitted to the Commonwealth Attorney General. In fact, the legislation was proclaimed the day before we submitted our amendments through the Attorney General, Hon Joe Berinson. The regulations arising from the Bill had been gazetted by the time we had our second meeting with the Attorney General to discuss the amendments; hence, any motion by us to defer the commencement date until 1 July – a date which the business community in Australia has indicated will be a far more sensible date than the proclaimed date of 1 January – would have been of no consequence.

The second set of amendments related to clauses 5, 7, 8, 59, 67 and 77 of the Bill. Their effect would have been to ensure that future amendments to the corporations law and the Australian Securities Commission Act would not take effect unless approved by the Ministerial Council. We were asking in those amendments that the procedure for the amendment of the uniform scheme, which is now in place and will be in place until 31 December, be continued under the new scheme. However, the new scheme arrangements separate legislative power and Executive authority. Legislative power will be retained by the States. The validity of the corporations Bill relies upon the legislative authority of this State Parliament, the other State Parliaments and the Parliament of the Northern Territory. However, even though the validity of the legislation will depend upon this State Parliament, Executive authority has been taken away from this State Parliament and this Government and placed entirely in the hands of the Commonwealth.

Hon J.M. Berinson: You said that the second point was to ensure that future amendments had the approval of the Ministerial Council. I thought your second point went further and actually required the approval of this Parliament.

Hon DERRICK TOMLINSON: Yes.

The matter hinges on the powers of the Commonwealth Government. It is without doubt that section 51(xx) of the Constitution gives the Commonwealth the power to make laws with respect to corporations. It is also without doubt and was demonstrated, as a result of the challenge which was mounted in the High Court by the Governments of Western Australia, South Australia, New South Wales and, for a time, Queensland, that the Commonwealth does not have a comprehensive power with respect to corporations law. The States do have such a comprehensive power. In fact, the original challenge questioned about 1 000 matters of detail about the corporations law, but in order to expedite the hearing and a decision, the number of challenges was reduced to one; namely, the power of the Commonwealth to incorporate. It has been demonstrated that the Commonwealth does not have the power to incorporate; but the other 999 matters of detail still have not been dealt with. Therefore, in order to avoid future High Court challenges, the procedure which was devised for the enactment of the national companies and securities scheme – the so-called uniform scheme – was resurrected; that is, legislation was enacted by the Commonwealth to take effect in the Australian Capital Territory, using not its section 51 power but its section 122 power. The States then enacted legislation to apply that ACT law as the law of each State. Hence, we have a uniform corporations law. The Liberal Party does not oppose the principle of uniform corporations law and it is on public record that the procedure of the national companies and securities scheme, which is the basis of the scheme that is now before us, in fact was devised largely at the initiative of the then Attorney General of a State coalition Government, Hon Ian Medcalf. We have never resiled from the need for uniform corporations law in this country.

The irony of this procedure, which was adopted entirely to avoid the possibility of a challenge in the High Court to those parts of the Commonwealth's corporations power which are uncertain, is that they will now be subject to challenge anyway. That challenge will not come from the States, because through the agreement and through the legislative procedure to which they have agreed, the States have effectively denied themselves the opportunity of mounting future challenges; but all of those uncertain aspects of the corporations law still remain open to challenge in the High Court from the commercial sector.

I refer to a paper presented by Professor Austin at a seminar organised by the Minter Ellison group. This seminar was held on 4 December, the day on which this House decided not to

support the legislation. Professor Austin indicated that the Bill did not purport to deal with any of the law reform proposals which had been discussed previously in such places as the Cooney committee, the Griffith committee, the Ford committee and the Burrows committee. In fact it continued to expose the law to litigation. I quote from Professor Austin's paper –

Since the States appear to support the Bill, such a challenge will come from the private sector. The Bill runs to 299 pages and contains some very complex legislative provisions. The policy, drafting and consultative processes necessary to generate it were carried out in only four months. In the result, the Bill shows signs of having been rushed, and seems to contain a large number of anomalies. The inter-relationships of the key corporation concepts of the new law, contained in the definitions of 'company', 'corporation', 'body corporate', 'foreign company', 'recognised company', 'Chapter 6 body', 'Chapter 6 company', 'exempt body', 'exempt public authority', 'Division 1, 2, 3 and 4 companies', 'registrable Australian body', 'registered body' and 'non-company' are particularly difficult. These matters have to be sorted out, because different sections of the Corporations Law apply to different kinds of body.

I put it to the Attorney General that we have not avoided the possibility of a High Court challenge. The possibility of a High Court challenge exists; there will possibly be seven to 10 challenges, and it will possibly be seven to 10 years before such matters are sorted out.

Hon J.M. Berinson: I do not think the professor is talking about constitutional challenges. I thought you were making the point that this combined legislation does not solve the constitutional problem.

Hon DERRICK TOMLINSON: That is quite proper, because the constitutional challenge has been avoided by not legislating under section 51. In fact, as I may have pointed out earlier, the legislative validity relies upon section 122 of the Constitution, therefore the constitutional challenge is avoided. However, the challenges to the points of law have not been avoided.

Not only have we not avoided the challenges in the High Court to matters of detail in the legislation in the High Court, in fact there is a second irony in that one of the reasons for the Commonwealth pursuing unilateral legislation in 1989 was the opinion expressed by the Senate Standing Committee which looked at the effect of the legislation of the National Companies and Securities Commission on the Commonwealth Parliament. That committee pointed out that because of the requirement for amending legislation to be referred to the Ministerial Council, the Commonwealth was denied discretionary authority in the pursuit of its legislation. It was described as being a rubber stamp of the Ministerial Council. Whatever the Ministerial Council decided, the Commonwealth was compelled to pursue. That was seen to be a diminution of the legislative authority of the Commonwealth.

Hon Tom Stephens: It was your drivel which got us into this trouble. Shut up.

The CHAIRMAN: Order!

Hon Tom Stephens: I am sick to death of you!

The CHAIRMAN: Order!

Hon Tom Stephens: You are a disgrace!

Hon Barry House: You are the disgrace.

The CHAIRMAN: Order!

Several members interjected.

The CHAIRMAN: Order! I say to Hon Tom Stephens that that type of cross-Chamber abuse does not help in debate on any legislation, particularly on this occasion. I ask him to respect the Chairman of Committees and his responsibility to see that this Bill is handled as expeditiously as possible, and properly in the manner to which we are accustomed.

Hon DERRICK TOMLINSON: Thank you, Mr Chairman.

Hon Tom Stephens: I am going to have some tea!

Several members interjected.

Hon DERRICK TOMLINSON: Before I was interrupted I was making the point that the previous scheme was criticised because it diminished the legislative authority of the Commonwealth. The irony is that the old scheme diminished the legislative authority of the Commonwealth; the new scheme diminishes the legislative authority of the States.

The Bill recognises two levels of law. The first level is that where it is generally acknowledged that the Commonwealth has unchallenged and unchallengeable legislative authority. It can make laws with respect to securities, takeovers, and public fund raising, and that legislation would probably not be challenged. The other level of law is that where Commonwealth powers are not certain; where it is quite clear that the States have powers but the Commonwealth powers could be subject to challenge.

To deal with those two levels of law the agreement – not the Bill – sets out two procedures for future amendments to the law. The first procedure gives to the Commonwealth a discretionary authority for future amendments. It is required to refer any future amendments to the States. It is not bound by the decision of the States. In that respect it is acknowledged that the Commonwealth Parliament has independent legislative authority. The second level of laws contained in this Bill is that where the Commonwealth powers are not unchallengeable; where they are not certain. In that level of law the Ministerial Council will decide future amendments. However, if the Commonwealth disagrees with the decision of the Ministerial Council, it is not compelled to enact legislation with which it disagrees. The Commonwealth, in effect, has the power of veto over the Ministerial Council.

We now have the situation where the legislative authority of the States is not merely diminished; it is absolutely denied by the Commonwealth power of veto. This relates to legislation now before this Parliament and which we assume by the end of this day will be enacted and will become, on 1 January, the law of Western Australia. That law of Western Australia may be amended at the entire discretion of the Commonwealth. Not merely is the legislative authority of the State diminished, but also the legislative authority of this State is denied. In spite of protestations that there is no transfer of authority, in spite of protestations that there is no referral of power to the Commonwealth, in fact there is a transfer of authority from the State to the Commonwealth, and this State is diminished as a consequence of that transfer.

There is only one saving grace in that transfer, and that is this: In fact those provisions are not contained in the legislation at all; they are contained in the ministerial agreement which is not yet formalised but I assume will soon be formalised and at some stage be appended to the Bill. That ministerial agreement is not enforceable at law; it is an agreement among executive Governments and it does not have the legislative support of the State or the Federal Parliaments. Without the sanction of the Parliaments it is not enforceable at law, and at any time any State Government may repeal the legislation and proceed on an alternative course. I give notice that the Liberal Party will be watching very closely any future changes to the legislation – the future procedures, successes or failures of this new scheme – and I give notice that the Liberal Party reserves the right at any future date to exercise the power that it will have as a Government of this State.

Hon T.G. Butler: Do you mean you will make the same mistake again?

Hon J.M. Berinson: Do you mean you reserve the right to repeal the Bill we are now dealing with?

Hon DERRICK TOMLINSON: I reserve the right to repeal the Act at any time in the future.

Hon J.M. Berinson: In spite of the fact that the consequences then would be even worse than rejecting it now?

Hon DERRICK TOMLINSON: Let us deal with that. This legislation was cobbled together within four months after the heads of agreement were finalised on 29 July. It is not legislation which was devised over three years, as the Attorney General is very fond of telling us, but legislation which was cobbled together within four months and guillotined through the Commonwealth House of Representatives in one hour. The legislation was presented to the Legislative Council while it was still warm; it had been faxed from the Victorian Government only a few hours beforehand and was still warm from the photocopier when we received it. We were told, "I want this legislation to be dealt with next Tuesday." That did not give us even three sitting days to contemplate the legislation; we were given less

than one day to contemplate the legislation. Members should compare that procedure with the procedure for the National Companies and Securities Commission legislation of 1982, which sat on the Table for six months; the agreement and the regulations also sat on the Table for six months and were not implemented until 12 months later in order to give the Parliament, the commercial sector and the community the opportunity to understand and respond to that legislation. Yet now the Attorney General asks whether we would in future do what we did three weeks ago. My word we would! We would impose upon an irresponsible Government a responsibility and, as a Government, we would act responsibly. We would not say to any Opposition, "If you do this we will wash our hands like Pontius Pilate. It is not our doing; we have no room to move; it is the Commonwealth's decision." I put it to you, Mr Chairman, that that is the behaviour of an irresponsible Government, and in Government we would not be that irresponsible. Yes, if necessary we will repeal the legislation.

Hon J.M. Berinson: That is a very healthy and wise reservation you have made, Mr Tomlinson.

Hon DERRICK TOMLINSON: However, before we repeal that legislation we will be responsible and we will develop a viable alternative. We will not say to an Opposition, "We have no room to move. The Commonwealth Attorney General is imposing this on us."

Hon J.M. Berinson: What if you do not have room to move? Will you still not say it?

Hon DERRICK TOMLINSON: What the Attorney General fails to recognise is that this Parliament has the power to move.

Hon J.M. Berinson: Of course I recognise that.

Hon DERRICK TOMLINSON: It is constrained by —

Hon J.M. Berinson: Reality.

Hon DERRICK TOMLINSON: — complementary powers of the Commonwealth Parliament, and requires cooperation among the States, the jurisdictions of the Federal system. It requires cooperation and we, as a Government, will cooperate. We will not be coerced into accepting legislation which is not in the best interests of the Federal system of Australia.

I will deal now with the final amendment, which was to add to the Bill new sections 100 and 101, which would guarantee full delegation of authority upon the regional commissioner of the Australian Securities Commission. That was to entrench in the legislation an understanding which we have about the operation of the Australian Securities Commission — that we have been told, and it is on the public record, that the Australian Securities Commission will, to all practical purposes, delegate authority upon the regional offices. We wanted more than the uncertain terms of a ministerial agreement; we wanted more than the undertaking of a temporary chairman of the Australian Securities Commission. We wanted enshrined in the legislation that there would be full delegation of authority. The reason for that is quite simple, and it is in the principle that the Attorney General argued consistently until 29 June; that is, that the level of service in Western Australia should be maintained at a level not lower than the level of service that is now available through the Corporate Affairs Commission. I must acknowledge that the Attorney General succeeded in that, in so far as the personnel to be appointed in the first instance — that is, for the first three years of the operation of the scheme — numbered 195, compared with the 145 under the existing Corporate Affairs Department. One could look at that and say that an increase of some 50 personnel must mean not merely a maintenance of the level of service but also, if the number of personnel is an indication of the level of service, a consequential improvement in the service. I acknowledge the Attorney General's success in the Ministerial Council and in his negotiations with both the Australian Securities Commission and the Commonwealth Attorney General in achieving that.

However, let us look at the other factor of the level of service; that is, that the decision making authority be domiciled in Perth so that any corporation, person or private citizen who wants a decision from the regional commissioner of the Australian Securities Commission does not have to wait for a reference of his or her problem to Sydney or Melbourne for resolution; and that in fact the regional commissioner be authorised within the constraints of the policy of the Australian Securities Commission to give a decision so that the business community and the commercial and financial sectors of Perth and Western Australia can

have the assurance that, just as now, they can get an answer within three days and not have to wait three months as they now do when questions are referred to the New South Wales office of the Corporate Affairs Commission. We wanted to guarantee that level of service would be maintained.

The response was quite simply this: The Commonwealth Attorney General would entertain no amendment which was seen to be an advantage to Western Australia. He would not agree to Western Australia's being in a privileged position compared with any of the other States. It was a decision of the Commonwealth Attorney General. No matter what the State Attorney General might have thought – and I am not privy to what he thought – no matter what the State Attorney General publicly argued until 29 June this year – and I am privy to his public arguments – in spite of the position that Western Australia may have preferred, the Commonwealth Attorney General simply said, "No, I will not entertain any amendment. Furthermore, I am prepared to legislate so that the regional commissioner in Western Australia is not appointed under different terms and conditions from regional commissioners in other States. I will legislate to impose the lowest common denominator upon Western Australia. Furthermore, if the Western Australian Opposition persists with its amendments, we will not allow Western Australia into the cooperative scheme."

That epitomises our concerns about the future of corporations law in Australia. From 1 January onward, corporations law will be dictated by Canberra. The legislative authority of the States will be denied; the executive authority of the States will be transferred to Canberra, Sydney or Melbourne, and in future Western Australia will not have a voice in corporations law.

We have signified that we will not vote against this legislation. I do, however, reiterate that the Liberal Party stands opposed to the principles contained in the legislation and gives notice that it will watch the development of the legislation very closely indeed.

Hon E.J. CHARLTON: The National Party supported the stance of the Liberal Party when this legislation appeared before Parliament some weeks ago because so much of the responsibility of Government and departmental operations in this State are becoming centralised in Canberra. Hon Derrick Tomlinson has outlined in depth our many concerns. I simply add that we support these necessary measures today. We have known for some time that such action would need to be taken because we could not subject businesses in Western Australia to inconvenience or to the burden of extra costs incurred as a result of the Federal Government's desire not to accommodate our concerns. The necessary changes involved are obvious. This is not the first time that legislation has been rushed through at the direction of the Federal Government, resulting in further amendments to overcome subsequent problems. We support the Liberal Party in its moves today to allow the legislation to proceed.

Centralisation of power is the crux of all our difficulties. It was all very well for Government members to interject in a jovial way during the comments by Hon Derrick Tomlinson; it was all very well for members to consider that a cup of tea is more important than this legislation. However, the important point is that members of Parliament are elected to represent the people – and that point has never been more important than it is today. We should not lose sight of the fact that we have been elected to represent the people; we have not been elected to bow and scrape to the Federal Government. It is about time the media took note of that message. Unless we keep that message uppermost in our minds, the future of the people of Australia will be very bleak.

We support the Bill and the proposed amendments to it.

Hon R.G. PIKE: I wish to talk briefly about the ambush that has been placed on the State by the Attorney General, and the ambush placed upon businesses, brokers, accountants and lawyers in this State. I want the Chamber to reflect that the Liberal Party stand on this matter has not been incorrect.

I make the point with some degree of firmness that on 16 May the Legislative Council carried a resolution which was moved by me and voted for by the Labor Party and which read in part –

That this House resolves –

- (1) to inform the Attorney General that it does not support the proposal being discussed as it constitutes in substance and effect a breach of the principles set out in the motion . . .

The motion continued later –

- (3) That this Parliament should not be asked to approve any law that transfers constitutional power or authority to the Commonwealth.
- (4) That the State should retain the full benefit of and rights under the High Court decision.

And particularly important –

- (6) That there should be real and substantial political, constitutional and administrative power retained by the State.

The motion stated that the consequences of rejection of any such legislation would rest with the Attorney General and the Government.

Four sitting days before the House rose we were presented with a very complicated proposal to transfer the jurisdiction of corporate law from this State to the Commonwealth Government. Without apology, I say that was an ambush. It created a circumstance such that brokers, businesses, accountants and lawyers – and the Opposition itself – were placed in a position which was well designed to create a situation where the impost of the law by 1 January was such that people would find themselves in grave difficulty in trying to observe the law. The Government used the rule of law, and the obvious good intentions of people to observe the law, to ambush people in this State.

It will be my intention prospectively, probably through the Standing Committee on Constitutional Affairs, to recommend an amendment to the Standing Orders of the Legislative Council that no such transfer of power, State to Commonwealth, can be effected by this House prospectively unless it sits before this place for three months. Thus the Legislative Council will be able, by passing laws such as that which cannot be suspended, to create a circumstance where law as far reaching as this can be properly considered by the Legislative Council and not catapulted through this place as has happened with this legislation.

Is the Attorney General prepared to undertake now that he will make absolutely certain that all records of Corporate Affairs and departments hitherto under his administration and power will continue to be made available to the Select Committee inquiring into this area, and to the Royal Commission? I realise that transitional powers are contained in clauses 80 to 86 of the Bill, but I pause for the Attorney General to give that undertaking.

Hon J.M. Berinson: It is a matter upon which I would have to get advice.

Hon R.G. PIKE: The Attorney General will have to get advice.

Hon J.M. Berinson: I have not put my mind to that matter before.

Hon R.G. PIKE: I now quote from the Senate *Hansard* comments made by Mr Hartnell to the Standing Committee on Legal and Constitutional Affairs, as it is time to put the record straight. On page 371 of the Senate *Hansard* Mr Hartnell is reported as having said –

I said to the Western Australian Opposition parties in the upper House that if, at the end of the day, the Parliament of Western Australia – not the Opposition parties but the Parliament of Western Australia –

Hon Mark Nevill: Are you are trying to blame me for this mess?

Hon R.G. PIKE: The yahoos opposite will have an opportunity to speak in a moment. The quote continues –

– reached a position in relation to corporate regulation that was different from the rest of Australia, I believed the rest of Australia had no choice but to work out some way of living with that . . .

The Attorney General has hitherto stated, "Oh yes"; however, he changed his mind afterwards.

Hon J.M. Berinson: What is the point you are making? Are you seriously suggesting that this State could go it alone even at this late stage?

Hon R.G. PIKE: I have only a few minutes left; the Attorney General can make his points later.

This is a continuation of the plan put into effect by the Commonwealth Whitlam and Murphy Labor Government, of which the Attorney General was a member. The plan was to transfer the real and absolute powers for corporate Australia to a centralist control. This is now in the process of being effected.

Regarding the ambush – history will show that that is exactly what it is – which the Attorney General has imposed upon this Legislative Council and upon the professions in Western Australia, the question we must ask ourselves is: Has Attorney General Berinson lost his integrity?

Hon John Halden: Have some credibility, man!

Hon R.G. PIKE: The member can laugh afterwards.

Hon John Halden: You are making a fool of yourself.

Hon R.G. PIKE: The Attorney General, along with the South Australian Attorney General, supported the High Court case and then backed off.

Hon J.M. Berinson: I do not think you understand the first thing about this issue!

Hon R.G. PIKE: The record will speak for that.

Hon J.M. Berinson: Have you taken an interest in this matter over the past three months?

Hon R.G. PIKE: The Attorney General was part of the cabal that gave this Parliament four sitting days in which to deal with a matter of intricacy and complication; that speaks for itself.

Several members interjected.

Hon R.G. PIKE: I do not intend to be detoured by the comments of members opposite.

Members must determine whether the Attorney General has lost his integrity. Was the Attorney General part of the ambush imposed on the professions and businesses in this State? The facts speak for themselves.

Hon J.M. Berinson: They sure do; you don't!

Hon R.G. PIKE: History will also prove that only the Commonwealth Government and/or the stockbrokers of Australia could make a determination to exclude stockbrokers from the fidelity fund. Stockbrokers have contributed to that fund for 25 years, and it would only require legislation from the Commonwealth and from stockbrokers to change that situation. The Opposition and the professions in this State were backed into a corner with a predicated fear that they were to be excluded from the fund, with stockbrokers in other States saying, "You will no longer be included." If every point made were correct and they were to be excluded, all that was necessary to rectify the situation was Commonwealth legislation and the goodwill of the stockbrokers; this would apply on a similar basis to the previous cooperative scheme. Members will notice it was a matter of "woulds" and "coulds"; history will prove it was easily rectified.

Hon J.M. Berinson: The Commonwealth made it clear that it would not legislate in that way.

Hon R.G. PIKE: We are debating the transfer of corporate affairs powers. Notwithstanding the camouflage comments made in Brisbane by the Prime Minister, it is now a matter of record that State Government Ministers rejected and repudiated the notion that areas of State administration are under attack by the Commonwealth; these are, education, police, traffic, licensing, the environment, resources, health, electoral matters, transport, local government and industrial relations.

Hon Fred McKenzie: What is left?

Hon R.G. PIKE: If this continues we will not have a State Government with any power in this place in 10 years' time.

I conclude as I began: This is an ambush perpetrated on this State by Attorney General Berinson, and the question remains as to whether he has retained his integrity.

Hon J.M. BERINSON: I am sorry that the debate should end on such a pitiful note. At least until Hon Bob Pike spoke, some semblance of argument was advanced. Hon Bob Pike allowed that to go down the drain with his nonsensical talk about integrity and by asking

whether I was part of an ambush to deliberately mislead the Parliament and the people of Western Australia over the last three years. In fact, during that time Western Australia led the way among the other States in supporting a position on companies legislation which would have seen a very different position from that which we now face. It is also remarkable that Hon Bob Pike placed all his emphasis on a question about my integrity when his own is so much at stake. Not five minutes before raising the question of integrity, he referred to his motion of 3 May, and indicated that it had received Government support. I have taken the opportunity to look at the 3 May *Hansard* and the position is that he did not move a motion — he moved an amendment. We did not support it; we opposed it. Apart from those points, he was pretty well right!

The Legislative Council has witnessed some remarkable events in its time, but it is doubtful whether there has been a performance which has been as senseless and damaging as that of the Opposition blocking this corporations Bill. With its irresponsible stand on this Bill, the Opposition has caused immense harm to this State.

Hon P.G. Pental: What a joke coming from someone who has lost thousands of millions of dollars!

Hon J.M. BERINSON: I can understand Mr Pental's embarrassment, but how about his keeping to the subject.

Hon P.G. Pental: I am not embarrassed.

Hon J.M. BERINSON: Neither Mr Pental nor his colleagues can deny that the Opposition's stand on this Bill has caused immense damage to this State and the business community of this State.

Hon P.G. Pental: You are the one who has lost the money.

Hon J.M. BERINSON: This stand has also brought this House into disrepute and ridicule; this is from the very people who purport to show that the Legislative Council is democratic — which we know it is not — and responsible.

The harm to the State is twofold: In the first place, we have been held up as a joke both interstate and internationally. Commentators and the Federal and other State Liberal Party leaders have competed to find phrases to adequately convey the scorn they have for the approach of the Liberal Party in this Parliament. As a result of that approach the State as a whole was detrimentally affected. I recall some of the descriptions of the State Liberal Opposition on this issue: "Gilligan's Island", "King Canute turning back the tide", "nirwits", "idiots", and "bloody mad".

Hon P.G. Pental: Are these comments by your members?

Hon J.M. BERINSON: "Ideological lunacy" was Mr Greiner's distinctive contribution.

Hon P.G. Pental: They have not called us "corrupt"!

Hon J.M. BERINSON: These are not my comments. I am quoting these from commentators and from Mr Pental's Liberal Party colleagues in other States and in the Commonwealth.

Hon P.G. Pental: At least the word "corrupt" does not appear.

Hon J.M. BERINSON: All these comments have been directed primarily at the Liberals, but by extension they have done the State no good. The experience of the business community was one of confusion, uncertainty and utter dismay at the hopeless position created by the initial rejection of this Bill. At least 3 000 and as many as 19 000 companies operating in Western Australia and elsewhere were facing the prospect that as of next Wednesday they would be operating illegally. The Stock Exchange was wondering whether it could continue to function at all in this State and as late as this morning it was still working on urgent contingency measures. One hundred and fifty staff in the Corporate Affairs Department were left in limbo with absolutely no idea of their future career prospects. None of these difficulties should have been surprising. On the contrary all were predicted and inevitable. In fact, it is no secret that these difficulties constituted a vital factor in guiding the State Government's acceptance of the Australian Securities Commission scheme in spite of its earlier expressed reservations.

Politics provides ample scope for confrontation, bluff and going to the line, so to speak, but

there have to be limits when the State's welfare, its standing and the strength of its economy are at stake. The Opposition has been stubbornly unrealistic and irresponsible, and even its acceptance of the Bill today leaves us very far behind the field.

A common criticism of the Commonwealth Government has been that its process of this Bill has been rushed. I do not disagree with that. In fact, at least six months ago I expressed concern at the continued insistence by the Commonwealth to have the legislation effective from 1 January. That pressure on the timetable has created difficulties everywhere, but in Western Australia the process has not been rushed. Explicitly, as a result of the Opposition's rejection of this Bill in this place, there has been no action in this State at all and the effect of that is that the business community in this State is worse off than is the business community everywhere else in Australia.

Hon Derrick Tomlinson: That is nonsense.

Hon Peter Foss: You said it would not be ready before March.

Hon J.M. BERINSON: What would not be ready?

Several members interjected.

Hon J.M. BERINSON: I am anxious to hear the member and I am inviting a repetition, but a little louder.

Hon Peter Foss: You said it would not be ready in Western Australia before March.

Hon J.M. BERINSON: That is right and that is very close to the position that we have, but the difficulties in other States have been worked on in order to create a more orderly transition, and that will not now be possible in this State.

The ASC will start, given the passage of this legislation, on 1 January in this State. Everybody in this Chamber would be aware that Mr Tony Harnell, on the initial rejection of this legislation in this place, indicated that the preliminary work in this State would be suspended completely. It has been suspended completely, and given the passage of this Bill today there will be precisely one working day in Western Australia to gear up for the introduction of the ASC system in Western Australia on Wednesday of next week. That is the position we have been left in and that is the position created entirely by the Opposition as a result of its previous blockade. An appalling mess has been left and it brings the Opposition no credit.

I do not want to leave this discussion, brief as I intend to be, on these generalisations. The least I should do is refer to the three amendments which Hon Derrick Tomlinson brought to mind and which have had wide currency as representing the distinctive approach of the Opposition. As Hon Derrick Tomlinson pointed out there were three such amendments. The first amendment sought a change to the commencement date of the ASC scheme from 1 January to 1 July.

Hon George Cash: Very responsible.

Hon J.M. BERINSON: It was not only not responsible, but it was also totally impractical. The reason is that Hon Derrick Tomlinson was looking for the whole scheme to be delayed until 1 July and that was a matter simply out of this Government's hands.

Sitting suspended from 3.45 to 4.02 pm

MOTION

Questions Without Notice – Deferral

HON J.M. BERINSON (North Metropolitan – Leader of the House) [4.02 pm]: I move –

That the taking of questions be deferred until the Corporations (Western Australia) Bill has been passed and until after Order of the Day No 2 has been dealt with.

HON GEORGE CASH (North Metropolitan – Leader of the Opposition) [4.03 pm]: The Leader of the House has discussed this matter with both me and the Leader of the National Party. We are prepared to support the motion, firstly, on the basis of the technical nature of the Corporations (Western Australia) Bill which the Leader of the House wants to continue debating and, secondly, acknowledging the fact that the Legislative Assembly is currently

awaiting the Bill to be passed in this House before it is able to commence its business this afternoon. Whether you, Mr President, will accept my comments referring to the Legislative Assembly remains to be seen. The Opposition supports the motion.

Question put and passed.

CORPORATIONS (WESTERN AUSTRALIA) BILL

Committee

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

Clause 1: Short title and purposes –

Consideration resumed.

Hon J.M. BERINSON: I propose to deal in turn with the three proposed amendments referred to by Hon Derrick Tomlinson. The first relates to the date of implementation of the legislation. I believe I have already pointed out that it has never been in our hands to affect the date of implementation of the legislation by the Commonwealth and all the other States, which have agreed to 1 January. The second proposed amendment was to ensure the capacity of this Parliament to accept or reject amendments introduced by the Commonwealth. If I understand the position correctly, it was also part of the Opposition's proposal that it should be open to either House of this Parliament to consider regulations to the Australian Securities Commission legislation with a view to permitting disallowance under our general rules. The problem with that proposition was that if Western Australia were to have the right to pick and choose among the amendments and/or the regulations introduced by the Commonwealth, that power would have to be enjoyed by all the other States and the Parliament of the Northern Territory. The end of that process would be inconsistent with the basic aim of the Bill to provide uniform national legislation.

Hon Peter Foss: It did not pose a problem with the NCSC legislation. They had the same power with that legislation.

Hon J.M. BERINSON: Mr Foss is saying that it would be all right as long as this was a power which was introduced but never exercised.

Hon Peter Foss: It is the power you have the right to exercise if people behave irresponsibly.

Hon J.M. BERINSON: The most basic of all the propositions attached to the ASC proposal is uniform national legislation and an ability by any Parliament of any State or the Northern Territory to make its own choice among amendments would inevitably open the way to disuniformity.

The third matter related to the question of the administrative powers of the Western Australian regional commission. There is no need to deal with that matter in any detail because Hon Derrick Tomlinson was fair enough to indicate that that also would require the Commonwealth to enter into an agreement with this State in different terms from those applying to all other States. That was never acceptable and my further discussions with the Commonwealth Attorney General in the last two or three weeks – as this problem threatened to turn into a crisis – only went to confirm that that was the clear and unqualified approach of the Commonwealth which left amendment number three with nowhere to go.

In relation to Mr Tomlinson's rearguard action, so to speak, concerning the State's always having the right to withdraw from the uniform scheme by repeal of the Bill with which we are now dealing, I agree that is the legal position, but the vehemence and passion which he invested in declaring that reservation were misplaced. The truth of the matter is this State would be in enormous difficulty if it did not enter the national scheme come 1 January next week. However, at least the State would have a functioning Corporate Affairs Department at that time to carry on as best it could in the difficult and almost impossible circumstances that would arise. However, if at some future time it is contemplated that the State might unilaterally withdraw from the national scheme the position clearly would be very much worse. No equivalent of a Corporate Affairs Department would be in place to take over from a national body and all the difficulties which have come to attention in the last few weeks would be magnified many times. Belated though it is, the change of position by the

Opposition on this Bill is welcome. The alternative was too horrific to contemplate, but we were forced to contemplate it as the deadline for the legislation came closer and closer. For all practical purposes, today is the very last day on which we can effectively move to remedy the position. I welcome the fact that at least at this last gasp, so to speak, the Parliament can ensure continued orderly regulation of companies and securities in this State and throughout Australia.

Hon R.G. PIKE: I want to correct a comment made by the Attorney General. I referred to debate which took place in this Chamber on 3 May and I said that a motion had been carried on that date. The Attorney General repudiated those facts incorrectly. It is stated at the top of page 150 of *Hansard* that the following amendment was moved to the motion –

BUT SUBJECT ALWAYS to the following conditions precedent –

- (3) That this Parliament should not be asked to approve any law that transfers constitutional power or authority to the Commonwealth.
- (4) That the State should retain the full benefit of and rights under the High Court decision.
- (5) That the State should not concede the benefit of any undecided constitutional doubt in favour of the Commonwealth.
- (6) That there should be real and substantial political, constitutional and administrative power retained by the State.

It is recorded on page 153 of *Hansard* that the question was put and passed and that the Labor Party voted for it.

Hon J.M. Berinson: Where does it say that the Labor Party voted for your amendment?

Hon R.G. PIKE: I remember very clearly that the Labor Party did. Obviously the recall of the Attorney General is fading. He has selective memory recall and, with panache and style which is beginning to fade, he makes a statement with great authority and assertion as though that which he says is right and that which was hitherto said by me is wrong. The tragedy for him is that *Hansard* is available for all to read, and I am sure the Attorney General is not about to disagree with me again.

Hon J.M. BERINSON: I will surprise Hon Bob Pike because I intend to disagree with him. I am the first to admit that my powers are fading; my hearing from time to time gives me a little difficulty, and I must say that the comments Hon Bob Pike regularly makes in this Chamber give me more difficulty. I will not labour the point because the Parliament has not been recalled in order for Hon Bob Pike and me to have a chat about something as inconsequential as an amendment he once moved. Hon Bob Pike said he moved a motion and the Government agreed to it. I said he did not move a motion, he moved an amendment and the Government did not agree to his amendment; the Government opposed it. Mr Pike has conveniently referred to page 150 of *Hansard*, which is roughly halfway through the proceedings with which we are dealing. I go back to page 148 of *Hansard* wherein I moved a motion that stated in part –

This House supports the view of the Western Australian community that a minimum requirement of any new scheme should be that there will be –

- (1) No reduction in the level of regional services.
- (2) No unnecessary duplication between companies and securities administration and the general business regulatory framework.

It is recorded on page 150 that Hon Bob Pike moved the amendment he has quoted. In the course of further comment I went on to indicate that I did not much like that amendment, although I was not inclined to put it to a division. I concluded by saying –

Unless members say something substantially different I will use this debate as what is effectively a request for a withdrawal of the amendment and as a reply to the main motion.

I am not in the habit of asking for the withdrawal of amendments with which I agree. It would stand to reason, on the basis of the same record to which Hon Bob Pike refers, that the position is as I have put it. But that is not why we are here.

I commend this clause to the Committee.

Hon R.G. PIKE: The amendment to which the Attorney General referred – it seems he cannot even read correctly – was moved by Hon George Cash. I did not move an amendment; I moved a substantive motion, as recorded on page 8417 of *Hansard*. The Attorney General is making a selective comment on the facts, as he always does to try to make a point, and on this occasion he is incorrect.

Hon J.M. Berinson: I say nothing further, but my silence is not to be taken as acquiescence.

Clause put and passed.

Clause 2 put and negatived.

New clause –

Hon J.M. BERINSON: I move –

Page 2 – Insert after clause 1 the following new clause to stand as clause 2 –

Commencement

2. This Act shall come into operation on 1 January 1991.

This is to ensure that the Act will come into operation on the same day throughout Australia.

Hon PETER FOSS: The Attorney General previously expressed the view that the Corporate Affairs Department would not be able to function properly in Western Australia until March. What measures will be taken in the meantime to assist Western Australians to get some form of service from the new regulatory system?

Hon J.M. BERINSON: I hope I am right in saying that I did not indicate that the Corporate Affairs Department could not function until March, but rather that the Australian Securities Commission could not properly be established until February or March. It is contemplated, after discussion with the Commonwealth Attorney General and particularly with the chairman of the ASC, that initially the whole of the Corporate Affairs Department will be for all practical purposes seconded to the ASC from 1 January.

Over the past few weeks arrangements for the establishment of the ASC's own offices have been frozen and, more importantly, no action has been taken with regard to offers of Commonwealth employment to current State Corporate Affairs staff. I have an assurance from the Commonwealth Attorney General that the latter point in particular will be expedited as far as possible and, with luck, it may be possible to have the new arrangements in place and the new offices established and operating some time in February.

Hon PETER FOSS: Is 1 January the chairman of the ASC's preferred starting date? If not, what is his preferred starting date, and why has that starting date not been adopted?

Hon J.M. BERINSON: The preferred starting date for the State is 1 January and that is why it is now being advocated. The overriding consideration in this issue is the need to ensure national uniformity on that date because otherwise, as has become clearer from day to day, the difficulties faced in this State would be very serious indeed.

Hon PETER FOSS: The Attorney General knows the point I am trying to make. He has pointed to the inevitability of this starting date because everybody else will be starting on 1 January; but had there been cooperation between the States to ensure the best possible starting date, what would be that date?

Hon J.M. BERINSON: I do not see that this matters any more. I am on the record as having said that I am inclined to the view that 1 July would probably be preferable, although 1 March might be possible, depending on the speed with which the Commonwealth is able to progress its arrangements. As I have now said on a number of occasions, individual State preferences are irrelevant at this stage, given the absolute need to ensure that the date already agreed to and enacted by the Commonwealth, all other States and the Northern Territory should apply here at the same time.

New clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: This Act and applicable provisions of Western Australia not to be affected by later State laws –

Hon PETER FOSS: I would like the Attorney General to put on record what is intended by this clause, which states in subclause (1) –

An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, this Act or the applicable provisions of Western Australia.

I take it that it is "not to be interpreted" by way of necessary implication but that that is the distinction to be made between subclauses (1) and (2); that express amendment can still take place, but amendment by necessary implication is not to take place. Is that the intention of the clause? I take it that the words "applicable provisions of Western Australia" refer to things such as corporation law, regulations, Commonwealth law regulations, and so forth and that in view of that, and after comparing it with subclause (2), it is intended to mean that it is not to be interpreted by way of necessary implication as amending it but that express provision amending those things would have that effect.

Hon J.M. BERINSON: As Hon Peter Foss has pointed out, clause 5 provides that a later Act or statutory instrument is not to be interpreted as amending, repealing or otherwise affecting the Act or applicable provisions – that is, the corporations law or corporations regulations, and so on, of this State – unless it expressly so provides.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Application in Western Australia of the Corporations Law –

Hon PETER FOSS: It is not absolutely clear from the legislation whether amendments to the corporations law are capable of amending this legislation. I would have thought that legislation which is incorporated by reference should not be capable of amending this legislation; in other words, it should not be, even expressly, capable of changing the terms of this Bill. I would like the Attorney General to confirm that it is not the intention of this clause to render the Commonwealth capable of amending the wording of this legislation even by express provision.

Hon J.M. BERINSON: My understanding of the position is that this clause is meant to apply to the corporations law set out in section 82 of the Corporations Act as amended by the Commonwealth Bill and as in force for the time being. It would relate to the legislation in the hands of the Commonwealth, in any event.

Hon PETER FOSS: That does not answer my question. I understand that the corporations law as it applies for the time being will apply in Western Australia once this Bill becomes an Act. I do not want to see the corporations law purporting to amend this legislation. For instance, what if it deleted clause 5(2)? I do not believe it should be capable of doing that. It should be seen as a power for the Commonwealth to legislate to cause something to become part of the law of Western Australia but consistent with this legislation and not in any way detracting from its enabling Act.

Hon J.M. BERINSON: The introduction to clause 7 refers to the corporations law set out in section 82 of the Corporations Act. My understanding of the position is that the provisions that follow apply to that law. That does not include the State Act.

Hon PETER FOSS: My concern is that the corporations law should not be capable of being amended in a way which in effect purports to have something to do with this legislation. I think that the Attorney General agrees with me that it would not be possible to amend the corporations law for it, in effect, to be a later piece of legislation amending this legislation. It can only amend itself internally within the character of what it is; it cannot reach out and pull its enabling Statute up by the boot straps thereby doing something to its enabling Act, I would have thought.

Hon J.M. BERINSON: Yes, and I thought that was covered by the specific reference to section 82. In any event, there has never been any suggestion that amendments to the Commonwealth Act could have the effect of amending the State Act. In my view, the effect of proposed section 7 of the State Bill would not affect that intention.

Clause put and passed.

Clauses 8 to 55 put and passed.

Clause 56: Laws to be applied –

Hon J.M. BERINSON: I move –

Page 33, line 26 – To delete "9" and substitute "8".

I have arranged for the distribution of an explanatory memorandum, and members will note that this amendment is to remedy a typographical error.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 57 to 81 put and passed.

Clause 82: Staff –

Hon J.M. BERINSON: I move –

Page 53, lines 17 and 18 – To delete the lines and substitute –
may –

- (d) at any time within 2 years after being so appointed, apply for appointment to an office in the Public Service of

Subclause (1) paragraph (a) of proposed section 82 as it currently stands would allow those Corporate Affairs staff who elect to transfer to the Australian Securities Commission the right to apply for appointment to vacant positions in the State Public Service, and to appeal against recommendations for appointment, in perpetuity. This would allow these staff to apply for a State Public Service position or to appeal against a recommendation even where they have taken a promotion in the Commonwealth Public Service and thereby elected to pursue a career with that service. The right to elect to retransfer to the State Public Service which will be conferred by proposed subclause 82(2) will, on the other hand, be limited to a period of two years following transfer to the ASC. The purpose of the proposed amendments is to limit to the period of two years after transfer to the ASC the right of transferring staff to apply for State Public Service vacancies and to appeal against recommendations. That right will also not be available to staff who are promoted within the Commonwealth Public Service.

An explanatory memorandum has also been distributed to members, and I need add only that this amendment, and indeed the whole provision, is in line with the discussions and offers which the State made in earlier anticipation of the passage of the original legislation.

Hon DERRICK TOMLINSON: The terms and conditions of transfer of State public servants to the Commonwealth Public Service was one of the matters dealt with in the heads of agreement. I think I am correct in saying that the Attorney General characterised this as one of the most difficult matters of discussion and resolution in the Ministerial Council. That matter was not resolved on 29 June and was subject to further negotiations at the meeting of the Ministerial Council at Hobart.

Even though the conditions of transfer were the subject of Ministerial Council negotiation and, I assume, agreement, and are now contained in the legislation, have the conditions of transfer been negotiated between the employer – in this case, the Commonwealth Public Service – and the unions, at both State and Federal level, who represent those persons currently employed by the Corporate Affairs Department who will be subject to offers and transfers to the Commonwealth Public Service? I draw attention to the differences between the conditions of employment of State public servants and their counterparts elsewhere, and indicate that our State public servants have more attractive conditions of employment; for example, long service leave after seven years rather than 10 years elsewhere. Have those matters been resolved at the employer–employee level or only at the Ministerial Council level?

Hon J.M. BERINSON: There have been lengthy negotiations on this issue, and I think it is fair to say that one of the reasons for the provision with which we are now dealing, which will give a right of return to the State Public Service transferees, is the difficulty of reaching

an agreement that will be satisfactory to all parties. It is not only a question of different conditions as between the Commonwealth and State Public Service in a general sense but also the additional difficulty that the Commonwealth is dealing on an individual basis with the positions in the new ASC office and is making offers to members of the State Public Service to come into a particular position.

Hon Derrick Tomlinson: Making offers to some members of the State Public Service.

Hon J.M. BERINSON: No. Part of the agreement between the Commonwealth and the States is that existing State officers should have priority in the offers being made for employment. That applies to the whole of the staff of the Corporate Affairs Department. The difficulty arises from the fact that in many – if, indeed, not all – cases the positions which the Commonwealth is offering as the equivalent of the current State positions have a lower salary, apart from questions of general conditions. Two measures are proposed to be implemented in an attempt to meet that difficulty. One is by way of a salary maintenance arrangement, which will apply for four years.

Hon Derrick Tomlinson: Is that substantive salary status or acting salary status?

Hon J.M. BERINSON: Substantive.

Hon Derrick Tomlinson: So some people may lose up to \$12 000?

Hon J.M. BERINSON: It will apply to substantive positions and to those members of staff who have held acting positions for a lengthy period.

Hon Derrick Tomlinson: What is the lengthy period?

Hon J.M. BERINSON: Something longer than a short period!

Hon Derrick Tomlinson: Something longer than a day!

Hon J.M. BERINSON: I was making the point that efforts have been made along two basic lines. One is salary maintenance for a period of four years, and in a restricted number of positions, which are in the minority, the salary maintenance would actually continue for five years. The second line of approach is by means of the clause with which we are now dealing; namely, to permit transferees to the Commonwealth Public Service who are dissatisfied with the outcome of that move to opt to return to the State Public Service as long as they exercise that option within two years.

There is no reason to doubt that two years will be long enough for these officers to decide where they would prefer their future career paths to lie. The combination of these provisions, many of which have been negotiated up from much less generous starting points as far as the Commonwealth is concerned, can reasonably be accepted as appropriate for the circumstances.

Hon DERRICK TOMLINSON: On 20 December the Public Service Commissioner contacted the unions in Western Australia representing the people employed by the Corporate Affairs Department and asked them to lodge a log of claims for the conditions of transfer.

Hon J.M. Berinson: Was that the Commonwealth commissioner?

Hon DERRICK TOMLINSON: The Commonwealth commissioner. Those long negotiations must have been rather fruitless for the Commonwealth to decide on 20 December to ask the unions to present their log of claims.

If a person elects to join the Commonwealth Public Service and then takes advantage of the amended clause to transfer back again within two years or seek a promotional position within the State Public Service, will that person carry with him or her all the rights and privileges he or she may have had, had he or she continued in the State Public Service?

Hon J.M. BERINSON: That is the intention, and it is believed that is fully met by the arrangement. For example, should the prior State position have had increments of salary, the transferee coming back to the State Public Service could have the benefits of that. Another example would be long service leave, when the period in the Commonwealth Public Service, as I understand the position, would also be credited.

Amendment put and passed.

Hon J.M. BERINSON: I move –

Page 54, line 5 – To delete "Subsection (2) does" and substitute –

Subsections (1) and (2) do

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 83 to 99 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

HON J.M. BERINSON (North Metropolitan – Attorney General) [4.45 pm]: I move –

That the Bill be now read a third time.

HON PETER FOSS (East Metropolitan) [4.46 pm]: We have heard speeches today mentioning sections 51 and 122 of the Constitution. However, it strikes me that the real problem behind this Bill is to be found in section 125 of the Constitution, a section which has not had a great deal of litigation about it, nor even public discussion, over the years; but it gets to the root of the problem we in Western Australia face. I shall read a somewhat paraphrased version of this section. Section 125 reads –

The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be . . . in the State of New South Wales, and shall be distant not less than one hundred miles from Sydney. . .

The Parliament shall sit at Melbourne until it meet at the seat of Government.

That seemed to be a very minor provision in the Constitution. Where will we put the capital? It was said that it must be in New South Wales, and it must be no less than 100 miles from Sydney. While the country is making up its mind where the seat of Government is to go, the Parliament will sit at Melbourne. Anybody who has had anything to do with influencing decisions knows perfectly well that the person closest to the decision maker is the person who has the greatest opportunity of getting a decision in his favour.

The PRESIDENT: Order! The honourable member knows perfectly well why I am calling him to order. In the third reading stage he cannot introduce new material; he cannot rehash the second reading debate. He is limited to giving reasons why he will either support the Bill or vote against it. He must relate what he is saying to whether he will support the Bill or oppose it. He is not to raise a new debate.

Hon PETER FOSS: I do intend to comply with that. The problem is that I normally line up my argument from some distance away.

Hon John Halden: And miss!

The PRESIDENT: With respect, that is not the way to do it.

Hon PETER FOSS: This is a Bill which should not be passed. The reason it should not be passed is because this is a very sad day for the people of Western Australia.

Hon B.L. Jones: You will vote against it, will you?

Hon PETER FOSS: I am surprised by the levity of Government members in this Chamber, because everyone here should be aware that whether or not we pass this Bill, whatever our reasons for voting in favour of or against it, it cannot be a good day for Western Australia.

Hon P.G. Pendal: Hear, hear!

Hon PETER FOSS: I am surprised at the levity of members opposite today, because although I believe this Bill will be passed, although I shall be supporting it, every member of this Parliament today should be wearing a black armband. This legislation is not being passed by this Parliament because we want it, because we have heard the Attorney General himself say what he believes should be the proper way to deal with this legislation. We have a system capable of being operated in such a way as to preserve the integrity and the position of the States. We have certain preconditions that the Attorney General himself has put on the

passage of this legislation, and we have heard him answer questions during the Committee stage which indicate certainly that we have no guarantee as to the quality of service in Western Australia. We have no guarantee that Western Australians will receive the quality of corporate service they have become used to and which they can expect.

We are being told that the reason this legislation should be passed is that we have no option; that the alternative is that Western Australia is left out on a limb; that we lose what was previously a cooperative system set up by all the States together. That is thrown out because the remainder of the States have decided otherwise. It is not something we have taken up voluntarily. I hope not even Government members would say they wanted this situation to go forward in the way it has, that they wanted this Parliament to have only three days in which to consider a Bill, that they wanted this Bill to come before this Parliament as has been outlined by Hon Derrick Tomlinson – hot off the press, without the Attorney General's really knowing what would be in it. That is not what any of us wanted. It is a disgrace that this legislation has been foisted on this Parliament by the Commonwealth Government and, I am sad to say, the Governments of New South Wales and Victoria.

Hon J.M. Berinson: And Queensland, South Australia, Tasmania and the Northern Territory.

Hon PETER FOSS: Many of those Governments found themselves adopting the same attitude as did the Attorney General. They saw themselves as not having an option. I do not believe the Governments of South Australia, Queensland, Tasmania or the Northern Territory wanted this situation – and I hope the Attorney General is not saying that he wanted this situation. I hope he is not saying this is the legislation he wanted; or is he saying that? I do not believe he would be consistent with the rhetoric he has been using in this Parliament if he said he wanted this legislation, or that he wanted it served up to the Parliament in the way in which it has been served up. I would have hoped that rather than gloating over us he would have had the guts to stand and say that the behaviour of the Commonwealth Government in serving up the legislation this way is disgraceful – and it is disgraceful.

Hon P.G. Pental: Hear, hear!

Hon J.M. Brown: That is your opinion.

Hon PETER FOSS: I sincerely hope that is the Attorney General's position. I would like to hear the Attorney General say that, because if the Attorney General does not say that, when it comes to the crunch his rhetoric will not measure up with what is happening today. I sincerely hope that the Attorney General does say, "Like it or not, we have to take this legislation but I for one do not believe that it has been appropriately handled by the Commonwealth Government or by the Governments of New South Wales and Victoria." I drew the Attorney General's attention to section 125 of the Constitution of Australia because in this particular instance – and it is not in the Bills before us but this is what persuaded them to go ahead and foist this on Western Australia – the chairmanship and deputy chairmanship of the Australian Securities Commission have very conveniently been carved up between New South Wales and Victoria. They are guaranteed the service we believe all Australians should have. They look at us and say, "What are you worried about? What is there to concern you?" In federation that has always been the problem we in Western Australia have faced. In New South Wales and Victoria they do not understand the problem we face of being so far from where the decisions are made. We say we have difficulties in getting decisions made; we say we have difficulties in that we must fly to Canberra, Sydney or Melbourne. They say, "What is the problem?" It is not just a matter of their understanding our problem but nonetheless riding roughshod over us; I do not believe they even understand the problem. They have no conception of what it means to be a person in Western Australia who wishes to get something done with Government. The record of the Federal Government has been disgraceful and that is why I believe this legislation is not in the best interests of Western Australia. Whether we are faced with passing it or not, members on the other side of the House should take the grins off their faces.

Hon J.M. Berinson: Why are you so embarrassed?

Hon PETER FOSS: They were grinning earlier on, and the Attorney General knows they were.

Several members interjected.

The PRESIDENT: Order!

Hon PETER FOSS: Hon Tom Stephens could not wait to say, "Now it is time for you to eat humble pie."

Hon Graham Edwards: You were wrong.

Hon PETER FOSS: We tried for Western Australia. At least we did try, and that is the reason we opposed this legislation. In principle I believe the Government would agree that we are right; in principle the business groups in Western Australia have also agreed we are right. The problem is that the mafia has made us an offer that we cannot refuse. The mafia is saying to us, "If you do not accept this offer we will burn down the restaurant." That is what they have told us all along. All the problems that have been pointed out could have been overcome by appropriate Commonwealth legislation – in fact could have been overcome in large measure by appropriate Western Australian legislation – but were they trying to stop the restaurant burning down? No, they got out the petrol and poured on a little more because they were very keen to see us eat humble pie as Hon Tom Stephens wanted. They were not interested in Western Australia. They knew that, given the opportunity, they would make us eat humble pie. We were doing it for Western Australia, and members opposite were not concerned by the fact that they know in their hearts that this legislation is wrong and that Western Australia will be badly served by this legislation. Members opposite would really like to see us eating humble pie. I have news for them: We are proud of the stand we have taken; we are proud we stood up for Western Australia.

Hon Graham Edwards: Tell that to Mr MacKinnon.

The PRESIDENT: Order!

Hon PETER FOSS: We are disgusted that when we did so not one effort was made by this State Government to say to the Commonwealth Government, "We must have something more to offer to the Western Australians to get this solved."

Hon J.M. Berinson: You really know better than that.

Hon PETER FOSS: I know exactly what I am saying.

Hon J.M. Brown: No, he does not know better than that.

Hon Derrick Tomlinson: Don't contradict your leader.

Hon Graham Edwards: You would not even tell your leader what your position was.

The PRESIDENT: Order!

Hon Graham Edwards: He had to come in here to find out.

Several members interjected.

The PRESIDENT: Order! When I call for order everybody should keep quiet. The debate is about to conclude and I certainly do not want to face the possibility of not having a constitutional majority when it does.

Hon PETER FOSS: Even if the Attorney General says now that he was doing something, which I very much doubt, I think the problem goes back further. The only way we really had an opportunity of ensuring that Western Australia would have some ability to be heard with regard to the laws that apply in Western Australia, and to ensure that the service to be provided to Western Australia was maintained, was if this Government had not only used rhetoric but also done something to get the other States to stand up too. The problem one always faces when one receives an offer from the mafia is that unless one has a few other people standing with one what will happen is what has happened in this case.

Members should look at the arrangements. How will this law be amended in the future? We know, because the High Court has said so, that much of the area we are dealing with in this legislation is law which is quite categorically within the power of the State. I confess there are also areas which, although the High Court has not said so, are clearly within the jurisdiction of the Commonwealth.

Hon J.M. Berinson: It has said so only on one area and that is one which the Commonwealth could circumvent very readily, as you know.

Hon PETER FOSS: It is interesting to find the Attorney General so ready to argue the position on the part of the Commonwealth.

Hon J.M. Berinson: I am not arguing the Commonwealth's position. It is about time you argued the State's position and the position of the business community of this State.

Hon PETER FOSS: The Attorney General is making excuses; one must justify one's position and rationalise the situation. That is a fact.

The important point to keep in mind is what has been agreed with respect to the amendment of law in the future. That does not show in this Bill. What has been agreed to, and what Western Australia will be subject to, is this: For future amendments for those parts plainly within the jurisdiction of Western Australia, and for those parts arguably within the jurisdiction of Western Australia, there will be a vote. That vote will be loaded because the Commonwealth will have four votes, plus a casting vote. The States, plus the Northern Territory, will have one vote each; that is, seven votes. This is the new federalism, the new cooperative effort. The Commonwealth will not agree to having an equal number of votes.

Hon P.G. Pental: One—vote—one—value!

Hon PETER FOSS: It does not take too much calculation to work out that the Commonwealth, plus New South Wales and Victoria gives a majority. Once again, New South Wales and Victoria are happy because together with the Commonwealth they have more than 60 per cent of members in the Federal Parliament. As far as the law is concerned, they are all right because they control the numbers; as far as the administration is concerned they are all right because they have all the committees, the chairman and the vice chairman.

Hon P.G. Pental: Labor believes in one—vote—one—value!

Hon PETER FOSS: This has happened, I can assure Mr Pental. It happened with the Loan Council. We are aware of the abject way the Premier has dealt with the Loan Council. This is complete and utter capitulation — nothing less.

To date, we have had a uniform companies system. This is not something new; the law has been uniform throughout Australia for nine years. We do not need a new system. This is the Commonwealth's new system, even though previously we had a uniform system. The Commonwealth is looking for uniform administration; it could have proposed uniform administration without changing the law and taking away the rights of the States. However, that is not the way the Commonwealth works; it ignores the needs of the people of Western Australia; if the needs of New South Wales and Victoria are looked after, everything will be sewn up.

No—one should believe that this has been a great victory for anyone. It is not a victory for the Government; it represents capitulation for Western Australia. Western Australians will suffer because people will not be able to receive the professional services of the past, nor will businesses come to Western Australia as they have previously. We will be deprived. We will find that the dominance of New South Wales and Victoria will be increased. The Government may say that is all right, that happens all the time. It does happen all the time, but that should not be celebrated, regarded as a great move or a wonderful stage set for Western Australia. It is a disgrace. We recognise the inevitability of the disgrace. We recognise that at the end of the line the Opposition cannot do much. We may have been able to do something if the Government were prepared to cooperate or if the Government had the guts to stir up the other States. It did not.

Several members interjected.

Hon PETER FOSS: The Government has been so busy looking after its problems with WA Inc that I do not think it has gone far beyond rhetoric —

The PRESIDENT: Order! There are far too many interjections and private conversations going on. I have told honourable members so many times that they do not need to like what members say but they must listen. Members should allow Hon Peter Foss to finish his speech.

Hon PETER FOSS: One important point should be recognised: This is bad legislation; it has been foisted on Western Australia. Even if I could give to the Government the credit it would like, this legislation is still foisted on Western Australia. It has been accepted by Western Australia in the face of inevitability, not because we want it but because we have no choice. It is not legislation which would ideally have been passed had Western Australia been properly consulted; it is not the legislation that would have been passed if Western Australian interests had been properly regarded under the Federal system. It is not the way

Western Australian interests should have been listened to if talk about new federalism is to be carried in truth.

This is a bad day; it is bad legislation. It is legislation that we should not have been forced to consider. It is legislation which should never have been put up in this disgraceful manner. I do not blame the Government, except by complicity. But do not let anyone think it has been a victory for anybody. It has been a capitulation to Federal power and ultimately it will be to the detriment of the people and businesses of Western Australia. It may take 20 years before we feel the full effect of the legislation but mark my words this legislation will have the same effect ultimately on the ability of the States to do the right thing by their people as the powers previously given to the Federal Government with regard to loans and taxation.

This is not good legislation, but reluctantly the Opposition – having tried as much as we can to change it – faces the fact that the Federal Government was intent on pouring petrol on the flames if we continued to oppose it. An offer which cannot be refused has been made, the match has been set to the restaurant, and unfortunately we have had to give in to the pressure put upon us. The principle we stood for is correct, and it is important we stand by that principle.

HON R.G. PIKE (North Metropolitan) [5.07 pm]: The important point which needs to be made is that prospectively should the Federal Labor Government determine to alter the law, a law with which we in this State would be unable to interfere, and/or alter regulations – for example, should that Government determine that any company capitalised at more than \$2 million and with more than 50 shareholders shall have two members of a union nominated, say, by the ACTU as directors – that will ipso facto happen, and the Parliament in this State will not possess the power to prevent that from happening.

The Attorney General may well say that will never happen. However, I remind the House that there are countless examples of the Commonwealth's taking over powers of the States with alleged goodwill and cooperation, and almost before the ink has dried on the Governor General's signature on the legislation the Commonwealth has repudiated any undertaking and has legislated according to its own centralist, selfish and partisan interests. That has happened with both Liberal and Labor Governments, and that is an important point to make.

In anticipation of the reply the Government may make – such as "That is for the future. Mr Pike is always going off on a tangent. Where are the Socialists?" – I warn the House that within five years it will see in this massive move towards centralisation of corporate powers real teeth being displayed in the form of absolute Canberra power. It is interesting to contemplate that in eastern Europe where massive socialist and communist administrations exist it was found and is being found that multiple centres of economic power and multiple centres of political power are absolutely essential to preserve the integrity and the rights of the individual. It is an incredible blot on our history that the Labor Commonwealth Government, in the face of a worldwide trend, should be enacting legislation to the opposite. One of the fundamental Marxist beliefs is that a central Government must have absolute power, and the Labor Commonwealth Government will continue to impose that belief.

Hon J.M. Brown: Is that Jack or Karl?

Hon R.G. PIKE: The yahoos and the hip hip hoorays can interject, but the facts will speak for themselves! We will observe this happening within 10 years, at the conclusion of which WA will, at this rate, have no real power.

HON J.M. BERINSON (North Metropolitan – Attorney General) [5.11 pm]: I suspect that Hon Peter Foss believed that he was speaking like a statesman; certainly he spoke with apparent authority and great indignation, not to mention volume. The problem is that his statesmanship and indignation are three years out of date in that everyone knows that this legislation has been going through the mill for three years. Why has it taken that long? Is it because all the States, and particularly Western Australia, rolled over and died the first time the Commonwealth indicated that it wished to take over the effective control of companies and securities? Did the States roll over? Did we roll over?

Hon George Cash: You did.

Hon J.M. BERINSON: If we did, how come three years passed before we reached the current stage? The position we have now reached is not one of our preference, and we are on record on innumerable occasions indicating that point. However, we must pursue uniform

business regulations in this country in the interests of the business community of Western Australia and its employees.

Hon Peter Foss and Hon Bob Pike used all manner of pejorative terms stating that we "rolled over", were "betraying the State" and were "not doing the job". However, everything within the capacity of this State Government has been done. The position we have taken in Parliament and in public has been no different from the position we took in the Ministerial Council and in other discussions with the Commonwealth.

It has been our position throughout that it would have been preferable to go down the route of an improved cooperative scheme rather than the Australian Securities Commission system which is now being implemented. When we went beyond that point we also argued for a longer term implementation of the new scheme. Also, we argued not only for additional staff, but also for additional staff of such seniority to ensure that the decision making authority in this State will be adequate and at least comparable to the present position.

Hon Derrick Tomlinson: How many did you get?

Hon J.M. BERINSON: More than was offered and more than the other States.

Hon Derrick Tomlinson: You have two less than currently!

Hon J.M. BERINSON: We have two more than any other State received on a comparable basis. Two more or two less is a matter of —

Hon Derrick Tomlinson: You rolled over.

Hon J.M. BERINSON: We received more than was originally offered, and these were at the most senior level. This occurred following detailed agreements made with other States, which, on a per capita basis, received less staff.

I cannot tell what will happen in five years' time. If the people of Australia want corporations and securities legislation to follow a certain route, the Commonwealth Government of that time will make a decision on that. That Government may follow the route suggested by Hon Bob Pike, but I doubt it. On the other hand, that Government may go down the route — given a coalition Government — in an entirely different direction. I do not have a crystal ball. I cannot say what will happen in five years' time; however, I can tell members what will happen next Wednesday if the legislation is not passed: The business community in Western Australia will be in utter chaos.

Hon George Cash: I wonder whether you have arranged for the dining room to operate tonight. I don't say that as a hurry-up, but others want to speak.

Hon J.M. BERINSON: That is the most persuasive argument I have heard today, and I am prepared to take it on board. I agree that the principle has been established; however, I am not prepared to allow an argument to go unchallenged which suggests that the State approach on this matter has been inconsistent, let alone dishonest.

We are in a position in which the basic need is for uniform companies legislation. There is only one way to achieve that and it is no good talking about alternatives, as the Opposition was trying to do as late as last Thursday and Friday. It is no good talking about alternatives because alternatives are not available. It has been clear for months that alternatives are not available and the business community of this State should not have been put in the position of uncertainty, to its serious detriment, for as long as it was. I commend the Bill to the House.

Question put and passed.

Bill read a third time and transmitted to the Assembly.

CORPORATIONS (TAXING) BILL

Second Reading

Debate resumed from 29 November.

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 (Attorney General) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Imposition of tax –

Hon J.M. BERINSON: I move –

That the Legislative Assembly be requested to make the following amendment –

New clause 2 – Insert as new clause 2 the following –

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

The Bill is currently silent on the commencement date and this amendment will allow it to come into operation on the day it receives the Royal assent. Arrangements will be made to ensure that this Bill, which is consequential to the Bill which was previously passed today, will have its timing coordinated with that other Bill.

Question put and passed.

Clause put and passed.

Title put and passed.

Report

Bill reported, with a requested amendment, and the report adopted.

Third Reading

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

[Questions without notice taken.]

ADJOURNMENT OF THE HOUSE – SPECIAL

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

That the House at its rising adjourn to a time and date to be fixed by Mr President.

ADJOURNMENT OF THE HOUSE – ORDINARY

HON J.M. BERINSON (North Metropolitan – Leader of the House) [5.35 pm]: I move –

That the House do now adjourn.

Adjournment Debate – Country Areas Trip – Members of Parliament

HON E.J. CHARLTON (Agricultural) [5.36 pm]: I have had discussions with colleagues about this matter to the point of being requested to make this speech. A couple of years ago I intimated to members that I wanted to invite them to participate in a trip around some country areas of this State to see at first hand the problems being experienced by country people as a consequence of the severe economic downturn. Those problems are being experienced by all country people, including farmers and small business people, and consequently by country towns.

On top of that, proposed cutbacks were announced to health and education services, the result of which has been a great deal of concern about the effects of falling numbers on country schools and hospitals.

Early in the New Year I will be issuing to all members of the upper House an invitation to experience at first hand some of those difficulties. Depending on the response I get from members, I hope that this visit will occur in March prior to the resumption of Parliament. I also invite staff of the Parliament to participate. I envisage it will take place over two days and that we will stay overnight in a suitable country area. When country members come to

the city to attend Parliament and to attend to other duties, we see at first hand what is happening in metropolitan Western Australia. We make decisions that affect the people living in the city. Unfortunately, city members do not have the same opportunity to see at first hand what is happening in country areas. I will send invitations to members in the near future.

Question put and passed.

House adjourned at 5.38 pm

QUESTIONS WITHOUT NOTICE

MOTORCYCLE RALLY – AUSTRALIAN DESIGN RULE

Protest

938. Hon GEORGE CASH to the Minister for Police:

- (1) Was the Minister invited to attend a rally organised by various motorcycle rider associations and held at Parliament House last Saturday morning to protest against a Commonwealth initiated Australian design rule which will require new motorcycles registered after 2 March 1992 to be wired to ensure the headlamp remains on while the motorcycle is operational?
- (2) If yes, why did he not attend, and why was the Government not represented at the rally, which was attended by approximately 300 motorcyclists?

Hon GRAHAM EDWARDS replied:

(1)-(2)

I did receive a late invitation to that meeting. I explained to one of the organisers why I could not attend and that if this group wants to do business with me I am only too happy – as I am with any group within the community –

Hon George Cash: I am sure they will take that offer up.

Hon GRAHAM EDWARDS: – to discuss the matter with them. But I have a view about the most efficient and productive way to deal with such matters, and I do not feel that a meeting on the steps of Parliament House is the best way. I have indicated to those people – who have had some discussions with the Government, with the previous Minister and with my office – that I am happy to meet with a deputation and to discuss these matters with them some time early in January.

Hon George Cash: I am sure they will take that offer up.

Hon GRAHAM EDWARDS: That will depend on the return to work of one of my officers who is ill. He has had the run of these things and this group understands the position.

As far as the Police Force in this State is concerned its role is one of ensuring compliance with these regulations which were made by the Federal Government. We do not have any say in that, so the report that was in the newspaper quoting Hon George Cash – I do not know whether it was accurate – as suggesting that people should lobby Ministers to have the law changed is not one that will have direct benefit if people lobby State Ministers.

If they want to change the law, Mr Cash should suggest that they go to the Commonwealth. In taking the argument to the Commonwealth they would have to be aware of the very strong arguments that have been put to meetings of State Transport Ministers and the Federal Government who have considered the safety matters. The police ensure compliance and they too have had discussions with motorcycle riders. I understand they have been involved in direct negotiations and that the position has been put to various motorcycle rider groups by the Assistant Commissioner of Traffic, Mr Len Thickbroom.

MOTORCYCLE RALLY – AUSTRALIAN DESIGN RULE

Protest

939. Hon GEORGE CASH to the Minister for Police:

Is the Minister aware that at a previous rally held at Parliament House in March 1990 the Minister for Transport stated that the Western Australian Government would not support the Commonwealth initiated Australian design rule until there had been proper consultation with the various groups?

Hon GRAHAM EDWARDS replied:

It is my understanding that there has been consultation. That consultation took place at a meeting with the previous Minister for Police and with the traffic section of the Police Department. That may have related directly to retrospectivity, but it is my understanding of the current situation that no retrospectivity is proposed in the regulations. Indeed, it is not due to take effect until 1 March 1991 and will only apply to new motorcycles.

Hon George Cash: It is March 1992.

Hon GRAHAM EDWARDS: I will check that date.

MOTORCYCLE RALLY – AUSTRALIAN DESIGN RULE

Protest

940. Hon GEORGE CASH to the Minister for Police:

By way of clarification, and in reply to the Minister's most recent response, there has not been adequate consultation and this will be substantiated by the various motorcycle groups.

Is there need for the Government to introduce a regulation into this House to enable the police to have the necessary jurisdiction in respect of the Australian design rule?

Hon GRAHAM EDWARDS replied:

If the group feels there has not been adequate consultation that is a matter they can take up with me when we meet in January. However, I do not term effective and proper consultation that which takes place at a meeting of 200 or 300 people on the steps of Parliament House, or at Hillarys boat harbour – where I was ably represented by Hon Fred McKenzie, who was the only member of Parliament who was able to attend from either side –

Hon George Cash: The motorcyclists were most appreciative of Mr McKenzie's attendance.

Hon P.G. Pendal: They said he was the only decent Labor bloke left.

Hon GRAHAM EDWARDS: I do not want to turn this into a political argument, Mr President; people know my stance on matters of road safety.

AGRICULTURAL IMPLEMENTS – TOWING REGULATIONS

941. Hon MARGARET McALEER to the Minister for Police:

On behalf of Hon David Wordsworth who is unavoidably absent I ask in regard to the regulations for the towing of agricultural implements –

- (1) Has the Minister invoked the provisional order – as he assured the House that he would?
- (2) If so, does this mean that at law the old regulation stands for both enforcement by the police and for the courts to adjudicate third party and other damages cases?

The PRESIDENT: Order! The second part of that question is seeking a legal opinion; but the first part is okay.

Hon GRAHAM EDWARDS replied:

(1)-(2)

I gave an undertaking to this House before we rose and it has been carried out.

SMITH, MR ROBERT – PHONE TAPPING

Attorney General's Awareness

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

Was the Attorney General aware that phone tapping or other forms of surveillance were being carried out on behalf of the Government by Mr Robert Smith?

Hon J.M. BERINSON replied:

Not only have I been unaware of any such activities on behalf of the Government, but so far as I know it has not been established that any such activities took place.

BURKE, MR BRIAN – RETURN TO WESTERN AUSTRALIA
Phone Tapping Allegations

943. Hon GEORGE CASH to the Attorney General:

Does the Attorney General intend to speak to his Federal colleague, Senator Richardson, and request that during his proposed discussion with Mr Brian Burke, Senator Richardson urge Mr Burke to return to Western Australia forthwith to enable Mr Burke to answer claims involving serious allegations in respect of phone tapping?

Hon J.M. BERINSON replied:

Senator Richardson's activities do not come within my portfolio.

AGRICULTURAL IMPLEMENTS – TOWING REGULATIONS

944. Hon MARGARET McALEER to the Minister for Police:

I am trying to obtain clarification from the Minister for Police on the present towing regulations for agricultural implements as there is a certain amount of confusion.

Hon GRAHAM EDWARDS replied:

I refer the member back to the debate that we had in the Chamber and the commitment that I gave to honourable members opposite at the time. That commitment, to the best of my knowledge, has been fulfilled. Indeed, I checked the other day to make sure that the matter had been addressed and it had been.

CORPORATIONS (WESTERN AUSTRALIA) BILL – ROYAL COMMISSION

945. Hon DERRICK TOMLINSON to the Attorney General:

Will all documents and records now held by State Government departments and instrumentalities which will be transferred to the Commonwealth Government by virtue of the passage of the Corporations (Western Australia) Bill be produced to the Royal Commission under its terms of reference if they are required by the Royal Commission?

Hon J.M. BERINSON replied:

I indicated earlier that I need advice on the strictly legal position. I cannot imagine that they would be withheld. However, without notice of the question, I am unable to fully pursue what are the implications.

**CORPORATIONS (WESTERN AUSTRALIA) BILL AND
CORPORATIONS (TAXING) BILL – CORPORATE AFFAIRS
DEPARTMENT**

Destruction of Documents

946. Hon GEORGE CASH to the Attorney General:

- (1) Will he give the House a categorical assurance that no documents currently held by or in the control of the Corporate Affairs Department will be destroyed prior to the Corporations (Western Australia) Bill and the Corporations (Taxing) Bill coming into effect?
- (2) Will he also give an assurance that any potential deleterious impact on the proposed Royal Commission because of documents not being available due to some legal technicality will be properly addressed and advised to the House as soon as possible?

Hon J.M. BERINSON replied:

- (1) I have no contact whatsoever with the detailed administration of the Corporate Affairs Department. I am quite certain it would not improperly destroy any material which we could expect to be passed on to the Australian Securities Commission and I am sure those records will be passed over intact.
- (2) Yes.

**CORPORATIONS (WESTERN AUSTRALIA) BILL – STATE PUBLIC
SERVANTS
Subpoenas**

947. Hon DERRICK TOMLINSON to the Attorney General:

Will officers of the State Public Service who elect to transfer to the Commonwealth Public Service by virtue of the passage of the Corporations (Western Australia) Bill still be able to be subpoenaed to appear before the Royal Commission?

Hon J.M. BERINSON replied:

My understanding is that anyone within the jurisdiction is open to a summons.

ATTORNEY GENERAL – CABINET MEMBERSHIP

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

Will the Attorney General be a member of Parliament and a member of the Cabinet when Parliament resumes in March next year?

Hon J.M. BERINSON replied:

Why not?

FIREARMS – LICENCES

949. Hon GEORGE CASH to the Minister for Police:

I have given some notice of the question.

- (1) Is there a statutory limit on the number of firearms able to be held by a person holding a firearms licence?
- (2) If so, what is the limit and where is it stated in the relevant Act?

Hon GRAHAM EDWARDS replied:

(1)–(2)

I thank the member for some notice of the question. Section 11 of the Firearms Act prevents the Commissioner of Police from issuing a firearms permit or licence if he is satisfied inter alia that, firstly, it is not desirable in the public interest or, secondly, that the applicant does not have a good reason for possessing a firearm to which the application relates.

Each of these provisions is capable of supporting a policy whereby the number of firearms of a given type already held by an applicant is taken into account in determining an application for addition of a further firearm of that type to a firearms licence. Under that policy, the Commissioner of Police makes a judgment about when a particular applicant's need for a further firearm of a given type is exhausted because of the number of similar firearms licensed to the applicant.
