Legislative Assembly

Thursday, 30 October 1986

THE SPEAKER (Mr Barnett) took the Chair at 10.45 a.m., and read prayers.

PARLIAMENTARY HISTORY ADVISORY COMMITTEE

Statement by Speaker

THE SPEAKER: In September 1984 the Presiding Officers reported to both Houses on the progress made by the top-level committee appointed to oversee the writing of the history of the State Parliament of Western Australia. On this occasion I would like to take the opportunity to bring honourable members up to date on the progress made towards this objective and, in the process, foreshadow the remaining stages of the project, culminating in the production of a one-volume history of the Parliament to be published to coincide with the centenary of the proclamation of self-government in Western Australia in October 1990.

Members of the committee since its inception have included as chairman and editor of the volume, Mr David Black, Principal Lecturer in the School of Social Sciences at the Western Australian Institute of Technology; Professor Peter Boyce, Vice Chancellor of Murdoch University; Associate Professor Dr Tom Stannage from the Department of History at the University of Western Australia; Hon Phillip Pendal MLC; and the Clerks of the Legislative Assembly and Council respectively, Mr Bruce Okely and Mr Laurie Marquet. In addition, Hon. Robert Hetherington MLC is to join the committee in lieu of Hon. Colin Jamieson, who is, however, to continue to serve as a co-opted member in view of his great parliamentary experience and considerable interest in the project. His Excellency the Governor of Western Australia, Professor Gordon Reid, who was a member of the committee until he took up his vice regal post, will also continue to act as a consultant to the committee and as one of the authors.

The original list of authors, in addition to the academic members of the advisory committeee, included Dr Brian de Garis from the History Department of the University of Western Australia; Dr Michael Wood, Secretary of the Department of Local Government; Mr Campbell Sharman of the Department of Politics at the University of Western Australia; Professor Geoffrey Bolton and Dr Lenore Layman from Murdoch University; and Dr Geoff Gallop MLA, formerly also from that university. The list has since been expanded by the inclusion of Dr Peter Johnston from the Faculty of Law at the University of Western Australia and by Dr Harry Phillips of the Western Australian College of Advanced Education who will work with Dr Gallop. In addition to a chronological history of the Parliament from 1831 to the late 1980s there will be chapters on the relationship of Parliament to Governors, the Executive, State and Federal constitutions, other Parliaments and the community, with the final chapter speculating on the possible future of parliamentary government in this State.

The immediate schedule is for the completion of the first drafts of most chapters by March 1987 and the authors have signed contracts in this regard. To minimise overlap and to ensure no significant areas are omitted from the final volume, a series of seminars and discussions between authors was held during July and August this year. It is hoped to carry out most of the initial editing during 1987 leaving the final versions of the chapters to be completed by the end of 1988. This should allow adequate time for the collection of photographs and the actual publication process. The committee is also planning a number of associated activities to arouse interest in the community, both in the parliamentary history itself and in the significance of the 1990 centenary generally. In this regard the committee is arranging during 1987 to sponsor jointly with the Historical Society of Western Australia and the Joint Politics Tertiary Entrance Examination Syllabus Committee respectively, essay competitions for students in Years 11 and 12 at secondary schools throughout the State.

Suggestions will also be forthcoming for associated activities which the Parliament might consider undertaking in connection with the celebrations in 1990. Honourable members are urged to contact the Clerks if they have any suggestions or feel they would like to contribute to the project in any way.

Despite rising costs it is hoped to hold the final total cost of the project to about $160 000 based on current values. This money would have been spent largely on research assistance, the secondment of the editor and the actual production costs, with smaller amounts being utilised for secretarial assistance, expenses associated with the oral history project, and related matters. The total costs have been significantly minimised by the fact that none of

the authors will receive any royalties or direct payments for writing and that the tertiary institutions are effectively providing important financial assistance to the project through the provision of study leave time for academic writers, secretarial assistance and, in the case of the Western Australian Institute of Technology, the personnel and accounting services for the payment of the research assistants. The whole project has in fact already proved to be a splendid example of cooperation between the Parliament, all the tertiary institutions and the Battye Library.

The expenditure of the annual grant from the parliamentary vote has been carefully scrutinised by the advisory committee which in turn reports regularly to the Presiding Officers who are ultimately responsible for the control of the project. In this regard the money already granted has been spent well and, assuming the modest level of funding previously promised is maintained, the Parliament will have obtained for a level of expenditure well below that outlaid by the Commonwealth Parliament, a definitive history of its own activities and a permanent and lasting oral record from people who have been associated with the Parliament over several decades.

BILLS (3): INTRODUCTION AND FIRST READING

1. Loan Bill.

   Bill introduced, on motion by Mr Pearce (Leader of the House), and read a first time.

2. Country Areas Water Supply Amendment Bill.

3. Acts Amendment (Itinerant Vendors) Bill.

   Bills introduced, on motions by Mr Schell, and read a first time.

CRIMINAL LAW AMENDMENT BILL

Receipt and First Reading

Bill received from the Council; and, on motion by Mr Peter Dowding (Minister for Industrial Relations), read a first time.

ENVIRONMENTAL PROTECTION BILL

In Committee

Resumed from 29 October. The Chairman of Committees (Mr Burkett) in the Chair; Mr Hodge (Minister for Environment) in charge of the Bill.

Clause 40: Assessment of proposals referred—

Progress was reported after the clause had been partly considered.

Mr BLAIKIE: I again indicate to the Chamber the difficulty of enacting all-embracing legislation which encompasses not only the provisions of the original Act, but also noise, air, and water pollution. It is difficult for the Government to introduce workable legislation which will also retain the Government's direction on these issues.

Clause 40 is a classic example of the difficulties which could arise. A proposal can be referred to the EPA only if the Minister accepts that it is a matter of public concern. A great deal rests with the Minister and I have already expressed my thoughts on this matter. Once the Minister has told the authority that the proposal is a matter of public concern, the authority establishes the procedure for the assessments to be made. Subclause (2) sets out a definite and difficult procedure to be followed for any proposal referred for an environmental impact assessment.

Subclause (6) sets out the procedure with regard to advertising and publication, and the availability of information or reports to public authorities and other persons. It has not yet been determined how such information will be advertised. No doubt that will be covered by regulations and I ask the Minister to explain how it will work.

Subparagraph (ii) on page 32 specifies that the proponent shall provide copies of the information or report free of charge to public authorities and persons, and to members of the public at a price not exceeding such maximum price as the authority determines. One can envisage the development of a new printing and publishing industry because this provision gives the authority limitless powers with regard to the number of reports required at any one time.

It is all very well for the Minister to say that the authority will be responsible and will act with due discretion. However, the authority is under no obligation to refer to the Minister with regard to its reporting procedure. The procedures which must be carried out by proponents are a real weakness of this Bill. Any proponent whose project will be subject to an environmental impact assessment—it could be a land development proposal—will incur a great deal of ongoing cost as a result of the requirements. He must apply to the local auth-

ority and meet the State Planning Commission's guidelines, and the project can then be referred for an environmental impact assessment if the Minister determines that the proposal will significantly alter the environment. Having been through those procedures the authority can then require the proponent to provide copies of the report to all and sundry.

There could be one copy, 100 copies, or 500 copies of the report. A number of copies will be available to public authorities. I do not want to question that side of it too much, but some people will not be able to meet this ongoing cost.

On top of that, the proponent must make available further copies of the report to members of the public at certain times and places and at a price not exceeding the maximum price. We are attemping to understand what the Minister is trying to achieve in this all-embracing Act. Some sections, and this one in particular, will be of concern to the wider community. The section could well be likened to the Achilles heel of the legislation, as the fringe benefits tax is the Achilles heel of the Federal Treasurer. Proposals which may have appeared to be a good idea at the time were included, and I have no idea why. In due course, when the public understands the full consequences, they will respond in a very positive way. I would like to know why proponents must be responsible for such detailed reporting.

Mr HODGE: I am surprised that the member for Vasse has laboured this point so hard. I have listened closely to what he has had to say, and it boils down to the fact that he is worried about what it will cost proponents to provide copies of environmental assessments to the public.

Mr Blaikie: And the number of copies they could be called upon to make available to public authorities and other people as determined by the authority.

Mr HODGE: I will try to reassure the member this is no departure from the present practice which has developed over the years. All we are doing is formalising it and putting it into a Statute. That is precisely what happens now. I have been the Minister for a relatively short time only, but I have not had a single complaint from any proponent about this issue.

Obviously the EPA will discuss the matter with a proponent and set a price on the report for sale to the public. That price will be set to cover the full cost of preparing those editions of the report. We do not expect the proponent to give away copies or to lose money by providing copies of the report to the public. Nevertheless, we do not expect them to be making a profit out of it either. We will ensure the proponents are able to charge a fair and reasonable price which will not leave them out of pocket when they produce copies of environmental studies.

I do not expect proponents to charge Government departments, Government instrumentalities, or local government for providing copies of the report. That is a legitimate cost they should be prepared to bear as part of the overall development costs of the project. I am sure one would not find a single developer who would object to that concept. Developers have been doing it for years.

Members of the EPA are quite experienced in this field. They will discuss with the proponent how many copies should be printed, and they will use their best endeavours to gauge the extent of public interest and the likely demand for the report. That will be a matter of people using their judgment and experience. It will not be in anyone's interest to produce more copies of a report than are necessary.

On the other hand, some of these projects will generate wide public interest, and there will probably be a fairly strong demand for copies of the report. It will be a matter of people, with experience of these things, sitting down and discussing how many copies need to be produced.

This is not a radical departure from the present situation; we are merely seeking to formalise an existing custom and practice.

Mr RUSHTON: This is a particularly important area, and while it might not appear to be of importance to the Minister, the EPA needs to understand what Parliament considers fair.

I base my comments on my experience in planning. An industry of consultants has built up in this field. The owner of a piece of land who wants to develop a quite minor project has been given to understand that unless he goes through the whole procedure he does not have much prospect of getting it through the Planning Commission. It is abhorrent to think that the owner is enticed to spend $2 000 in putting out a glossy report on a project which is fundamental and which should normally receive written approval without much difficulty.

Mr Hodge: The EPA never requires glossy reports. If you know of any instance where it has required one I will investigate it.

Mr RUSHTON: It would be a good thing for the EPA to clarify for the general public what it expects.

Mr Hodge: It does.

Mr RUSHTON: The Minister's words were related to the big fellows. They know their way around. I am talking about the middle or lower level.

Mr Hodge: The EPA produces guidelines and pamphlets for developers which set out the rules and tell them what is expected. They are only too happy to give further oral advice about how to go about obtaining EPA approval.

Mr RUSHTON: That is essential. This side of the legislation is growing in intensity because people will be encouraged to take a wider interest and more people will interact with the EPA. The EPA is becoming far more involved. Previously there was a separation of functions. I still support the separation in the sense that things fit into their right slots. This is very much a growth generating type of involvement.

Mr Hodge: It would be one of the smallest Government departments in the State.

Mr RUSHTON: It used to be the smallest.

Mr Hodge: Its gross budget is $6 million.

Mr RUSHTON: In the old days, when it started under Dr O'Brien, it had a very small staff. He used other people.

Mr Hodge: He had the Department of Conservation and Environment to service him.

Mr RUSHTON: Under Colin Porter the direction was different. It became a very large department reaching into all sorts of areas.

Mr Hodge: It has never been very large.

Mr RUSHTON: It is in my book, particularly when one does not need it. Its role should not be managerial, it should be giving advice.

Mr Hodge: That is exactly its role now.

Mr RUSHTON: I know that is what the Minister wants, but it is so easy to grow, when one brings it all together. It is like CALM. It embraces everything. In fact the Minister will have to be careful it does not embrace him. The Minister has an important role to play. We do not want CALM telling him what to do. There must be an advisory role through the EPA. I would like to see the EPA making itself independent of the Minister.

There used to be a requirement for three to six copies of a report. Now a copy must be available to anyone who wants one.

Mr Hodge: You are wrong.

Mr RUSHTON: I think the Minister is wrong. He has set a price which would not recover the cost of the reports. Reports can be very expensive.

Mr Hodge: I am just giving you an assurance.

Mr RUSHTON: It is important to have that. What I am suggesting is that it would not be a bad thing for proponents to be entitled to recoup their costs to a certain extent.

Mr Hodge: If you distrust the Environmental Protection Authority to that extent, you are wasting our time.

Mr RUSHTON: I am talking about people.

Mr Hodge: We are putting trust in the EPA to give advice on some of the most important projects in this State—in some instances they are billion-dollar projects—and you are quibbling about whether you can trust them on a report.

Mr RUSHTON: The Government has a mind for the big projects and can see only those; but I am considering small projects, not huge ones. There are important people in the middle ground and the bottom ground—people who do not have a huge amount of money. They are still entitled to justice and fairness in the deliberations. The Minister is becoming impatient because he is thinking only about big developments. It is important that every man in the street understands the environment and is able to share it in the same way under the Government's administration. It should not be only for the big, moneyed people.

Mr Hodge: You tell me where it says it is for the big people. You are wasting a lot of time.

Mr RUSHTON: The Minister is talking about billion-dollar projects, and I am talking about projects worth a couple of thousand dollars.

Mr Hodge: You are just wasting time.

Mr RUSHTON: That is the Minister's point of view.

Mr Hodge: It is shared by your colleagues—just about all of them have left.

Mr RUSHTON: Nobody on the Government side is interested in the subject. There are only six members on that side.

Mr Hodge: That is because you are speaking.

Mr RUSHTON: The Minister is the person responsible; he is dealing with the Bill. We are simply trying to react. The Minister has had the advantages, and we have the disadvantages. We are trying to protect society in this State in relation to the environment.

I have asked the Minister about the cost of these documents and so on because I wanted to get it into the *Hansard*. Members of the EPA read the *Hansard*, and I want them to know that the Opposition wants them to have the greatest regard not only for the big developers but also for every other developer, down to the humble person with a once-only project who does not know his way around all that well. He should be able to go to the EPA and be encouraged and made aware of what will take place. There is an industry of consultants out there, encouraging people to put up these glossy documents. I find it offensive that this goes on in the planning area, and I discourage it whenever I can. I suggest to electors in my area, and to others who come to me, that they have a chat with the State Planning Commission or, in this case, with the EPA. I would want the EPA to be sympathetic to such people and give them guidance. Those people might not be highly educated in their understanding of the environment, and they might be short of resources, but I want them to be given as much consideration as a person well-versed in the ways of getting things done and having huge resources.

Mr BLAIKIE: The Opposition is very concerned about the practicality of subclause 40(6) and the expense associated with it. I am well aware of the circumstances which prevail under the existing legislation, and they have worked well. I assume the Minister wishes to transpose what has worked well in the past into the legislation, with some added refinements; however, I believe that in this case they will be not added refinements but added disincentives, to the extent that some people will be disadvantaged and will not be interested in putting forward proposals because of the potential costs and time delays involved.

The member for Dale made the very important point that he recommends to people who approach him that they talk to the EPA regarding the guidelines for a project. I would do the same myself, and would suggest to would-be developers that if they wish to get a project off the ground they ensure that it is environmentally sensitive. First of all, they should ensure that the project will comply with the environmental guidelines set down.

Having got over that first hurdle, the proponent can then proceed through the other planning processes. Under subclause 40(6), proponents will have to prepare documentation of a very high, and very expensive, order. I fail to see why it is the proponent's responsibility to advertise the availability of the document for public review, when he has put forward the proposal. For instance, I handled one such matter only this morning. I have written to the appropriate agency that was seeking my support for an artificial reef to be located in Geographe Bay. That project is being supported by the South West Development Authority, which was seeking support from members of Parliament. I replied that I supported the concept, subject to its meeting environmental requirements.

That project will certainly cause public concern and will come within the ambit of the environmental impact assessments we are discussing. There will be widespread interest in the proposal and the South West Development Authority will be obliged to prepare an assessment. Having done that, the Authority will then have to make copies of the proposal available to the public, and I fail to see why it must advertise the availability of the report. Surely to goodness the Government department concerned ought to say, "We have the proposals, and they are now available."

My second point is that, at the total expense of the proponent, he is obliged to make as many copies available, and at whatever times, as may be determined. In this instance, bearing in mind that this project is in Geographe Bay, one could well imagine the EPA determining that the public interest warrants something like 2 000 copies. A host of Government agencies will want copies, as will numerous public authorities, and those will be supplied free of charge; then there is the public interest factor on top of that. The Minister will then determine that the reports be made available at a cost decided by the authority.

I do not believe the authority wants to get into the role of price fixing of reports because it may impinge on the authority's proper role and function. I refer the Minister again to the requirement for the proponent to advertise the availability of reports for public review. I do not believe that is the proponent's role. Surely that is one of the roles of the EPA. If people have an interest they can apply for reports as they see fit. I do not see why the proponent needs to be dragged through the coals time and time again.

Mr HODGE: I have noted the member's comments. I have nothing further to add to what I said previously.

Clause put and passed.

Clause 41: Decision-making authority to await authorization by Minister—

Mr RUSHTON: I would like the Minister to consider an amendment to the amendment appearing on the Notice Paper. The phrase "shall not make any decision" should be amended to read "shall not approve the proposal".

The current wording is somewhat antiquated and does not spell out what it means. If the decision-making authority decides to refuse a proposal, I see little point in pursuing the environmental assessment. There is a likelihood the proponent will appeal against a refusal, in which case there would be no reason that the appeal and the assessment could not be pursued simultaneously. I ask the Minister to consider this point. It is not a major point but it would clarify the position.

Mr HODGE: An organisation has written to me, I think yesterday, suggesting there should be a change along those lines. I will refer it to my advisers and the Parliamentary Draftsmen. If the advice is that it should be amended along those lines, I will be prepared to consider that point at a later stage.

[Quorum formed.]

I move an amendment—

> Page 33, line 22—To insert after "Authority under this Part" the following—
>
> and the period within which an appeal against that decision may be lodged under section 100 (1) has expired without the lodging of such an appeal or, if such an appeal has been lodged within that period, that appeal has been determined.

The amendment would provide that where the authority has decided not to environmentally assess a proposal, an appeal can be made to the Minister to have him request the authority to make the assessment. This subclause is consequential to a proposed amendment to clause 100. The Government's decision to adjourn debate on the Bill for a lengthy period allowed it to be fully studied over the recess period and subsequently the deficiency was pointed out to the Government.

I think it is a fair criticism of the Bill that there was no mechanism for the public to be able to say, "We think the EPA is wrong in its initial view that this project does not require assessment. We believe it does require some form of assessment." If the Minister is convinced, after looking at the matter, that that is a legitimate point of view, the Minister can say to the EPA, "Please have another look at this with a view to carrying out an assessment of the project." That was a deficiency in the Bill as drafted originally. I am very pleased it was pointed out.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 42 put and passed.

Clause 43: Power of Minister in relation to assessment by Authority of proposals—

Mr BLAIKIE: Under this clause the Minister can have an environmental impact referral assessed and reassessed as often as he wishes. He can interfere. This is what I call the special "Yes, Minister" clause. He can request more public assessment, because the authority must comply with the Minister's direction. If the Minister does not agree with a proposal, he could commit it to a series of never-ending assessments. The issue will never reach a solution because the Minister can have the matter reassessed.

It is a clause I do not support, but the Government has seen fit, in its philosophy, to have it included. It is part of the attitude of the Government, and it comes out very strongly in this clause where the Minister at all times will make the determination.

Recently, we have seen a situation develop at Mosman. Under the provisions of this type of clause the Mosman-type attitude could well reoccur time and time again, as the Government sees fit.

Mr RUSHTON: I support the views of the member for Vasse. This proves, without doubt, there is no independence for the Chairman of the EPA or the chief executive, and it has been admitted that they are one and the same person. If anyone examines this Bill in great detail—and we have done the best we could within our capacity—he would see it as control legislation—the EPA will be firmly under the control of the Minister for Environment, and that, of course, means the Government.

We will be in a position where the Premier will be able to get instant response to his wishes with respect to a development. He will be able to say to a developer that he can guarantee a development will be able to go ahead. He will ring the Minister and say, "I have committed the Government to this; you comply" and the Minister will be able to get the EPA to conform, if not immediately, at least fairly quickly. This area concerns me. There was a great op-

portunity to enhance the role of the EPA, not limiting it, not controlling it, or reducing it to a rubber stamp. Time will tell that we are right and the Government is wrong.

Mr HODGE: The comments made by the two members, and in particular those made by the member for Dale, are a real insult and a slur on the characters of the three members on the current EPA.

I promise members opposite that I will make sure that the members of the EPA see this *Hansard*. It is a slur and a real insult on the members of the EPA for members opposite to imply that the Premier could ring up the EPA and tell it what to do. I will make a point of showing this *Hansard* to the EPA members so that they can understand what the Opposition thinks of their character and integrity. The Opposition has quite a hide to suggest that the Premier could ring the members of the EPA and tell them what to do. I think that is the greatest insult I have heard here for a while.

Mr Rushton: That is what happened at Mosman.

The CHAIRMAN: Order!

Mr HODGE: That is not what happened at Mosman—

Several members interjected.

The CHAIRMAN: Order! Order!

Several members interjected.

The CHAIRMAN: When I call "Order!" I would like members to respond to that call. I am always extremely fair when I preside as the Chairman of Committees or the Deputy Speaker, but I do not want to have to call for order on three occasions—particularly in respect of a member as senior as the member for Dale.

Mr HODGE: The real purpose of this clause is to provide an avenue through which members of the public can appeal to the Minister about the level of assessment that that the EPA has decided upon. The Minister can then go back to the EPA and say, "Look, we have had an appeal from the public because they believe that the level of assessment you have decided upon is not adequate." Perhaps the level of assessment was a minor internal departmental inquiry and the members of the public may say, "We think there should be a higher-level inquiry, a public environmental report or an environmental review and management programme." This gives the Minister a facility to ask the authority to reassess the proposal at a higher level of intensity. That is all it involves.

If a Government wants to stall or somehow or other frustrate a particular project, I can assure members that it would not need this clause to enable it to do so. In fact none of these clauses would be necessary. The Government has the authority to say that it just does not want a particular project to go ahead and it will not give an approval for it, and that would be that. The Government would not have to resort to the subterfuge of referring it back to the EPA. It would soon become patently obvious that this was what the Government was doing. It would be a very weak way to stop a project, if that is what members opposite are trying to imply.

I have given the Committee the real purpose of this clause. I suggest that any other interpretation of it is not accurate.

Mr BLAIKIE: I thank the Minister for his response. However, I take exception to some of the comments he made.

Firstly, at no stage during this debate have Opposition members cast aspersions on the membership of the EPA. If the Minister does not want to finish up with a real donnybrook on this issue, he should desist from making such comments.

I want to get the record straight. Under clause 43, the Minister will have the authority to have a proposal not only reassessed, but also reassessed again, and to have this done either more fully or more publicly or both, as the Minister determines. The Minister will be able to advise the authority as to the level of assessment made and the Minister will be able to say, "Hang on, I am not too happy about that. I want it to be assessed more openly and more publicly. I want it to be reassessed again." The Minister has said that clause 43 allows an input by the public to the Minister and that the public's involvement extends to requesting the Minister to further request the authority to readjust the level of assessment which it made of a particular proposal.

This particular clause is one of the appendages which would have been put in the legislation as a result of a committee working on the Bill. While the Minister may well have wanted to cover all aspects in the legislation, I believe in this area he is going too far. If the authority is to work on an assessment of a proposal to be put forward and if the Minister is to be able to come back to the authority again and say,"Look, I have had an input from the public; the public are not happy with what is going on and they want the assessment to be conducted

in a more open forum, and/or they want other aspects to be covered", it is indicative that the Minister can direct the authority to do just that.

One of my major concerns with this legislation is in respect of the woodchipping industry. Many arguments have arisen about this industry over the years. This industry has been assessed and been found environmentally satisfactory, yet it has had to be reassessed and reassessed and reassessed again. In spite of all the assessments which have been made of the woodchipping industry, there are still some people in the community who are not satisfied with the decisions of the umpire. There are still some people in the community who want to see all woodchipping cease. I believe it is possible that the woodchipping agreement, which is coming up for renewal, will be assessed, and this assessment will be affected by people badgering the Minister and complaining about the type of assessment to be carried out. Under clause 43 the Minister can redirect the authority to look at that assessment in a different light.

The authority can then take the new direction on the reassessment that the Minister wants. It will in fact move down a certain track in accordance with the wishes of the Minister. This extremist element in the community can then appeal to the Minister again and say that although the inquiry is being held, it is not being held publicly enough or that there ought to be a series of other factors considered, such as aesthetic factors. The Minister can then ask for a further reassessment. I implore the Minister to realise that a future Minister for Environment—who could be very well-intentioned, as is this present Minister, of whom I have no criticism because I think he does a good job; he is a very understanding Minister—might not have the same degree of consideration and understanding he has. The Minister of the day could take a different point of view and this clause could be used in a negative fashion.

The Minister would be aware of some of the more extreme people in his party's own ranks. We have them in our ranks as well and I would not like to see them have seemingly unlimited influence. I believe this clause will lead to the wrong direction being taken. I believe that the Minister of the day will be badgered incessantly if this clause is passed.

This clause will leave the Minister wide open to all sorts of public pressures and demands. There is no doubt whatever that the pressure of public opinion on a Minister has a profound effect. I see this as a case of a committee drawing up legislation and putting it forward with clause 43 as the escape chute. It allows the public to have its two bob's worth at any stage, and to put pressure on the Minister to change direction. Once that happens, heaven help the proponent of the original proposal. In this situation a proposal could keep going around in circles. This is not good legislation, and the Minister should consider deleting the clause.

Mr RUSHTON: The Minister is normally a calm person, but he got a little heated and took things the wrong way. I am not reflecting on the EPA. It has a big job to do. I reflected on the Government's intentions, and if the Minister takes that personally I can do nothing about it; however, I am entitled to make my remarks about the Government.

The Minister said the Government did not need an escape hatch by way of a clause which would keep turning over a proposal so that the Government could say it was not going to proceed with a particular development. That is all very well, but it highlights the point I made earlier. The EPA should have the authority to make an unbiased and uninfluenced commitment to the public about a certain development. Under this Bill the Minister can control the authority. What is missing from the legislation is the intent to give the EPA—whether it comprises three people or five people, doing the best with the resources they have—the opportunity to give the public a full and frank opinion as to what it thinks about a certain development.

That is all I ask. That is the strength we need to protect the environment. Without that, one cannot achieve a result. The bottom line is what counts—how does one in a moderate and sensible way get the best result for the environment? Governments have to make judgments about the best result for the public. I was devastated by the Government's decision to put the casino on Burswood Island. The public may have a different opinion from mine, but I think more people today are finding that that decision was the wrong one. The Government bulldozed that decision through. Governments have a right to make decisions, but I would have liked the EPA to put forward an opinion on the casino development based on its experience and on the work carried out by others. I would have liked the EPA to come forward with a frank assessment for the public. It might have enhanced my opinion that the casino should be built somewhere else. The EPA was not able to do that.

I certainly would not want the Minister to be able to mislead the EPA as to my opinion of the authority.

Mr HODGE: The member for Vasse said the Minister would be able to direct the EPA to re-examine and reassess proposals in a different light, thereby implying that we could direct it to produce a different result. I do not know where he got the words "in a different light". It implies getting a different result. The clause says "more fully or more publicly or both". I do not think that can be misconstrued to suggest that somehow or other a predetermined result will be arrived at for the Government. I do not believe that at all.

At the moment the EPA can carry out three levels of assessment—an in-house assessment by departmental officers; a public environmental report; or an ERMP. The EPA does not conduct any other type of assessment, so it is only open to the Minister to ask the authority to conduct a higher level assessment. If the authority decides not to have an assessment, the Minister can ask it to do one; if it is an internal assessment, he can ask for a PER to be done; if the authority decides to do a PER and the Minister thinks a higher level assessment is needed, he can ask for an ERMP. How that can be interpreted in the way members of the Opposition have interpreted it is beyond me. That is all that is open to the EPA.

Mr Blaikie: You want the opportunity to be able to tell the EPA on proposals which you believe are important that it has to vary the type of assessment?

Mr HODGE: Only upwards. I cannot direct it to conduct a lower level inquiry.

Mr Blaikie: Has that been necessary at any time in the past, and on what projects?

Mr HODGE: I cannot think of one off the cuff. The member mentioned the woodchip licence renewal. I can tell him here and now that the Government will be requiring the highest level inquiry—an ERMP—of that matter before any decision is made. There is no need for the member to speculate or worry about it. An ERMP will be done before the licence is renewed, and that is the beginning and end of the story.

Mr Blaikie: If it has not been seen as necessary in the past, what is the reason for putting it in the Bill?

Mr HODGE: I am not saying it has not been necessary in the past. I have been Minister only since February, and I cannot tell the member off the cuff the history of the EPA since 1971. If he is interested I will try to find out. There may be occasions when the EPA considers that a project needs a middle-ranking assessment—a PER—whereas the Government may think it is a matter of wide importance to the public and the State. The Government may want to ensure the maximum possible scrutiny and that every avenue is covered so that everyone can say that a thorough environmental assessment has been done. We would want an ERMP carried out. I see nothing wrong with our saying to the EPA that that is what the Government wants—a more thorough inquiry than the EPA was proposing. The authority must then carry out the Government's wishes.

Mr Blaikie: You have just said you want to direct the authority to carry out the level of assessment the Government wants. Earlier you said the EPA had autonomy; now you are saying it does not.

Mr HODGE: I have qualified that all along. Two clauses in this Bill give me some power to direct the EPA. This is one, and that is no secret. However, I cannot tell the EPA to conduct a lower level assessment; I can only tell it to upgrade the assessment.

Clause put and passed.

Clause 44: Report by Authority—

Mr MacKINNON: I am concerned about the confidentiality provisions of subclause (3). Many people have approached me about the security of confidential information and whether clause 40(5) also applies to the publication of information. If people are going to provide information as part of a report, they should be guaranteed that that information will remain confidential. It could be commercially sensitive.

Mr BLAIKIE: Subclause (3) refers to copies of the report being given to the Minister and other decision-making authorities. I have indicated already that there will be a fairly difficult situation regarding time delays, particularly if proposals are going to be reassessed. What will be a reasonable time delay from the time this Bill is enacted to the time the Minister believes he is able to make the report available to decision-making bodies?

It is important that the proponent be given a copy of the report. Why, if the legislation provides for an objector to obtain a copy of the report, is not the proponent also provided with a copy?

Mr HODGE: I assure the Deputy Leader of the Opposition that the confidentiality requirements in the Bill apply in the circumstances he

has raised. The EPA has never published confidential material in any of its reports. It restricts its reports to purely environmental matters. I have been advised that the secrecy provisions contained in this Bill were taken from the Trade Practices Act.

I cannot answer the question relating to time delay put to me by the member for Vasse. The different processes vary enormously depending on the size and complexity of the project. Yesterday I instanced the Pelican Point project. We set a target of 12 weeks to deal with that. The proponent said he would be able to complete his PER in a certain time—I think six weeks. We said we would have it open for public assessment for so many weeks and the EPA would issue its report about two weeks after that. In fact, we set ourselves a tight schedule of 12 weeks but have now fallen behind by three weeks because the developer was delayed in preparing his PER. That is a $25 million project and those types of projects cannot be completed quickly.

The Government hopes that the environmental assessment process does not bog down proposals. It is conscious of dealing with these things in the most expeditious way. If the Government feels that things are dragging on too long, I have the authority—this is the other area to which I referred earlier—to direct the authority to provide a report by a certain date.

I also assure the member for Vasse that the proponent would be the first person to receive a copy of the report, as is currently the practice. When the EPA sends the report to me, it also sends sufficient copies and draft letters for me to sign to be sent to the proponent, Ministers whose portfolios are affected by the proposal, and other decision-making authorities.

Mr RUSHTON: When I took over the Town Planning portfolio there was a delay in appeals of about nine months. When I completed my term in that portfolio 4½ years later the turnaround time was six weeks on average. That change made a huge difference to the economy of the State. Those sorts of things are not so much controlled by legislation but by the Minister's own practices. He should call for a progress report, probably once a month, listing each appeal.

Mr Hodge: The Chairman of the EPA does that now. He comes to see me once a week and gives me a run-through of where things are and what has been done.

Mr RUSHTON: I believe the Government could achieve much goodwill from good administration of practices relating to this clause.

Clause put and passed.

Clause 45: Procedure for deciding on implementation of proposals—

Mr HOUSE: This is one of the most important parts of this legislation. I believe that, in certain cases, someone needs to be placed between the authority and the Minister.

Also, in a lot of cases, decisions need to be made quickly. I am concerned that sometimes authorities take a long time to go through the various processes to make a decision.

Subclause (2) states in part that the Minister shall refer the matter or matters in dispute to the Governor for his decision, and the decision of the Governor on that matter or matters shall be final and without appeal. My understanding of the Statutes of this State is that the Governor is a figurehead only for the Executive Council. Therefore, if my interpretation is correct, this subclause is a nonsense.

Mr Rushton: It would be the Government making the decision.

Mr HOUSE: That is how I understand it. If one reads subclause (2) he would be of the opinion that the Governor is being described as an independent person, and he is not. I hope the Minister will answer my query.

Mr BLAIKIE: Clause 45 relates to the procedure for deciding on the implementation of proposals. After a proposal has been drawn up and has been reported on by the authority, the decision is given to the Minister who then makes it available for public comment. Following this procedure the proposal is implemented.

This clause sets out the reasons under which the proposals will be implemented. As an example I will use again the woodchipping industry. The EPA may have carried out an ERMP and made a decision that woodchipping shall not proceed.

Mr Hodge: It can only give advice.

Mr BLAIKIE: In other words, the EPA would advise the Minister and he would act on that advice. If the Minister decided to accept the EPA's advice he would rule that the woodchipping proposal should not proceed. It may well be that the Minister could have a conflicting view to that of the Minister for Conservation and Land Management—for the sake of my argument let us assume that they are

different people. One Minister could say that his department had carried out all the environmental requirements for forest management and that it is considered that the woodchipping proposal is a good idea. The other Minister could say that the EPA had carried out an assessment and that public concern had been expressed and, therefore, he would not accept the advice he had been given. Under such circumstances Cabinet would make a decision; and I believe that is what should occur.

If other decision-making bodies are concerned, such as local government authorities, the Minister then has the power to decide what action he will take. Ultimately, it is the Minister's decision and he is allowing for a series of appeal tribunals to be set up.

I have seen the State Planning Commission's appeals tribunal at work, and while it can be criticised, I believe it gives people a reasonable avenue of appeal. Two avenues of appeal are open, one to the Minister and the other to the appeals tribunal. It has worked reasonably well, but administratively it may have put an additional burden on the Minister and the tribunal. By and large the public have been well satisfied.

Mr Rushton: It gives an option. We introduced it during our time in office.

Mr BLAIKIE: It does give people an option. I have raised this with the Minister because a similar tribunal could be more appropriate in this instance. As it stands, the Minister will have the final say on appeals.

Mr Hodge: You are wrong.

Mr BLAIKIE: Subclause (4) relates to a situation which will arise where the Minister and a decision-making body disagree on a particular matter. For instance, if the Minister wanted to impose the conditions contained in a report from his department and the decision-making body such as a local authority says, "Hang on, Mr Minister, those conditions may apply in Perth but they do not apply in East Ravensthorpe"—

Mr Hodge: It would go to the appeals committee. The Minister is obligated to implement the appeals committee recommendation if the appeal is against the Minister.

Mr BLAIKIE: Is the Minister saying that if the appeals committee found in favour of the local governing body, he would not have the opportunity to overturn that decision.

Mr Hodge: Yes, that is right. I will discuss it when I reply.

Mr BLAIKIE: On the one hand, did the Government consider establishing an appeals tribunal and on the other hand, is it allowing for a decision to be made by the Minister which would be similar to that which applies under the planning legislation?

It is my opinion that in matters which go to an appeal the Minister does have the opportunity to cut out some of the red tape. My assessment of the planning legislation is that it has worked satisfactorily.

Mr HODGE: I will respond to the member for Katanning-Roe at a later stage.

In response to the member for Vasse, the situation which will apply under this legislation is, in fact, very similar to the State Planning Commission's appeals tribunal arrangement. If the Minister accepts the EPA recommendation and then decides to impose those conditions on a development, and if the decision-making body—in this instance we are talking about a shire council—and the Minister disagree, they must get together and discuss the matter. Virtually, there is provision for an appeal to the Minister. The shire could say, "We think those conditions you are intending to impose are unreasonable and we want you to reconsider them." In such an instance, the Minister is capable of reconsidering them.

If the Minister then says that he has thought the request through and has decided that he wants to maintain the position, the shire can then ask the Minister to convene an appeals committee. If the shire is appealing against the Minister, the Minister is required to implement the decision of the appeals committee. If it is not appealing against the Minister's decision, the Minister must only take note of the appeals committee's decision.

The member for Dale spoke about Caesar appealing to Caesar, and that is the reason we have included that mechanism in the legislation. Therefore, there is an avenue of appeal and if the person is appealing against the Minister's decision, there is nowhere else for him to go.

We have given serious consideration to the model of the Town Planning Appeals Tribunal. We have had informal discussions with my colleague, the Minister for Planning, on the possibility of using that very tribunal. We are not quite certain yet whether we will be able to do that. The Appeals Tribunal already has a lot on its plate. Obviously, if we wanted to use it we would probably have to look at expanding it a little.

Mr Rushton: You would want some different people.

Mr HODGE: Yes, we may need some different people. However, we are very impressed with the way that tribunal works and I certainly have something like that in mind. We are not sure what the work load will be or how frequently we would need to use such a mechanism. I suspect that it would be fairly infrequently, so we do not want to go to the expense of setting up an elaborate new bureaucracy and structure to deal with the occasional appeal.

Mr Blaikie: I imagine that when the first Town Planning and Development Bill was introduced to the Parliament years ago, the Minister of the day would also have said that he did not expect many appeals. We know now that that is not the case. I suggest that any provision under this legislation will also be used quite often.

Mr HODGE: The member for Vasse may be right. Only time will tell.

The member for Katanning-Roe raised virtually the same point as the member for Vasse; that is, if the Minister for Environment accepted the recommendations of the EPA and said that he intended to impose its conditions on a development, he would need to consult the other Minister and tell him that he intended to impose those conditions. That Minister may disagree and say that he does not think the conditions are fair or reasonable. If the two Ministers cannot settle the matter between themselves, the matter is referred to Cabinet. That is what the legal jargon means. The matter is referred to Cabinet and Cabinet decides which of the Ministers it will support. Thus the use of the word "Governor" really means the Cabinet. The Cabinet recommends to the Governor that he sign the Executive Council minute. The Governor does not actually sit in judgment and make decisions. He accepts the advice of his Ministers and the Ministers advise him of Cabinet decisions. Cabinet is the final arbiter in any dispute between Ministers. I do not think any other mechanism or option other than that is open.

Mr RUSHTON: It is an intriguing issue and one which can be likened to the experience in the planning area. For instance, if the Town Planning Board made a decision and the proponent of a proposal did not like that decision he could appeal to the Minister and the Minister's decision would be final. When I was Minister for Urban Development and Town Planning I handled something like 700 appeals a year. It was a case of Caesar unto Caesar because the same staff advised the Town Planning Board and the Minister, which was not very satisfactory. People wanted another choice. Because people may not have trusted the Minister to make the final judgment, we introduced the tribunal. The qualifications of its members were spelt out in that they had to have knowledge of the subject.

The chairman of the tribunal told me that it could handle only about 50 appeals a year. Its process is more legalistic than that used by the Minister. The Minister obtains advice and makes judgments. An appeal to the Minister is final. An appeal to the tribunal is final. However, the proposal in this legislation is a little more complex. If a request is made to the EPA and it makes a determination with conditions, does the Minister then accept or reject those conditions?

Mr Hodge: People have a right to object to the EPA's report. They can say that the objections in the EPA's report are not fair or just. If the Minister considers that the appeal is legitimate, he can direct the EPA to reassess the position.

Mr RUSHTON: That is fair enough, but is he not able to make a decision?

Mr Hodge: It is at the next stage that the Minister makes a decision. He then assesses the EPA's recommendations and decides whether he will accept them, reject them, or accept them in some modified form.

Mr RUSHTON: So he can make a determination. But if somebody disputes the Minister's decision, is there another appeal he can make, perhaps to a committee of some sort?

Mr Hodge: Only a decision-making authority can ask for an appeals committee.

Mr RUSHTON: Not a private person?

Mr Hodge: Not a private member of the public.

Mr RUSHTON: So a private person can make no other appeal once the Minister has made a final decision?

Mr Hodge: Members of the public cannot initiate an appeals committee hearing. If the appeals committee itself thinks that a certain member of the public or a certain individual or organisation should be heard and may help the appeals committee, it can give that person standing. It can invite that person to appear before the committee.

Mr RUSHTON: It appears that it would be worth keeping in mind some mechanism to enable the ordinary person to appeal.

Mr Hodge: It was a very deliberate policy decision of the Government not to do that.

Mr RUSHTON: That is the Minister's decision for the time being, but it may be worth keeping the alternative in mind for the future. When I was Minister for Urban Development and Town Planning I was responsible for implementing our party's policy with respect to the planning tribunal. It has worked very well. I suggest that it worked to the advantage of the independent person, who can choose between one system and the other.

The Minister has said that only a body such as a department can appeal to a review committee.

Mr Hodge: Or a shire council, the Water Authority or another authority such as that.

Mr RUSHTON: I suggest that for consistency, the Minister consider the planning tribunal appeals system as a model for his proposed system.

Mr Hodge: As I indicated, we are considering that model. It would be my desire to see whether we could use some members of that tribunal and some of its mechanisms.

Mr RUSHTON: I suggest that the Minister would not be able to use the town planning tribunal because it is the chairman's view that it is flat out.

Mr Hodge: It may be cheaper to expand that existing set-up rather than create a new one.

Mr RUSHTON: One would imagine that if the only bodies able to put appeals forward are bodies such as local government authorities or departments there would not be too many cases put forward. The Minister should give some consideration to a proposal to allow ordinary people in the community to put cases before an appeals tribunal.

Mr Hodge: That goes directly against what the member for Vasse said about people bogging down the system and deliberately delaying projects.

Mr RUSHTON: It is my experience that the absence of a formal procedure lengthens proceedings. It is important that decisions be made as quickly as possible. I believe firmly in having a 30-day time limit for people to make decisions. If they want to extend that time, they should have to seek an extension. It was very hard to get local government authorities to make a decision within 30 days because of their meeting structures and so forth, so when I was Minister for Urban Development and Town Planning I set down time limits and insisted that any extension of time be applied for.

That works very well because otherwise it would be nobody's business to make it move. I understand that it cost one firm $125 000 a day while waiting for decisions. I do not relate my comments only to big corporations, because it would also affect the smaller developers proportionately.

This area will be examined and considered as we work through the legislation. It is most important for the Minister to take a direct interest and to make sure that people perform as he would want them to. The Government will be judged on that. If the Minister does not have the time or interest, the public will soon let him know if it is not working properly.

Mr BLAIKIE: I draw the attention of the Committee to subclause (6) on page 37 of the Bill. This subclause deals with an appeal that can be lodged under proposed section 100 (2) in respect of a report published under proposed section 44 (3). In the hypothetical case of a woodchipping proposal, the Minister would have caused a copy of the report to be tabled and reached general agreement with his colleagues, and under the provisions of this Bill an appeal could be made by any decision-making authority, proponent, or other person which or who disagrees with the content or recommendations of the report. In the woodchipping example, the proponents—the people wanting to carry out the woodchipping—may have grounds for appeal.

I query the inclusion of the phrase "any other person" to the list of those who have the right of appeal. Before a matter is referred initially to the Environmental Protection Authority for assessment, there is plenty of opportunity for any person to trigger off an inquiry. During the course of an inquiry, any aggrieved person has plenty of opportunity to make an input. The proposal having been through those procedures, the umpire having made a decision and reported to the Minister, and the Minister having accepted or rejected the point of view, I do not believe any other person should be given an opportunity to lodge a further complaint. Certainly the decision-making authority should have that opportunity because it made the decision in the first place.

Mr Hodge: You have misread this, you are wrong.

Mr BLAIKIE: My reasoning is that these people can object all the way along the line, but once a final decision has been made, they should not be allowed to object again. I ask for the Minister's explanation.

Mr HODGE: This part of the Bill is complicated and I can understand the member for Vasse getting confused. The "any other person" to whom he refers can only appeal against the EPA report. Once the Minister has considered the report and made a decision the "any other person" cannot appeal against that decision. He can appeal against the EPA report on such grounds that certain information was submitted to the proponents when they were conducting their environmental assessment, but that the report from the EPA did not reflect with sufficient emphasis the information submitted. It may be suggested that the information may have been ignored or not taken sufficient heed of and, therefore, the recommendations are not valid. It would be open to any member of the public to appeal, saying that the EPA report was not fair or accurate. The Minister hears that appeal and then determines it.

Mr Blaikie: They have already had two opportunities.

Mr HODGE: The public have had an input, but this is an opportunity for them to appeal against the results of that input. This is the only avenue of appeal a member of the public has if he considers that his submission has not been given sufficient weight. I do not think it is unreasonable. If we were to remove this provision, members of the public would have the right to make submissions but would have no right of appeal to anyone. This is an appeal against the EPA's recommendations, made to the Minister, who may uphold or reject it. Once the Minister makes a decision on the matter, it is only open to a decision-making authority to appeal; members of the public cannot appeal against the Minister's decision.

I think it is fair and reasonable and it is exactly in line with what the member for Dale was advocating a few minutes ago. If we removed that provision, the public would have no avenue of appeal, and I do not think they would be prepared to accept that.

Mr BLAIKIE: My understanding is that any person could appeal against the report of the EPA, and the Minister would make a final determination. Members of the public will have ample opportunity to lodge a complaint against a proposal and to make an input at any stage in the procedure. Once the report has been finalised, they should have no further right of appeal to the Minister. I indicate that I shall therefore seek to amend clause 100.

Mr RUSHTON: I support the appeal system, but the Minister has certainly shown that it removes the independence of the EPA. Whether intended or not, the Minister can control every decision of the EPA through the appeals system. This is what I saw the Town Planning Board doing. It considered itself independent.

Mr Hodge: You are hard to follow.

Mr RUSHTON: I am not disagreeing with the planning appeals system. The Minister must realise it does not give any independence to the EPA or town planning authority.

Mr Hodge: Do you think the EPA should be so independent no-one can appeal against its decision?

Mr RUSHTON: The EPA should not have an administrative role.

Mr Hodge: It has not.

Mr RUSHTON: It is running the whole show under the control of unionists.

Mr Hodge: All it does is give advice.

Mr RUSHTON: It is making decisions.

Mr Hodge: It is not; it is giving advice. This shows the decision is made by the Minister.

Mr RUSHTON: The EPA makes a decision that these are the conditions which apply in this sort of development.

Mr Hodge: It does not. The Minister imposes the conditions, not the EPA.

Mr RUSHTON: It is an administrative problem. The Government controls the EPA, in the Minister's own words.

Mr Hodge: It is not; it is an advice-giving body.

Mr RUSHTON: That is what should happen.

Mr Hodge: The EPA gives advice to the Minister. It is not capable of imposing any conditions on anyone.

Mr RUSHTON: It recommends to the Minister, but it does not have any teeth, according to the Minister. What I am suggesting is that the teeth of the EPA resulted from the public's knowing the EPA gave an opinion. The Minister could have worded this differently. The Minister is saying that through the appeals system he can fix the position every time he wants to. The EPA does not have independence at all.

Mr Hodge: That is just not correct at all. If I wanted to I could ignore the EPA's advice on every occasion.

Mr RUSHTON: The main thing is for the public to know that the Minister has ignored the EPA.

Mr Hodge: The report of the EPA will be made public. If the Minister ignores it, the public will know.

Mr RUSHTON: It looks like an extension of time to reach a decision will result from the introduction of this legislation. We do not want delays in the EPA reaching a decision. That is where we want a limitation of time. That is why I advocate the EPA and the Planning Commission going forward and getting results together—reducing delays in decision-making.

This provision looks very clumsy. The appeal system was refined and improved in the town planning area because we gave the appellant or proponent the right to appeal to an independent body. The Minister is not doing that. In this case he has decided not to give independence to the EPA; it is swallowed up in the whole departmental performance. That little group of people, the EPA, is not able to take an independent overview and say, "We do not like this project", or, "We do like it", and give reasons. It is now a mish-mash of administration. There is only one place to go with an environmental proposal, and that is to the EPA.

Mr Hodge: That is correct. It is an advice-giving body. It has no managerial role at all.

Mr RUSHTON: One went to a department before. One received certain advice.

Mr Hodge: The department still does that.

Mr RUSHTON: It looked at that role of the EPA independently and said "Yes" or "No".

Mr Hodge: You are hopelessly muddled.

Mr RUSHTON: I am not. I think the Minister is confused. He is trying to include a planning appeals system, but he is not doing anything. We might be talking at cross-purposes because the Minister and I agreed that the appeals system, involving the appointment of a planning tribunal for the planning area, was important.

Mr Hodge: Your colleague is trying to amend it.

Mr RUSHTON: He is trying to speed things up.

Mr Hodge: He is trying to take away the public's rights to appeal.

Mr RUSHTON: There is no appeal for the public really. The Minister's system is Caesar unto Caesar.

Mr Hodge: The appeal is to the Minister. You were advocating an alternative tribunal a few minutes ago.

Mr RUSHTON: I am not advocating an alternative to the tribunal. If the Minister wants to make all the decisions, that is what he is doing.

Mr Hodge: It is in black and white.

Mr RUSHTON: That is what concerns me. We must get back to the position where we can see what the Government is doing. There is some control by the Government and the Minister, and a few people will play a part along the way. It will be discredited after a period.

Mr THOMAS: Most of these issues will be dealt with when we reach clause 100, but I cannot for the life of me understand the point made by the member for Dale about the independence of the EPA and the way in which this clause relates to it. The proposition put by the member for Vasse in relation to the provisions under clause 100, which have some consequential provisions under this clause, would result in members of the public being very much downgraded in their rights as compared with other parties who are entitled to bring matters before the authority.

Mr Blaikie: They have already separated it before the EPA.

Mr THOMAS: A number of people are entitled effectively to draw the authority's attention to a particular proposal. Everyone else is entitled to draw a matter to the authority's attention—is entitled to appeal if he feels some sense of dissatisfaction with his treatment by the authority. What the member is saying is that members of the public ought to be in a second category as opposed to proponents and other groups.

Mr Lewis: They do not own the property.

Mr THOMAS: Someone may well live downstream in an area likely to be polluted.

Mr Lewis: So non-owners should have more rights than an owner!

Mr THOMAS: If I lived next door to a property which is likely to be used for the storage of polychlorinated biphenyls I would be unhappy about the proposal, and I ought to be able to appeal to the Minister as much as the owner of that property.

Mr Lewis: Is the authority not acting in the capacity of a judge?

Mr THOMAS: The Government is responsible. A member of the public ought to be able to take a complaint to his Minister in the same way as other parties.

Mr Lewis: Irrespective of the decision made, if one lived next door to a property on which a decision had been made, and it was not a decision one wanted, one would always be unhappy. Governments have to live with that every day of the week. You will have an opportunity of lodging your complaint and of an umpire adjudicating on that complaint.

Mr THOMAS: If the member sees this as a game, I wonder if one may use the analogy of an umpire and say that one player dissatisfied with the decision of the umpire, has a right to appeal to the Minister, but the other player cannot do so. If one player can go to the Minister, both should be able to.

Clause put and passed.

Clauses 46 and 47 put and passed.

Clause 48: Control of implementation of proposals—

Mr RUSHTON: Once again this highlights the fact there is no appeal provision. This needs some consideration. We have debated this pretty fully in another clause, but I wonder if the Minister could give some explanation of how he thinks clause 48 would work.

Mr HODGE: I am sorry, I cannot understand the point the member for Dale is making. If he could elaborate I might be able to follow him.

Mr RUSHTON: There is no provision in clause 48 which allows a proponent to have a decision re-examined. I thought the Minister would be aware of that situation. Certain conditions can be imposed upon a proponent and he has no redress. We are back to the same old argument, and I do not want to prolong it, but I ask the Minister to give me a brief response.

Mr HODGE: I think the member for Dale has misunderstood clause 48, which relates to the implementation of proposals after all the appeal mechanisms have been gone through—after proposals have been assessed and appealed against, and decisions have been made. This clause merely facilitates the implementation of those decisions, and I cannot follow the point the member is trying to make.

I move an amendment—

> Page 40, line 9—To delete "(b) report" and substitute the following—
>
> (d) report

This very minor amendment is necessary to rectify a drafting error, and I had hoped to have it corrected without having to go through this formal procedure.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 49: Causing pollution and noxious emissions—

Mr LEWIS: There is a little confusion about the word "person" and its definition as it relates to this clause. No definition of "person" appears in the interpretation clause of this Bill. I ask the Minister whether the word "person" also refers to corporations, bodies, and the like. I note that within part V of the legislation, corporations are prescribed in a general sense, as are occupiers and/or owners, and I request that the Minister clarify this point.

Mr HODGE: This point can be clarified by looking at the Interpretation Act 1984, which gives the following definition—

> "person" or any word or expression descriptive of a person includes a public body, company, or association or body of persons, corporate or unincorporate;

Mr LEWIS: Thank you, Mr Minister. Another example of where a definition has not been given is in relation to the term "electromagnetic radiation". I understand that electromagnetic radiation can take several forms, from simple distance measuring equipment used in my profession, to radar equipment, high frequency transmitters, and the like, and maybe even microwaves and lasers. The reference to the type of electromagnetic radiation in the Bill has not been specified, and I ask the Minister to clarify that point.

Mr HODGE: My advice is that the term "electromagnetic radiation" has not been defined because more physical effects of electromagnetic radiation are being found all the time, and it is almost impossible to define it. If we did, that definition would probably be rendered out of date in a very short time—perhaps before the Bill finishes its passage through the parliamentary process. For that reason the technical advisers decided it was best not to try to define that term in this legislation.

Mr LEWIS: I can accept that, but notwithstanding, a situation could arise where someone—a ham radio operator, say—has a transmitter in his backyard and a vexatious neighbour makes a complaint to the EPA.

Mr Hodge: It would have to be clearly demonstrated that it was causing degradation to the environment.

Mr LEWIS: But there is an ability in the legislation for those odd situations to happen—for instance, with simple survey equipment.

Mr Hodge: Such a complaint would be legitimate only if it could be demonstrated that that simple survey equipment was having a detrimental effect on the environment.

Mr LEWIS: Another cause for concern is the extent of the penalties prescribed within schedule 1. I note that a person who emits or causes or allows to be emitted from any premises the items listed in clause 49(2) faces a penalty of $5 000. I wonder whether that is a prescribed penalty, or whether a magistrate has the ability to hand down a penalty of up to $5 000?

Mr Hodge: That is a maximum.

Mr LEWIS: So there is no minimum, and the magistrate can prescribe the penalty?

Mr Hodge: Yes.

Mr RUSHTON: Pollution is a dominant feature of this Bill, and a very serious subject. The EPA is basically an advisory group, and pollution falls into the category of an action area. Time will tell us that we have done the wrong thing—and that is not a criticism but merely an observation.

It would be better to leave the matter of pollution in the health area. That is where it was before, and it was refined and amended. Now it is being put under the control of the EPA, an advisory group, when it should be in an action area because it is a vital question relating to our environment. Its transfer to the EPA is detrimental to the effective, bottom-line administration of pollution.

Mr BLAIKIE: The Bill embraces a series of Acts and proposes to upgrade the Environmental Protection Authority. More importantly, the Government is proposing to make major changes in relation to the control of pollution.

I ask the Minister why it has been necessary to substantially upgrade the legislation relating to pollution. Has there been any occasion on which the legislative measures available in Western Australia were not able to cope with the demands upon them? It seems to me that it is a situation of overkill—that not only are we catering for Western Australia, but also it is as though Perth has become another Pittsburgh. No doubt there is a philosophy behind the Government's move in this direction, and I ask the Minister to tell us what it is.

Mr HODGE: I am pleased to do that. To a fair degree, I am supportive of the comments of the member for Dale about the placement of the pollution control responsibilities with the Government, although I do not agree with what he said about its belonging in the health area.

These days, pollution is recognised by everyone as being quite a separate problem, although related to health matters. Pollution can have a very serious effect on the environment and quality of life, although not always affecting people's health.

When I was Minister for Health I supported the move to have the Clean Air Act and the Noise Abatement Act shifted from the administration of the Minister for Health to that of the Minister for Environment. I have some misgivings about pollution control being placed with the EPA. The EPA's basic role is as an advice-giving body. I do not want to go to the extent of creating a new department to enforce pollution control laws because it does not sit comfortably with any other existing department. The Chief Executive Officer will be responsible to the Minister for its implementation.

I refer now to the concern of the member for Vasse. We have not dramatically expanded the pollution control measures but have drawn together three separate pieces of legislation and brought them together under the one department and the one Minister. There were a number of instances where the storage of PCBs and emissions into the atmosphere—for example, the pollution of Cockburn Sound and the Kwinana air problems—showed that the existing pollution laws were not adequate. Experience has taught us to try to improve the situation and those improvements are reflected in this Bill.

Clause put and passed.

Sitting suspended from 1.02 to 2.15 p.m.

Clause 50: Discharge of waste in circumstances in which it is likely to cause pollution—

Mr LEWIS: Clause 50 provides that a person who causes or allows waste to be placed in any position from which the waste could reasonably be expected to gain access to any portion of the environment commits an offence. It is against natural justice to say, where pollution has not actually occurred, that technically an offence is committed. Someone may say there is an ability to pollute, and even if the other person does not pollute he can be prosecuted for something that has not actually happened.

Mr HODGE: This clause allows for someone to be prosecuted if he has taken action likely to cause pollution. For example, if someone were irresponsible enough to store drums of cyanide near a dam in a water catchment area, it would be highly likely to cause very serious pollution, ill health or even death. We believe that such a serious offence should be punishable because of that irresponsible action. We may have reached the cyanide before it got into the water, but we should not necessarily wait until such time as the cyanide does get into the water to say an offence is committed. That irresponsible action, in our view, is enough to lay a charge for an offence which is likely to occur. This is not a unique situation. The police also have quite wide powers to charge people with offences, for example when the peace is likely to be disturbed.

Mr LEWIS: If pollution is not actually occurring in the eyes of the inspectors or authorised persons, would it not be appropriate for them to give a warning rather than to implement immediate prosecution as is provided for by this Bill?

Mr Hodge: It is up to the magistrates to decide whether a person should be convicted. We can only lay the charge.

Mr LEWIS: There may be a situation where a person quite innocently is placed in a position where he does not perceive there is a danger of polluting the environment.

Mr Hodge: I am sure the courts would accept that as a mitigating circumstance.

Mr LEWIS: It does not say that.

Mr Hodge: That is how the courts work. They weigh up the evidence put before them, assess the situation and make a decision. If a penalty is applicable it will fit the circumstances of the offence.

Mr LEWIS: If we have a situation where someone pollutes by chance, the Bill provides for the ability to prosecute, because an offence is committed.

The person may have pleaded guilty to that offence because he realised that it could cause pollution, and therefore he would automatically be guilty. I believe that to soften this legislation would give a little natural justice to that person or corporation. The EPA and its inspectors should be aware that something untoward could happen, and there should be an ability to warn the people involved that there may be a need to take action. If a warning is not heeded, I accept that prosecution should prevail.

Mr HODGE: There is no prohibition in this piece of legislation on the EPA giving a warning. However, if the member for East Melville is suggesting that we write that into the Statute, that will be giving the game away. Everyone would know that there was no need to worry because if they were caught a first time, all they would get would be a warning. We cannot put that sort of thing into the legislation. It would reduce it to a farce.

The legislation does not make it mandatory for the EPA to lay a charge, and whether the person is convicted and a penalty imposed is entirely at the discretion of the judiciary. That is why we have a judiciary—to weigh up the evidence before them and to take into account any mitigating circumstances, and then impose a conviction or a penalty if they see fit. I really think the circumstances are covered. I would be surprised to hear the member for East Melville argue, for example, against the provisions of the Police Act or the Criminal Code or whatever gives the Police Force the right to charge people who are likely to cause a breach of the peace, which is a longstanding and well-established practice. I think this clause is quite reasonable in the circumstances.

Clause put and passed.

Clause 51 put and passed.

Clause 52: Restriction on changing premises to prescribed premises—

Mr LEWIS: This clause requires occupiers to take certain precautions. It provides that if occupiers change their manufacturing techniques or equipment or whatever, they are required to notify the authority, whether it is on the basis of a licence or a works approval.

If modification to products reduces pollution, it would seem to me that there should be no need to notify the various authorities.

Mr HODGE: I would think that it would merely be a formality on the part of the occupier to notify the EPA that he is going to modify something. It may be the occupier's opinion that it will reduce pollution, but of course the authority has to be convinced that is correct.

I would think that would be the case in many walks of life. For example, under the Liquor Act if a licensee wants to make a change to his licensed premises, even though it may be to upgrade those premises and improve them, he must get the permission of the Licensing Court to do so. I would not think that this would be out of step with normal practice. If one works under a system of authorising, with a permit or a licence, one ought to notify the regulating

authority of the changes that one intends to make, even if this is done only as a courtesy.

I would imagine that every one will be pleased with a change for the better.

Clause put and passed.

Clauses 53 to 56 put and passed.

Clause 57: Applications for licences—

Mr LEWIS: This clause prohibits an application from being dealt with during the currency of a works approval. I would suggest that in an effort to get around the red tape and to reduce the lead time in any situation of putting a manufacturing process or whatever in place, an application for a licence should be considered at the same time as a works permit is being put into place.

Mr HODGE: I am advised that a works approval is done so that the whole project can be examined and judged as to whether or not it is appropriate by the EPA. Once that decision has been made, a licence to proceed may be granted.

It would not be appropriate to give the two approvals simultaneously the way the EPA will operate. The two approvals are quite separate and different.

Mr Blaikie: Can you give an example?

Mr HODGE: Not off the cuff. Once the situation has been looked at and given the go-ahead, a licence can be issued. Until the original project has been scrutinised to determine its suitability, it is not appropriate to give a licence. That is the current practice.

Mr LEWIS: Another point which should be addressed is that there is no constraint to deal with licences within a specific time. Most other applications for licences—specifically town planning applications—have a time constraint in which answers or approvals or refusals should be given. I wonder whether provision is made for that here or in a regulation.

Mr HODGE: Is the member talking about the length of time it takes to grant a licence, or the period for which the licence is issued?

Mr Lewis: No, the process of granting the licence.

Mr HODGE: As far as I am aware no time limit is laid down in the legislation. I am not aware that this has caused a serious problem in the past. Does the member have any examples where it has caused a problem?

Mr LEWIS: No, I do not have any examples, but I had experience in town planning matters over a period of years and, perhaps because of inadequate staffing and the volume of applications, there were delays of up to six months. The Government saw the need to bring in a regulation to make sure that applications are dealt with within an appropriate period.

Mr Hodge: I will take note of that point and give it some consideration.

Clause put and passed.

Clause 58: Contravention of licence conditions—

Mr LEWIS: This clause does not give an occupier any defence if pollution occurs by malicious action. My understanding is that an occupier is deemed to commit an offence if pollution emanates from his premises, notwithstanding that an employee by a vexatious act causes the pollution to occur.

Mr HODGE: It is correct that the occupier is responsible for any pollution that occurs. I am advised that that is not uncommon in industrial circumstances. The occupier is responsible for a whole range of things and must accept responsibility for his servants. He is not absolved if an employee causes pollution by accident, carelessness, or malicious action. Someone has to be responsible, and one can hardly hold the servant or employee responsible. Of course it would be open to the employer or occupier of the premises to take legal action against that employee and take him to court to get some justice.

Most employers and occupiers are covered by insurance for this eventuality, so I do not think it is anything out of the ordinary. It would be fairly common in a whole range of Statutes for some person—the employer or owner or occupier of premises—ultimately to be held legally responsible for what occurs on the premises—in this case if pollution is emitted from the premises.

Mr LEWIS: I cannot accept the Minister's answer in relation to insurance. The point that seems to be missed is that if one of the employees of a corporation causes pollution, the corporation has no defence. It is automatically guilty, notwithstanding that it took all the necessary steps to ensure that pollution did not happen. I do not think it is good enough to say that companies have insurance to cover that situation. The Minister should look again at this clause, and it should be a defence that a corporation took all reasonable precautions and could prove that it did so. It should not be convicted just because pollution emanated from a particular premises. To say that the in-

surance companies can pay for it is not good enough from my point of view.

Mr BLAIKIE: I support the comments made by the member for East Melville. I draw the Minister's attention to a set of circumstances where an employee acts maliciously outside the spirit of the agreement a company has with the EPA, and irrespective of the company's good record within the community.

Mr Hodge: Who should be responsible for making good the environment in those circumstances? Who should pay for it to be cleaned up—the public?

Mr Lewis: This is a prosecution.

Mr Hodge: Yes, prosecution for pollution. What happens if the Fremantle fishing boat harbour is covered with six inches of oil? Who pays for that?

Mr BLAIKIE: If the harbour is covered with six inches of oil because of an oil spill from Kwinana caused by an aggrieved employee, and it was proved that that employee had malicious intent to get his own back on the company, I do not believe the company should be held totally responsible.

Mr Hodge: Who should be held responsible to clean it up?

Mr BLAIKIE: The community at large will meet its obligation in due course, but I do not believe companies should be held to ransom, as this clause will allow. As the Minister and his department know, a number of companies have extremely good track records and are mindful of what they do. If a person employed by one of those companies goes out of his way to maliciously cause pollution, and that is proved to be the case, I do not see why the company should be held responsible. This Bill will not give a company any redress. Companies must be given right of redress, and there must be some acceptance by the community at large if those unfortunate circumstances to which I have referred occur. The comments of the member for East Melville have some foundation and bear further consideration by the Minister.

Mr HODGE: I do not accept the points made by either member. I refer them to clause 74 on page 64 of the Bill which relates to defences to certain proceedings. It states—

> (1) Subject to section 58 and subsection (2), it shall be a defence to proceedings for an offence under this Part in respect of the discharge of waste or the emission of noise, odour or electromagnetic radiation if the person charged with that offence proves that—
>
> (a) that discharge or emission occurred—
>
> (i) for the purpose of preventing danger to human life or health or irreversible damage to a significant portion of the environment; or
>
> (ii) as a result of an accident caused otherwise than by the negligence of that person,
>
> and that the occupier of the premises, if any, from which that discharge or emission occurred took all reasonable precautions to prevent that discharge or emission; and

It goes on to deal with certain other requirements.

Mr THOMAS: The member for East Melville and the member for Vasse should be aware that, in many areas of activity, employers are held to be vicariously liable for the actions of their servants, and subcontractors working under a contract for service with them. The contract of employment or for service usually includes arrangements for the occupier to have some sort of redress against a servant or contractor for any liability that he might vicariously have for the actions of that person. That happens in many areas of activity.

Clause put and passed.

Clause 59: Revocation, suspension and amendment of licences by Chief Executive Officer—

Mr HODGE: I move an amendment—

> Page 50, line 31—To delete "7 days" and substitute the following—
>
> 21 days

Representations were made to me by the Confederation of Western Australian Industry regarding this period. That group thinks that for pollution control licensing a reasonable opportunity should be provided to a licensee to respond in writing to the Chief Executive Officer before the latter exercises his powers with regard to revocation, suspension, or amendment of licences. The seven days is seen to be too short a period.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 60: Relationship between works approvals or licences and approved policies—

Mr LEWIS: This clause gives the Chief Executive Officer power to make demands for the upgrading of specific plant or equipment causing discharge of waste or emission of noise, odour, or electromagnetic radiation inconsistent with approved policy. I accept that he will have to have dialogue with the manufacturer, but the manufacturer knows best how his machinery operates and the technology behind it. I feel it is wrong for an officer to have the power to enter premises and demand that certain equipment be upgraded.

Mr Hodge: He can demand only what the law prescribes; he cannot make things up.

Mr LEWIS: I understand that the prescription can be upgraded.

Mr Hodge: Only through the due processes provided for in the legislation.

Mr LEWIS: Notwithstanding that process, it could happen.

Mr Hodge: It happens every day. People are affected every day when new regulations are passed by this Parliament. The CEO must obey the law; he cannot make things up. You are implying he can take some action off the top of his head.

Mr LEWIS: No, I am not. I accept that the prescription can be upgraded. I cannot accept, however, that he can demand that certain machinery be put in place.

Mr Hodge: He only has the ability to enforce the law. If a law has not been passed, he cannot enforce it.

Mr LEWIS: The point I am attempting to make is there is nothing in this clause stating that he should have dialogue with a manufacturer.

Mr Hodge: You are saying that the Chief Executive Officer should have the power to negotiate with someone and waive the law. The dialogue would occur when the law was being formulated, not once it is put in place.

Mr LEWIS: As I read this clause, it seems to me that the CEO can specify that certain things be done to machinery to bring it up to standard.

Mr HODGE: I do not know whether I can add much more to what I have said already by way of interjection. I cannot see the difficulty that the member for East Melville has with this clause. He seems to be suggesting that the Chief Executive Officer will be able to enter premises and make demands on occupiers, but he cannot. The Chief Executive Officer can only enforce the law specified in the Act, regulations, or prescribed policies; and those policies have the force of law. They go through a set procedure as laid down in the Bill, and once they have gone through that procedure they have the force of law.

The Chief Executive Officer's role is no different from a myriad of other roles of public servants who have inspectorial duties. They have to ensure that the law of the land is enforced. They do not have the ability to discuss the merits or demerits of the law.

All the CEO can ask any occupier to do is to comply with the law, and if the occupier believes the law is wrong, it is open to him to request that the law be amended or rescinded.

Clause put and passed.

Clause 61 put and passed.

Clause 62: Conditions to which works approvals and licences may be subjected—

Mr LEWIS: Clauses 60 and 62 are similar, and my previous comments perhaps related more to clause 62 than they did to clause 60. As I said before, certain powers rest with the Chief Executive Officer, and I refer members to subclause (1) of this clause.

The Chief Executive Officer not only has the ability to apply the standards as prescribed, but he also has the ability to specify what equipment will be installed in a premises. Obviously, a manufacturer knows best how his works operate and he knows what machinery should be installed. He also knows the economics of that machinery.

I accept what the Minister said when the Committee was debating clause 60, that the standards are prescribed. I do not believe that the Chief Executive Officer should have the power to specify what machinery shall be put in place.

Mr HODGE: Those sorts of provisions exist in the current Clean Air Act. The sort of scenario the member for East Melville is outlining does not happen in real life. The sort of consultation that occurs is extensive indeed. The department has lengthy consultation now with industry over dust emission problems, odour emission problems, and noise—the whole gamut of pollution problems. Consultation occurs regarding the type of machinery that is to be fitted to reduce dust or odour emission problems.

Obviously, the "specified type" to which the member is referring has to be a particular type of machinery that is available in this State. If the member does not think that the Chief Executive Officer of the EPA should have that power, I do not know who he thinks should have it. If pollution is occurring it is in the public interest that someone have the power to abate that pollution. The person who has been chosen in this instance is the Chief Executive Officer of the EPA.

I do not know what the member for East Melville is proposing as an alternative. This provision is included in other legislation, and it works well. This is not a radical departure from what is presently contained in the Clean Air Act.

Mr LEWIS: Notwithstanding that it is in the Clean Air Act, this clause allows the Chief Executive Officer to insist on the installation of pollution control equipment as he specifies.

I have no argument about the Chief Executive Officer of the EPA going into a works and advising the occupier of the premises that his equipment must comply with the prescribed standards. However, I do argue with the view that the Chief Executive Officer should have the ability to specify what machinery should be installed.

Mr Hodge: You obviously do not take the same serious attitude towards pollution as does the Government.

Mr LEWIS: I would object to someone coming into my works and presenting me with a list of instructions to bring my plant up to the specified standards without first seeing me. It is right that the Chief Executive Officer should go to a works and advise the occupier that certain machinery is below standard and that he must bring it up to the required standard, but there is an argument about the ability of the Chief Executive Officer, or his officers, demanding that certain equipment be put in place.

Mr Hodge: If people want the privilege of polluting the atmosphere they have to comply with the conditions laid down by the Chief Executive Officer. It is fair and reasonable that that man be given the power to protect the environment and that he insist on the installation of machinery to abate and keep pollution to a reasonable level. I see nothing wrong with that, and that is what this clause does.

Mr LEWIS: I do not want the Minister to take my next comment the wrong way, and I do not want to reflect on the EPA or the Chief Executive Officer. However, with the passing of time—maybe 10 years down the track—there may be a different person in that position and he may prescribe a certain line of machinery to be put in place.

Mr Hodge: Are you saying that the Chief Executive Officer should not have the power to impose the conditions of licence?

Mr LEWIS: I am saying that the Chief Executive Officer should have the power to enforce the prescribed standards.

Mr Hodge: That is what he is doing.

Mr LEWIS: This clause gives him the ability to specify what type of equipment shall be installed.

Mr Hodge: To bring it to the prescribed level.

Mr LEWIS: I am talking about the proprietary lines of machinery. He may say that a person must install "X" make.

Mr Hodge: It says of a specified type of machinery, not make.

Mr LEWIS: The clause could be better worded. The Chief Executive Officer should be given the power to demand that the machinery be brought up to the prescribed standard, but he should not have the power to state what type of machinery shall be installed.

Mr Hodge: The method of bringing it to a prescribed standard must be acceptable to the EPA.

Mr BLAIKIE: I support the proposition put forward by the member for East Melville. It is right that the Chief Executive Officer shall set the standards and lay down the conditions applying to licences and works approvals. It is also quite right, as the Minister has indicated, that the standards may well be prescribed in due course.

However, there could be a series of circumstances where a standard of control is applied by the Chief Executive Officer that, quite frankly, is unreasonable in a particular circumstance. The Chief Executive Officer might in his "wisdom" decide that the standards applied to Kwinana should be applied to Ravensthorpe. It may be inappropriate for Ravensthorpe and it may mean that the proposal considered for that town may not go ahead.

Irrespective of the good intentions of the Chief Executive Officer, whoever he may be, there will be some degree of fallibility and there should be an avenue of appeal whereby persons can appeal against decisions. A body of higher authority should adjudicate to consider the

reasonableness of his direction. This does not take away the initial thrust of cleaning up the environment and ensuring that the atmosphere is not polluted. It does ensure that there is a degree of reasonableness imposed on people in meeting the provisions laid down in this legislation.

I give an example from a different industry. A Liberal Government decided that the Public Health Department would impose its point of view with respect to the licensing of abattoirs throughout the State. The upshot was that approximately 90 per cent of all abattoirs throughout the State closed down because the same standard was made to apply to abattoirs in Perth and places as remote as Halls Creek. The abattoir at Halls Creek had to operate to Perth standards. That was completely farcical. Western Australia is the only State to operate under those conditions. The conditions imposed on abattoir operators throughout the State were unreasonable, and those operators either closed down or were forced to operate illegally.

With respect to abattoirs, other States devised a three-tiered standard, depending on the area. Meat quality still had to be determined, but was determined under a different standard, according to the grade of the abattoir.

Mr Evans: There are three standards for abattoirs in the State. The abattoirs are classified as export, normal domestic, and small country abattoirs. They are controlled by the Health Department.

Mr BLAIKIE: The Health Department, in implementing the standards, was responsible for ensuring that something like 90 per cent of abattoirs in the State closed down.

Mr Evans: The point is that the three levels cater for the different situations.

Mr BLAIKIE: That may well be the case in theory, but it is not what happens in practice.

The same applies to standards in caravan parks. There is one basic standard, but many caravan parks operate illegally.

Mr Evans: Especially over Christmas.

Mr BLAIKIE: They operate below the prescribed standard over the Christmas period because the standards imposed are quite ridiculous. However, there are few avenues of appeal. Perhaps the Minister will give consideration to providing some right of appeal by a person who will be subjected to the licensing provisions of the legislation before the Bill is transmitted to the other place. I am not suggesting that we lower standards, but there may be circumstances which the Chief Executive Officer may have overlooked in carrying out his duties. There should be some avenue of appeal.

Mr HODGE: I do not know that I can add much more. It is perfectly proper for the Chief Executive Office to be able to attach conditions to the issuing of a licence. If what the member for Vasse is worried about is an avenue of appeal against conditions that are imposed on a licence, I point out to him that such appeal is already provided for in this legislation. Clause 57 provides that licences can be issued by the Chief Executive Officer with conditions attached. Anyone wishing to appeal against those can appeal to the Minister under clause 102. Thus there is an avenue of appeal for anyone who thinks the conditions are too harsh. I do not think there is any problem with it. It is what happens at the moment. I am not aware of any history of problems, and in practical terms the system works fairly well. I hope that satisfies the points raised by the Opposition.

Clause put and passed.

Clauses 63 and 64 put and passed.

Clause 65: Pollution abatement notices—

Mr HODGE: I move the following amendments—

> Page 55, lines 20-23—To delete "a trade, process or activity is being or is proposed to be carried on at any premises, in the course of or as a result of or in connection with which trade, process or activity".
>
> Page 55, line 24—To insert after "likely to be emitted," the following—
>
> from any premises
>
> Page 57, line 7—To delete "7 days" and substitute the following—
>
> 21 days

With respect to the first amendment, the Clean Air Advisory Council recommended the deletion of the words which constrain the capacity of the Chief Executive Officer to undertake successful conclusions.

The second amendment is consequential to the changes made in the first amendment. The final amendment was made at the request of the Confederation of Australian Industry.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 66 and 67 put and passed.

Clause 68: Restriction on subdivision and amalgamation of land to which registered pollution abatement notice relates—

Mr LEWIS: Clause 68 gives the Chief Executive Officer the ability to prohibit the approval of the State Planning Commission to a subdivision, amalgamation, or the like. Initially, I had some trouble in trying to appreciate why this may be. I understand that legislation requires registration of provisions on the certificates of title to protect the public and to tell the public that there are certain covenants or constraints on a parcel of land. It seems to me, notwithstanding that it is probably right and proper that the Chief Executive Officer should have the power to restrict subdivision or amalgamation, that an applicant should also be able to appeal against the prohibition.

I think anyone in the community should have the right to appeal against a provision which appears unreasonable to him or her. There may be a property of say 100 hectares, in one corner of which is deposited, stowed, or contained certain pollutants. The Chief Executive Officer, in his wisdom, may believe that area should be cleaned up before he will allow a subdivision. It may cost a great amount of money to clean up and the only means the owner has of meeting that cost is by subdividing, amalgamating, or doing certain things to his land. It is an unnecessary restriction and against today's thinking that people should have a right of appeal.

An amendment should be moved or a new clause inserted to give the applicant the right to appeal.

Mr HODGE: I acknowledge the point made by the member, but it is not a valid point. I refer him to proposed section 103—lodging of appeals in respect of pollution abatement notices.

A person who is aggrieved by having a pollution abatement notice put on his property can appeal to the Minister. It is essential that we have this sort of power. The member for Vasse is well and truly familiar with the area of land polluted by mineral sands tailings at Wonnorup. I was involved in that matter when I was Minister for Health and I remember feeling quite concerned upon being advised that even though those areas had quite high radiation levels, and we certainly did not want anyone subdividing, selling, or being able to live on that land, we had no way of stopping it. The existing laws contained no requirement whereby a pollution notice could be put on those blocks preventing any unsuspecting or ignorant person from purchasing the land, erecting premises, and living there.

It is essential to have this power, but there is a brake on the power in proposed section 103 which gives a person aggrieved by a pollution abatement notice the right to appeal within 21 days to the Minister.

Mr LEWIS: The Minister is missing the point: Notwithstanding that there is an abatement notice on the property and the person has the right to appeal, he has no right to appeal against the Chief Executive Officer not allowing the subdivision or giving approval to the planning authority to process that application.

Mr Hodge: The Statute specifically forbids the process while the pollution abatement notice is on the property. They can appeal to the Minister about the fact that the notice has been put on the property.

Mr LEWIS: I can accept the need for a pollution abatement notice on a property and that the Chief Executive Officer should prescribe that notice. However, the Government is inhibiting the ability of a person to subdivide that property while it has a pollution abatement notice on it.

Mr Hodge: Yes. Do you think polluted land should be able to be developed?

Mr LEWIS: I am not talking about whether we want polluted land developed, but about the rights of an individual to appeal against an arbitrary decision which may have been made by the Chief Executive Officer. There is no appeal right against the Chief Executive Officer not granting approval to subdivide.

Mr Hodge: It is a deliberate part of the Bill. Surely you are not advocating that a developer should develop land while it is polluted? The moment the pollution is rectified the Chief Executive Officer will take off the pollution abatement notice.

Mr LEWIS: The Minister obviously was not listening to my example of a property of 100 hectares with pollution in one corner of it, but the pollution abatement notice covers the whole property.

I understand there is a requirement in the legislation for the Registrar of Titles to be notified of any pollution abatement notice and for that to be recorded on the Title, which encumbers all of the land. In other words, the whole parcel of land will be sterilised.

Mr Hodge: The pollution abatement notice would specify only that part of the property which is polluted.

Mr LEWIS: That is not spelt out in the Bill.

Mr Hodge: It is not spelt out the way you are spelling it out either.

Mr LEWIS: I do not believe the appeal clause can in any way direct the Chief Executive Officer to issue an approval to the State Planning Commission. The Minister is saying that the owner must remove the pollution abatement notice before doing anything else.

Mr Hodge: Correct.

Mr LEWIS: The point was made by the member for Welshpool earlier that he believes a third party has the right to appeal. If that is acceptable, surely the owner of a property has a right to appeal against a restriction placed on him by the Chief Executive Officer.

Mr HODGE: I dispute the interpretation put on this clause by the member for East Melville. My intention is that the pollution abatement notice will relate only to that part of the land which is polluted. The purpose of the legislation is to deal with and combat pollution; it is not about property development or subdivision.

I refer the member to the bottom line of clause 66(2), which reads—

> . . . in respect of the land to which that pollution abatement notice relates.

It is that portion of the land which is polluted to which the pollution abatement notice relates. That is the order which will go on the title to that land, drawing people's attention to the part of the land which is polluted.

I do not know how many times I have to repeat it. I have already said this about 10 times. Members opposite are wasting time pursuing that point.

Mr Blaikie: What you are saying is that if you use the land as an example, you would be proposing to issue a pollution notice to go with that part of the land which was polluted?

Mr HODGE: That is correct.

Mr Blaikie: Still permitting the other part which was not polluted to be used?

Mr HODGE: Correct. That is what the Bill says and that is what my advisers tell me it says.

Mr RUSHTON: Circumstances vary. As the member for East Melville says, we can have a parcel of land and that small section could affect the whole subdivision.

Mr Hodge: Only if it is polluted.

Mr RUSHTON: The Minister is looking at it in isolation. He is bringing forward an all-embracing Bill. In fact, he has agreed with me that the EPA should be an advisory body. It is no longer an advisory body; it is a direct controlling body and it will reach into nearly everybody's area of interest.

Mr Hodge: It is not the EPA which is involved in policy control, it is the Chief Executive Officer.

Mr RUSHTON: He is one and the same.

Mr Hodge: He is not one and the same.

Mr RUSHTON: Of course he is.

Mr Hodge: He has a definite role as Chief Executive Officer.

Mr RUSHTON: As far as I am concerned, the EPA is no longer an advisory body, it is a direct controlling body. A couple of words do not change the whole intention. The point raised by the member for East Melville is very valid. This legislation is all-embracing and will have many detrimental effects. I am not sure it will do what the Minister wants to do, and that is to control the environment in the way we want to control it. It is a very difficult area in which to work, but if one gives too much power in one direction, people resist it. We will only be able to observe the results from this Chamber and come back to redraft the Bill in an effective way in 2½ years' time.

Clause put and passed.

Clauses 69 and 70 put and passed.

Clause 71: Environmental protection directions—

Mr MacKINNON: I want the Minister's advice on this issue which has been raised by industry representatives who have expressed concern about the power of the Chief Executive Officer, albeit with the approval of the Minister, to issue orders. These orders would have a savage effect on an industry at any time.

It is said that the order may be issued by the Chief Executive Officer if he is satisfied that pollution is occurring or is likely to occur, and paragraph (b) says "with the approval of the Minister".

The point made by the people who have approached me is that they would feel happier if the clause included a state of emergency or apparent concern relating to severe damage being caused to the environment or surroundings. Their concern is that the clause gives no overriding reason as to how that order can be

implemented. They are concerned that as a result of a minor matter their whole livelihood could be placed in jeopardy, either for a short or a long period of time.

Is it possible to consider including a clause which better defines the conditions which must exist before such an order can be issued?

Mr HODGE: The point raised by the Deputy Leader of the Opposition is a very reasonable one. The intention of the clause is that it should apply in the case of an emergency. I shall have to look at it.

I recollect that we decided not to try to put that in because of the problem of defining an emergency. But as the member would know, on some days atmospheric conditions are such that emissions into the atmosphere can cause problems. On certain days in the Kwinana area, because of the atmospheric conditions, we have high levels of sulphur dioxide and other chemicals present in the air.

To emphasise the fact that this action was not to be taken lightly, we did not leave the matter to the Chief Executive Officer; we included the Minister. Even if the Chief Executive Officer happened to be a crank, or an irresponsible person, the Minister's approval is also necessary. One might say the chance of having a crank there is perhaps as great or greater than with the Chief Executive Officer! I will see whether we can do better along the lines requested. I offer the assurance that the provision will be used only in an emergency. In any event, if the period exceeds three days, certain other steps must be taken. We have tried to safeguard the position, but I accept the point made by the Deputy Leader of the Opposition.

Clause put and passed.

Clause 72 put and passed.

Clause 73: Powers of inspectors in respect of discharges of waste and creation of pollution—

Mr HODGE: I will move amendments at the request of the Confederation of Western Australian Industry (Inc), which recommended to me that when directions are given they should be in writing and not just orally. The amendments to line 20 on page 62 and line 11 on page 63 are consequential amendments on the following amendment, and the following amendment is to lines 23 to 31. They are intended to make it clear that the Chief Executive Officer can cause waste or pollution to be cleaned up and the cost charged to the occupier of premises as necessary.

This stems from the recent inquiry into the oil spill in the fishing boat harbour. Doubt was raised about whether we had the authority to require the oil companies involved to pay for the clean-up of the pollution. In order to put that beyond any doubt, we have decided, in line with the recommendations of the inquiry, to make this amendment.

We will also change the heading of the clause. That does not require a formal amendment.

I move the following amendments—

Page 62, line 17—To insert after "inspector" the following—

or authorized person

Page 62, line 19—To delete "orally or in writing as the inspector" and substitute the following—

in writing as the inspector or authorized person

Page 62, line 20—To insert after "inspector" the following—

or authorized person

Page 63, line 11—To insert after "inspector" the following—

or authorized person

Page 63, lines 23-31—To delete subsection (4) and substitute the following subsection—

(4) If any waste has been or is being discharged from any premises or a condition of pollution is likely to arise or has arisen, the Chief Executive Officer may—

(a) cause the waste to be removed, dispersed, destroyed, disposed of or otherwise dealt with, or the condition of pollution to be prevented from arising or, if that condition arises, that condition to be controlled or abated; and

(b) recover the cost of the removal, dispersal, destruction, disposal or other dealing, or of the prevention, control or abatement, as the case requires, referred to in paragraph (a) from the person who—

(i) was the occupier of the premises at the time of that discharge; or

(ii) caused or allowed to be caused that discharge or the likelihood of the condition of

pollution arising or the arising of that condition, as the case requires, by action in a court of competent jurisdiction as a debt due to the Crown and shall pay any cost so recovered into the Consolidated Revenue Fund.

Amendments put and passed.

Mr LEWIS: Clause 73 as amended gives powers to authorised persons and inspectors to take measures to clean up after pollution has occurred. That is quite fair and reasonable because in situations where these things have happened there must be an ability to move in and clean up quickly.

Notwithstanding that, I believe that the occupier or proprietor of the premises from where the pollution emanated should, in the first instance, be given the opportunity to clean it up. The clause should contain a requirement that the authority take reasonable measures to contact the owner or occupier to request that the pollution be cleaned up. As it stands, the clause gives power for an authorised person to take his own initiatives without first discussing the matter with the person causing the pollution, or seeking his assistance.

Mr HODGE: It is not the Government's intention to go in straightaway where pollution occurs, clean it up, and then send the bill to the occupier. It would be our intention to do just as the member for East Melville said; that is, to give the occupier the opportunity first of all to clean the pollution up. Only if the occupier failed to do that would we step in, do it, and send him the bill. This clause does not require us to step in and do it; it merely indicates that the Chief Executive Officer may cause waste to be removed, and so on. All he has to do is ask the occupier to do so, and in fact that would probably be the first thing he did.

Paragraph (a) does not say that the Chief Executive Officer must do it, but that he must cause it to be done. He might telephone the owner or occupier and ask him to clean up the pollution. If the owner or occupier tells him to drop dead, paragraph (b) of the clause authorises him to clean up the pollution and send the owner the bill.

On the occasion of the recent oil spill in the fishing boat harbour we were very heartened by the responsible approach taken by the oil companies involved. They acted promptly and responsibly to initiate clean-up action, and as I understand it they footed the total bill.

Clause, as amended, put and passed.

Clause 74: Defences to certain proceedings—

Mr HOUSE: I would like the Minister once again to go over the point he made when we were discussing clause 58, because it is not very clear to me.

It is my belief that there should be a defence if pollution occurs because of a malicious act by another person. We can imagine all sorts of scenarios in which that could occur and, through no fault of his own, somebody could be held liable for a malicious act done by somebody else.

Also during the debate on clause 58, the point was raised that the fact that a person takes all reasonable precautions to ensure his instructions to another person are carried out should be a defence, and I would appreciate the Minister's covering that point again.

The time limit of seven days within which a person must notify his intention to rely on a defence is possibly too short, especially in a case where something happens in the north-west, say, and a person needs to seek legal advice before submitting his defence. Perhaps the Minister could consider extending that time.

Mr HODGE: Just to show the member for Katanning-Roe how cooperative I am, in one moment I will move to amend that period from seven to 21 days, so his requests are instantaneously agreed to.

It is difficult to respond to the member for Katanning-Roe on this clause without having the same debate we had about an hour ago. I think the defences are quite clearly spelt out in clause 74. In my interpretation, those defences do not necessarily protect an occupier from a servant causing pollution to occur. Someone still has to be responsible for that offence, and for cleaning it up and paying for it. It would be a very easy matter for an unprincipled occupier or employer to hide behind a servant and say, "I know nothing about this pollution occurring, it was his fault", referring to a storeman or a person at the end of the line. In that case a director or an owner of a property could have an excuse and say he knew nothing about it and therefore should be absolved from cleaning up the pollution.

Mr Lewis: But if you prescribed that, it would come out in a court case, would it not?

Mr HODGE: If we prescribed the occupier?

Mr Lewis: Yes, and you are saying, "Hang on, that was the fault of a 16-year-old who has since left."

Mr HODGE: But that does not hold when an enormous amount of pollution has occurred and someone must pay for it to be cleaned up, and be held responsible. However that may influence a court in what penalty it imposes on the occupier. If it thought the occupier was the innocent victim of a deliberate campaign by someone to cause pollution, I am quite sure the court would take that into account when deciding whether to convict, and what the penalty should be.

Nevertheless, someone must be held responsible for cleaning up the pollution. For example, in the case of the pipeline that recently fractured and flooded the fishing boat harbour, even if an employee of the company had deliberately fractured it, nevertheless an enormous amount of pollution occurred and an enormous amount of oil flowed into the fishing boat harbour. It had to be cleaned up, the oil belonged to the company, and it would have to accept responsibility.

Mr Lewis: I can accept that, but I cannot accept that a person might be fined $50 000 and also be charged for the cleaning up when it was not even his fault. Someone else did it, yet he has no defence.

Mr HODGE: As the member for Welshpool indicated, that is not unusual. As far as I know, it is a longstanding legal principle that employers must be responsible for the actions of their servants. As I mentioned before—and the member for East Melville took exception to the fact—employers have insurance to cover themselves against that eventuality. The member is quoting the maximum penalty that can be imposed and I am quite sure that in the circumstances, if a court was convinced that the occupier was in fact an innocent victim, and if it recorded a conviction, it would not see fit to impose the maximum penalty, especially if a substantial amount of money was involved in paying for the cleaning up.

I move an amendment—

Page 64, line 20—To delete "7 days" and substitute the following—

21 days.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 75: Discharges or emissions in emergencies—

Mr HOUSE: How far-reaching does the Minister see the powers of the EPA or the Chief Executive Officer? Would he see them as being similar to the powers of a bushfire control officer? Powers are all very well, but what worries me is that if they are in the hands of an officious person they could be over-used.

I refer to the part of the clause which says "proposed noise". If there were to be a dance at the local hall where a rock n' roll band was to play and the old lady down the street complained, are we to have the dance stopped because there may be noise later on?

Mr HODGE: The member for Katanning-Roe is wanting me to give an example of the sort of emergencies in which the Chief Executive Officer may exercise his discretion. I am advised that an example might be the WA Water Authority's waste water treatment plant which floods from time to time, particularly when heavy rain occurs. No-one can control or prevent this action. It may occur once or twice a year, so in those circumstances the Chief Executive Officer would need to grant an exemption to the Western Australian Water Authority under the water pollution laws.

There may also be an instance where, in a large industrial complex, a large boiler may overheat due to some malfunction. We may need to allow certain emissions into the atmosphere to overcome a dangerous situation in that instance. This clause gives a degree of flexibility to the Chief Executive Officer to deal with those sorts of emergencies. I think the member for Katanning-Roe referred to noise abatement—

Mr House: My question related to the proposed noise. The Chief Executive Officer may take action if he thinks there will be a proposed noise. I used the example of a rock n' roll band at a dance. If someone complained about that dance, could the Chief Executive Officer stop it taking place just because he thought there was going to be too much noise?

Mr HODGE: I am familiar with people seeking exemptions from the Noise Abatement Act, particularly with respect to rock n' roll bands. They usually come to the department and seek an exemption before they have their concert. If it does come to our attention that the noise abatement laws are likely to be exceeded, we normally contact the group and ask them about their intentions. We point out the provisions of the Noise Abatement Act and show them, if they think they will exceed the provisions, how they might make an application for an exemption.

The exemption can be granted by the Minister, refused, or given on conditions. The most common is the exemption given with certain

conditions. The conditions usually are that there shall be a restriction placed on how late they can play, and a noise level condition which says that the noise shall not exceed so many decibels at the border of the nearest residence. There should also be a responsible person on duty at all times—a senior officer of the local council—to ensure the conditions are enforced. If the conditions are not met, the exemption is automatically null and void. People can then take action as a breach of the Act has occurred.

Mr HOUSE: Is this an area where the Minister sees local government becoming involved, and will local government health inspectors take control?

Mr Hodge: Yes, they are the front line troops.

Clause put and passed.

Clause 76: Miscellaneous offences—

Mr LEWIS: This clause prohibits a person from selling a piece of equipment that has the ability to make a noise. It has been put to us that it should not be an offence if the equipment has the ability to make the noise rather than if the vendor of the vehicle has not notified the purchaser that it has the ability to make the noise.

I refer to the simple farm tractor or any piece of equipment that may be in disrepair, run down, or have certain parts missing from it. This clause prohibits a person from selling the equipment unless he is exempted under the regulations. I think that is grossly unfair and restricts a person selling any sort of equipment because, if it is in disrepair, it will make a noise. A person who owns a motor vehicle which is involved in an accident and has its exhaust system damaged cannot sell that vehicle until it is brought into conformity with the noise requirements as prescribed. It would be an offence if a person selling that equipment did not notify the purchaser.

Mr HODGE: It would only be an offence if the piece of equipment was to be used in such a way as to cause pollution. If the equipment that is being sold is to be used for parts or in such a location as not to cause pollution, then it is not an offence.

Mr Lewis: It is if it is above the prescribed standards.

Mr HODGE: It depends on which prescribed standards we are talking about. For instance, if we are talking about noise, the neighbourhood noise abatement regulations take into account the type of neighbourhood one lives in and what the background noise is. If one happens to own a tractor which is creating a noise out on a farm hundreds of metres or kilometres from another property, obviously it is not causing pollution under the regulations. I do not think that would be a problem.

I have become aware of the problem of motor vehicles fitted with mufflers that are on sale in Perth and do not comply with the regulations.

In all good faith someone could purchase a muffler and put it on his car, and it still might not comply with the noise pollution laws. Members may well say that we should try to make selling a faulty muffler an offence by the proprietor of the shop, or even an offence by the manufacturer, but I believe that is unfortunately something of a pipe dream.

Mr Lewis: What about a tractor?

Mr HODGE: The Australian design standards now lay down that when a car or a tractor is manufactured, it has to comply with noise and air pollution standards. We are seeking under this clause to ensure that vehicles and other goods which could cause pollution in the atmosphere are not being sold. I have already instanced the example of a person buying a muffler, putting it on his car, and finding that it was almost a straight-through muffler which caused a terrific din and in no way complied with the noise requirements of the Act.

Mr LEWIS: I do not want to labour the point, but this clause is similar to clause 86. It does not say that machinery has to pollute; it says that it has to have an ability to pollute or to make a nuisance. It does not have to actually create the nuisance, but the person who sells something which has the potential to create a nuisance will be committing an offence. I cannot accept that.

Mr HODGE: I will have a look at the point that the member for East Melville has raised. I do not read the clause in that way and that is not my advice.

Clause put and passed.

Clauses 77 and 78 put and passed.

Clause 79: Unreasonable noise emissions on premises—

Mr BLAIKIE: I notice that this clause relates particularly to the use of equipment. It states in effect that people can lodge a complaint and certain actions can be taken against people who make unreasonable noise on their premises. From time to time members occasionally be-

come involved in complaints about noises from private premises which are not related to equipment. Sometimes the noise is the result of domestic disputations which can be violent. This appears to be occurring with ever-increasing frequency. Does the Minister intend that this part of the noise pollution section include a clause to allow people the opportunity to take action against such noise or is he going to relate this simply to pollution caused by equipment only?

Considerable concern is being felt and expressed by people in the community who are apprehensive about their not being able to take action. While the Minister is attempting to cover all aspects of pollution, I would like to assure him that domestic pollution is causing some people concern.

Mr HODGE: I believe that this matter is covered by clause 81, which deals with any sort of noise being emitted from any premises. Under this clause police officers can take action. Clause 79 has been structured to deal with equipment.

Clause put and passed.

Clauses 80 and 81 put and passed.

Clause 82: Powers of entry in respect of noise abatement directions—

Mr LEWIS: This clause relates to provisions under the Noise Abatement Act. My concern is that the authorised person has the ability to enter premises at will. He can enter those premises using force if he is accompanied by a police officer. It seems strange to me that an authorised person can enter premises legally without a warrant, while a police officer does not have that power. I make the point that the powers of entry are far greater under this clause than those which apply to police officers. Indeed, a warrant is not even required for entry by the authorised officer.

Mr HODGE: The member for East Melville is correct. This provision was taken straight out of section 35 of the present Noise Abatement Act. I remember having the same debate with Ray Young when I was on the other side and he was on this side in 1981.

Mr Blaikie: I might say that at that time I thought your argument was wrong.

Mr HODGE: The very important point which the member for East Melville raised I canvassed, without much success, in 1981. I refer members to Ray Young's spirited defence of those provisions.

Clause put and passed.

Clauses 83 and 84 put and passed.

Clause 85: Excessive noise emissions from equipment—

Mr LEWIS: This clause relates to the liability to prosecution for the offence of owning equipment that can make a noise. The clause does not even state that a noise needs to be made. This provision is against natural justice. One may have equipment within one's workshop or factory that certainly may be able to make a noise, but unless that equipment is commissioned and run, it actually does not create a nuisance.

How can the Minister justify being able to prosecute someone for having equipment that is capable of making a noise, when in fact it has not yet made that noise and has not transgressed the prescribed standards?

Mr HODGE: Clause 84 relates to excessive noise emissions from vehicles or vessels. Clause 85 deals with excessive noise from equipment which is stationary. It may be that an enormous machine in a particular location can generate a fantastic noise once started up. This clause is designed to cope with that situation. The member for East Melville is implying that the noise inspectors would have to catch the offender red-handed; that is, the inspector would have to have a noise reading meter in his pocket and catch an offender while a noisy machine is in operation. That is not a realistic attitude because there are literally tens of thousands of premises containing potentially noisy equipment throughout the State and probably only a handful of inspectors.

The member is saying that it is okay as long as one does not get caught red-handed. I do not subscribe to that theory, and I am surprised that the member should take this up. One of the most common complaints to my electorate office is about noise pollution, and I know that his constituency is like mine. For him to suggest we should try to water down the present approach—and this is no departure from the present approach—and make our noise laws less effective, is surprising. All the representations made to my electorate office are for draconian measures to deal with noise. It is becoming one of the serious forms of pollution, and causes great problems, particularly in the metropolitan area.

Mr LEWIS: I accept what the Minister says, but I had a lot of experience of noise complaints when I was with the council. The Minister's analogy, is that if one has a motor car that is capable of going at 100 kmh, one can be

prosecuted for driving in a 60 kmh zone simply because one's motor vehicle has the ability to go faster than the prescribed speed limit. That is nonsense. I believe one has to commit an offence in order to be prosecuted. It should not be possible for a person to be prosecuted on the basis that he is in a position to be able to commit an offence.

We are talking about noise, but this legislation does not refer to animals. I know it is by the bye, but I have had many complaints about barking dogs and squawking parrots. This legislation does not give us the ability to prosecute or restrict people who have animals which annoy.

Mr Hodge: We can do something about barking dogs.

Mr LEWIS: I would like the Minister to answer the analogy about the motor car which goes faster than 100 kmh.

Mr HODGE: I do not know that we are going to get very far with this sort of debate. This clause is a genuine attempt to reduce noise pollution in the community. In reality, what would happen is that the inspectors would go to premises and see that huge, noisy machinery is in place, and they would probably offer some expert advice to the occupier of the premises on ways of reducing the noise, such as by soundproofing the room or double-glazing the windows, or silencing the machinery. I do not know if there has been a prosecution under this section in the old legislation; I doubt it very much, and I doubt whether there will be any prosecution under this clause. It is possible there will be prosecutions under subclause (2).

I take the point the member made, but I maintain that we need these sorts of laws to combat noise pollution and convince people that it is a serious problem about which they must do something. If the member is advocating that we weaken the present noise abatement laws, I am surprised. I do not support that proposition.

Clause put and passed.

Clauses 86 to 88 put and passed.

Clause 89: General powers of entry of inspectors—

Mr HOUSE: My query relates to this and the next two clauses. Do the powers of inspectors exceed those of police investigating offences under the Criminal Code? Irrespective of whether they do, I would like to know where they differ, because in a few minutes when we get to another clause I will have more to say about the rights of people in these circumstances.

Mr MacKINNON: Subclause (1) (a) uses the words "at any time any premises used as a factory", whereas subclauses (b) and (c) use the words "at any reasonable time". I cannot see any reason why subclause (a) should not use the expression "any reasonable time". I do not think anyone objects to the powers of entry of inspectors, but I think inspection should be at reasonable times as in the circumstances set out in subclauses (b) and (c). Can the Minister explain why that word has been excluded? Its inclusion in subclause (a) would not detract from the clause and would ensure that the policing and inspection powers were carried out in the proper manner.

Mr HODGE: In response to the member for Katanning-Roe, I am advised that these powers do not exceed the powers of the police, and I refer the member to sections 69 and 70 of the Environmental Protection Act which are very similar to the provisions in this Bill. They have virtually been transferred but rewritten. They are no more far-reaching than the powers in the present legislation.

In response to the Deputy Leader of the Opposition, I am advised that this terminology has existed for years in the Noise Abatement Act, the Clean Air Act, and the Rights in Water and Irrigation Act. We have merely transferred it from those pieces of legislation to maintain the status quo.

Mr MacKinnon: Perhaps it is a mistake in the other legislation. I do not understand why we cannot include the word "reasonable".

Mr HODGE: I do not know the answer off the cuff. I will try to find out.

Clause put and passed.

Clauses 90 to 95 put and passed.

Clause 96: Chief Executive Officer may require information concerning vehicles or vessels—

Mr HOUSE: When somebody reports or alleges an offence against a vehicle—for example, in relation to excessive noise or throwing rubbish out the window—does this clause enable the Environmental Protection Authority to find out registration details of the vehicle from police records?

Mr HODGE: I cannot see anything in this clause which specifically relates to the police. That would be merely an administrative arrangement between Government departments. As I understand it, it is quite common for

Government departments to be able to ascertain information. Indeed, most local authorities which have parking regulations to enforce obtain information about the registration details from the Police Department.

I would not think it was something we would put into this legislation, but administrative arrangements could exist between the Police Department and various other Government departments so that upon a reasonable request they can find out who is the registered owner of a particular vehicle.

Clause put and passed.

Clause 97: Chief Executive Officer may require vehicles, vessels and equipment to be made available for testing—

Mr HOUSE: It concerns me a little that this power may allow the EPA in future to require that vehicles be tested annually. I would find that a bit hard to stomach, as I am sure would a lot of people. It could be regarded as being very heavy-handed. As I read the clause, there could be room for this to happen. I would like the Minister to tell me whether that is the case.

Mr HODGE: There is no intention of requiring people to have annual checkups on their vehicles and that is not provided for in the clause. It has to be clear that there has been a breach of the pollution laws before this provision can be invoked.

Mr HOUSE: I handed a suggested amendment to this clause to the Minister's assistant. I hope the Minister will consider that while this Bill goes to the other place.

Mr HODGE: I have only just seen it. I was not aware the member put it forward as an amendment; I thought it was a query.

Mr House: If your answer had been a little different from the one you gave I would have suggested it as an amendment. Will you give it consideration?

Mr HODGE: I will be pleased to undertake that.

Clause put and passed.

Clauses 98 and 99 put and passed.

Clause 100: Lodging of appeals in respect of levels of assessment of, and reports on, proposals and conditions or procedures attached thereto—

Mr BLAIKIE: It is very important that a system of appeals is available to the public who want to object against decisions of the EPA. At this time the Parliament is not aware of many of the grounds of appeal.

I propose to move to amend subclause (2). At the beginning of any proposal, the public have the right to object to it before it is processed and before it is referred for an environmental impact study. Under this clause, the proposal's path will be tortuous. When the report is made public and is sent to the Minister for final determination, it is proposed that the third party, the objector to the proposal, will have another opportunity to raise his objections against the decision of the umpire—in this case, the EPA. That means that the third party will have the same rights as the local authority or the person who introduced the proposal.

The Opposition believes that there are ample opportunities for members of the public to lodge objections. They can lodge them individually with the Government, the EPA and other agencies concerned and follow their objections through the due processes of the proposal. However, to allow the public to continue with their objections is, I believe, an inhibiting factor against the developers.

I do not see why the 14-day period needs to be included in the legislation. I imagine that anybody disagreeing with a proposal will contact the Minister anyhow and the Minister will make his decision after considering the objections to the proposal and the proposal itself. We see this subclause as being unnecessary. People will contact the Government irrespective of what decision is made. Some people are never satisfied and appeals could go on for ever.

Mr HODGE: I move an amendment—

Page 83, lines 25-30—To delete subclause (1) and substitute the following subclause—

(1) Any decision-making authority, proponent or other person which or who disagrees with—

(a) the decision of the Authority under section 40(1)(a) that a proposal should not be assessed by it under Part IV; or

(b) the level of assessment of a proposal disclosed in the public record kept of the proposal under section 39(1),

may, within 14 days of—

(c) the later or the last, as the case requires, of the persons required to be informed under section 40(1)(a) having been so informed or of the expiry of the period of

28 days referred to in section 40(1)(a), whichever is the sooner; or

(d) the making available of the public record referred to in paragraph (b) under section 39(3),

as the case requires, lodge with the Minister an appeal in writing setting out the grounds of that appeal.

This amendment makes it clear that, where the authority has decided not to assess a proposal, that decision should be appealable to the Minister for him to decide whether to direct the authority to assess that proposal. The amendment to subclause (1) seeks to allow that to happen. It provides that, after the EPA has decided not to assess a proposal, a person who feels aggrieved by that decision of the authority not to assess the proposal has 14 days to appeal to the Minister. If the Minister upholds the appeal, he can ask the authority to assess the proposal.

I see nothing out of the ordinary with that. I am surprised at the attitude of the member for Vasse. I thought that the Liberal Party would be happy to have public participation in important decision-making matters related to the environment.

Mr Blaikie: We have; the whole Bill provides for that.

Mr HODGE: It provides for submissions to be made to the EPA.

Mr Blaikie: And for the opportunity of public participation.

Mr HODGE: In making submissions, yes, but I believe the public own the environment and if the public believe that, in the recommendations of the EPA—the member for Vasse kept referring to them as decisions—due weight has not been given to any aspect, they have a right of appeal.

It is elementary justice to give to the public a right of appeal against recommendations of the EPA. If the Opposition's amendment is successful that would really take away from the public at large any right to appeal against those recommendations. I am not in favour of expensive or lengthy appeals and that is the reason the appeal mechanism has been instituted in this way. The appeal is to the Minister so the matter still stays firmly in the hands of the Government.

Certainly, an elementary avenue of appeal must be provided to members of the public and that is what we are endeavouring to do under this clause. The amendment I will move will give the public the right to disagree and appeal to the Minister if the EPA decides not to carry out an assessment. It was an oversight on my part when the Bill was drafted. However, it has been brought to my attention over recent months.

Mr BLAIKIE: Clause 40 deals with the assessment of proposals referred to the authority. It states that the authority will make a determination on whether it will make an assessment. If the authority makes a determination that it will make an assessment it advises the Minister and the Minister decides whether it will be carried out.

Having had a matter referred to it, under the Minister's proposed amendment the authority could say, "We have looked at the Pelican Point proposal and do not believe it needs any further action and we recommend that no further action be taken."

Mr Hodge: It can still do that.

Mr BLAIKIE: The Minister is saying that as a result of this amendment the public will have a right of appeal.

Mr Hodge: The public can say that the EPA's assessment is wrong and the Minister can consider it and either reject or uphold it.

Mr BLAIKIE: What it means is that the EPA will make certain determinations as it has done in the past. I am sure that all members in this House agree that it has done a reasonably good job in the interests of the State.

What the Minister is proposing is irresponsible. In future, the decision of the EPA as to whether it will carry out assessments will be subject to appeal and not to whether its good judgment prevails.

Mr Hodge: The EPA is there to serve the State. If the people want an assessment the EPA is there to do what the people want.

Mr BLAIKIE: What the Minister is saying is that notwithstanding what the EPA may determine—it may determine that the Pelican Point proposal will not be subject to an environmental referral—an appeal may be lodged and in the appeal process the Minister can redirect the EPA to carry out an assessment.

The Opposition has said continuously that the EPA does not have autonomy. The amendment the Minister has moved takes away any autonomy it may have had. On the one hand, the authority can determine whether to have an assessment made, but on the other hand if the authority determines that it is not necessary to

have an assessment its decision can be appealed against and if the Minister upholds the appeal, he can direct the authority to do what he wants done.

Mr Hodge: What the people who appeal want done.

Mr BLAIKIE: The Minister will direct them in due course to do what he wants done. There is a very wide disparity between the existing Act and what is now proposed.

Mr Hodge: There are many deficiencies in the existing Act and there is nothing in it about assessments.

Mr BLAIKIE: With all its deficiencies the existing Act has worked well. What the Minister is proposing is to ensure that the EPA is directed by the Government of the day and his amendment will provide that.

Mr Hodge: What I am trying to do is to give the public an avenue of appeal.

Mr BLAIKIE: I do not support the amendment.

Mr THOMAS: Most of the issues relating to the rights of the members of the public to make appeals to the authority will be dealt with under the amendment on the Notice Paper, in the name of the member for Vasse, and which relates to clause 100 (2).

It is a red herring to say that the power of appeal to the Minister under subclause (1) takes away from the autonomy of the authority. In fact, that is quite clearly not the case. It is open to any person who is interested in a matter that has been referred to the authority, be that person a proponent to a public authority or an interested member of the public, to make an appeal as to the level of assessment. That matter may be dealt with by the Minister and subclause (4) outlines what action the Minister may take.

It is not open to the Minister to determine what substantive conclusions the authority may come to. The autonomy of the authority would only be threatened if it were possible for the Minister to direct it to undertake the substantive conclusions it may reach. The legislation does not provide for that. It is not possible to talk about the autonomy being threatened. There are proper procedural safeguards and I would have thought that the members opposite would welcome them.

The proponent who feels that the requirements placed on him by the authority are too onerous has the option to make a similar appeal. He could say, "I think it is too much considering the nature of the proposition I am proposing to undertake." He could lodge an appeal asking the Minister to provide some sort of relief, but the Minister could not direct the authority as to any substantive conclusions.

I am sure that members opposite agree that that provision should exist. If that is the case, the Opposition must agree that a person who believes that the level of assessment required of a proponent is not sufficient for that proposal to be adequately assessed, should also have the option of going to the Minister. I do not think anyone could say that it is not a fair and reasonable proposition.

It should also be noted—this applies to subclause (2) as well—that it provides a system of ministerial appeals and we have some experience of ministerial appeals in the town planning area. Most people who have had any involvement with it would agree that it is a very efficient and quick means of dealing with appeals. For example, I have had some experience in the planning area and happen to know that in at least one year during the time I was involved, the Minister for Planning dealt with some 600 appeals. That is an average of three appeals each working day. Those appeals were dealt with very expeditiously. Most people who have any involvement or experience with a system of ministerial appeals would be aware of the fact that they can be dealt with expeditiously and that proposals are unlikely to be bogged down for any lengthy period.

It is efficient, right and proper that the proponent, the public authority, and interested members of the public should be able at the preliminary stage of proceedings to go to the Minister and appeal if they believe that a decision which has been made as to the level of assessment of the authority is not the appropriate one in the circumstances.

Mr RUSHTON: This provision demonstrates the point we have been making about the arm's length relationship between the EPA and the Government. Not long after I became Minister for Urban Development and Town Planning, I attended a meeting at the offices of the Shire of Kalamunda to answer the questions of a group of local government representatives. My predecessor had stalled them on the question of small farmlet subdivisions. It was part of our policy that they be allowed. They asked my opinion as to how the policy would work and complained that the previous Government had denied them consideration of the small farmlet subdivisions. So I enunciated

the policy, which was that we would approve these types of subdivisions.

The commissioner of the time got to his feet and said, "I don't like to do this to you publicly, Mr Minister, but I suggest that it is not the Town Planning Board's policy to approve these farmlet subdivisions." In reply, I indicated that I did not like what I was doing to him either, but that there was an appeals system and if the Government's policy was not going to be heeded by the Town Planning Board, more appeals would be upheld. That demonstrates the power given to the Minister under this type of provision.

The EPA really is under the control of the Minister. That might well be the practical way of working. If we had a tribunal we would have an alternative to the Caesar unto Caesar situation. I suggest that the Government is trying to hoodwink the public into believing that the EPA is at arm's length from the Government. I emphasise that throughout the Bill it is clear that the Minister controls the EPA. Obviously the Government thinks it would be an advantage to have the EPA at arm's length because it keeps saying that it is, but that is not so.

The person to hold the position of Chief Executive Officer is extremely competent. However, no matter how competent the person holding that office is, he will be put in an impossible position. He will be put in a straitjacket; not many people, other than Houdini types, work well in a straitjacket.

Amendment put and passed.

Mr BLAIKIE: I move an amendment—

Page 83, line 31—To delete "or other person".

Mr HODGE: I indicate for the record that the Government opposes this amendment. We have discussed the matter several times today, so I will not take up the time of the Chamber by doing so again.

Amendment put and negatived.

Clause, as amended, put and passed.

Clause 101: Powers of Minister in respect of appeals lodged under section 100—

Mr HODGE: I have a series of consequential amendments to clause 101. I move the following amendments—

Page 84, lines 21-24—To delete paragraph (b) and substitute the following paragraph—

(b) in the case of an appeal referred to in section 100(1) or (2), remit the proposal concerned to the Authority for—

(i) the making of a fresh decision under section 40(1) on whether or not that proposal should be assessed by it under Part IV; or

(ii) further assessment or reassessment and for that purpose make a direction under section 43,

as the case requires;

Page 85, lines 7-12—To delete subclause (2) and substitute the following subclause—

(2) When the Minister remits under subsection (1)(b) a proposal to the Authority for—

(a) the making of a fresh decision, that decision shall be made; or

(b) further assessment or reassessment and makes a direction under section 43, such portions of the procedure laid down by sections 40 to 48 as are appropriate shall apply to the proposal and those portions shall be completed,

within such period as the Minister specifies in his remittal.

Page 85, lines 14 and 15—To delete paragraph (a) and substitute the following paragraph—

(a) referred to in section 100(1) does not affect the relevant decision referred to in section 100(1)(a) or the level of assessment of the relevant proposal, as the case requires;

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 102 to 107 put and passed.

Clause 108: Composition and remuneration of appeals committees—

Mr HOUSE: During consideration in Committee of the Bill, the possibility of having an avenue of appeal other than the Minister and the EPA has been raised. Who appoints the appeals committee? If the Minister appoints the appeals committee, he could stack the committee in order to get the sort of result he wants.

Clause 101 states that the Minister's decision on appeals is final. That includes the right of appeal to some arbitrator outside the Environmental Protection Authority's umbrella. Quite clearly, one could argue that the person seeking to make such an appeal is being denied natural justice.

Mr HODGE: The appeals committee will be appointed by the Minister. I cannot see how we could have any other arrangement. I cannot think of many other appeals committee or tribunals around Perth that are not appointed by the Government. As I indicated earlier, it would be my desire, if possible, to use the existing Town Planning Appeals Tribunal. I am impressed with the way that tribunal works. I have had informal discussions with the Minister for Planning and I intend, when this legislation is passed, to explore the prospect of using that tribunal. I think it would make good sense to try to have one tribunal to deal with both areas. It may be that the tribunal would have to be expanded. It would probably be more economical to expand the existing tribunal than to establish a new bureaucracy.

Mr Rushton: It would need different people. It would need people specialising in environmental matters.

Mr HODGE: I am not sure how much expertise in environmental matters members of the committee have to have. Environmental matters are very complex and cover many fields.

Mr Rushton: You want good, practical people. I suggest that you could use the administrative base of the planning tribunal.

Mr HODGE: I have no hard and fast arrangements in mind. To be quite honest, I have not made up my mind as yet.

We have left the options open. I am hopeful that we shall not have to use an appeals committee very often but that may be a forlorn hope; it may be a regular occurrence.

It certainly is correct that the appeals committee would be appointed by the Minister of the day, as I think the Town Planning Appeals Tribunal is appointed by the Minister for Planning. I do not know who else would be responsible for appointing such a committee. The Town Planning Appeals Tribunal is held in high regard, and I see no reason why this committee should not be held in the same high regard.

Mr Rushton: The strength of that committee is its continuity. It should not appoint special people for this, that, and the other.

Mr HODGE: It may be necessary to have different people on the appeals committee for different projects. The matters under consideration could be very diverse and there could be complex matters dealing with air or water pollution.

Mr Rushton: They could get advice.

Mr HODGE: They could get advice but it would be helpful if the people had some knowledge, interest in, or experience of the matters being appealed before them.

Mr HOUSE: I put on the record once more that it is very important to have someone in that position and I am pleased to hear the Minister say that he will consider setting it up similar to the Town Planning Appeals Tribunal.

Clause put and passed.

Clause 109 put and passed.

Clause 110: Implementation by Chief Executive Officer of decisions of Minister on appeals—

Mr HODGE: I move the following amendments—

Page 90, line 6—To insert after "110." the following—

(1)

Page 90, after line 8—To insert the following subclause—

(2) The Minister shall cause such details of his decisions under this Part in respect of appeals to be published in such manner as is prescribed.

The inclusion of subclause (2) in this clause is to provide for the publishing of the Minister's decision with respect to an appeal. This was recommended by the Environmental Law Association at its seminar. It was pointed out that although we had every intention when drafting the Bill of making the Minister's decision public, we had not specifically provided for it. The new subclause will achieve that.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 111 to 113 put and passed.

Clause 114: Institution of prosecutions—

Mr HODGE: I move the following amendments—

Page 91, line 19—To insert after "114." the following—

(1)

Page 91, after line 24—To insert the following subclause—

(2) Notwithstanding section 51 of the *Justices Act 1902*, a complaint of an offence under this Act shall be made within 12 months from the time when the matter of complaint arose.

The second amendment is made at the request of the pollution control division of the department. It was drawn to my attention that we needed to allow for the limitation of the period when prosecutions can be instituted to be extended for 12 months. This amendment is a direct result of that request.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 115 and 116 put and passed.

Clause 117: Proof of documents—

Mr HODGE: I move an amendment—

Page 92, line 19—To delete "; or" and substitute the following—

; and

This amendment is to correct a drafting error.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 118: Liability of directors etc. when offence committee by body corporate—

Mr HOUSE: I have always believed that a person was innocent until proved guilty, and I am concerned that in this clause a person is presumed guilty until proved innocent. The directors have a liability for the company's offence unless they can prove their ignorance or that they took all reasonable care. Obviously the onus is on the director to prove his or her innocence. That seems particularly and directly contrary to natural justice.

Mr HODGE: This clause makes directors and those officers of a body corporate who are identifiably concerned with making management decisions liable for committed offences unless they can prove they were not concerned with the offence; that is, they did not consent to it. Subclauses (a) and (b) provide the defence.

I am amending this clause at the recent direction of the Cabinet. This amendment relates to the blowing up of the reefs at Rottnest. I was advised that that could be construed as an act of pollution and the Government is most anxious that those deliberate acts of pollution be severely dealt with. We shall provide for a fine of $10 000 and/or a maximum of six months' imprisonment for people convicted of wilfully causing a serious act of pollution.

Mr Rushton: Have you found who has done the job yet?

Mr HODGE: Not yet.

Mr Court: Are inquiries still going on?

Mr HODGE: I am not sure what the other departments are doing. I instructed Mr Carbon to endeavour to find out what information he could and report to me. I understand he has had divers there analysing the reefs and taking samples in an effort to ascertain when the explosions occurred, and to find any other information.

Mr Rushton: One would think the Marine and Harbours Department would have a good knowledge; it patrols the area.

Mr HODGE: It may have. I do not know what it knows. I am not responsible for the Marine and Harbours Department.

Mr MacKINNON: I share the concern of the member for Katanning-Roe, and I am not entirely satisfied with the Minister's response.

I view this clause in the same light as legislation introduced recently when a similar situation occurred. The Minister for Minerals and Energy was involved, and I think we were debating a mines regulation Bill, which included a clause stating that the person was presumed guilty unless proved otherwise. The system of justice under which we have operated for a long times works strictly on the opposite premise; that is, a person is innocent unless proved guilty.

Mr Hodge: This only occurs when the body corporate has been found guilty.

Mr MacKINNON: I still think that the prosecuting body should have the responsibility of proving the involvement of the individual concerned.

Mr Hodge: What happens if a serious pollution offence occurs and the culprit is found to be one of those $2, off-the-shelf companies? What would you suggest we do?

Mr MacKINNON: It would be a simple exercise to prove that the people involved in the management of the company were directly responsible.

Mr Hodge: Your suggestion is, if there is a front man, he should be held responsible. The directors may have been out of the State at the time.

Mr MacKINNON: I am saying it should be the Minister's responsibility to prove who was responsible, and then they should be properly prosecuted.

The other point I want to raise concerns prosecuting a director or other officer. What other officer? The definition is not really exact. Under previous legislation officers of the company involved have been defined. It is very poor that we should be here considering legislation which presumes the guilt just because of a man's position in the company, not because of his actions. It should be the responsibility of the prosecuting body to prove the involvement of those persons and their guilt.

I may well be an officer in a company as defined in the Bill. An officer is any employee. I could be prosecuted, yet I might have no knowledge of the goings-on and no responsibility. This is a dangerous precedent and I urge the Minister to give consideration to changing the legislation in that regard—that is, regarding the question of guilt—and also ensuring some definition of "officer" in this clause.

Mr HODGE: Crown Law advice has been sought on the term "officer", and the advice is that it is quite clear he is a decision-making officer—an officer who makes decisions in the company. There does not seem to be any confusion in Crown Law's mind as to who an officer is.

The Deputy Leader of the Opposition said this created some sort of precedent. Legislation enacted by members opposite when they were in Government contains almost precisely the same clause. It has been there for years. I refer to clause 73 of the Waterways Conservation Act which covers offences by a body corporate and does precisely the same as we are attempting to do here.

This clause has not been included lightly. It has been included as a result of experience by the department over the years when some fairly unscrupulous operators always seem to find a way of avoiding taking responsibility when serious pollution offences occur, particularly offences against the Clean Air Act. They always seem to be out of town at the time offences occur and blame some underling well down the line.

The experience of the department over the years has caused it to recommend to me that we adopt this provision. It is not an unusual provision. I have given an example of where members opposite when in Government enacted precisely the same legislation in 1976. It is not unreasonable to include that sort of reference in this legislation.

Mr MacKINNON: As I said to the Minister for Minerals and Energy when we debated this general issue last time, I do not take as any argument the fact that previous Governments, albeit one of which I may have been a part, enacted legislation containing similar clauses. If mistakes were made in the past we should admit those mistakes and ensure that they do not occur again.

Mr Hodge: Are you unhappy about the way that Act operates?

Mr MacKINNON: Now that it has been pointed out to me, I am. If we are to say that the reason for enacting legislation is that a department has found difficulty in obtaining prosecutions, that is a dangerous precedent. If a person is to be charged by any Government or bureaucracy according to legislation which we authorise, the responsibility should clearly be on that agency or that Government to prove his guilt.

That is a very important principle. Guilt should not be presumed. It is a fundamental principle of law and one to which I strongly subscribe. I take strong exception to legislation brought to the Parliament which contravenes that principle. I urge the Minister to take that criticism on board and if possible review the clause with a view to ensuring that the onus to prove guilt is retained where it properly should be, and that is with the prosecuting authority.

Mr LEWIS: I must reinforce what the Deputy Leader of the Opposition has said and return to my example of where an employee, by way of a vexatious act, could cause pollution. By virtue of that, an occupier could be deemed to be guilty. The occupier may be a corporation, and as a result of that provision the directors and officers of that company are deemed to be guilty.

Mr Blaikie: And they have no defence.

Mr LEWIS: And they have no defence. They then have to go to the court and prove their innocence. This is nonsense. Someone can, as a result of vexatious acts, deliberately cause pollution to occur, and because the Act does not

provide a defence, not only the corporation but also the directors and officers of that corporation are prosecuted.

If one looks at the penalties, we are talking in figures like $50 000. This is no mean penalty to suffer when one is innocent but is presumed guilty because of the way in which the legislation is written. The Minister should accept the comments of the Deputy Leader of the Opposition and the member for Katanning-Roe and take that clause back with a view to amending it.

Mr THOMAS: The example of the vexatious employee has been raised a number of times in this debate, but quite clearly the clause provides an adequate defence for the directors of a corporation in that event.

Mr Lewis: They should not have to defend themselves if they are not guilty.

Mr THOMAS: Those responsible for administering the law, not only in this area but also in many other areas, admit it has been possible for individual persons to hide behind the "corporate fold", which is the legal term, as I understand it, and escape liability for actions for which they have been responsible. A person is never obliged to lead evidence. One can have a situation where it is difficult to prove individual responsibility unless the onus is cast in the way this clause is worded.

However, the provisions here quite clearly make it a defence in the event that the person exercises proper responsibility by giving proper instructions to the employees and so on. If one has the scenario of the vexatious employee—I am not aware of any instances of this, but if it did occur—the responsible officers of that corporate body would have a defence and the matter could be disposed of very quickly.

But I pose this question to the House: Knowing the practicalities of administering a court of law and the ease with which individual people can hide behind the corporate veil, do members believe this Parliament ought to set up a situation where it would be possible for responsible officers of a body corporate to evade prosecution because of principles of justice which are really intended to protect individuals in a criminal law situation rather than the type of legal situation we have here?

In the past, in a number of areas in which I have in some instances been directly involved, it has happened that people who were responsible for acts against the law avoided being brought to book for their actions because they were able to hide behind the body corporate. That is what this Bill seeks to avoid; but within its provisions it gives adequate protection to ensure that individuals would not be held responsible for actions which took place despite their diligent and responsible activities.

Mr HOUSE: I hope the member for Welshpool reads and understands quite clearly what he has just said, because he has just said to this Parliament that he wants to pass a law that makes everybody guilty because one person might be. We all accept that under the law there may be some who escape through the net, but there is no way in this wide world that this Parliament should pass a law that makes everybody guilty because there might be a different law under which one person out of 100 escapes. That is the principle to which the member for Welshpool has said he adheres, and I do not think we should have a law like that in a Western democracy. I am strongly opposed to this clause.

Mr HODGE: I move the following amendments—

> Page 92, line 23—To delete "When a body corporate" and substitute the following—
>
> (1) Subject to subsection (2), when a body corporate
>
> Page 92, after line 31—To insert the following subclause—
>
> (2) A director or other officer who is guilty of an offence under this Act by virtue of subsection (1) is liable to the penalty to which an individual who is convicted of the same offence is liable.

Amendments put and passed.

Clause, as amended, put and a division taken with the following result—

Ayes 23

Mrs Beggs	Mr Read
Mr Bertram	Mr D. L. Smith
Mr Bridge	Mr P. J. Smith
Mr Bryce	Mr Taylor
Mr Brian Burke	Mr Thomas
Mr Terry Burke	Mr Tonkin
Mr Burkett	Mr Troy
Mr Carr	Mrs Watkins
Mr Gordon Hill	Dr Watson
Mr Hodge	Mr Wilson
Mr Marlborough	Mrs Buchanan
Mr Pearce	*(Teller)*

Noes 17

Mr Blaikie	Mr Laurance
Mr Bradshaw	Mr Lewis
Mr Cash	Mr MacKinnon
Mr Court	Mr Mensaros
Mr Cowan	Mr Schell
Mr Crane	Mr Thompson
Mr Grayden	Mr Watt
Mr Hassell	Mr Spriggs
Mr House	*(Teller)*

Pairs

Ayes	Noes
Mr Parker	Mr Clarko
Mrs Henderson	Mr Lightfoot
Mr Peter Dowding	Mr Stephens
Mr Tom Jones	Mr Williams
Mr Grill	Mr Trenorden
Mr Evans	Mr Tubby
Dr Gallop	Mr Rushton

Clause, as amended, thus passed.

Clause 119 put and passed.

Clause 120: Secrecy—

Mr BLAIKIE: I ask the Minister to look again at this clause because I believe it should include a further provision regarding matters that are commercially sensitive; and I envisage this provision being taken directly from the Noise Abatement and Clean Air Acts.

Where environmental legislation is involved with land dealings or things of that nature, a person may not necessarily be talking about a manufacturing process or a trade secret but he could be talking about arrangements with banks. We have already seen how the Parliament has turned itself inside out over certain sensitivities about people making commercial transactions, and the Government's attitude in relation to those people. I believe commercially sensitive areas should be provided for in this clause, and ask the Minister to give it very serious consideration before the Bill is transmitted to the other place.

Mr HODGE: I give that undertaking.

Clause put and passed.

Clause 121: General indemnity—

Mr HODGE: I move an amendment—

Page 93, line 26—To insert before "an Authority member" in paragraph (a) the following—

the Minister, an inspector, an authorized officer,

This amendment was put on the Notice Paper because it was found that the general indemnity had not been extended to cover the Minister, and I thought that was a serious oversight which I am most anxious to rectify.

Amendment put and passed.

Mr HODGE: I move an amendment—

Page 94, line 7—To insert after "liable for any act of" the following—

the Minister, an inspector, an authorized officer,

Amendment put and passed.

Clause, as amended, put and passed.

Clause 122 put and passed.

Clause 123: Regulations—

Mr COURT: Was the office of regulatory review, which falls within the Department of Premier and Cabinet, involved in the formation of this legislation?

Mr Hodge: Not as far as I am aware.

Mr COURT: The reason I asked that question was that last year the Government went through a public relations exercise where it said it was trying to cut out the red tape affecting industry. The Deputy Premier made the comment that all Government regulations would have a maximum life of 10 years and there would be regulatory impact statements prepared on regulations brought into effect.

This legislation will have tremendous impact on a wide section of industry, and it seems rather strange that the Government made all the noise with front page stories last year about a major piece of legislation to set up its so-called office of regulatory review. That office seems to be lost somewhere in the Department of Premier and Cabinet and does not have any input into this legislation.

Mr HODGE: The Bill, in its drafted form, was referred to the Department of Premier and Cabinet for scrutiny. I am not sure whether that department examined the section the member for Nedlands is referring to. The Bill was referred to all Ministers for their scrutiny.

From my understanding, the office of regulatory review is there to look at existing regulations, particularly old regulations that have been around for decades, and to ascertain whether they are still required and necessary. I am not sure what the member for Nedlands envisages its role to be in respect of this legislation.

Mr Thompson: Just to do what the Deputy Premier said it would do.

Mr HODGE: Review old regulations?

Mr Thompson: No, put a life on regulations that are tied up in new legislation.

Mr HODGE: I do not know whether he said that or not. My understanding is that they are busily reviewing the mountains of regulations

that have been in place for many decades, seeing what their relevance is in this society and, where necessary, recommending that some be deleted.

Mr COURT: I am not going to delay the House on this point.

Mr Hodge: I am told that the regulations permit them to be referred to that committee.

Mr COURT: Another Bill which is to come before the House will give me an opportunity to debate the matter futher. All the talk we heard last year about these impact statements was obviously a PR exercise. I will certainly have more to say on that point. This legislation will have a tremendous impact on all sections of industry.

Clause put and passed.

Clause 124: Review of Act—

Mr HOUSE: It is my personal opinion that five years is too long for the review of this legislation. I would rather a period of three years. Would the Minister study that point before this Bill is considered in another place? Is this review to be internal or external, and will it invite public comment on the workings of the Environmental Protection Authority? A number of areas could be looked at by someone reviewing this Act. It is important that some external people be involved in the review and that public comment be invited.

Mr HODGE: I have taken note of what the member for Katanning-Roe has said. The five-year period for review is standard Government policy. This is a standard clause which goes into all legislation. I think five years is a reasonable period. Three years is too short to give an effective indication of a department's and the legislation's performance.

I have no hard and fast ideas about how the review should be conducted. I agree there should be some mechanism for public input. I will give the matter consideration.

Clause put and passed.

Clauses 125 to 128 put and passed.

Schedule 1—

Mr HODGE: I move an amendment—

Page 96—To delete item 4 of Part I and substitute the following items—

4	49(1)	$10 000 or 6 months imprisonment or both	$2 000
5	49(2)	$10 000	$2 000

This amendment is to provide for the implementation of the recent Cabinet decision that people who are found guilty of a serious offence of creating deliberate pollution should receive a very harsh penalty. We are making provision for a $10 000 maximum fine and/or a maximum term of six months' imprisonment.

This was a Cabinet decision that followed the vandalism of the blowing up of a reef at Rottnest Island. Cabinet made it clear it wanted a strong deterrent penalty in the legislation. That is the reason for this amendment.

Amendment put and passed.

Mr HODGE: I move the following amendments—

Page 97—To delete item 4 of Part II and substitute the following items—

4	49(1)	$20 000	$4 000
5	49(2)	$20 000	$4 000.

Page 97—To delete items 2 and 3 of Part III and substitute the following item—

2	50	$5 000	$1 000

Amendments put and passed.

Schedule, as amended, put and passed.

Schedules 2 to 4 put and passed.

Title put and passed.

Bill reported, with amendments.

CRIMINAL LAW AMENDMENT BILL

Second Reading

MR PEARCE (Armadale—Leader of the House) [5.21 p.m.]: On behalf of the Minister for Employment and Training, I move—

That the Bill be now read a second time.

This Bill continues the Government's on-going review of the Criminal Code, and substantially reflects recommendations made in the review of the Criminal Code by the Crown Counsel, Mr Michael Murray, QC.

The Bill deals with four separate areas of the code. The code presently deals with a number of circumstances in which persons other than the principal actor can become parties to offences and be treated as equally culpable.

An example is found in section 8 of the code; namely, where a number of persons undertake a joint enterprise to commit a criminal offence and in the course of that, another offence is committed which was a probable consequence of the commission of the offence agreed upon. The code makes no provision for a person who has been part of such a joint enterprise to with-

draw in such a way as to avoid criminal liability if his co-offenders pursue the enterprise to the commission of the second offence. In the past the common law has been applied in such areas. That, however, is somewhat uncertain.

The Bill proposes that the code provide for the concept of dissociation—that is, timely communication of withdrawal to the co-offenders, together with the taking of all reasonable steps to prevent the commission of the offence which has become likely as a result of the joint criminal enterprise. Clause 4 of the Bill effects the change.

It is also proposed to amend the code in respect of accessories after the fact who receive or assist offenders in order to enable them to escape punishment. At present, a married woman cannot become an accessory after the fact if, by her husband's authority, she receives or assists a third person who is a joint offender with her husband. That restriction is inappropriate and clause 10 effects its removal.

Comparable jurisdictions have for some time had a specific offence of infanticide. This occurs when a woman kills her baby under the influence of emotional disturbance attributable to the process of giving birth or subsequent lactation. This is a well-recognised phenomenon which occurs occasionally and in tragic circumstances. At present, such a person is generally unable to plead insanity, and the matter is dealt with as an offence of wilful murder or murder.

It is proposed that an offence of infanticide be created in Western Australia, and that this be an alternative conviction open upon a charge of wilful murder or murder. The offence would apply to the killing of a child under the age of 12 months, with a maximum penalty of seven years' imprisonment. The question of appropriate maximum penalty for infanticide has been very difficult to resolve and the proposed penalty is, quite frankly, a compromise between competing professional views. Thus Mr Murray suggested life imprisonment; the Law Society, 10 years, and the Criminal Lawyers Association, five years. The peculiar nature of the offence also led to consideration of indeterminate sentences, but this possibility has not been pursued due to general objections to this form of sentence. I would welcome the views of members as to the appropriateness of these provisions. Clauses 7 and 8 effect the change.

A well-known exception to the general rule that proceedings in criminal courts are open and public is in the area of extortion offences. This is to protect the victims of blackmail. The code presently prevents, except by leave of the court, any publication in relation to such proceedings except for basic particulars which do not identify the victim.

It is proposed that the present emphasis of the provision be amended so that publication will be possible if no order is made. It is proposed to make provision for an order restricting publication, but not so as to prevent publication of the basic matters which are now permissible.

The effect of the change is to recognise as the general principle that publication should always be possible except for specific reasons consistent with the proper administration of justice. Clause 9 effects the change.

In some comparable jurisdictions, in particular the United Kingdom, provision exists for an offender who appears charged with one offence to ask for other offences committed by him to be taken into consideration, although no charge of those offences is before the court. If the prosecution agrees, the judge, in sentencing the offender for the offence before the court, may take into account the commission of the other admitted offences.

It is felt that such a provision has substantial advantages in that, if properly structured, it may allow an offender to be sentenced at the one time for all offences outstanding against him. This has the potential for substantial savings in time and costs. It is proposed to add such a provision to the code. Its principal features will be the capacity to deal at the one time with all offences involving the one offender to which he is prepared to plead guilty, whether or not those offences would ordinarily be dealt with at the one time in the same or in different courts.

The procedure will require the agreement of both the prosecution and the accused, so it will not be used if either party regards it as inappropriate. The court will have an overriding discretion as to whether or not to implement the scheme in a particular case. Where the scheme is employed it will be extremely flexible in the way that matters may be brought before the court and the court will have full sentencing powers. Provision will be made for the retention of effective rights of appeal in relation to sentence. Clause 11 effects the change.

I commend the Bill to the House.

Debate adjourned, on motion by Mr Hassell (Leader of the Opposition).

QUESTIONS ON NOTICE

Closing Time

THE DEPUTY SPEAKER (Mr Burkett): I notify members that questions on notice for 11 November will close at 4.30 p.m. on Thursday, 6 November.

PARLIAMENTARY PRIVILEGE

Breaches: Statement by Speaker

THE DEPUTY SPEAKER: Before moving to questions without notice, the Speaker intended to make a statement to the House. Unfortunately, he has been called away; and in view of the gravity of the situation, he asked me, in my capacity as Deputy Speaker, to read this statement on his behalf in order that members might reflect on it during the next week's adjournment.

The Speaker's statement reads as follows—

> The member for Pilbara has drawn my attention to question 1518 asked on Tuesday, 28 October 1986 by the member for Mt Lawley to the Minister representing the Attorney General. The question is in six parts, and refers to an application for appointment as a justice of the peace. The question contains a number of allegations, inferences, and innuendoes which, to my mind, would be highly defamatory if uttered or printed outside this House. They amount to a gross abuse of the privileges of this House and reflect poorly on the member who asked the question.
>
> For the benefit of members, the question refers to an individual, and, on the basis of no evidence whatsoever, states the individual is reputed to have written threatening letters to persons with whom he has differences of opinion. The member for Mt Lawley indicated in his question that there is a widespread view that this individual is regarded as a standover man adopting an intimidating gangster style in pursuit of his objectives. This allegation amounts to nothing more than a generalised slur on the character of an individual who is unable to take the member to task for his statements, because the member is using the cloak of parliamentary privilege.
>
> Parliamentary privilege is of the utmost importance to the capacity of members of Parliament to raise matters of public importance without fear of prejudicial action being taken against them. However, it was never intended to enable members to make generalised and defamatory allegations of this nature.
>
> Unfortunately some members of this House are taking the opportunity to make allegations either in debate or by way of parliamentary questions which can be extremely damaging and distressing to individuals outside the Parliament and which are made without evidence to support them. Members will be aware that once in this session already this House has found it necessary to take action against a member for what it viewed as an abuse of parliamentary privilege in relation to allegations made about people outside this House. I understand from a reply given to a question without notice concerning the actions of the same member that consideration is being given to a further Committee of Privilege in relation to another set of allegations by the member.
>
> It is not my role, nor would I presume to be the custodian of the morals and standard of individual members of Parliament who pursue the courses of action I have previously described. Others will judge those actions on their merits at the appropriate time. But it is my responsibility to ensure that the reputation of this House is not damaged, and its powers are not abused.
>
> The abuses of parliamentary privilege to attack persons outside this House have risen to a totally unacceptable level. If members of Parliament choose to pillory each other in this House, then that is their prerogative provided they do not breach the Standing Orders.
>
> If members of Parliament choose to pillory individuals outside the Parliament, and they do so without evidence, they not only do themselves a disservice, but also they reflect on each and every member of this House.
>
> On Wednesday, 15 October 1986, the Leader of the Opposition made a statement to the House in which he implicated, by innuendo, persons involved with a Legislative Assembly Select Committee in the alleged tampering with a member's vehicle. At that time, he could have had no evidence to support that inference.
>
> It is not within my capacity to interfere, nor would I ever give consideration to interfering with a member's right to raise any matter he wishes in this House in any man-

ner he wishes, provided Standing Orders are not breached. But, I advise members that I will take a dim view of any misuse of the powers of this House which might reflect adversely upon the Parliament and its functions.

I will leave it to the good judgment of members to err on the side of caution before embarking on a course which might bring them into conflict with the Standing Orders of this House.

In relation to question 1518 asked by the member for Mt Lawley, I rule it out of order on the grounds that it contains inferences, hypothetical matter and expressions of opinion. It is also seeking an opinion.

Point of Order

Mr HASSELL: I appreciate that the statement you have just read is not yours, Mr Deputy Speaker, and is that of the Speaker, but I point out with respect to you and to the House that the Speaker raised in the statement a number of very serious questions relating both to the privileges of the House and to the functions of the Speaker and his prerogatives in relation to those privileges. I therefore indicate the view that these matters should be open for debate at an appropriate time, and that I intend to take them up.

The DEPUTY SPEAKER: I am surprised that the Leader of Her Majesty's Opposition should rise on a point of order without even bringing the point of order to the Parliament. I think that is in very poor taste, and a man of his professional capacity should know better.

[Questions taken.]

ADJOURNMENT OF THE HOUSE: SPECIAL

MR PEARCE (Armadale—Leader of the House) [6.00 p.m.]: I move—

That the House at its rising adjourn until Tuesday, 11 November 1986 at 2.15 p.m.

Question put and passed.

House adjourned at 6.01 p.m.

QUESTIONS ON NOTICE

HEALTH: DRUGS

Shark Bay Area: Arrests

1461. Mr CASH, to the Minister for Police and Emergency Services:

(1) Did his office receive a copy of a letter from me dated 4 April 1986, in which I raised matters concerning the apprehension of certain persons alleged to have been involved in connection with a large quantity of drugs which were found in the Shark Bay area?

(2) Did his office receive a follow-up letter from me dated 20 May 1986, in which I sought advice as to when I might expect a substantive reply to my earlier letter?

(3) Did his office receive a further letter from me dated 7 July 1986, in which I again sought advice as to when I might expect a substantive reply to the matter raised by me on 4 April 1986?

(4) When may I expect a reply to these letters?

(5) Is the length of time taken to answer my original letter considered reasonable?

Mr GORDON HILL replied:

(1) to (5) I am aware that the member has had the benefit of a briefing by a senior police officer on matters pertaining to the Police Force, together with the opportunity of asking questions, and it was considered that matters of interest to him would have been raised directly at that meeting for advice.

As that opportunity was apparently not taken, I will provide the member with the written response which he requests.

HEALTH

Drugs: Law Enforcement

1462. Mr CASH, to the Minister for Police and Emergency Services:

(1) Referring to a letter dated 5 May 1986 addressed to me from the then Acting Minister for Police and Emergency Services, in which the Minister advised that several questions I had raised in respect to drug law enforcement were receiving attention and that I could expect to receive a reply in due course, when may I expect to receive a substantive reply on the matters raised?

(2) Is the length of time taken in replying to these questions considered reasonable?

Mr GORDON HILL replied:

(1) and (2) I am aware that the member has had the benefit of a briefing by a senior police officer on matters pertaining to the Police Force, together with the opportunity of asking questions, and it was considered that matters of interest to him would have been raised directly at that meeting for advice.

As that opportunity was apparently not taken, I will provide the member with the written response which he requests.

CRIME RATES

Increase

1550. Mr CASH, to the Minister for Police and Emergency Services:

By what annual percentage has crime increased for the years ended 30 June—

(a) 1982;

(b) 1983;

(c) 1984;

(d) 1985; and

(e) 1986?

Mr GORDON HILL replied:

		Total Offences	% Increase
(a)	1981-1982	85 860	0.35
(b)	1982-83	*108 334	*11 est.
(c)	1983-84	105 550	*11 est.
(d)	1984-1985	113 870	7.88
(e)	1985-1986	125 955	10.61

*The upgrading of the crime statistics collection system in late 1982 caused statistical fluctuation to the 1982-83 count of offences reported. The 1982-83 figure is therefore not comparable to the figures listed for other fiscal years. If the 1982-83 count is disregarded, the increase for the two year period from 1 July 1982 to 30

June 1984 was 23 per cent, which would represent an average increase of 11 per cent in the years 1982-83 and 1983-84.

COMMUNITY SERVICES

Child Care Centres: Cost

1607. Mr BRADSHAW, to the Minister representing the Minister for Community Services:

What was the cost to Government in 1985-86 for child care centres, excluding capital works?

Mr WILSON replied:

For child care centres for children aged between 0 and 6 years, the cost was nil.

HEALTH: MENTAL

Psychiatric Hostels: Transport

1608. Mr BRADSHAW, to the Minister for Health:

What assistance to private psychiatric hostels is available when residents require treatment at some institution such as Royal Perth Hospital to transport the resident to the treatment centre and back to the hostel?

Mr TAYLOR replied:

Hostel owners are responsible for arranging transport for residents attending hospital appointments.

HEALTH: MENTAL

Psychiatric Hostels: Subsidies

1609. Mr BRADSHAW, to the Minister for Health:

(1) What subsidy is paid to private psychiatric hostels?

(2) When was this subsidy last increased?

(3) Does he intend to increase this subsidy in the near future?

Mr TAYLOR replied:

(1) Subsidy paid to private psychiatric hostels is $1.50 per day per approved resident where residents attend day programmes. $1.75 is paid where residents remain at a hostel for the entire day.

(2) Subsidy was last increased in September 1976.

(3) Hostel system and subsidy payments are under review by the Health Department.

GOVERNMENT EMPLOYEES

Moora: Statistics

1610. Mr CRANE, to the Premier:

(1) Would he detail the number of Government positions held in Moora as of 30 June 1986?

(2) Would he identify the number in the individual departments?

Mr BRIAN BURKE replied:

The information which the member seeks is not readily available. However, if he has any specific concerns and brings them to my attention, I will consider having further inquiries made.

EDUCATION DEPARTMENT

Restructuring: Responsibility

1611. Mr SCHELL, to the Minister for Education:

(1) With reference to the proposed changes to the administration of the Education Department announced last week, will the net effect of those changes be to give greater management responsibility to the schools themselves?

(2) If "Yes", what role does he foresee for the parents and citizens' organisations?

(3) Will the changes provide for greater parent involvement in determining a school's educational priorities?

Mr PEARCE replied:

(1) Yes.

(2) and (3) The Government is moving to a position whereby parents will have a significant voice in the operation of schools through their participation in school councils. Legislation enabling the establishment of school councils is presently being drafted following extensive discussions with the Western Australian Council of State School Organisations and other professional bodies.

HEALTH: HOSPITAL

Heathcote: Bus Driver

1612. Mr BRADSHAW, to the Minister for Health:

(1) Has the bus driver at Heathcote Hospital been told to report to Graylands on or after 17 November 1986?

(2) If "Yes", does this mean the day care centre at Heathcote Hospital will close as from the date the bus driver is transferred?

(3) Are new patients being taken on at Heathcote Hospital?

Mr TAYLOR replied:

(1) No. There has been no instruction from Heathcote Hospital administration to the bus driver to report to Graylands Hospital on any date.

(2) Not applicable.

(3) Yes.

HEALTH

Alcohol and Drug Authority: Select Committee Recommendation

1614. Mr BRADSHAW, to the Minister for Health:

(1) With regard to the Select Committee's report on alcohol and other drugs in Western Australia, 1983, has the recommendation "that the Alcohol and Drug Authority retain only limited involvement in the treatment area" been carried out?

(2) What was the staff level of the Alcohol and Drug Authority in 1984-85 and 1985-86?

(3) Did a member of the Alcohol and Drug Authority assist the Select Committee in writing the report?

(4) What was the total Alcohol and Drug Authority expenditure on its services in 1985-86 for—

(a) recurrent funds;

(b) capital including renovations?

(5) How many new client-patients did the Alcohol and Drug Authority receive in 1985-86?

(6) What was the average number of outpatients at the Alcohol and Drug Authority in 1985-86?

Mr TAYLOR replied:

(1) The parliamentary Select Committee into alcohol and other drugs made no such recommendation. One recommendation reads—

> . . .retain its limited involvement in specialised treatment to those with alcohol related problems. Other recommendations propose an expansion of services in the treatment area.

(2) The number of occupied staff positions was—

1984-85—130

1985-86—176—including 36 appointed under the national campaign against drug abuse.

(3) No.

(4) (a) $6 468 691;

(b) $1 283 733.

(5) 956.

(6) Records are not kept in a manner which allow this question to be answered for a complete year.

GOVERNMENT ADVERTISING

Mr Don Odgers: Contracts

1615. Mr LIGHTFOOT, to the Premier:

(1) What is the total value of Government and departmental advertising contracts placed with advertising agencies connected with Mr Don Odgers since February 1983?

(2) What is the total value of Government and departmental advertising contracts placed with advertising agencies not connected with Mr Don Odgers since February 1983?

Mr BRIAN BURKE replied:

The information which the member is seeking would require considerable diversion of resources to obtain. However, if he has any specific concerns or evidence of irregularities and advises me of them, I will consider applying resources to obtain the information he seeks or to make further inquiries as appropriate.

PASTORAL LEASES

Aboriginal Groups: Tenure

1616. Mr HASSELL, to the Minister for Aboriginal Affairs:

(1) Is the Government proposing any change to the tenure upon which Aboriginal communities hold pastoral leases, other than any general change applicable to pastoral leases generally?

(2) On what tenure is it proposed that Aboriginal communities will hold land which the Government is currently proposing be excised from pastoral leases for Aboriginal communities?

Mr BRIDGE replied:

(1) No.

(2) Land excised from pastoral leases for Aboriginal communities for living areas will be reserved under the Land Act and vested in the Aboriginal Lands Trust with power to lease. The trust will negotiate a 99-year lease with the resident Aboriginal community.

LOCAL GOVERNMENT CHARGES

Limitations

1618. Mr TRENORDEN, to the Minister for Local Government:

(1) Which local government fees and charges are provided for and limited by the Local Government Act?

(2) What are the statutory limits on the various fees and charges?

(3) When were those limits last amended?

(4) Which local government fees and charges are provided for and limited by Acts other than the Local Government Act and the Health Act?

Mr CARR replied:

(1) The Local Government Act and Model by-laws made pursuant to it provide for the setting of fees and/or charges in 27 sections, listed hereunder—

(a) Copy of electoral roll (s. 49)

(b) Electoral nomination (s. 85)

(c) Certification of qualification (s. 159)

(d) Goat registration (s. 215)

(e) Hawkers licence and badge (s. 217)

(f) Parking meter fees (s. 231)

(g) Private swimming pools (s. 245A)

(h) Caravan park registration (Model No. 2) (s. 258)

(i) Motel registration (Model No. 3)

(j) Obstructing animals and vehicles (Model No. 7)

(k) Extractive industries (Model No. 9)

(l) Petrol pumps (Model No. 10)

(m) Street lawns (Model No. 11)

(n) Signs, hoardings and billpostings (Model No. 13)

(o) Vehicle wrecking (Model No. 17)

(p) Holiday accommodation (Model No. 18)

(q) Registration of fences and grids (s. 335)

(r) Street level appeals (s. 350, 678)

(s) Copy of an appeal award (s. 430)

(t) Building referee fee (s. 431)

(u) Television masts and antennae (s. 433)

(v) Uniform building by-laws (s. 433A)

(w) Rangers fees (s. 458)

(x) Animal pound fees (s. 462, 463, 464)

(y) Notification of poundage (s. 470)

(z) Auctioneer's commission (s. 479)

(aa) Passenger service charges (s. 512).

(2) and (3) The provision of full details required by these questions needs considerable research which cannot be undertaken immediately. However, a proposal involving the restructure and updating of building fees under section 433A of the Local Government Act is before me. These fees were last reviewed in 1981.

(4) The following statutes provide for the setting of fees and/or charges, under the portfolio of the Minister for Local Government—

Dog Act;
Cemeteries Act; and
Control of Vehicles (Off-road areas) Act.

As well as under the Health Act, local government fees are limited by Statutes not under my portfolio. These include—

Radiation Safety Act;
Town Planning and Development Act;
Strata Titles Act; and
Library Board of Western Australia Act.

It is suggested that this question be followed up with relevant Ministers.

LOCAL GOVERNMENT CHARGES

Limitations

1619. Mr TRENORDEN, to the Minister for Health:

(1) Which local government fees and charges are provided for and limited by the Health Act?

(2) What are the statutory limits on the various fees and charges?

(3) When were those limits last amended?

Mr TAYLOR replied:

(1) to (3) I refer the member to the Health Act which, as he indicates, contains the information he requires.

POLICE FORCE

Recruitments

1620. Mr CASH, to the Minister for Police and Emergency Services:

How many persons were recruited into the Police Force between Tuesday, 1 July 1986 and Monday, 20 October 1986?

Mr GORDON HILL replied:

76 persons.

EDUCATION: STUDENTS

Mt Barker: Reading Difficulties

1621. Mr HASSELL, to the Minister for Education:

(1) Does the Education Department consider the Mt Barker primary school has a higher than average proportion of students with reading difficulties?

(2) If so, what programme is being pursued to remedy the situation?

(3) If not, what programme is being pursued to assist those students at the Mt Barker primary school with reading difficulties?

Mr PEARCE replied:

(1) No.

(2) Not applicable.

(3) Mt Barker Primary School has developed language programmes suitable to meet the needs and capabilities of all students. These programmes, as they are in all Government primary schools, are school-based and resource assisted by regional offices.

FORESTS

Logging: Dam Catchment Areas

1625. Mr STEPHENS, to the Minister for Water Resources:

(1) In the calendar years—

(a) 1983;

(b) 1984; and

(c) 1985

respectively, what areas of State forest were logged in the South Dandalup Dam catchment area?

(2) In the same area as above, what are the estimated areas to be logged in each of the years—

(a) 1986;

(b) 1987; and

(c) 1988?

(3) With respect to the Serpentine Dam catchment area of the State forest—

(a) what area was logged in each of the years—

(i) 1983;

(ii) 1984; and

(iii) 1985?

(b) what is the estimated area to be logged in—

(i) 1986;

(ii) 1987; and

(iii) 1988?

(4) With repsect to the Canning Dam catchment area of the State forest—

(a) what area was logged in each of the years—

(i) 1983;

(ii) 1984; and

(iii) 1985?

(b) what is the estimated area to be logged in—

(i) 1986;

(ii) 1987; and

(iii) 1988?

(5) What steps have been taken to ensure that logging operations in previously quarantined areas of State forest in the northern jarrah forest do not put at risk the quality of Western Australia's water resources?

Mr BRIDGE replied:

This question has wrongly been addressed to the Minister for Water Resources. It has been referred to the Minister for Conservation and Land Management, and he will answer the question in writing.

FORESTS

Timber Royalties: Adjustments

1626. Mr STEPHENS, to the Minister for Conservation and Land Management:

(1) (a) Does he intend to proceed with the timber royalties adjustments;

(b) if "Yes", what is the timetable?

(2) What is the role of the Lands and Forest Commission?

(3) Will he please table copies of all agendas of the Lands and Forest Commission?

Mr HODGE replied:

(1) (a) Yes;

(b) normal indexation adjustments will continue to apply and additional increases to meet the target royalty rates will be subject to a comprehensive review of the economic situation of the timber industry.

(2) As prescribed in section 19(1) of the Conservation and Land Management Act.

(3) Agendas include confidential matters which I have referred to the Lands and Forest Commission for advice. These often involve commercial negotiations, and because of this I am not prepared to make copies of agendas available. The outcome of the deliberations of the commission is provided in its annual report.

FORESTS

Woodchipping Export Licence: Western Australian Chip and Pulp Co Pty Ltd

1627. Mr STEPHENS, to the Minister for Conservation and Land Management:

(1) Has the Western Australian Chip and Pulp Company Pty Ltd ever applied for a licence to export an additional 200 000 tonnes of karri-marri woodchips per annum over and above the 750 000 tonnes per annum quota set out in its original Federal export woodchip licence?

(2) If "Yes",—

(a) when was the application made;

(b) why was the increase in the export quota not granted?

Mr HODGE replied:

(1) The company applied for an addition to its export licence of 350 000 tonnes per annum made up of 150 000 tonnes of woodchips from jarrah sawmill residues and 200 000 tonnes produced from hardwood logs from forest operations outside the woodchip licence area.

(2) (a) The application was made on 31 October 1979 and amended on 5 March 1980;

(b) the 150 000 tonne increase from jarrah sawmill residue was granted on 28 May 1980, but apart from trial shipments has not been taken up.

The balance of 200 000 tonnes was not proceeded with as the ERMP required was not provided by the company. The member is referred to the answer to question 1919 of 3 November 1982.

GOVERNMENT EMPLOYEES

Relocation: Bunbury

1633. Mr MacKINNON, to the Premier:

What incentives or assistance have been provided to employees relocating from their positions in the metropolitan area to the Bunbury Tower?

Mr BRIAN BURKE replied:

Employees relocated to Bunbury are entitled to assistance defined under appropriate industrial awards and agreements.

BUILDING MANAGEMENT AUTHORITY

Mr Mark Brinstead: Employment

1634. Mr MacKINNON, to the Minister representing the Minister for Works and Services:

(1) Is Mr Mark Brinstead still employed by the Building Management Authority?

(2) If so, what is his position with the Authority?

(3) On what contracts has Mr Brinstead been employed by the Authority during the last two years?

Mr PEARCE replied:

(1) No.

(2) Not applicable.

(3) Mr Mark Brinstead was employed by the Building Management Authority on the Perth Technical College project from 8 May 1985 until 27 August 1985.

POLICE OFFICERS

Families: Superannuation Payments

1635. Mr COWAN, to the Treasurer:

(1) What benefit does the State Superannuation Board pay to the family of a police officer who is killed or incapacitated while on duty?

(2) (a) Is it a fact that no death benefit is payable to the family of a married female police officer; and

(b) if so, why?

(3) If "Yes" to (2), what becomes of the officers' superannuation contributions?

(4) Is there any distinction between death and incapacity benefits payable to single male and female police officers or their estates?

Mr BRIAN BURKE replied:

(1) Death and incapacity benefits payable from the superannuation fund are based upon the unit holding of the member at the relevant time.

Incapacity benefits are the same as normal retirement benefits. Death benefits consist of a widow's pension equal to two-thirds of the member's normal retirement benefit, and where applicable, child allowance of $51.61 per fortnight for each dependent child who is under age 16 or a full-time student under age 25.

The relevant benefit is payable regardless of whether or not the cause of death or incapacity is work-related.

(2) The widow benefits outlined in (1) above would be payable in the case of a female contributor only where her husband and/or children were wholly or substantially dependent upon her at the time of death.

(3) Where a widower's pension is not payable, the contributions paid by the deceased female member are refunded to her estate together with interest.

(4) No.

EDUCATION: TERTIARY

Staff: Superannuation

1636. Mr COWAN, to the Minister for Education:

(1) Further to question 1503 of 1986, what was the most recent assessment of the costs and performance of the superannuation scheme for Australian universities—SSAU?

(2) Is the assessment publicly available and, if so, where?

(3) With respect to the scheme's portability, to which schemes outside the tertiary education section can the full actuarial value of accrued benefits be transferred following the resignation of a contributor?

Mr PEARCE replied:

(1) June 1986.

(2) Yes, from the Chief Executive Officer, SSAU Nominee Pty Ltd, Level 5, 394 Collins Street, Melbourne, Victoria.

(3) The value can be transferred to any public sector and any bona fide private scheme—particularly, that of a public company—except where inquiries by trustees suggest that the purpose of the transfer is to achieve an enhanced cash benefit and circumvent the preservation of the employer's share until retirement.

QUESTIONS WITHOUT NOTICE

AGRICULTURE

Industries Assistance Commission: Recommendations

329. Mr HOUSE, to the Minister for Agriculture:

(1) Will the Minister and the Government pressure the Federal Government to have implemented immediately the Gruen report recommendations on anti-dumping procedures?

(2) Will they further pressure the Federal Government to have implemented the IAC recommendations on chemicals?

(3) Will they further pressure the Federal Government to have acted on the IAC recommendations on textiles, clothing, and footwear?

Mr GRILL replied:

(1) The State Government, together with the Primary Industry Association, made a submission to the Gruen inquiry into anti-dumping legislation which was largely reflected in the recommendations of the inquiry.

Senator Button, the Federal Minister for Industry, Technology and Commerce, today announced the Government's response to this inquiry.

I would like to make a further assessment of the details of the decision before commenting in detail. I will supply a detailed comment on the Federal Government's decision in due course. However, I would like to say that Gruen's findings are fairly consistent with the report put to the inquiry by the State Government and the PIA.

Gruen's review makes two broad recommendations—

(i) To reduce the discrepancy between the concept of "unfair trading practices" as it is applied within Australia and externally. This is to be achieved by greater concern with the original definition of dumping—goods sold abroad at prices below those on the domestic market—and less with other criteria such as estimation of "normal values", which are at present frequently applied.

A requirement to establish more clearly the existence of injury and a causal link between dumping and injury—where low cost, injurious, import competition occurs outside the original definition of dumping it is recommended that this is appropriately handled as an industry assistance issue through the normal IAC-Government decision making process. It is inefficient to address multi-sourced import competition through the country specific tool of the present anti-dumping system.

(ii) To discourage widespread use of the anti-dumping system to shield import-competing industry from the need for adjustment. This is to be achieved by:

Making criteria for the granting of anti-dumping duties more difficult to satisfy.

Including a sunset clause so that anti-dumping action cannot remain in place for more than two years without reference to the IAC. This would indicate to industry that the anti-dumping system was intended as emergency protection and not long term assistance.

Unfortunately, Senator Button's Press release says that he will retain section 5 (9) of the Customs Tariff (Anti-dumping) Act 1975. This section prohibits "normal values" being based on sales at a loss and allows the use of constructed values using the estimated cost to make and sell and, where appropriate, a "reasonable" profit.

As far as agriculture is concerned, this is not a good result because this still could allow an anti-dumping application to be made against DAP fertiliser, which had been traded for many years at a cost much less than the "estimated cost to make and sell".

Any move to implement an anti-dumping duty on DAP fertiliser will be strenuously opposed by the State Government, as it was earlier this year.

(2) Senator Button announced today the Federal Government's decisions on the IAC inquiry into the chemicals and plastics industry.

Senator Button has agreed to accept the IAC's major recommendation, which was to reduce tariff levels to a maximum long-term rate of 15 per cent.

I welcome the lowering of tariffs because it will take some of the burden from Australia's export industries, providing timely support for agriculture. Lower tariffs for the chemical and plastics industries are a small step towards the ideal of a less protected, more competitive Australian economy.

Although many of the goods under reference in the IAC inquiry are not of direct relevance to the Western Australian agricultural sector, the inquiry does cover such agricultural inputs as pesticides, some inputs into the manufacture of fertilisers, as well as plastic products such as piping used in irrigation and land reclamation programmes. Reductions in the current level of tariff protection afforded these industries will increase competition, lower input costs, and improve the viability and international competitiveness of the agricultural sector.

There would not only be the direct benefits of lower costs for chemicals and plastics, but the indirect benefits of more efficient resource allocation and reduced inflationary pressures that accompany lower tariffs.

(3) Yes. The State Government has already made a number of representations to the Commonwealth Government calling for an across-the-board reduction in tariffs, and will continue to do so at every appropriate opportunity.

HEALTH: HOSPITAL

Heathcote: Sale

330. Mr LEWIS, to the Minister for Health:

In view of the recent Press articles referring to the Heathcote Hospital—

(1) Has the Government sold the Heathcote Hospital site?

(2) If "Yes", what was the selling price, and to whom was it sold?

(3) If "No", has the Government made a decision to sell the site?

(4) If the site is to be sold, what method of sale will be used, and when will it be sold?

(5) Have any negotiations started with any person or corporation with regard to the sale of the Heathcote site?

Mr TAYLOR replied:

(1) No.

(2) Answered by (1).

(3) Not at this stage.

(4) To be decided.

(5) I read in one newspaper report a couple of weeks ago that one of the workers at the hospital suggested the site had been sold for $10 million and that we had missed out on an offer of $94 million a few months previously. If I could get $94 million for the site, it would be sold tomorrow. I do not believe it is worth anything like that.

Heathcote Hospital is about to be closed, and we have announced that. It will be sold, but the method of sale and the way we will go about it are still to be finally decided.

TRANSPORT: TAXIS

Demand: America's Cup

331. Mr MARLBOROUGH, to the Minister for Transport:

(1) Will the Minister advise the House what steps the Taxi Control Board is taking to ensure that the taxi industry is properly placed to meet the increased demands generated by the America's Cup, particularly bearing in mind the heavy demand for service in the lead up to Christmas and the Government's commitment to the drink-driving campaign.

(2) Is he aware of the rumblings of discontent by some taxi drivers that, in arrangements to meet this demand, there is a danger the board may overcater for the anticipated demand?

Mr TROY replied:

(1) To ensure the taxi industry has the resources to meet the increased demand for services over the coming months, the Taxi Control Board has issued additional temporary restricted licences. I stress these licences are temporary, restricting the licence holders to operating during the peak periods of Thursday, Friday, Saturday, and Sunday evenings, and that the licences are only valid until the end of February 1987.

In taking this action, the board was conscious of the need to strike the balance between the interests of the taxi-travelling public and the long-term viability and stability of the taxi industry. Given the responsibility to cover anticipated demand for service, the board had two choices—to issue additional premium plates or to introduce a system of temporary plates. I acknowledge not all drivers like temporary plates, but the alternative is unacceptable as the premium plates would be sharing the work in periods of less demand, and they would be permanently in the system.

I remind members that in 1962 premium plates were issued by the then Liberal Government, not the TCB, to cope with the temporary demand for the Commonwealth Games. Those plates distorted the industry for many years, and it is not the board's nor my intention that the same problem should be encountered by the industry in catering for the America's Cup.

After extensive consideration the Taxi Control Board has issued 55 temporary plates, and these are currently operating.

(2) I am aware that there is disquiet by some taxi drivers over the arrangements I have just outlined; indeed, I understand that petitions are circulating expressing this concern, and they may be presented to me in the near future. I will, of course take full notice of any petitioners on this subject, but I point out that this Government, at the request of those in the industry, reformed the membership of the Taxi Control Board so that the taxi industry itself had a controlling influence with six of the 10 members on the board coming from the industry.

The industry is thus, to a large extent, self-regulated; and I would recommend those unhappy with the current temporary arrangements to approach board representatives to put their point of view. This is an essential part of that representation process, and for it to work, points of view need to be expressed to those elected and appointed representatives.

One point that has concerned me is the question of determining utilisation of taxis in the industry, and in assessing the level of demand. It is quite difficult, given the current technology operating in the industry, to determine the utilisation.

I have asked the Board to address this matter and I will be continuing negotiations with it to procure long-term solutions to the problem.

HEALTH: DRUGS

Marijuana: Move to Heroin

332. Mr BRADSHAW, to the Minister for Health:

In view of the report in Tuesday's *The West Australian* by Mrs Bragg—whose son recently died from a heroin overdose—in which she said that her son had used marijuana and when marijuana was in short supply, often turned to heroin, does he support the statement in the drug education kit that the use of marijuana does not lead to the use of harder drugs?

Mr TAYLOR replied:

I do not know whether the member for Murray-Wellington reads the answers I give to his questions on notice, but I have already answered that question.

HILLARYS BOAT HARBOUR

Reef Blasting

333. Mrs WATKINS, to the Minister for Transport:

(1) Has the Minister seen an article on page 7 of this evening's *Daily News* regarding reef blasting?

(2) Can the Minister advise on the accuracy of this article?

Mr TROY replied:

(1) and (2) There are a limited number of knobs of limestone rocks outside the reef system that are being closely examined. When the matter first came to my attention, I requested the Marine and Harbours Department to look at it and give me some indication whether it was essential to remove those outcrops, and what were the alternative means of removal other than by blasting. To minimise the threat to the marine environment in that area, it is important to utilise appropriate buoy markings on the outcrops.

I am waiting for a report from the department. I assure the House that the Government has given a firm commitment that there will be no reef blasting in the area.

The balance of the article accurately reflects the circumstances surrounding the reef blasting, including the small size of the outcrop.

AGRICULTURE

Avondale Research Station

334. Mr TRENORDEN, to the Minister for Agriculture:

(1) Has the Government ceased funding the historical element of the Avondale Research Station, Beverley?

(2) If so, how many jobs will be lost?

Mr GRILL replied:

(1) Yes.

(2) Two jobs. The decision to cease funding the historical element of the Avondale Research Station was taken as part of the Budget cuts. The cost of running the historical element was $40 000 a year, and the return was $4 000 a year. The department is hopeful that the display will be kept open and all machinery will be retained.

TECHNICAL AND FURTHER EDUCATION

Lecturers: Dispute

335. Mr READ, to the Minister for Education:

Has the dispute with TAFE lecturers been resolved?

Mr PEARCE replied:

This morning I reached an agreement with representatives of the TAFE section of the Teachers Union on a package of efficiency and cost-saving measures which has led to an unqualified lifting of the bans and a return to work by lecturers. I am pleased that agreement was reached between the Government and the union, although it has been a vexed question.

From our point of view, the situation is satisfactory because the union representatives and I have worked over two days to identify effective ways to solve the dispute relating to the level of cost savings to be made in the colleges. We gave ground on some of the proposals, but the $9 million we were looking to save will be largely saved. I still expect that we will be able to make savings of between $7 million and $8 million.

Mr Williams: Why did you not talk to them before?

Mr PEARCE: The member's interjection was a good one. The answer is that we were doing that. I sought a response to the proposals that I made, and the union spent two weeks striking in order to discuss the matter. My door was open every day while that was going on. Once we got down to discussing the matter, it was wrapped up.

Those kinds of strikes are unnecessary. I thought it was strange that members of the Opposition gave comfort to strikers, and that a couple of the most anti-union members in this Parliament took the opportunity last Thursday night to play to the gallery. I have been in the House for as long as the Opposition Whip and have never met a more virulent anti-union person. Whenever the member for Clontarf's drycleaning business has been affected by union activities, he has come here frothing at the mouth making anti-union statements. I thought it was ironic that that member was able to find his best lines to play to the gallery. Second prize went to the member for Mt Lawley, who is also no friend of the unions. I thought it was interesting to see a group of union haters take the opportunity to support

strikers while they hoped the Government could make its programme with regard to greater efficiency stick in the same way that the Opposition was never able to do when in Government. We have made it stick, but in a way that is typical of a Labor Government. We have achieved it by agreement and compromise, although it took some time to get there. In the end the solution met our needs and the needs of the Teachers Union, and that is the way to go about these types of changes in these economic times.

MOSMAN PARK TEAROOMS

Uses: Approval

336. Mr HASSELL, to the Minister for Transport:

I have given the Minister notice of my question.

Referring to his answer to question 1507 in relation to the Mosman Park river tearooms development—

(1) What are the "approved uses for which the building may be used"?

(2) In what precise terms are those approved uses expressed?

(3) In what precise terms will the jetty licence contain conditions relating to the restriction on obtaining a liquor licence?

(4) Will the conditions include a prohibition on—

(a) the consumption of alcohol on the premises; and

(b) the obtaining of permits in relation to the sale and consumption of liquor on the premises?

(5) In what precise terms does the jetty licence specify the hours of operation of the business?

(6) Will the Minister table a copy of the jetty licence?

(7) On what basis can the terms of a jetty licence be changed during its currency?

(8) What will be the term of the jetty licence relating to the Mosman Park river tearooms development?

(9) On what basis will the development be properly described as a tearooms development rather than a restaurant?

(10) Will the operation of the business be confined to the hours 8.00 a.m. to 8.00 p.m., and if not, what hours will be permitted?

(11) How will the provisions and conditions be enforced?

Mr TROY replied:

I believe the residents of Mosman Park will be rather delighted in the belated interest of their member in this matter. With that aside, I do thank him for the question.

Mr Brian Burke: Could you imagine the protest if this was in Bayswater?

Mr Bryce: Yes, I can.

Mr Hassell: Well made point, Mr Deputy Premier.

The DEPUTY SPEAKER: Order! I think we will allow the Minister to answer the question, or there may be no teacups for any storm.

Mr TROY: My answer is as follows—

(1) Tearooms, kiosk, caretakers' quarters, and the mooring of vessels.

(2) and (3) The precise terms are being drafted by the Crown Law Department.

(4) The instructions for drafting require a covenant that a liquor licence will not be sought or obtained in respect of the tearooms and kiosk, and the structures will not be used for purposes for which a liquor licence is required.

(5) Again the precise terms are to be drafted. However, the instructions are that the tearooms-kiosk area will be restricted to opening between the hours of 8.00 a.m. and 8.00 p.m. on each day of opening.

(6) Yes, when the document is drafted.

(7) The terms of the jetty licence can, if provided for in the licence, be varied by approval in writing.

I remind the House of this Government's clear conditions. I certainly cannot accept the responsibility for conditions imposed by any future Government formed by the Opposition. Perhaps it will be prepared to

publicly declare its position on this matter.

(8) The term of the licence will be co-terminous with the riverbed lease which expires on 31 December 2006.

(9) The basis for classifying the development as a tearooms is—

(a) the hours of operation;

(b) the restrictions applying to liquor;

(c) the services provided.

(10) Yes.

(11) In precisely the same manner as applies to all other jetty licences. The licence conditions will contain remedies relating to breaches, and if evidence is available to prove a breach of the conditions the licensee would be given notice that unless the breach was remedied, action may be taken to cancel the licence.

MOSMAN PARK TEAROOMS

Planning Approvals

337. Mr HASSELL, to the Minister for Planning:

(1) On what basis did the State Planning Commission approve the Mosman Park river tearooms development following alterations of the plans between March and September?

(2) What consultation was undertaken by the State Planning Commission with—

(a) the Swan River Management Authority;

(b) the Waterways Commission;

(c) the Mosman Park Town Council; and

(d) the Department of Marine and Harbours,

prior to approval being given?

Mr PEARCE replied:

(1) and (2) The circumstances surrounding the planning approval given for this development are the same as those which apply under any planning development proposal. The development application was made on a number of occasions, and it was knocked back on a number of occasions, the last occasion being as late as 1984.

With the destruction of the tearooms by fire, a meeting was called by the relevant authorities to determine what would happen in regard to the tearooms. Previously, applications for development had been knocked back to preserve the tearooms, but once it had been burnt down the question arose as to what kind of development would be permitted.

Consultations were held between the relevant authorities, including those mentioned by the Leader of the Opposition, and including the Mosman Park Town Council.

Mr Hassell: Between March and October.

Mr PEARCE: I will step through it because the sequence of events is important.

An agreement was made to give conditional approval on 21 March this year to a proposed development subject to three conditions which were—

(a) that the design had to be altered to bring down the height because the original development had a two-storey building on it;

(b) to reduce the bulk of the building; and

(c) to ensure that it was built in materials and in a design style that matched the old tearooms rather than the much more modern type of structure which is proposed according to that plan. Approval was given for the development subject to those three conditions. Between March and September the building was redesigned by an architect, Louise Kennedy, in accordance with those three design principles. The height was brought down to a single storey, the bulk of the building was broken up, and the size of the project was diminished from about 520 square metres to just over 500 square metres. The design was reworked in more traditional type materials which matched the old Smith's tearooms.

Mr Hassell: There were other significant changes.

Mr PEARCE: I suggest to the Leader of the Opposition that he waits a minute. They were the three conditions put on the development approval. That came back to the State Planning Commission, as the relevant agency, and since the conditional approval was already in place, given all the consultation and the normal course of events, the State Planning Commission agreed that the three conditions had been met and the development could go ahead.

It is not normal under these circumstances of conditions being placed on a development for a whole new application to have to be entered into in order to have the development considered. The approval given by the Planning Commission was on the basis that the three conditions of the original conditional approval had been met. That is all that was required and that is all that was done.

In terms of the residents in the area, I would have thought that there would not have been any significant change in the level of objection in September from that which existed in March.

The Leader of the Opposition is alluding to something else which is also perfectly true. In the redesign of the smaller, more traditional single-storey building, a change was made in that the amount of space that was put aside for a boat workshop was diminished and the size of the tearoom section was increased. Two things need to be said about that.

Mr Hassell: The size of the tearoom and kitchen area was increased by almost seven times.

Mr PEARCE: The boat workshop size was decreased by 100 per cent because, effectively, it was eliminated.

None of these things was done at a Government level, but it was done through the normal processes. When I looked at the matter I noticed that firstly, as the tearooms had always been there, it was a much more appropriate facility to have for that kind of beach than a large boat workshop which presumably would have been tantamount to bringing a small industrial area into that section of Mosman Park. In terms of eliteness, clearly the boat workshop would work for the people who owned large boats which would be put into the moorings and pens which had been approved by the Liberal Government. I think the member for Dale was the Minister who gave approval for that.

In terms of what was proposed, it seemed to me that the decision to allow a greater area for the tearooms and less area for an industrial workshop was a proper decision.

The second point which needs to be made about the tearooms is that it is only marginally larger than the tearooms which were burnt down. It is not as if a larger development has been put in place than the one that had been there for ages. I used to go down there when I was a four-year-old on Sunday school picnics with the Church of Christ from Maylands, and I could not afford to buy anything from the tearooms. I remember that I thought it was huge—it was probably because I was small at that time.

I am very supportive of the sensible decision which the Planning Commission has made in that regard. The development is a proper one in terms of what has historically been there and in terms of previous approvals that were given during the life of the previous Government and this Government, and it is in accordance with the conditions laid down by the people consulted, including the Mosman Park Town Council.

I think it is outrageous that the Mosman Park Town Council has written to me and has asked me, as Minister for Planning, to retract approvals given last March to which they were a party and, therefore, put at risk the development for the developers. It is outrageous for a council to agree to a development, in a certain area, and then when it gets cold feet it writes to the Minister for Planning and says, "Don't worry about all the people involved and the money that has been put into it; we want you to use your authority to cancel approval for a development which we asked you, in the first place, to agree to." It is disgraceful.