

# Legislative Council

Thursday, 12 September 1991

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

## STATEMENT BY THE PRESIDENT

### *Parliamentary Sitting Hours - Switchboard Notification*

**THE PRESIDENT:** Honourable members, the switchboard should be notified of the hours this Parliament sits. They are not a mystery and are clearly defined. The switchboard should not be ringing this Chamber when the House is about to commence its business. The Whip has no control over somebody from another office ringing his phone, but people in this building should be advised that they should not ring the Chamber while prayers are being taken. I am not sure how we will fix this problem, but a good starting point would be for members to tell people what I have just said.

## STANDING ORDERS SUSPENSION - STATE GOVERNMENT INSURANCE COMMISSION

### *Bell Group Shares Purchase - Attorney General, Legal Opinions Tabling*

Debate resumed from 11 September.

**THE PRESIDENT** (Hon Clive Griffiths): This motion has not been seconded; indeed the mover has not finished moving it. As a result I direct that the passage "on Wednesday, 11 September 1991" after "moved" on the second line be deleted, and the motion should read the "... motion to be moved and the debate thereon concluded at that day's sitting without adjournment".

**HON GEORGE CASH** (North Metropolitan - Leader of the Opposition) [2.41 pm]: I was afforded only a few minutes to speak to this motion yesterday before the Government decided to exercise its right under the one hour rule to refuse leave to hear motions. I do not need to go through the arguments I put yesterday. However, it is important that Standing Orders be suspended today to enable this motion to be debated to a conclusion because it represents what accountability to Parliament is all about.

Yesterday I explained that the position of Attorney General in this State is a very special one. I said that he was the guardian of public interest. In that role alone he owes a duty of care to the people of Western Australia in matters within his portfolio and within the purview of the office of Attorney General.

It is necessary to suspend Standing Orders so that we can conclude this debate today. In effect, the motion requires the Attorney General to table a certain legal opinion which has been given to the State Government Insurance Commission and which was referred to in the Attorney General's evidence to the Royal Commission. It also requires certain other legal opinions and written papers commenting on or supplementing those legal opinions to be tabled.

The argument could be advanced that some confidentiality is required in respect of those opinions. The Opposition understands the requirement for confidentiality. Indeed, in the recent past - I refer to debates in this House on Thursday, 28 March this year when the House was debating the requirement to table certain other papers from the SGIC again - the Opposition has recognised that from time to time Government agencies or instrumentalities might advise their Minister, or indeed the House, that the tabling of certain documents might cause detriment to the Government, the agency or the instrumentality in respect of other actions, in particular litigation, which might be taking place.

At that time I said that I recognised the need for confidentiality, and I thought it important that that confidentiality should be respected by the House. I read to the House something which I thought might assist it to ensure that confidentiality were not broken, and that the Government, its agencies or instrumentalities were not put at risk in the tabling of information. I want to read these words to the House so that members can understand that I

have given consideration to the question of confidentiality. If the Government argues that some confidentiality attaches to the documents, the legal opinions, the problem of tabling them can be overcome by the inclusion of the following to the motion. Those words would be -

- (a) Where in the Minister's opinion (the reasons for which shall be tabled at the time this order is complied with) the publication of any material in a document, or class or group of documents, to be tabled under this order is calculated as likely to place the board or the commission at a serious commercial disadvantage, the requirement to table in relation to that material is satisfied by depositing it, clearly identified, in a sealed container with the Clerk.
- (b) Any material tabled under subparagraph (a) is open to inspection by any member who, unless by further order of this House, shall neither publish nor copy that material.

I believe that would take care of the confidentiality, if that is claimed by the Government for these documents.

Another point which has been discussed in this House before is the right of the Opposition to take what the Attorney General has described in the past as the business of the House out of the hands of the Government. I make it clear that yesterday, so that the Opposition could not be accused of taking the business out of the hands of the Government, I made a particular point of ensuring that motions in my name were not moved; in fact they were discharged from the Notice Paper for want of a mover, and that was done so that this motion could rise to the top of the Notice Paper and be debated. It just so happens that listed on the Notice Paper was a motion by Hon Tom Helm. With some prompting from the Government, he spoke on that motion for something like 45 or 50 minutes, which allowed me only a few minutes yesterday to begin my comments on this matter. A genuine attempt was made by the Opposition to ensure that the business of the House was not taken out of the hands of the Government and that we were seen to be acting, as we were, in a very responsible way.

Hon J.M. Berinson: I invite you to acknowledge that had we gone on until 3.30 pm your motion would still be lower on the list than it is now. The fact that you started ensured that the continuation of debate had priority today.

Hon GEORGE CASH: That is not necessarily the case, because had the Attorney General examined those motions yesterday, he would have seen that the whole structure was arranged. I negotiated with the National Party to ensure that certain motions in the names of members of the National Party were adjourned to another sitting day so that this motion would be debated first.

Hon J.M. Berinson: That would have been done today.

Hon GEORGE CASH: It could have been adjourned again today.

Hon J.M. Berinson: The fact that this motion came on yesterday has ensured that it has priority today. That is something which should be acknowledged.

Hon GEORGE CASH: I thank the Attorney General for acknowledging that.

Hon N.F. Moore: It had to come on.

Hon J.M. Berinson: It did not. I do not think Hon Tom Helm would have had any difficulty continuing for another hour.

Several members interjected.

The PRESIDENT: Order!

Hon GEORGE CASH: The fact is that the Attorney General is probably right -

The PRESIDENT: I think he is, but that is not the point of this exercise.

Hon GEORGE CASH: I am presently speaking to the motion to suspend Standing Orders to enable the motion highlighted to be moved, debated and concluded at this day's sitting without adjournment. I have made a number of statements to the House. I believe this is a matter of urgency and a matter of public importance. It is a matter that should be expedited. Any delay in dealing with this motion, any refusal to suspend Standing Orders to allow the

matter to be brought to a conclusion today would mean - because of agreements already reached in this House - that the matter could not be brought to its conclusion for a number of days. When I say "a number of days" I mean a number of sitting days because the committee system -

Hon J.M. Berinson: It could be brought to a conclusion on the next sitting day.

Hon GEORGE CASH: Behind the Chair, the Attorney said that he would not be here next Tuesday. I recognise and respect that. It would not of course be usual for us to proceed with motions directly involving the Attorney General were he not in attendance. We have agreed that Wednesday and Thursday next week, and the Tuesday following, will be committee days.

This is a matter that requires the urgent attention of this House. It is also a matter that involves hundreds of millions of dollars. It involves a legal opinion on the purchase by State Government Insurance Commission of shares in the Bell Group amounting to approximately \$160 million and the underwriting of debentures amounting to approximately \$150 million. The community of Western Australia has the expectation that this matter will be debated in this House without delay. I call on the Attorney General and other Government members to support the suspension of Standing Orders so that this matter can be properly addressed.

In concluding my comments on this part of the motion, I remind members that any confidentiality which might be claimed by the Government can be overcome by the words that I have previously read out to the House.

HON J.M. BERINSON (North Metropolitan - Attorney General) [2.52 pm]: It is fair to say that the usual position which arises when the Opposition moves a motion is that the Government has a fairly clear choice between supporting and opposing it. For reasons which I shall come to, the choice is not as clear as that on the present motion and in order to safeguard the position of the State, while appreciating the Opposition's view that consideration should be expedited, I will at a later course of my comments both move an amendment and suggest a course of proceedings which I hope will meet our combined requirements.

Yesterday, as the Leader of the Opposition has reminded us, this motion was brought on at about 3.20 pm and required the leave of the House to continue beyond 3.30 pm. In accordance with what is almost invariably current practice on Wednesday and Thursday sittings and quite common practice on Tuesdays as well, I declined to give leave for that purpose.

Hon George Cash: That is a practice that is not supported by the Opposition, as the Attorney will understand.

Hon J.M. BERINSON: Yes. I accept there is a difference between us but I think it is well understood on all sides that it is a procedure which is contemplated by the Standing Orders and is authorised by them. In spite of that refusal of leave being quite in the ordinary course of events there were of course the predictable cries of mock outrage from Opposition members.

Hon N.F. Moore: It was not mock outrage; it was genuine outrage.

Hon J.M. BERINSON: That achieved the obvious aim of about two and a half lines of reportage in *The West Australian* so that members of the Opposition could no doubt feel satisfied that their amateur theatricals yesterday were justified.

Hon P.G. Pandal: Don't tell us about amateur theatricals; you would be the Actors Equity man of the year.

Hon J.M. BERINSON: I am not lodging any complaint; I thought the performance was quite reasonable -

Hon W.N. Stretch: Coming from an expert, that is some praise.

Hon J.M. BERINSON: - and would have done justice to the Festival of Perth.

The PRESIDENT: Order!

Hon J.M. BERINSON: The important question yesterday, however, was whether there was anything seriously to be gained or lost by the one day's delay. I want to spend a moment

indicating that there was no difficulty on either side in having that day's delay. The reason I want to elaborate on that to some extent is to provide some background to the position I will shortly come to in respect of the move to suspend Standing Orders for purposes of completing consideration of this whole matter today.

The absence of that sort of immediate urgency is, I think, easily demonstrated in two ways: In the first place we are dealing with a request for the tabling of a document which is about three and a half years old already, so that its further ageing by a day or a couple of days or a week really will not have any effect on either what it says or what it can do. Perhaps more importantly there needs to be recognition of what useful purpose can be served by the production of this document. I jump ahead of myself to avoid any aggro on the other side by saying that I have no problem personally with the presentation of the document. The fact remains, however, that its production really serves no purpose given the obvious context -

Hon P.G. Pandal: So there should not be any difficulty.

Hon J.M. BERINSON: Not from my point of view. I am sure that Hon Phillip Pandal will be happy to hear that.

Hon P.G. Pandal: No difficulty - after four years.

Hon J.M. BERINSON: The real point I was making is that it must be obvious that the only interest in this document arises from a comment to the Royal Commission last week that in the day or days preceding the purchase of Bell Group shares by the State Government Insurance Commission, reference was made to a legal opinion which the SGIC had, and I indicated to the commission that at that time I had expressed the view, in response to a question, that since the proposed purchase was clearly an SGIC and not a Government transaction all matters related to that transaction, including the consideration of legal advice, should be a matter for SGIC consideration rather than Government consideration.

I give that background to say what I think is obvious both from public comment by the Opposition and by parliamentary debate in the other House earlier this week. The criticism of me, which that has given rise to, is on the basis that I should have called for further consideration of that legal opinion - for a second opinion on it - at the time. For purposes of this criticism the content of the document is really irrelevant.

Hon George Cash: In your view.

Hon J.M. BERINSON: In any reasonable person's view, and for this reason: The content of the document would be relevant if the argument were that I had considered the content and had not taken appropriate action on it. However, that is not the criticism at all. The criticism is that I did not call for a second opinion on the legal opinion which the SGIC indicated it had. It necessarily follows from that that the content of the opinion is really irrelevant to the basic criticism of me, but no doubt it can be used as an extra bow by people who want to use it in that way. It certainly cannot constitute any fundamental basis for criticism.

Hon Peter Foss: That is what you think.

Hon J.M. BERINSON: How can the member criticise? I will not answer that and get into further debate, but I have no doubt that Hon Peter Foss, with his vast capacity to create issues ex nihilo - Hon Bob Pike might be able to help me with the correct Latin -

Hon Peter Foss: You anticipate again.

Hon J.M. BERINSON: - could no doubt establish three or four separate problems where none at all exists.

Hon P.G. Pandal: More than that.

Hon J.M. BERINSON: Any discussion of that -

Hon Peter Foss: Is not proper.

Hon J.M. BERINSON: - is properly left to the debate on the suspension of Standing Orders.

Hon Peter Foss: That is what I was saying to you.

Hon J.M. BERINSON: I will make the further preliminary observation to one already offered in answer to an interjection. I have no personal interest in keeping this document secret. The Government has no political interest in keeping that document confidential.

However, we have received the most unequivocal advice that the SGIC - advice which has been conveyed to us by the SGIC's own senior counsel, that the -

Hon George Cash: Mr Berinson is not speaking to the suspension of Standing Orders.

Hon J.M. BERINSON: I will take only a couple of sentences and I will not repeat it later so we will not be wasting any time on this account. We have received the most clear and unequivocal advice that the tabling of this document, or the publication of it, would be to the severe prejudice of the SGIC, actual or potential, in its litigation with Bond Corporation. The Leader of the Opposition has referred to that and I readily acknowledge that he has indicated in advance that he would be prepared to adopt a form of words that would keep this document confidential in the hands of the Legislative Council, along lines which he read into the record.

The position that I am in is as follows: The foreshadowed provisions for confidentiality are certainly essential under any circumstances and it would be most important that we implemented that at the very least. The problem is that I have not, in the time available to me since this morning and in spite of requests for the most urgent advice, been able to receive an opinion from the senior counsel advising the SGIC on whether the proposed form of confidentiality would be enough to protect the SGIC in that litigation. I would like to make clear that, if the advice does emerge to the effect that it is enough, I will support this motion together with the qualification which the Leader of the Opposition has foreshadowed. If the advice is to a different effect then I would want at least to discuss it with the Leader of the Opposition and the Leader of the National Party, as I have the background to the present motion.

Hon Peter Foss: Are you concerned about losing privilege because of the compulsion?

Hon J.M. BERINSON: Yes, I am concerned about whether compulsion is enough.

Hon Peter Foss: Yes, it is.

Hon J.M. BERINSON: I appreciate the member's advice!

Hon Peter Foss: It is a good start.

Hon J.M. BERINSON: I suggest that it would pay the Legislative Council to wait another day to get senior counsel advice.

Hon Peter Foss: You didn't do it for your other opinion.

Hon J.M. BERINSON: Now Hon Peter Foss is condemning me for that.

The PRESIDENT: I remind the Attorney General that we are talking on the first motion.

Hon J.M. BERINSON: I am coming directly to that because the whole point of what I am putting to the Legislative Council is that I am simply not equipped to give an appropriate response either way to the foreshadowed suggestion that we pass this motion with the foreshadowed provisions for continued confidentiality. If we have counsel's advice to the effect that that can safely be pursued, we will support it, and support it without any delay. It is not available to me now. I asked for it first thing this morning and do not expect it to be available by the time we come to the finish of this debate. I am therefore suggesting that taking that serious factor into account, together with the absence of any real urgency for the reasons that I have indicated, we should not proceed as the motion provides to suspend Standing Orders to reach a decision today.

To summarise the suggestion that I want to put to the House, I should like to move an amendment to delete the first three lines of the present motion. Those are the words which provide for the suspension of Standing Orders and the completion of the debate today. That would be done on a clear understanding and commitment, which I now give, that in the event of that being agreed to I would with the concurrence of the House take whatever procedural steps were necessary on our resumption next Tuesday to have this matter again listed as the first item for consideration and on the basis that it would then be debated to completion. I am obviously not in a position to say now whether I would agree to it then or oppose it; that would depend on the advice that we obtain in the meantime.

Hon George Cash: As to the tabling?

Hon J.M. BERINSON: As to the tabling; but in this context I am taking into account the

proposal that Hon George Cash has foreshadowed that the tabling could be satisfactory in the way that he referred to. I would like the Leader of the Opposition to be aware that I genuinely appreciate his preparedness to accommodate my absence for almost all of next Tuesday's sitting. I believe, however, that under the circumstances which I foreshadowed, the Government will come to the House next Tuesday with a very clear position and that if I am unable to put that position myself I will ensure that another of our spokesmen is equipped to do so. I do not think then that it will be a very complicated or lengthy debate. The issues will be quite clear. I can say even now that, provided the advice from counsel to the State Government Insurance Commission is that we could proceed without jeopardising the SGIC's position, the Government would not oppose a confidential tabling of the documents; that is, in terms which would prevent its publication along the lines Hon George Cash indicated. It is only if counsel's advice were to the contrary that we would have to oppose it, but that could then be done briefly. It is for those reasons that I made those earlier comments. Therefore, I intend to move that the first three lines of the motion be deleted.

The PRESIDENT: Order! Before the Attorney General forwards that amendment in writing his attention must be drawn to the fact that he is not amending the motion but deleting every word, because the first item on the Notice Paper comprises two motions and the Attorney General is seeking to delete the whole of the first motion.

Yesterday when Hon George Cash moved this motion I said that it was to be taken as being two motions. I said that the first three lines stood alone as a motion and were required to be passed or defeated before we could deal with the second part of the motion. I cannot accept the Attorney General's amendment because there would be nothing left. The procedure for dealing with that is to vote against the first motion. The question that I will be putting contains those first three lines of the first item on the Notice Paper. If that is defeated it has the same effect as the Attorney General's amendment, though the other words would stay on the Notice Paper and would need to be moved in the ordinary course of events and would remain as the first item on the Notice Paper. That would be the effect of deleting those three lines. I cannot accept the amendment because it does more than amend the motion.

#### *Amendment to Motion*

Hon J.M. BERINSON: Perhaps I could move another amendment which would obviate the need for any special procedural motions next week. I move -

That after the word "moved" to insert "on Tuesday, 17 September 1991"

That will ensure that the debate will not only come on but will be completed next Tuesday. That will also avoid the need for any special procedural motion.

**HON GEORGE CASH** (North Metropolitan - Leader of the Opposition) [3.16 pm]: I listened carefully to what the Attorney General said and I recognised in part some of the questions about confidentiality. However, I said at the outset that the Liberal Party and the National Party do not want to destroy the confidentiality of any documentation from a Government agency or instrumentality if that were to cause distress or difficulty for a Government agency.

By changing the date from today to next Tuesday we alter very little of the substance of the motion because if the motion is carried today - that is, if we suspend Standing Orders and agree to the motion - certain documents will be required to be tabled. It is clear from the Attorney General's comments that he is endeavouring to seek additional legal opinion on whether the confidentiality of the documents to which I have referred would be destroyed if they were tabled.

Hon J.M. Berinson: I have made it clear that we already have the clearest advice that it does. The question is the extent of the continuing confidentiality - that we would have to try to preserve.

Hon GEORGE CASH: The Attorney General reinforces the position I take. His wish to seek further advice on the question of confidentiality would not be disturbed if we proceeded with this motion today or waited until Tuesday. I have suggested to the House that it is an urgent matter which needs to be expedited. If we were to carry this motion today it would not prevent the Attorney General from seeking further advice. The order would have been

made by this House and the Attorney General would still be able to table any documents in order to comply with an order of this House.

I see no benefit at all to the House in deferring this matter beyond today; there is just no need.

Hon J.M. Berinson: Since I can't speak again, I ask you to recognise that if we were to proceed and make a decision today and advice then came in to indicate that further protection was needed or, indeed, that we should not agree to the motion at all, that would require a whole new process. Notice of motion would need to be given, the motion moved, further consideration given and so on. All that can be tied up in one day.

Hon GEORGE CASH: I accept what the Attorney General is saying. It would require further processes of the House to reconsider an order of the House, but the House has the capacity to do that. From time to time the Attorney General moves motions without notice and is supported by the Opposition. I will not give any commitment to future support in respect of motions that we may not know the content of. However, that practice can be carried out at any stage. The sooner this matter is dealt with the sooner there will be some certainty in the actions that the Attorney General will need to take to satisfy an order of the House.

HON PETER FOSS (East Metropolitan) [3.21 pm]: I share the concern of the Leader of the Opposition and believe that this matter can be dealt with quite adequately today. I do not see any problem with loss of privilege under the circumstances of this order, the reason being that two protections are proposed. The first one is the protection of the order - the fact that the order compels the production of the paper as opposed to its merely being voluntarily disclosed. The concern of it would be - if there is a concern about confidentiality - if it were not for a further amendment proposed by the Leader of the Opposition, that it would not do anyone any good by having the document as a public document. If the confidentiality were lost it would not be reassuring.

Most members have received a copy of the proposed amendment referred to by both the Leader of the Opposition and the Attorney General. The actual document would not be available to anybody; the substance of the document would not be revealed. Another principle has to be observed; that is, notwithstanding the background to this we cannot at any stage ignore the fact that accountability to this Parliament is paramount. I would not like it to be thought that, firstly, if it were claimed by the corporation that it would be prejudiced, which in itself is a little bit hard to believe, and, secondly, if it were actually to be prejudiced, it does not have an obligation to this House to disclose these matters. I would not like either of those propositions to be accepted in this House.

The Leader of the Opposition's proposition is clear. It seems on the information available to the House that this is a proper motion to be put and passed. If it is necessary to reconsider it - I do not think it will become necessary - we can easily, within the procedures of this House, bring it back to be debated. As the Leader of the Opposition said, the Opposition does not give any guarantee that it would at that time agree to it. That is for the House to decide at that time and all members will have an opportunity to decide whether they are convinced by any later evidence.

On the evidence before the House and members' understanding of the situation it appears appropriate that this order be made. It is also important that the matter be discussed; and if a good case is put forward for the matter to be reconsidered, I am sure the Opposition would consider that motion. No-one in this House would have any objection to reconsidering it, but whether they would vote in favour of it is another matter. If the House did not reconsider it, obviously it would be reaffirming the motion. If it decided to amend the order, obviously it would be not reaffirming that motion.

Hon J.M. Berinson: What would be lost between today and Tuesday?

Hon PETER FOSS: I do not see anything to be lost by passing the motion today. It is a proper and reasonable motion to pass and I do not have any difficulty with it. The Attorney General is raising theoretical difficulties.

Hon J.M. Berinson: But they are theoretical difficulties affecting \$200 million.

Hon PETER FOSS: The theoretical difficulties do not have to be dealt with under three sitting days of this House.

Hon J.M. Berinson: Are you saying that if we pass it now we can bring in another motion to change it?

Hon PETER FOSS: Yes, that is what the Leader of the Opposition said.

Hon J.M. Berinson: Why would we do that?

Hon PETER FOSS: Because the Attorney General has not put up anything to indicate why we should not pass it. On the facts before the House, and subject to the Attorney General's wishing to obtain extra confirmation, the motion is all right. If it turns out not to be correct we can reconsider it at a later stage.

Hon Kay Hallahan: Why don't we deal with it on Tuesday?

Hon PETER FOSS: Perhaps there is a stirring in the Attorney General's gut that all things are not right.

Several members interjected.

Hon J.M. Berinson: It is not in my mind. It is on the basis of advice we already have.

The PRESIDENT: Order! I ask honourable members to stop interjecting so that the member on his feet can conclude his remarks.

Hon PETER FOSS: It is a perfectly reasonable motion and we should debate it now. If the Attorney General can come up with something more concrete other than a stirring in his gut, there would be no objection to this House reconsidering the motion. However, I do not know whether the Opposition would vote in favour of it.

Hon Garry Kelly: There is more than a stirring there.

Hon J.M. Berinson: We already have some advice as far as it goes, but it does not go far enough to cover the situation.

Hon PETER FOSS: The Attorney General does not have any advice which states that it is a problem. I have made my point; it can be considered now and no-one will have any objection to reconsidering it at a later date if that becomes necessary.

HON REG DAVIES (North Metropolitan) [3.28 pm]: I oppose the amendment. This is an important matter that is before us. Regardless of the age of the document requested to be tabled, I am of the view that the Parliament is the place to debate this issue. If the motion is passed the Attorney General will have three sitting days to comply with the order. My biggest concern is that it may be found that the tabling of the document will be detrimental to the finances of this State, which are already under great stress.

The PRESIDENT: Order! What the member is debating now is whether the words, "Tuesday, 17 September 1991" should be added to the motion.

Hon REG DAVIES: I am aware of that, Mr President, but thank you for reminding me. The point I want to make is that there is ample time, should this motion be put today, for the Attorney General to table the documents in this House. However, if the compulsion to reveal the information is to the detriment of this State we will have the time to reconsider it. The most important aspect in all of this is the State of Western Australia. It is an important issue and it should be debated in this House as soon as possible.

HON GARRY KELLY (South Metropolitan) [3.29 pm]: I support the amendment. It is quite reasonable that the debate take place on 17 September.

[Debate adjourned, pursuant to Standing Order No 195.]

## JOINT SELECT COMMITTEE ON THE CONSTITUTION

### *Report Tabling - Extension of Time*

Message from the Assembly requesting concurrence in the following resolution now considered -

That the date for presentation of the report of the Joint Select Committee on the Constitution be extended to 24 October 1991.

On motion by Hon J.M. Berinson (Attorney General), resolved -

That the request contained in the Assembly's message be agreed to.

## **CORPORATIONS (WESTERN AUSTRALIA) AMENDMENT BILL**

### *Introduction and First Reading*

Bill introduced, on motion by Hon J.M. Berinson (Attorney General), and read a first time.

### *Second Reading*

**HON J.M. BERINSON** (North Metropolitan - Attorney General) [3.33 pm]: I move -

That the Bill be now read a second time.

The national corporations scheme commenced on 1 January this year. It marked the completion of the first phase of a program for a single national system of corporate regulation in Australia. The Commonwealth, by its Corporations Legislation Amendment Act 1991, commenced an important phase of its reform of corporate regulation. A number of major amendments contained in that Act brought about necessary reforms to require companies to consolidate their accounts and those of the entities they control, and to strengthen insider trading regulation. The Act also included machinery amendments relating to the clarification and reinforcement of the legislative framework of the new national scheme.

This Bill amends machinery provisions contained in the Corporations (Western Australia) Act 1990 consequential on the Commonwealth amendments. This Act effectively adopts Australian Capital Territory law and makes it the corporations law of Western Australia. Most of the amendments in the Bill complement the amendment made to the Commonwealth machinery provisions by the Commonwealth Act. The Bill also enacts complementary provisions relating to the abolition of the National Companies and Securities Commission.

Most of the provisions of the Bill relate to the Family Court of Australia and the Family Court of Western Australia, and the abolition of the NCSC. Division 1 of part 9 of the Corporations (Western Australia) Act 1990 is to be amended to confer on the Family Courts civil cross-vesting jurisdiction under the corporations law of Western Australia. The amendments will restore to the Family Courts the jurisdiction those courts had in relation to matters arising under the cooperative scheme legislation immediately prior to the commencement of the corporations law on 1 January 1991. Before the introduction of the Corporations Act the Family Courts had jurisdiction to deal with matters under the cooperative scheme legislation by virtue of the general scheme for the cross-vesting of jurisdiction for Australian courts. However, the Corporations (Western Australia) Act 1990 excluded the general cross-vesting scheme and replaced it with a special regime for the vesting and cross-vesting of jurisdiction between the Federal Court and the State and Territory courts on corporations law matters, under which all those courts have full coordinate jurisdiction under the law.

In the present Bill, the approach has been taken to give the Family Courts the same status under the corporations law of Western Australia as they had under the general cross-vesting legislation in relation to jurisdiction under the former cooperative scheme legislation. The Family Courts will be subject to requirements to transfer corporations law matters to other courts in accordance with provisions which follow closely the general jurisdiction of courts' cross-vesting legislation. This will enable the Family Courts to deal with corporations law matters when they arise in an ancillary way in relation to family law proceedings. The Family Court of Western Australia will be able to transfer a case to any appropriate State Supreme Court or to the Federal Court of Australia having jurisdiction under the corporations law.

As the functions of the NCSC have been assumed by the Australian Securities Commission, the further existence of the NCSC is redundant. The National Companies and Securities Commission Act is to be repealed by the Commonwealth, and the NCSC abolished. The National Companies and Securities Commission (State Provisions) Act 1990 of Western Australia imposed powers and duties on the NCSC. The State Provisions Act is repealed by part 3 of the Bill. As part of the winding-up of the NCSC, reports on the operations of the NCSC and financial statements, together with a report of the Auditor General of the Commonwealth, must be tabled before this Parliament.

Because of the technicality of some issues, I intend to circulate an explanatory paper and clause notes to the Bill. I commend the Bill to the House.

Debate adjourned, on motion by Hon Peter Foss.

**MOTION - EMERGENCY PROVISIONS (AMMONIA UNLOADING)  
REGULATIONS**

*Disallowance*

Order of the Day read for the resumption of debate from 11 September.

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

**WATERFRONT WORKERS (COMPENSATION FOR ASBESTOS RELATED  
DISEASES) AMENDMENT BILL**

*Second Reading*

Debate resumed from 11 September.

**HON PETER FOSS** (East Metropolitan) [3.38 pm]: This Bill overcomes a problem which has arisen from the Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986. It has been pointed out in another place that that Act caused some contention because in order to make some payments to waterfront workers who had suffered from asbestos related diseases, the present Government raided a fund which had been set up for other purposes, and having raided that fund, it became necessary for the Government to regularise what had happened. That action led to the Waterfront Workers (Compensation for Asbestos Related Diseases) Act No 84 of 1986. I suppose to some extent what has been done by this Government in the past is a matter of history.

Hon Derrick Tomlinson: Retrospective legitimisation.

Hon PETER FOSS: Yes, we have had a bit of that with this Government; but, that having been done and having been approved by this Parliament, it is really a matter of making sure it operates appropriately. The problem that has arisen is that the whole idea of recovery under the fund is directed to the concept of being able to recover from the people who should have paid the compensation. The difficulty we have with asbestos ships which came into Western Australia many years ago is that there was some considerable difficulty in working out who was the last person to have employed a worker.

I understand that since the Bill was introduced some diaries have been found which enable a degree of pinning down of responsibility; so it may be that many of the occasions that were contemplated by this Bill, when it was not possible to prove who was the last employer, will not arise due to the finding of this evidence. Nonetheless, there may still be those occasions when it is not clear who should contribute, and I suppose one could see this as being a different regime, one which is probably more appropriate to asbestos exposure because there is really nothing to say that it was the last exposure to asbestos which was the critical one rather than the first exposure. Therefore, I suppose the best argument one can make in adopting this approach is that the normal approach under the Workers' Compensation and Assistance Act, that of pinning the responsibility on the last employer and leaving it to that employer to work it out with the others as to what responsibility there should be inter se, is not an appropriate one in the case of asbestos related diseases because there is no necessary causal relationship between the last exposure and the asbestos related disease that has occurred.

The regime it sets up really is to debit the amount that is to be recovered by the fund to all the ships that came into port during the relevant period - or, in the terminology of the Bill, the critical time - and to rateably apportion the liability among them in accordance with their number. It is a little strange that it does not seem to take into account the size of the ship or the number of times it visited. That seems a little inconsistent with rateably apportioning it in the probability that that person actually did contribute to it. I certainly can understand the Bill's leaving out the size of the ship because during this critical time ships would not have varied enormously in size, certainly not as they do nowadays. I am sure there would have been differences in size but I think the calculation would probably cost more than the amount to be debited. However, I would have thought that the number of visits might have had some relationship; but again, perhaps the amount of money taken up in making the calculation would not be worth the actual differences that would affect the ship owners.

There is a rather peculiar provision which I should probably deal with in more detail during the Committee stage; that is, the Bill provides for some sort of adjustment to be made as between the people who have been rateably assessed to contribute to the fund and the people who can be proved to have an obligation to contribute to the fund as being the last employer. It talks about there being changes in payments in and payments out of the fund. Clause 4 deals with section 11 of the parent Act, and subclause (9)(b) talks about payment of further moneys or the recovery of further moneys. Certainly in relation to the payment of further moneys under section 8 of the parent Act I can see why there is a need for that adjustment. However, as to the recovery of further moneys under section 9 of the parent Act, in view of the fact that a person who has a rateable proportion makes a payment under section 9 and is given a credit for that payment under section 9, it is a little difficult to see how that can, in the end, lead to any form of adjustment.

*Sitting suspended from 3.45 to 4.00 pm*

**[Questions without notice taken.]**

Hon PETER FOSS: One of the consequences of this Bill is that much of the defence that would otherwise have been available to an employer from whom the SGIC sought to recover these funds will disappear. In the past the employer could have relied on asking the SGIC to prove that it was the last employer of the worker. Consequently, it will be a much easier evidentiary task for the SGIC in that all it needs to prove is that a company was an employer of waterfront labour force during the critical time and it was the owner of an asbestos carrying vessel.

It was stated in the second reading speech that this move has been agreed to by the Tripartite Labour Consultative Council. The problem I have with workers' compensation matters agreed to by the Tripartite Labour Consultative Council is that a very important element of the whole workers' compensation structure is omitted. Although employers certainly have an interest in the consequences of changes in the workers' compensation law, another group probably has even greater interest in the changes; that is, the insurance industry. In the end, the insurance companies will be making the payments. The passage of previous Bills to amend the Workers' Compensation and Assistance Act has proceeded in this House on the basis that the appropriate people with whom to discuss the legislation were the members of the Tripartite Labour Consultative Council. However, when these matters are debated in this House there is an enormous outcry from the insurance industry that its members had not been consulted and that, had they been consulted, they would have told the Government that the proposals were not acceptable to the industry and were not an appropriate way of dealing with the matter. No mention is made in the second reading speech of the insurance industry's having been consulted, and I would like to be certain that its failure to respond is not because it does not know what is happening. I want to be certain that the insurance industry has been consulted and that it agrees with the proposal, because the members of that industry will be putting their hands in their pockets and paying the money. If the industry agrees to the Bill it is appropriate that it be passed, because it is a perfectly proper decision which the insurance industry may make. The industry is a very pragmatic one and, rather than involve its members in disputes or litigation arguing over whether the evidence is there, it may decide it is a matter of spreading the payment equitably over the insurance industry in one way or another. Most of the people who have insured the employers of waterside workers have probably also been involved in insuring other forms of labour, so the payments would be out of their pockets as insurers liable to make up the fund generally or insurers liable to make up the fund specifically, under the provisions of this Bill. One wonders whether it will make a significant difference who pays it, unless it can be shown that it is a different group of insurers. A different group of insurers may very well have taken on the workers' compensation for those ships, but I do not know whether that is the case. It may be, for instance, that merely consulting the Insurance Council of Australia Ltd is inappropriate in that if members of the ICA would be liable to pay the amount should the amendment not be passed they would be pleased if the change were made because members of the protection and indemnity clubs would pay the amount of money that goes into the fund.

I am concerned about whether the insurance industry has been consulted and whether the Government has ascertained which group of insurers would be liable to make this payment. Should it not be the same group of insurers who are gathered in the ICA - but, for instance, is the people in the protection and indemnity clubs - I query whether they have been consulted

to determine whether they agree with this amendment to the legislation. It would be quite improper for us to proceed with this legislation, without having at least heard the submissions and obtained the facts, on the basis that everybody concerned in this matter has been consulted. Certainly, everybody concerned should have been consulted. The insurance industry may see this as a pragmatic way of dealing with the matter - it seems to be so to me and I envisage no problems. However, I will not be required to put my hand in my pocket, and frequently the person who must pay can see difficulties not evident to those who are not required to pay.

With that qualification, I indicate that the scheme appears to be sensible. It is fairly practical and it fits in with the reality of the situation as to how these workers would have contracted the asbestos related disease. As a basic scheme and concept I have no problem with the Bill. However, on the principle that, when dealing with legislation which will impact on people who will be required to pay the money and which will have a retrospective effect as to their liability to pay, we should always be sure that the people directly affected by the legislation have been advised of it, I believe we should not pass the Bill without being absolutely certain that the people affected have had the opportunity to consider it and consult their advisers, and have had an opportunity to make a submission if they wish to do so. I look forward to receiving an assurance from the Government that it has consulted the ICA and if appropriate the P & I clubs. If that is the case, the Opposition has considerable pleasure supporting the Bill.

**HON TOM STEPHENS** (Mining and Pastoral - Parliamentary Secretary) [4.40 pm]: I thank the honourable member for his expression of support for the legislation on behalf of the Opposition. I hope that the following information will be of some assistance in his understanding the consultative process that the Government has undertaken. I am advised that, apart from the formal mechanism of the Tripartite Council, about which the member has indicated he has reservations -

**Hon Peter Foss**: I do not have reservations if they were consulted, only if they were the only ones consulted.

**Hon TOM STEPHENS**: I am advised that the Workers' Compensation Commission comprises representatives of private and Government insurers and that the legislation was developed through the commission with the support of those representatives. It then went to the Government and to the Parliament. As I understand it, the insurance relates to ship visits between 1943 and 1969. It seems there are only 10 such ships involved. The SGIC has accepted liability for 50 per cent of those ships and is satisfied with the legislation.

**Hon Peter Foss**: Are the P & I clubs involved?

**Hon TOM STEPHENS**: Yes. The remainder of the liability is not with any insurer associated with the confederation but rather with the P & I clubs.

**Hon Peter Foss**: Were they consulted?

**Hon TOM STEPHENS**: I understand they were aware of it. Hon Peter Foss would appreciate that even if they were not consulted formally the insurance industry is saying, "Fair go, we want to narrow down the liability back to the specific people who should be liable for this area of activity."

**Hon Peter Foss**: Could it be that the insurance industry on the whole would bear the cost if we did not pass this legislation whereas if we do pass it, it will be passed to another group of people? One can see why they take the attitude that money is being taken out of their pockets to go to somebody else.

**Hon TOM STEPHENS**: The liability is being sheeted home to exactly the people who should have borne the responsibility.

**Hon Peter Foss**: Maybe so, but they should have been covered, of course.

**Hon TOM STEPHENS**: I am advised that half the levy will be paid by the SGIC which has agreed to do that. The Insurance Council of Australia Ltd is not involved as liability lies with the professional indemnity clubs, which are cooperative self-insurance clubs. The shipping companies were approved self-insurers under the Workers' Compensation and Assistance Act and are therefore responsible.

Hon Peter Foss: And have they agreed to it?

Hon TOM STEPHENS: They have not disagreed with it. I understand the reservations held by Hon Peter Foss. I am sure he will understand the desire of the Government to proceed with the legislation because in the end it sheets home responsibility to precisely the area of those insurers - the P & I clubs that should accept responsibility in this area. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

#### *Committee*

The Deputy Chairman of Committees (Hon Garry Kelly) in the Chair; Hon Tom Stephens (Parliamentary Secretary) in charge of the Bill.

#### **Clause 1: Short Title -**

Hon PETER FOSS: I think it appropriate that the people who have responsibility in this area should have it sheeted home to them. On the other hand, there is the basic principle that before one hangs a man one should at least hear from him in his defence. It is always a problem when a solution is given which sounds like the right one and one has heard only from the people willing to say it is the right solution because they are benefited by it. That worries me particularly because of the origin of this legislation. Members will recall that the initial Act was passed to regularise an improper use of this fund to make payments. It is always the case that when one does something wrong one ends up doing more and more things wrong. It is all very well to say that we should sheet home the blame to the people who should be responsible, but had it not been for the Government raiding this fund in the first instance the people paying into it now would not be doing so. We had a group of insurers in this State who were liable to make good the fund and who suddenly found that their fund was raided by the Government. Questions were raised about that so this Parliament passed an Act saying it was all right to raid that fund. The people then said, "Hang on, you are raiding our fund that we are paying into and the people who really should be paying it should not be the people contributing to this fund but somebody else."

The first wrong move was taking money out of the fund. The second thing that was wrong was that it then fell on people who should not have been paying it. The third thing we are doing wrong, unless someone has spoken to the P & I clubs, is casting the responsibility on somebody without their having an opportunity to tell us why we should not do that. I admit that after looking at the legislation and hearing the arguments it sounded appropriate that these people pay, if anybody is to pay. I do not have a problem with that. However, I have only heard that side of the story from the people who are promoting that point of view. It is a convincing argument. However, there are many convincing arguments that are less convincing when one hears someone argue the other way and realises that they are not so convincing. I hope the argument being presented is a convincing one because it is only one side of the argument. If one cannot win an argument when one is the only person talking one would be putting a pretty bad argument. The hard times come when somebody disagrees. It is not the principle of the Act that is in question because it appears to me to be correct. What is in question is whether we should be passing this legislation without hearing from the P & I clubs, because they have to pay in substantial measure. It may be that those clubs have been alerted to this fact and have had an opportunity to make a submission. If that is the case, I would like to know what that submission was.

Hon TOM STEPHENS: To suggest that the fund was raided illegally or improperly is incorrect. I am advised that the fund was never used until the Act authorising its use was enacted.

Hon Peter Foss: I cannot disagree because I am going only on what I have been told.

Hon TOM STEPHENS: I am informed that is the reality of the matter. The P & I clubs are informed about this legislation and I am advised that they understand that they are liable to pay compensation. The P & I clubs would have had to pay compensation had it been possible to identify the latest employer. The shipping companies were approved self-insurers and are, therefore, clearly liable, and the P & I clubs represent the shipping companies involved. There have been no expressions from them to the Government that they believe

any unfairness will impact upon them by the passage of this legislation, and they have not approached the Opposition either, so I guess we can take it from that absence of comment that they acquiesce with the legislation.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Section 11 substituted -**

Hon PETER FOSS: Proposed subsection (4) states -

At least one month after the Commission has given to a person or insurer notice under subsection (3), the Commission may require the person or insurer to pay to the Commission, within a time specified in the requirement, an amount so specified.

I am at a loss to see what the word "so" means. It does not appear to have any meaning, and perhaps that word should be deleted, but if it is to stay in the clause then I want to know to what does it refer? Why is that word there?

Hon TOM STEPHENS: Perhaps I could throw the question back to the member. What does he think it means?

Hon PETER FOSS: If I were drafting this clause I would use the words "an amount specified in the notice"; and if that is what it means, that is what the clause should state. The words "so specified" cannot be used unless one is referring back to some earlier specification, but I cannot see anywhere else in the Bill a reference to a specification. This is the first time the word "specified" is used. It cannot be referring to the original Act either.

Hon TOM STEPHENS: The member has concluded, in response to my invitation to speculate on what it means, that the words "specified" mean "as specified in the notice", and I am advised that is exactly what it is intended to mean. Therefore, in the context where the member has arrived at the correct conclusion on the basis of the words that are in front of him, I wonder whether he is satisfied to leave the words as they currently stand, on the basis that if he were able to understand the words as intended by the draftsman, everyone else would understand them?

Hon PETER FOSS: It sounds like a counsel of despair. I arrived at that conclusion simply because the words did not make sense, and the only way I could make sense of them was to read them in the only way that could make sense. It seems to me to be a bad principle of parliamentary drafting that one ends up getting the right interpretation by discarding all the other possible interpretations until one is eventually left with the only interpretation that could make sense. I do not believe that is an ideal way of doing it. Would the Parliamentary Secretary be happy for the clause to be amended to state "an amount specified in the notice"?

Hon Tom Stephens: Yes.

Hon PETER FOSS: I move -

Page 3, line 20 - To delete "so" and insert after the word "specified" the words "in the notice".

**Amendments put and passed.**

Hon PETER FOSS: I turn now to proposed subsection (5). I think the Parliamentary Secretary mentioned that there are only 10 vessels. I assume the amount has been worked out as being a fair allocation between them - it is obviously the simplest allocation between them - but would it make a huge difference if one took into account the number of vessels or the size of the vessels? I do not wish to go into too much detail because I am not proposing that we make such a change, but I would like to know why this was arrived at.

Hon TOM STEPHENS: It would appear that at this stage there has not been enough success in recovering from the records details about the number of ship movements to those ports in the period from 1943 to 1969. It is thought at this stage that only 10 ships were involved. The exact number is not yet fully known by the authorities, nor is there enough detail available about the size of those vessels. It is believed that in the absence of all that information being adequately available, this is a reasonably fair way of handling the matter, and there has been no argument to the contrary. Basically, there would be equal levying. If further shipowners or insurers are found, there will be appropriate adjustments to ensure equity of contribution.

Hon PETER FOSS: I am also concerned with proposed subsection (9)(b), and I refer the Committee to its provisions. It would seem to me that under proposed subsection (7), because in most circumstances a credit is given under this subsection for the moneys recovered under section 9 of the Act, no adjustment is likely to be necessary, and as a result everyone would be levied equally. Even if one were levied specifically under section 9, under section 11 there would be a credit for the levy paid under section 9. It is not as though one would be levied under section 9 for everything that can be proved, with the balance distributed under section 11. Under proposed subsection (7), the levy is rateable, no matter what. I cannot see the circumstances under which one would not have everything done under section 11. Even if one found a new person to recover against under proposed subsection (9), he would be caught under section 11 anyway.

Hon TOM STEPHENS: I assume that nothing turns on it and that the member will support the legislation in its current form.

Hon PETER FOSS: I was hoping that the Parliamentary Secretary would enlighten me as to when it might have effect. If it is surplusage, and the Parliamentary Secretary can assure me of that, I suppose I need have no objection to it.

Hon TOM STEPHENS: I understand that Hon Peter Foss has correctly identified what might be the reality, but I understand that there is a possibility of its being made at least possible if we reach the situation of being able to identify additional shipowners. This proposed section will hopefully make possible recovery if additional shipowners are identified.

**Clause, as amended, put and passed.**

**Title put and passed.**

**Bill reported with amendments.**

### **ACTS AMENDMENT (EVIDENCE) BILL**

#### *Second Reading*

Order of the Day read for the resumption of debate from 29 May.

Debate adjourned, on motion by Hon George Cash (Leader of the Opposition).

### **HOME BUILDING CONTRACTS BILL**

#### *Second Reading*

Debate resumed from 29 August.

**HON GEORGE CASH** (North Metropolitan - Leader of the Opposition) [5.08 pm]: The Bill now before the House seeks to address a number of areas allegedly to provide assistance to new home buyers, people carrying out renovations, and those who have contracted with registered builders. If one had listened to the Minister's second reading speech one might have thought it was "Oyez! Big Brother is here to help you!" What the Government is attempting to do in this legislation can already be done successfully by using a standard contract, or under general contract law.

I remind members that this Bill is the result of a report by an inquiry into home building industries conducted in 1989. The report of that inquiry acknowledged that there were some difficulties in the home building industry. One of the recommendations was that there be legislative change to protect consumers. It was said that that was necessary at the time and, indeed, appropriate under the circumstances. The report stated that on occasions contracts used by some building contractors were designed to disadvantage the consumer and a number of instances were considered and reported on by that committee. From the outset I want to acknowledge that from time to time, and particularly during boom periods, the building industry is the subject of disputes between a consumer and a builder. However, while there is room for improvement in the area of standard contracts between builders and consumers so that both parties clearly understand their positions, I do not believe that an Act of Parliament which specifies the various matters that must be included in a contract needs to come before this House.

Hon Garry Kelly: Don't you think it is an unequal contest between home buyers and fairly big building companies?

Hon GEORGE CASH: In the main I would say no; however, I recognise that there have been difficulties in the past. As to whether this legislation is before us because it is allegedly based on some equity process - that is, to bring the builder, contractor or corporation to the same level as the consumer - I would argue that that is a dangerous way of doing business anyway.

Hon Garry Kelly: You would not find much agreement with consumers about that.

Hon GEORGE CASH: I have said that I recognise there have been some problems in the building industry; but I say on behalf of those reputable companies in the industry that they manage their businesses in such a manner as to defuse the problems that arise from time to time, and have been successful in doing that for a number of years.

In his second reading speech the Attorney General states that the Bill will ensure that consumers will be, and these are the Attorney General's words, "well protected against unfair or inequitable practices". Those words in themselves worry me a little, not because I do not understand what they are all about, but because they assume immediately that there is a great divergence of power between a building contractor and a consumer. In my view that is not the real situation and the Bill appears to make the situation that exists now less equal between the parties.

The Bill is intended to cover those building contracts between the values of \$6 000 and \$200 000, it being argued that a dispute over building works for a sum less than \$6 000 can be taken to the Small Claims Tribunal. The Bill does not specifically state why the upper limit should be \$200 000, but from reading the Attorney General's second reading speech and reviewing the comments that have been made about this legislation I presume that he is arguing that someone who can afford to enter into a building contract worth more than \$200 000 allegedly is not at the same disadvantage as that which he seems to think others are who have contracts between \$6 000 and \$200 000. Other matters covered by the Bill include the fact that rise and fall clauses will be outlawed and that all contracts will have a fixed price. The Government proposes in this Bill that deposits shall be not more than 6.5 per cent and that the defects liability period, currently 90 days, should be extended to 120 days. The Bill also provides for a builder to understand clearly just what approvals he is to be responsible for, and there are various penalties if the builder does not carry out his obligations in respect of those requirements.

The Bill also provides for the establishment of a building disputes committee, which is to be located at the Builders Registration Board of Western Australia. In the statements the Government has made from time to time on this legislation it has argued that the proposed disputes committee will be able to address consumer disputes faster than if the consumer resorted to court action. It may be that the disputes committee can offer a faster service, but included in the Bill is a provision that a consumer cannot be represented by counsel when he goes before the disputes committee. I refer to the argument Hon Garry Kelly put earlier - that is, that there is considerable inequity between a builder, contractor or corporation engaged in the construction industry and, if I might use the term, an ordinary person who builds a home or carries out building works as defined in the legislation between the values of \$6 000 and \$200 000. It is strange that the consumer cannot have a solicitor or counsel to represent him before the building disputes committee.

Hon Tom Stephens: Before you go too far down that path, I can assure you that, as I understand the legislation, if the disputes committee considered that the consumer would be disadvantaged by the absence of legal counsel, that legal counsel would be able to represent him before the committee.

Hon GEORGE CASH: I appreciate the comments of the Parliamentary Secretary but I must say that if we are talking about people's rights, they should have the right to be represented by counsel if they are prepared to bear the cost, whether or not the disputes committee believes that representation is needed, and whether or not the disputes committee decides that the consumer will be disadvantaged if counsel is not present.

This Bill is full of inconsistencies. Attempts are made in the Bill to disregard completely common law which has been well established for centuries and, more than that, to overturn ordinary contract law. To give one example of the problems inherent in this Bill, I said earlier that the legislation would provide for those works between the values of \$6 000 and

\$200 000. I do not understand how the Government is able to cut off at that arbitrary figure of \$200 000 because, should the contract be for, say, \$200 005, it seems that another set of contract provisions must apply in respect of that building which is to cost only \$5 more than the upper limit currently provided in the Bill.

There is also considerable confusion in the Bill about which types of building are covered. It is all very well for us to talk about a value of between \$6 000 and \$200 000, but in relation to the interpretation clause considerable confusion exists about what construction we are talking about when referring to associated works, which are mentioned throughout the Bill. As a result of that confusion I have placed on the Notice Paper a number of amendments which would clearly define "dwelling" and "associated works". As well, I have placed a number of amendments on the Notice Paper to amend the penalties currently provided in the Bill. The penalties provided in the Bill are for what would normally be a somewhat insignificant oversight; that is, the failure to put a date on a contract. For a simple mistake, tremendous monetary penalties are to be attached. For instance, for failure to put a date on a contract the penalty is up to \$2 000. The Opposition believes that those penalties are harsh. My amendment intends to substitute a penalty of \$500 in that regard.

I recognise that problems have occurred in the building industry. No-one denies that. No doubt those problems still exist but this legislation will set up a huge bureaucracy to overcome what we regard as a limited contractual problem. It appears that the legislation will use a sledgehammer to crack a nut and we will end up with more regulations in the building industry. Members have heard me talk about regulations in the building industry previously. Too many regulations are applied and they are strangling the industry.

Hon T.G. Butler: How would the Leader of the Opposition suggest that those problems in the industry be solved? So far, his approach has been a negative one.

Hon GEORGE CASH: I am about to make some positive suggestions which the Government may consider. First, the passing of this legislation will lead to an increased cost to the consumer. Second, the legislation will create another bureaucratic structure to be funded by the taxpayer. That bureaucratic structure is unnecessary; it will destroy the right of the consumer to enter into contracts with builders on mutually agreed and understood terms. Unless the provisions of the Bill are reflected in such contracts, delays will occur for the consumer and for the industry. This is an example of more regulations and greater burdens on the building industry and that will cause added costs. More than that, it reflects an increase in Government intervention, once again, at some cost to the industry. As Hon Tom Butler has said, we need to suggest alternative proposals that the Liberal Party believes could be put in place rather than this Bill. The use of standard contract forms agreed upon and stamped by the Builders Registration Board, incorporating important elements that are in part contained in the Bill, would not be unreasonable. The building industry has indicated to the Government that this course of action is preferable to an Act of Parliament which imposes these additional burdens on the industry. Were that the case, we would see a considerable lessening of expense to the community. The Liberal Party, indeed the Opposition, is not opposed to a greater consumer education program - indeed, an understanding - for people entering into contracts with builders. However, we draw the line at a situation where, because elements within the industry have not played the game, we need an Act of Parliament to cover all builders rather than using the officers and the authority of the Builders Registration Board to clean out unscrupulous builders from the industry, those builders who at times take consumers for a ride.

One problem with the Bill is its inconsistency. The provisions of the Bill should be clearly understood; they should be compared with current contract law and common law. The Law Society of Western Australia has had an opportunity to consider the legislation; it is far from impressed with it. A letter from the Law Society, in part, reads -

After further reflection on the subject, it would seem that the Bill in its amended form still makes substantial changes to the law of contract which are unnecessary and likely to lead to further confusion. The problems that the Bill seeks to address would better be solved by the adoption of a standard form building contract which fairly represents the interests of both owners and builders.

Another point raised by the Law Society is a problem with the definition of home building contract work. The society letter states -

The problem of the breadth of the definition of "Home Building Contract Work" - which could have included a contract to construct a multi-storied block of flats or units - has now been dealt with by excluding contracts for a price exceeding \$200,000.00. There will now be a different law for contracts above that sum from those below that sum. This is an arbitrary and unsatisfactory solution to what is really a problem of defining commercial projects which it is intended to exclude from the operation of the Act.

I referred earlier to the \$200 000 cut-off point. While the Opposition does not support the Bill in its present form, if we are not successful in having the Legislation Committee consider the Bill - to take further submissions from interested parties and report to the House - I intend to move an amendment to delete the maximum figure of \$200 000 and to substitute a figure of \$350 000. That would be an attempt to take out a number of contracts included in the provisions of the Bill, to allow for inflation. The figure of \$200 000 is being set as an arbitrary figure within the Act, and it will need another Act of Parliament to change the figure in future. It is not as if the figure is being set by regulation and can be amended from time to time through the normal system of introducing regulations in this House. I need not go further into the Bill because if members have read it they will understand the confusion and inconsistency that is apparent within most clauses of the Bill.

Most members will agree that in the past matters referred to the Legislation Committee have been well considered and researched by that committee. This Bill is a classic example of one which should receive the consideration of the Legislation Committee. That committee should be able to investigate, take evidence and make recommendations on this legislation to the House so that if the legislation along these lines is to be further considered by the House the current inconsistencies may be removed. In that way we would see more certainty in the legislation, and both consumers and builders would understand their obligations regarding the part they play within the building industry. I reiterate that the Liberal Party believes this Bill should be sent to the Legislation Committee because it should not be allowed to pass into law in its present form. This Bill as it stands would do a disservice to the building industry and to consumers generally. It would not enhance the rights of consumers; in fact, it would take rights away by imposing the obligations, defined in the legislation. I give notice that at the conclusion of the second reading debate I intend to move that this Bill be referred to the Standing Committee on Legislation for its consideration and report.

**HON MURIEL PATTERSON** (South West) [5.31 pm]: I support the Leader of the Opposition's proposal to refer the Home Building Contracts Bill to the Standing Committee on Legislation. This is clearly a matter of great public importance, and it is an issue which cannot be allowed to pass with only a cursory glance at the principal headings. After all, buying the family home is the single most important transaction into which most people enter; therefore, it demands our closest attention. Equally, taking a bare block of land, some pallets of bricks and a load of timber and then raising that house from its foundations to the roof beam is a very serious undertaking for the individual building contractor. That is why I am concerned by an obvious, although I hope unintentional, bias in this legislation. A detailed reading of the legislation reveals at least 11 instances in which it is stated that the builder must do certain things, and a failure to comply carries harsh penalties. However, corresponding obligations binding the client to deal fairly and honestly with the builder do not appear to be part of the Bill. For example, clause 21 on page 20 of the Bill refers to the approach to the resolution of a dispute. This is entitled "Remedy for breach of section 15" and reads -

Where an owner claims that a builder has committed a breach of section 15, the owner may apply to the Disputes Committee for relief under this section.

Throughout the Bill's entire 29 pages the predominant presumption is that builders are exploitive villains and that buyers are helpless victims.

**Hon Tom Stephens:** So far we have not had too many complaints about those unscrupulous owners.

**Hon MURIEL PATTERSON:** If that is the case, the Government will not mind further examination of the Bill.

In this context, the Bill assumes that liability and a presumption of guilt in any given

transaction will apply only to the supplier of whatever goods or service is being regulated. It would be too easy to say that this Bill is just another example of anti-small business and anti-individual enterprise, a notion which permeates certain minds, and leave it at that; but such a comment would not be very charitable or helpful so I shall leave it unsaid. In its place I shall proceed to another example of short term thinking in this Bill; that is, the choice of \$6 000 as a price threshold at which this legislation will come into force. Can any member explain why that figure was chosen? That amount would barely put a lean-to conservatory onto an average home. Who can predict what \$6 000 will, or will not, buy 10 years from now?

Hon Tom Stephens: It will provide for just about every piece of additional building work.

Hon MURIEL PATTERSON: It would be a very bold person who would argue its suitability in a nation with an enormous foreign debt. Equally, the price ceiling of \$200 000 in 1991 may seem adequate; but it will not be too long before more homes are costing \$200 000-plus, and at that stage whatever this Bill confers will no longer apply to the buyer. Should that not be addressed now by inserting an escalation clause of so many per cent per annum? Do we have to wait until confrontations occur?

This brings me to clause 13 which is headed "Rise and fall clause prohibited" and carries a threat of a \$10 000 fine. Any variation in the contract price is prohibited unless it reflects further costs actually imposed on, or incurred by, the builder. Clause 13(4) describes this variation -

- (a) as a direct consequence of a written law of the State or the Commonwealth;
- (b) on account of an increase in any tax, duty or other charge imposed under such law after the date of the contract; or
- (c) by reason of a delay in the commencement of home building work beyond 45 working days after the date of the contract . . .

The next paragraph refers to "solely by the failure of the owner" to produce satisfactory evidence of the owner's ability to pay the contract price. This is followed by a suspiciously shapeless, catch-all smudge of words - a veritable lawyer's delight - which seems to assume that a home building contract price can be varied. Subparagraph (ii) of this clause refers to a variation as follows -

That occurs without any failure on the part of either the owner or the builder to comply with his or her obligations under the contract.

We are referring to a written contract. Further clarification is required before such a phrase is allowed to pass into law, especially when it is armed with a \$10 000 fine for misunderstanding its intent, whatever that may be.

Let us assume that a builder has entered into such a contract in good faith and within the stipulated 45 working days a strike occurs at one of his principal suppliers, his transport links are disrupted or the site is black banned and no work can take place. Can the builder apply to vary the contract so that any additional unforeseen expenses are passed on to the home buyer? At first sight that would seem to be an issue covered by clause 13(4)(c)(ii) of the current Bill, but is that how it will be interpreted in years to come? The responsible Minister has a clear cut duty to state now that losses incurred through industrial action, official or otherwise, are sufficient grounds for a variation in the home building contract. Until such an assurance is read into the record, this proposal should be set aside. Clearly this subject is far too important to be allowed to proceed until such crucial details have been clarified.

In summary, firstly, the Bill must contain a more equitable distribution of obligations and penalties; secondly, more realistic cost parameters must be set to take into account the dwindling purchasing power of money; and thirdly, a much clearer definition of clause 13(4)(c)(ii) is required. Therefore, I recommend that this Bill be referred to the Standing Committee on Legislation.

**HON GARRY KELLY** (South Metropolitan) [5.39 pm]: I remind the House that during Hon George Cash's contribution I interjected that the negotiations between builders and new home buyers is an uneven contest. The builder is in a position of some power over the purchaser. Until now - assuming that the legislation becomes law - the new home buyer has been at the mercy of unscrupulous builders and without legal protection. I hasten to add that most home builders are reputable firms or companies and they try to do the right thing by

their clients. As with most human endeavours we have laws to catch the unscrupulous; unfortunately those who do try to do the right thing are forced to abide by the same conditions. The Builders Registration Board checks the workmanship of houses constructed in its areas of jurisdiction. However, where there are contractual problems the board in many cases is not competent to deal with them, so there is a prime need for legislation which will afford protection to new home buyers. Some years ago the Standing Committee on Government Agencies prepared a report on the Builders Registration Board which touched on some of these issues, and I commend that report to members of the House and the public. It was a very thorough report and this legislation has picked up some of the issues raised. The average consumer purchasing a new home needs this protection, and it does not presently exist. I am not trying to refuse work, but as Chairman of the Standing Committee on Legislation I do not think that, given the level of consultation that has gone into producing this Bill, we need to go through that process again via the Legislation Committee procedures.

Hon P.G. Pandal: One can never have enough consultation.

Hon GARRY KELLY: We can consult to death. Sooner or later we must make a decision.

Hon P.G. Pandal: If that is the way we have to deal with you, so be it.

Hon Peter Foss: Are you referring to the Office of the Family?

The PRESIDENT: Order!

Hon GARRY KELLY: If a public meeting of new home buyers were convened and the need for legislation of this type were canvassed members would find overwhelmingly that the consumers would require, if not demand, this sort of protection. Shunting this Bill off to the Legislation Committee will do nothing but delay the legislation. The committee will come back with a report which will recommend legislation, if not identical, very similar to this Bill. We will not have advantaged the interests of consumers or the building industry.

Hon George Cash: I know you are chairman of this committee but you cannot presume to tell us what the committee will report back to this House.

Hon Tom Stephens: He is a very effective chairman.

Hon George Cash: Obviously.

Hon GARRY KELLY: Legislation of this type is required and, given the level of consultation that has taken place with all sides of industry and groups representing new home buyers, no purpose will be served by referring this Bill to the committee. If it were referred to the committee, we would have to seek evidence from those same people. Presumably they would say much the same thing as they said during the Bill's drafting process. Legislation that comes before the Parliament is the subject of consultation. The days are pretty well gone where Governments legislate off their own bat without consulting affected groups. From the information contained in the second reading speech and the Bill, a fair amount of consultation has taken place. All sides have been consulted and have had input into the drafting. We should argue out the points in a Committee of the Whole House. I support the Bill.

HON T.G. BUTLER (East Metropolitan) [5.45 pm]: I also support the Bill, but not the notion that it be referred to the Standing Committee on Legislation for the very same reasons given by Hon Garry Kelly. I was interested in the points made by Hon George Cash and Hon Muriel Patterson about the lack of necessity for regulations simply because the majority of builders are reputable companies.

Hon P.G. Pandal: You have to be decent to Mr Cash because it is his birthday and we have to do the right thing today.

Hon T.G. BUTLER: Would Hon Phillip Pandal like me to lead the singing?

Hon P.G. Pandal: No.

Hon T.G. BUTLER: Mr Pandal is lucky because I am in a fairly mellow mood it being my birthday, and I am even prepared to be nice to him.

Hon Sam Piantadosi: You have obviously had a bad day!

Hon T.G. BUTLER: Members should cast their minds back to 1988 and the disputes in the housing industry created by the less reputable companies which had included the 30 day

clause in their contracts. If a home buyer, by some stroke of magic, could get all the shire and other Government service organisation clearances through in 30 days, he could get a discount off the price of his house. People entered into those sorts of contracts with no chance, or only a very slim chance, of getting their percentage discount simply because it was impossible for local governments to complete their processes in that time. To suggest that because a small number of builders -

Hon Sam Piantadosi interjected.

The PRESIDENT: Order!

Hon T.G. BUTLER: I suggest that next time Hon Sam Piantadosi interjects the President name him!

As I was saying, to suggest that the industry does not need regulation simply because only a small number of builders are disreputable -

Hon D.J. Wordsworth interjected.

Hon T.G. BUTLER: Mr Wordsworth, I am deeply distressed. I will wind up in a minute given the opportunity.

The problems experienced in 1988 with that clause being written into building contracts showed how little protection home buyers had from the less reputable builders, and in 1989 an inquiry recommended the need for this type of legislation. As Hon Garry Kelly said, this Bill has come out of extensive negotiations with all parties connected with the home building industry. All points of view have been covered and it should proceed to the Committee Stage instead of being sent to the Standing Committee on Legislation. As Hon Garry Kelly said, the same people would be called before the committee and their sentiments would be repeated.

Debate adjourned, on motion by Hon Peter Foss.

## ADJOURNMENT OF THE HOUSE - ORDINARY

HON J.M. BERINSON (North Metropolitan - Leader of the House) [5.48 pm]: I move -  
That the House do now adjourn.

*Adjournment Debate - Soccer Federation of Western Australia - Soccer Administration of WA - Controlling Body*

HON SAM PIANTADOSI (North Metropolitan) [5.49 pm]: I take this opportunity to wish Hon Tom Butler a happy birthday.

Hon J.M. Berinson: Why was he born so beautiful!

Hon P.G. Pandal: Why was he born?

Hon SAM PIANTADOSI: That could be asked of Hon Phillip Pandal, but not of others. I also take the opportunity of wishing Hon George Cash a happy 48th birthday.

Hon George Cash: The member has it wrong. I was born in 1948.

Hon SAM PIANTADOSI: The niceties are over now.

Yesterday, Hon Barry House raised points in a question that he asked of the Minister for Sport and Recreation which I want to clarify. Unfortunately, he is not here. However, I showed him some letters on the matter about which he wanted information. He was appreciative of the information I presented to him and I believe that no further questions will be forthcoming from the Secretary of the Soccer Federation of Western Australia. For the benefit of members, I will read a letter received today by Ian Cox, the Chief Executive Officer of the Soccer Administration of Western Australia from Ian Holmes, the Chief Executive Officer of the Australian Soccer Federation. It states -

Dear Ian,

Thank you for a copy of the SFWA's newsletter of 7 September, 1991.

Under the Statutes of the Federation Internationale De Football Association (FIFA) it is not possible for SFWA to be affiliated other than via the Australian Soccer Federation.

The SFWA remains outside of the umbrella of FIFA and the ASF. As such they do not have the protection of being part of the official football family, either nationally or internationally.

The consequences which flow from not being part of the recognised system remain. These were previously detailed by Alan Vessey and are unchanged.

Attached is a copy of a letter received from the German Football Federation. It spells out most succinctly the position regarding international relationships. Similarly, I have received correspondence from the New Zealand Football Association following approaches from SFWA.

What needs to be understood by the SFWA is there is no proper way around the existing system. Ultimately, I believe they will come to that conclusion.

You have my authority to make known to persons you deem appropriate the contents of this letter and the attachment.

The member asked why the Minister had made available a grant to the Soccer Administration of WA while another body existed and while soccer in this State was not under the umbrella of a single organisation. The letter that I have read clarifies that the Soccer Administration of WA is now the controlling body and soccer in this State is under one umbrella organisation. The remnants of that association form part of the Soccer Federation of WA. It is a small minority group that has been trying to gain recognition through the back door. It failed to do that in Australia and went overseas to the New Zealand Football Association and the German Football Association to try to gain credibility. I hope this information puts to rest the concerns of the member. The quicker that the remnants of the SFWA disappear from the scene the better off the many people who are actively involved in soccer in this State will be. It is important that soccer regain its position as a major sport in Western Australia.

Question put and passed.

*House adjourned at 5.53 pm*

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## QUESTIONS ON NOTICE

### ABORIGINAL COMMUNITIES - BY-LAWS

#### *Aboriginal Communities Act 1979*

765. Hon N.F. MOORE to the Minister for Education representing the Minister for Aboriginal Affairs:

Which Aboriginal communities have adopted by-laws under the Aboriginal Communities Act 1979?

Hon KAY HALLAHAN replied:

The Minister for Aboriginal Affairs has submitted a list of Aboriginal communities proclaimed under the Aboriginal Communities Act 1979 for the information of the honourable member.

1. Bardi Aborigines Corporation
2. Bidyadanga Aboriginal Corporation  
(La Grange)
3. Lombadina Community Incorporated
4. Beagle Bay Aboriginal Incorporated
5. Balgo Hills Aboriginal Community  
Incorporated (Wirimanu)
6. Irrunytju Community Incorporated  
(Wingellina)
7. Mantamaru Community Incorporated (Jamison)
8. Papulankutja Community (Blackstone)
9. Warakurna Community Incorporated
10. Warburton Community Incorporated.
11. Kiwirrkurra Council Aboriginal  
Corporation.
12. Tjirrkarli Aboriginal Corporation
13. Tjukurla Community Aboriginal Corporation.
14. Upurl Upurilila Ngurratja Community  
Incorporated (Coonana)
15. Looma Community Incorporated
16. Warmun Aboriginal Community (Turkey Creek)
17. Woolah Community Incorporated (Doon Doon  
Station)
18. Kalumburu Aboriginal Corporation.
19. Mindibungu Aboriginal Corporation  
(Billiluna Station)
20. Oombulgurri Association Incorporated
21. Junjuwa Community Incorporated (Fitzroy  
Crossing)
22. Yungngora Association Incorporated  
(Nookanbah)
23. Mugarinya Community Incorporated  
(Yandeyarra)
24. Jigalong Community Incorporated

25. Aboriginal Movement for Outback Survival  
Incorporated (Mt Margaret Mission)

ABORIGINES - JIGALONG ABORIGINAL COMMUNITY EMPLOYEES  
*Sickness and Accident Insurance Policy Payments*

774. Hon GEORGE CASH to the Minister for Education representing the Minister for Aboriginal Affairs:

- (1) Have employees of the Jigalong Aboriginal Community recently had sickness and accident insurance policies paid for by the Aboriginal community out of Government funds?
- (2) Are the insurance policies in the name of the Aboriginal community or in the individual names of the employees?
- (3) Who are the benefits payable to in respect of the policies, and who owns the property in the policy?
- (4) What amount of funding is involved in respect of the payments of these policies and how many employees are involved?

Hon KAY HALLAHAN replied:

The Minister for Aboriginal Affairs has provided the following reply -

(1)-(4)

The Jigalong Community operates as an autonomous body responsible for its own affairs. Funding for its ongoing operations is provided by the Commonwealth Government through the Aboriginal and Torres Strait Islander Commission - ATSIC. No State Government moneys are provided for administrative purposes and I am unable to respond to the queries raised. This question should be referred to the community itself or through ATSIC.

SHARK BAY SALT - USELESS LOOP EXTENSIONS  
*Denham Fishermen's Association - Compensation Discussions*

834. Hon P.H. LOCKYER to the Minister for Education representing the Minister for the Environment:

- (1) Have any discussions taken place with the Denham Fishermen's Association in the last 30 days with a view to providing compensation for loss of fishing grounds with regard to the Government's decision to allow extensions to Shark Bay Salt at Useless Loop?
- (2) Has an official objection to the Environmental Protection Authority's decision to allow the extension been received?
- (3) If so, when?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) I have not yet issued conditions relating to the Shark Bay Salt development.

(2)-(3)

The Premier received a letter from the Denham Fishermen's Association dated 29 July.

QUESTIONS WITHOUT NOTICE

BELL GROUP SHARES - STATE GOVERNMENT INSURANCE COMMISSION  
*Purchase - Attorney General's Legal Advice*

512. Hon GEORGE CASH to the Attorney General:

Some notice of this question has been given.

- (1) Did the Attorney General seek an opinion or advice from Mr Peter Wiese, or any other lawyer, on the Government's involvement in the purchase of shares and/or any other securities in the Bell Group Ltd by the State Government Insurance Commission?
- (2) If yes, will he table the opinion or advice?
- (3) If no to (1), why not?

Hon J.M. BERINSON replied:

I thank the member for some advance notice of the question.

- (1) As far as I can recall, the only legal advice on any aspect of the Government's position in respect of this purchase was at the time of the NCSC inquiry in June 1988. The advice was peripheral to questions on the SGIC issue and was oral.
- (2)-(3) Not applicable.

# AUSTRALIAN SECURITIES COMMISSION - CORPORATE CRIMINALS

## *Draft Error - Legislation Amendment Discussions*

513. Hon GEORGE CASH to the Attorney General:

In view of a report in the *Business Australian* today which states that due to a drafting error the Australian Securities Commission's power to obtain evidence to convict corporate criminals has in fact been reduced and not strengthened, as was my understanding of the intent of the legislation, and as we have mirror legislation in this State, I ask -

- (1) Has the Attorney General discussed the matter with the Federal Attorney General with a view to amending the legislation?
- (2) If not, why not?

Hon J.M. BERINSON replied:

- (1)-(2) I have not discussed this problem with the Federal Attorney General because I was not aware that any such problem existed until the Leader of the Opposition brought it to attention. I have not seen the report to which he refers, but I am sure that if a difficulty exists in that area, the Commonwealth Attorney General will be taking prompt action on it. All initiative in respect of corporate regulation now rests with the Commonwealth. However, the Commonwealth has our assurance of cooperation wherever necessary. As a matter of coincidence, it was only earlier this afternoon that I introduced a Bill to ensure that uniformity with the Commonwealth Corporations Act was maintained.

# SPENT CONVICTIONS ACT - PROCLAMATION DELAY

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

I refer to the Spent Convictions Act which passed through this House in 1988, and I ask -

- (1) Is it correct that that Act has not yet been proclaimed?
- (2) If not, what are the reasons for that extremely long delay?

Hon J.M. BERINSON replied:

- (1)-(2) That Act comes within the portfolio of the Minister for Justice; therefore, I suggest that Mr Pendal put the question on notice for the Minister's attention.

## POLICE - COLLARD, MRS RHONDA

*Witness Delay*

515. Hon E.J. CHARLTON to the Minister for Police:

Will the Minister advise whether the police are aware of the identity of the person who made contact with the taxi driver, who in turn contacted the police, in the Rhonda Collard and Frank Nannup incident?

Hon GRAHAM EDWARDS replied:

My understanding is that the police have acquired a statement from that person.

## RAILWAY HOTEL, KALGOORLIE - DEMOLITION ORDER

516. Hon P.G. PENDAL to the Minister for Education representing the Minister for Heritage:

Some notice of this question has been given. I refer to the Railway Hotel in Kalgoorlie and ask -

- (1) Is it correct that the local government authority has issued a demolition order for the hotel?
- (2) If so, has a deadline date been set for the carrying out of that order?
- (3) If yes to (2), what is the date?
- (4) Given that his department has been working on a heritage agreement for the hotel's owner, how does he view such a demolition order?
- (5) What assessment has been made of the hotel's heritage value?

Hon KAY HALLAHAN replied:

The Minister for Heritage has provided the following reply -

(1) Yes.

(2)-(3)

The City of Kalgoorlie-Boulder proposed to decide on awarding the tender for the demolition of the hotel at its meeting on 23 September 1991 - I will check that date as I presume it should be 1990.

(4) The Minister for Heritage is concerned about the proposed course of action. The Heritage Council has had discussions with the city to resolve the matter.

(5) The hotel is classified by the National Trust of Australia (WA) and has been entered in the interim list of the Register of the National Estate.

## PERMANENT BUILDING SOCIETY - DEPOSITOR CLASSIFICATION

517. Hon D.J. WORDSWORTH to the Attorney General:

Did he direct the registrar or the administrator of the Permanent Building Society to divide depositors into various classifications?

Hon J.M. Berinson: Give me some examples of the classifications to which you refer.

Hon D.J. WORDSWORTH: The classifications which determined that deposits as pension cheques could be repaid immediately.

Hon J.M. BERINSON replied:

No.

## BLOOD ALCOHOL - 0.05 BLOOD LEVEL

*Compromise Legislation*

518. Hon REG DAVIES to the Minister for Police:

- (1) Will the Minister confirm a 6PR news item today that he intends to put forward compromise legislation to gain Opposition support for the 0.05 blood alcohol content restriction?

- (2) Is he negotiating with Independent members to gain support for that compromise legislation?
- (3) If that is the case, can the Minister outline the compromise and state whether he has received support from Independents?

Hon Graham Edwards: Have you received your letter yet?

Hon REG DAVIES: I know only what I have heard on 6PR.

Hon J.M. Berinson: The letter is in the mail.

Hon Graham Edwards: It is in the House and may be in your office.

Hon GRAHAM EDWARDS replied:

(1)-(3)

I have written to the leaders of the Liberal and National Parties and I have asked them to consider a compromise.

Hon George Cash: We haven't received the letter.

Hon GRAHAM EDWARDS: The letter has gone and is in their possession. It was delivered to the leader of Hon George Cash's party and to the Leader of the National Party.

Hon E.J. Charlton: The answer is no.

Hon GRAHAM EDWARDS: I hope the compromise will not be rejected just like that. I have asked the leaders and Independents to reconsider their positions. I am very disappointed that, without even looking at the compromise, Hon Eric Charlton has rejected it. The Government would be prepared to compromise by changing the original penalty of a \$200 fine with the loss of six demerit points to a fine of \$125 with the loss of three demerit points. That is very much in line with South Australia's policy and with what is accepted as a reasonable position in the Northern Territory, except that demerit points are not given. I have carefully considered the matter and the report prepared by the Standing Committee on Legislation. I hope that at members' party meetings next week they will give some real consideration to the position. I indicated on 6PR today that I would also write to the Independents.

Hon Reg Davies: I will consider it at my next party meeting.

Hon GRAHAM EDWARDS: There is a lot to be said at times for a party of one except when one is trying to get the numbers in a bigger forum. I certainly hope Hon Reg Davies is prepared to consider the position. I assure him the letter is in the House and may well be in his office. I intend to talk to him, as I intend to talk to the other Independents who make up the numbers in this Parliament. It is to them that I will be looking for a lead on the other side.

The PRESIDENT: Order! Before I call on Hon E.J. Charlton to ask his question, I am a bit fidgety about the last question, although I missed the first part of it. However, I have a feeling that when the Minister was answering it he was getting dangerously close to contravening the Standing Orders which say members cannot anticipate a debate pending in the House. The detailed answer given by the Minister came pretty close to doing that. Nevertheless, because I did not hear the first part of the question I did not interrupt him.

#### SCHOOLS - NEW NORCIA *Closure*

519. Hon E.J. CHARLTON to the Minister for Education:

Will the Minister advise the House whether, owing to the closure of the private school at New Norcia announced last week, the Government or the Ministry of Education gave any financial assistance to that school recently or any other commitment for financial assistance in the future?

Hon KAY HALLAHAN replied:

I suggest the member put his question on notice with any of the other matters in which he would be interested concerning that school and I will have the information assembled for him.

#### PERMANENT BUILDING SOCIETY - GOVERNMENT INQUIRY RUMOUR

520. Hon PETER FOSS to the Attorney General:

- (1) Is he aware that there are rumours in town that people knew of the Government investigation prior to the closure of the Permanent Building Society and that persons made substantial withdrawals in anticipation that something might happen?
- (2) Will he instruct the administrator to investigate whether there is any evidence on record within the society that such events may have occurred?

Hon J.M. BERINSON replied:

(1)-(2)

The only rumour that came to my attention that I can recall related to advice which was supposed to have gone to the Commonwealth Department of Social Security. That has since been investigated and rejected. That is agreed, I think, by the Commonwealth also. I am not aware of any other allegations in this respect, but I am quite happy to pass that question on to the administrator and ask whether he can provide a report on it.

#### EMPLOYMENT - LABOUR MARKET FIGURES

521. Hon BOB THOMAS to the Minister for Employment and Training:

The Australian Bureau of Statistics' labour market figures were released today. Can the Minister tell us what those figures were and the implications of them?

Hon KAY HALLAHAN replied:

The labour market figures are very encouraging. Quite strong job growth has occurred in Western Australia; 13 800 new jobs were created. However, that has been offset by the entry into the labour market of 14 000 people. Despite that, we have had a slight decline in unemployment from 11.2 per cent to 11 per cent, which is indeed heartening news, while the national figure stayed steady over the last two months. Nevertheless, that is pretty cold comfort to those people who are still unemployed. Although there was some, I suppose one could say soft, comment coming from that information about labour market figures, it is a fact that the economy in this State is on the road to recovery and that is why -

Several members interjected.

Hon KAY HALLAHAN: Do members not want to hear?

Hon E.J. Charlton: It is not on the road to recovery.

Several members interjected.

The PRESIDENT: Order!

Hon KAY HALLAHAN: If members do not want to hear the indicators I shall not bother to give the House any of the valuable information I would have thought responsible members -

Hon E.J. Charlton: It is misleading information.

Hon KAY HALLAHAN: It is not misleading information.

The PRESIDENT: Order!

Hon KAY HALLAHAN: If members read their daily newspaper, they would see -

The PRESIDENT: Order! I am trying to protect the Minister, but she is her own worst enemy. The Minister is entitled to be heard in silence with her answer.

However, she is also compelled to answer the question and not talk to the interjectors, otherwise the whole time will expire and nobody will know anything.

Hon KAY HALLAHAN: Despite the astonishing lack of interest from members opposite -

The PRESIDENT: Order!

Hon KAY HALLAHAN: If Opposition members say the economy is going nowhere, that is a disgusting indictment on them.

The PRESIDENT: Order! The Minister must only answer Hon Bob Thomas; she does not need to answer the rest of the members.

Hon KAY HALLAHAN: I will continue answering the question raised by Hon Bob Thomas because he is obviously a sensible and very concerned member of Parliament. The fact is that there has been job growth in the mining areas, the housing sector, some of the retail areas and, to a lesser extent, in the hospitality and tourism industries. They are very significant for our economy. I said last month that I was hoping there would be an improvement this month and for the next couple of months. There has been an improvement although I hoped it would be more significant than it is. However, the fact that more people have been drawn into the labour market than the number of jobs created - we have a very good record of job creation - indicates that a recovery is occurring. There has been a record level of exports from the State, an increase in motor vehicle registrations, a rise in the number of building approvals and a steady upward trend in retail sales. They are all very clear signs of recovery in the economy.

We have never predicted it would be a rapid recovery; in fact, it will be a slow recovery out of this recession. However, the signs of movement out of the recession are very clear. Job creation will occur in the private sector, not in the public sector. In framing the Budget, the Government did not impose on business any higher taxes or charges so that it would be in the best possible position to provide the employment opportunities that we so badly need. In the next couple of weeks we will be debating the Budget, and members need to keep in mind that, at a time when the amount of revenue coming to the State has been reduced, the Government chose not to raise taxes and charges so that we did not impose a burden on people who are having difficult times and so that we could create the best possible opportunity for business to create jobs.

Today's figures indicate a very slight fall in youth unemployment. However, we should feel some comfort from the fact that this State has the lowest youth unemployment rate in Australia. That does not mean that Western Australians who cannot find jobs should be happy. We have to continue doing everything possible to stimulate job opportunities for as many Western Australians as possible.

Several members interjected.

The PRESIDENT: Order! I am getting sick and tired of the way members are behaving during question time. Members have 30 minutes and my task is to allow as many members as possible to ask questions. It is unfair that members who are not asking questions take up the time of those who want to ask them by continually babbling on about nothing.

#### PERMANENT BUILDING SOCIETY - FUNDS WITHDRAWAL AUTHORITY

522. Hon D.J. WORDSWORTH to the Attorney General:

Under what authority and at whose direction have certain investors in the Permanent Building Society been given funds? I ask this question because some people who receive social security benefits were able to obtain money and I know that some local government authorities are putting pressure on the Government to have their funds returned.

Hon J.M. BERINSON replied:

It is true that some local government authorities have made submissions on this matter. As far as I am aware no special arrangements have been possible in that respect. Under the Building Societies Act, the registrar has the authority to permit such measures as the partial withdrawal of funds in the special circumstances to which he has agreed. I cannot remember whether it is under section 12 of the Act, but that is the section that I have in my mind. In any event, the eventual authority for those partial releases rests with the registrar.

### EMPLOYMENT - LABOUR MARKET FIGURES

#### *Government Financial Commitments Failure*

523. Hon E.J. CHARLTON to the Minister for Education:

Further to Hon Bob Thomas' question, is there anything in today's figures that relate to the Government's failure to meet its commitments last financial year and that can be derived as being encouraging or that it is unable to implement any new capital investment in the coming year?

Hon KAY HALLAHAN replied:

I suppose that question was brought about by a genuine desire for information, although it was a little hard to deduce that. Certainly, there was an increase in the funds allocated to the Capital Works Program. That will have an employment creating effect, as will the huge investment of \$420 million in housing. That will bring about 9 000 jobs. That does not mean that new people will go into those jobs. Some of them will be maintained in the housing and construction industry and others will be brought in. Had there been no investment in the industry there would be 9 000 fewer jobs. The member is under the wrong impression if what he implied in the question is his belief. This Government has done a great deal in the Budget to stimulate the economy. In the next couple of months we will see a positive flow-on from those decisions.

### EMPLOYMENT - LABOUR MARKET FIGURES

#### *Youth Unemployment Comparison*

524. Hon SAM PIANTADOSI to the Minister for Education:

For the benefit of members opposite, will the Minister compare the figures for youth unemployment in Western Australia, the so-called growth State of New South Wales, and Queensland?

Hon KAY HALLAHAN replied:

I want to explain the youth unemployment figures because they are very concerning taken at face value. The national figure for youth unemployment - that is, 15 to 19 year olds - is 28 per cent. Western Australia's figure is 1.3 per cent lower than the national average at 26.7 per cent. The figure for New South Wales is 0.9 per cent above Western Australia's figure at 27.6 per cent and is close to the national average. Victoria's rate is higher than the national average at 30.4 per cent, with the Queensland rate being below the national average at 27.4 per cent. South Australia's figure is just below the national average at 27.8 per cent and Tasmania's is above the national average at 30.7 per cent.

The vast majority of that 15 to 19 year old cohort is in employment and training. The figure of one in four of young people being unemployed is a very small group of the 15 to 19 year olds. If that figure is calculated out, it would come to something approaching eight per cent of that cohort that is unemployed, although it is always a concerning figure in the way it is represented.

**SCHOOLS - MT MARGARET SCHOOL**  
*Student Attendance Refusal*

525. Hon N.F. MOORE to the Minister for Education:

- (1) Is the Minister aware that parents are refusing to send their children to the Mt Margaret school?
- (2) If so,
  - (a) why are the parents boycotting the school; and
  - (b) what action is she taking to overcome the problem?

Hon KAY HALLAHAN replied:

- (1) Yes.
- (2) (a) Some parents in the Mt Margaret community are refusing to send their children to school as a result of conflict with the principal.
- (b) Two meetings were held at the community on Monday, where the superintendent of the Kalgoorlie district met with representatives from the school, parents and the community committee to discuss the problem. Plans for action to solve the problems are being negotiated.

**WEST ED MEDIA - CLOSURE**  
*Golden West Network Program Source - Alternative Programs*

526. Hon DERRICK TOMLINSON to the Minister for Education:

- (1) Is West Ed Media the main source of live interactive educational television programs broadcast through the Golden West Network?
- (2) What will be the alternative source of programs after West Ed Media has closed?

Hon KAY HALLAHAN replied:

- (1)-(2) I said yesterday that all the activities of West Ed Media deemed essential would be provided in one way or another, that Ed TV programs which are necessary would be continued, and that Golden West Network programming was unlikely to be affected.
- I understand that many general programs are broadcast and some are curriculum specific. I am told that some curriculum specific materials could easily be produced through videos of classroom activity which currently exist and that some of those videos are already part of the programming. Negotiations are continuing to maintain that level of broadcasting and, no doubt, some of it will become more relevant than at present. An interesting example is training sessions through the Bush Fires Board. I am sure that is important, and it will continue, but I wonder about its curriculum specificity.

**WESTERN WOMEN FINANCIAL SERVICES PTY LTD - CORPORATE AFFAIRS DEPARTMENT**  
*Books Access Prevention - Action Taken*

527. Hon PETER FOSS to the Attorney General:

- (1) After the Corporate Affairs Office demanded, under the provisions of the Companies Code, to see the books of Western Women Financial Services Pty Ltd, and Western Women Financial Services Pty Ltd applied to prevent that inspection, what action, if any, was taken by Corporate Affairs to bring the matter to a speedy conclusion and gain access to the books?
- (2) Why did the Corporate Affairs Office not take action to close the offices of Western Women Financial Services Pty Ltd between October 1990 and the end of the year?

Hon J.M. BERINSON replied:

(1)-(2)

All relevant files and staff concerned with Western Women Financial Services Pty Ltd matter are now with the Australian Securities Commission. Questions concerning this matter should be addressed to the Regional Commissioner of the Australian Securities Commission.

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