

Legislative Council

Thursday, 1 December 1988

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

POLICE - PRISONERS

East Perth Lockup - Parliamentary Commissioner for Administrative Investigations

THE PRESIDENT (Hon Clive Griffiths): I have just received a letter, which I have not yet read, addressed to me by the Parliamentary Commissioner for Administrative Investigations. He is an officer of this Parliament, and he has written to me in these terms -

Mr President,

In view of recent concern about the placing of prisoners as "trustees" in the East Perth lock-up, I have decided to commence an investigation on my own motion pursuant to section 16 of the Parliamentary Commissioner Act.

My investigation will include a consideration of the following matters -

- a. the administrative practices; procedures and guidelines of the Department of Corrective Services in allocating prisoners to the East Perth lock-up as "trustees";
- b. the role of the Commissioner of Police in such allocations;
- c. the obligations and privileges of "trustees"; and
- d. the extent of and the responsibility for the supervision of "trustees".

E.G. Freeman
Parliamentary Commissioner for
Administrative Investigations.

MOTION - URGENCY

Stamp Duty Act - Valuation of Assets

THE PRESIDENT (Hon Clive Griffiths): I have received the following letter -

Dear Mr. President

Adjournment of the House under section 63

At today's sitting, it is my intention to move:

That the House, at its rising, adjourn until Wednesday, December 14, 1988 at 11 am.

For the purpose of discussing:

1. The effect of interpretation of 1987 amendments to the Stamp Duty Act in respect of valuation of assets for the purpose of transferring shares.
2. The uncertainty of the cost of stamp duty for companies doing a restructuring of the organisation or at the time of purchase of a company with mining tenements.
3. The need for the Minister to meet urgently with the Mining Industry and other interested industries to discuss the present interpretation of the Act in assessing valuation of assets for share transfer purposes.
4. The need for the Government to urgently consider appropriate legislation amendments to include a pro rata exemption if the transfer is an internal re-organisation.

The letter is signed by Hon G.M. Evans. In order for this motion to be dealt with, it will require the support of at least four members.

[Four members rose in their places.]

HON MAX EVANS (Metropolitan) [2.38 pm]: I move -

That the House at its rising adjourn until 11.00 am on Wednesday, 14 December 1988.

The subject of my motion has arisen within the mining industry in recent months, and concerns the interpretation of the Stamp Amendment Bill, which was passed by the Parliament last year. I was told on Tuesday when I was looking at this subject that the Minister was hoping to get the debates cleaned up by today, and he was not certain whether we would be going on next week, so I have brought this matter on today in order to put it on record. I regret that the Minister is not here. He has been briefed about this matter, but he has not consulted with the industry.

There was a Press release in January 1987 about the proposed changes to the Stamp Act in respect of ordinary real estate transactions, but not in respect of mining tenements. When the legislation was introduced in June it was found that it affected mining tenements; it was retrospective; and there was no warning to the industry. As a result of considerable debate in this House, and after I had moved a special motion after the House rose, the Treasurer decided not to make the legislation retrospective against the mining industry. However, it was not realised at the time - because the mining industry had not been alerted to the fact that the legislation would affect it - how the legislation would be interpreted as it affected the mining industry in terms of the valuation of mining tenements.

The Leader of the House said in the second reading speech on 11 June 1987, on behalf of the Treasurer, that -

The main purpose of this Bill is to introduce measures aimed at eliminating stamp duty avoidance practices.

The Government is committed to eliminating such practices which ultimately result in the rest of the community having to bear a higher burden of taxes and charges.

The major schemes proposed to be dealt with in this Bill involve the transfer of real estate through the transfer of company shares, and the practice of trusts which are not really public becoming "approved" trusts in order to take advantage of certain duty concessions.

It goes on to deal with the transfer of real estate. In the whole second reading speech the Minister did not mention mining tenements, mining leases, prospecting licences or exploration leases. It was only when we received the Bill that we saw the intention was to include under the definition of "land" mining tenements under the Mining Act 1978. It was only then that the industry realised it was affected by this Bill. The Minister said the announcement was made in view of potential significant revenue losses associated with the use of this avoidance scheme. I might add that stamp duty went up last year by \$100 million, and it was not recovered from this scheme, so I am not sure how much was being avoided.

The Bill also affected unit trusts. It provides for the conveyance of property from a corporation to a shareholder, and for the distribution of assets as a reduction of capital without the company being wound up; it would be charged duty on the land and the conveyance rate would be based on the value of the property concerned.

I have been contacted by a number of people who have owned purple title properties. That is where a corporate body owns a block of flats and each person has shares relative to his flat. In the old days one could liquidate the company and distribute the assets and specie without paying stamp duty, or even make a reduction of capital without paying stamp duty. If those persons want titles themselves rather than have to deal with a corporate body, with the cost of a corporate body, if they want to transfer the properties from the purple title to themselves, that is now subject to full conveyance duty. They must pay full conveyance duty on something that belongs to them. Until that legislation was passed, a voluntary winding up, where one might want to distribute assets - which could include property - to the shareholders, was not subject to stamp duty. That was not an avoidance scheme or anything like that; after all, the shareholders owned all the assets of the company. If they wanted to do away with the shell of the company and distribute the assets of the company, that should not have been subject to stamp duty, but the exemption was removed in the same legislation.

My reason for rising today is the very serious effect this is having on the mining industry. A case is now going to court on one example of how the interpretation of valuation has been

undertaken. Members may also be aware of a further amendment to the Stamp Act to exempt bodies such as churches, schools and universities from stamp duty on property transactions. The University of Western Australia purchased some property, and the commissioner decided last year the purchase would not be exempt from stamp duty because the properties were commercial properties, even though they had been bought for the university to earn revenue for the university. The University of Western Australia appealed to the Supreme Court of Western Australia, which upheld its appeal and decided that the Minister and the commissioner had no right to change the exemption. The exemption was there and there was no discretion.

The Minister did not like this, so he moved to introduce amending legislation to remove the right of appeal to the court. Many church bodies, schools and universities, as well as charitable organisations, are very worried about this. Each time the Minister brings in legislation like this, he says the main purpose of the Bill is to introduce measures aimed at eliminating stamp duty avoidance practices. These people were not going in for tax avoidance practices or avoiding stamp duty; they were just operating according to the law.

The mining industry has become a sacred cow to be milked by everybody. The mining industry is fairly buoyant at the present time, but with the value of the currency going up it will not be so profitable. It will also depend on the ratio of the value of the Australian dollar to the US dollar with respect to gold prices.

The stamp duty offices are now looking for ways to obtain more money from many sources. This will affect farmers as well, because it comes back to the interpretation of the valuation of the land; not just the land itself, but what you can earn from the land. Mining tenements, including exploration leases, which are really just licences to obtain information, prospecting licences and mining licences are involved. After exploration most mining companies wish to transfer their leases to an operating company. They prefer to have their costs all in one structure rather than in separate structures. One company which is in the process of reorganisation is running into a lot of trouble and very high costs.

The Association of Mining and Exploration Companies has put forward a submission to the Minister - and publicly - to get some clarification of the position, because the commissioner is becoming more and more entrepreneurial in the way in which he intends to raise revenue, not because these people have avoided duty previously, but just because he wants to raise more revenue from companies he believes can stand the cost.

When we debated the issue last year it was not clear what the Government's intention was in respect of mining companies, but it has now become very clear. The mining industry wishes a fair hearing from Parliament, and the commissioner should look again at this entrepreneurial approach to maximising the money taken. It is not so much the money, but the information given. Legislation introduced last year exempted transactions involving shares in a public company because of the market value. Unencumbered land with a value of less than \$1 million was exempted, and that comprised less than 80 per cent of the asset value after excluding money and short term related loans and other assets which might be used to delete artificially the proportion of property represented by land.

What it did not exempt was the subsidiaries of public companies. As most members know, mining companies have a number of subsidiary companies to work particular leases. One subsidiary will operate a lease on one piece of land and another subsidiary will operate on another piece of land to control the costs within each subsidiary. If at some later stage the company rearranges the subsidiary companies, that will be subject to review for stamp duty by the commissioner.

Under the previous legislation, stamp duty on shares was 0.6 per cent on the net worth of the shares of the company. The rate is now 4.25 per cent in the case of real estate or mining tenements of the company. In the case of a company worth about \$25 million, stamp duty works out at \$1 million.

In June or July last year there was support not only from the mining industry, but also the WA Chamber of Commerce and Industry made its own comments about how unfair it thought this legislation was. The suggestion was that it was opening more avenues to raise revenue without being fair to the companies. Companies should be able to rearrange their affairs within their own structures at no large financial burden to the company.

Hon Tom Helm: You are talking about bottom of the harbour schemes.

Hon MAX EVANS: No. We might want to consolidate two or three companies together. There is nothing about bottom of the harbour schemes. Bottom of the harbour schemes are to do with income tax. It has nothing to do with that.

Hon Tom Helm: It is avoiding tax, though.

Hon MAX EVANS: It is not avoiding tax. It is transferring the assets owned by the parent company. It has nothing to do with any avoidance scheme; it is just a normal transfer arrangement.

A public mining company in this State has an appeal against this entrepreneurial stamp duty assessment - it is one of the first appeals in this State. This company was absolutely shocked when it put in its transfers of shares of the company at what its directors thought was a fair value for the land. Mining tenement land has a certain value. They refer to the fact that it has a value according to the address; that is, where it is located. If it is in good goldmining country it has a high value; if it is down on the beaches it will have very little value for any type of mining.

The company has now appealed against the assessment under the provisions of part IIIBA of the Western Australian Stamp Duty Act, brought in last year. I would like to quote the company's position, as follows -

... where a company is "entitled" to land (including mining tenements) in the State having unencumbered value exceeding \$1 million (including a partial interest in land or mining tenements where the whole interest is worth more than \$1 million) and the value of all land to which the company is entitled, whether within the State or elsewhere is 80% or more of the value of all property to which it is entitled, any transfer of a controlling interest in the company (or increase of that interest) is liable to stamp duty as if it were a transfer of the same proportionate interest in the land or mining tenement.

The implications of this are that the transfer of a controlling interest in this mining tenement may now be liable for the full rate of stamp duty on the value of the mining tenements as if the tenements themselves were transferred. In other words, if they are transferring shares they are taxed as though they were transferring the mining tenements. However, the appeal now raises a real problem. The assessment made by the commissioner of the value of mining tenements owned by the company is the net present value of the mining tenements after taking into account all available mining information in relation to the tenements, whether confidential to the owners or not.

What I am saying is that previously they were just transferring leased land - mining or exploration leases - where the company owned that land, at a value which might be one, two or three million dollars. The stamp duty has risen to 4.25 per cent, and if the company has spent \$20 million on exploration it will have to pay about \$900 000 stamp duty on that land. Regardless of the fact that the company has expended all that money without actually increasing the value of the land, it has to put together all the information on the money expended on it. The commissioner can call in any information, confidential or otherwise. It must be put before the Commissioner of Taxation to assess the total value of money expended on that lease, and to appraise all the information from it which might say, "There is gold there and therefore it is worth that much more." But that does not take into consideration the fact that the company in this case may have to raise \$100 million capital to get the wealth from the land. It has to pay the stamp duty based on these notional valuations, irrespective of what it might cost and irrespective of the value of the mineral product - and it applies not only to gold but also to zinc, lead and other minerals.

The company believes this is wrong, but it is a new interpretation to revalue up and maximise the value of the shares for stamp duty purposes now that stamp duty rates have risen from 0.6 per cent to 4.25 per cent on the value of the mining tenements. In fact, a mining company will have to pay stamp duty on the value of improvements or work it has done on that land. This has been done by this particular company for group restructuring purposes, because several parties are in joint ventures up the line but do not want to or cannot participate in the full amount of capital required for the future development of these leases. So they rearranged the affairs of the company, and found they had to provide all this information, and now they have to pay stamp duty of well over \$1 million.

The industry wants a clear understanding with the Minister and the commissioner as to how this will be handled in future. With one win the department will become more and more entrepreneurial in its assessments of the method of valuation that should be used to collect this higher rate of stamp duty. The case put forward says -

... in assessing the value of mining tenements the Commissioner will be looking at exploration expenditure or the net present value of the mining tenements based on all available mining information in relation to them. . . This may result in valuations of the mining tenements greatly exceeding their immediately realisable value, and exceeding their value in the books of the company. . .

The Commissioner has wide powers to requisition material in order to carry out a valuation of mining tenements and in a recent circular . . . set out his requirements for information to be delivered with the lodgment of any conveyance of an interest in mining tenements between parties who are in any way associated by virtue of, cross directorships, common Secretaries, or cross shareholding interest of any degree. That information includes;

- * a statement of "the market value of the tenements";
- * "a copy of all valuation and/or geological reports of the tenements";
- and
- * "production details for the tenements for the three years prior to the transfer".

This is not elimination of an avoidance scheme, it is an attempt to raise some revenue from an industry that is very important to this State and that needs every dollar it has to develop more mines, to employ more people and to bring more wealth to the country.

This company has had problems dealing with the Valuer General because the Valuer General's figures are based on bare land. I quote from a paper delivered to the 1988 State Conference of the Australian Mining and Petroleum Law Association Ltd in October -

Whilst the Valuer General's Department will provide a ready reference point to the Commissioner for valuation of freehold land, other reference will need to be made in the case of mining tenements.

That is why they want this back up information. The paper continues -

... At this stage, neither the State Taxation Department nor the Valuer General's Department have any pre-existing experience in this valuation process.

Those of us who support the mining industry believe that this must be clarified very soon, before it gets out of hand and before judgment is given against this company. There must be some commonsense, not just a way of getting more and more out of the industry simply for the purpose of raising revenue. The paper continues -

... the Commissioner attempts a rule of thumb approach that market value equals the initial acquisition costs plus subsequent expenditures on exploration and title maintenance.

The company of which I am talking is paying \$1 million stamp duty now and, if it has to transfer those leases in a year or so for another restructure, that \$1 million will be added on to the value of the leases, so there is a compounding factor on stamp duty.

Hon Kay Hallahan: But they would not be restructuring without some good reason of gain, would they?

Hon MAX EVANS: I have said they often restructure. An exploration company might have 10 separate exploration companies all owned by the same parent company or joint venturers. When they decide they want to go into production, they really want to transfer into the main company which has a bigger asset base, to enable them to borrow perhaps \$50 million or \$100 million for development. They do not want to expend that money where the exploration company is, they want to put it where the financial strength is. They are still all owned by the same parent company and for that reason they should not be involved in these very high stamp duty charges.

One of the problems is with the interpretation of the word "property", because how does one value property? There are some cases where property is being valued at the moment and

they are valuing all the investigation and exploration work, drill holes and so on as part of the property. From several legal viewpoints the word "property" does not encompass information. In *Pan Continental Mining Ltd. v. Commissioner of Stamp Duty (Qld.)* 88 ATC 4190 de Jersey J. held that the agreement for sale of interests under a joint venture agreement and for the furnishing of confidential information was both a contract for the sale of the property, including mining tenements, within the meaning of the relevant head of duty, and an agreement for the performance of a service by the vendor for the benefit of the taxpayer, being the disclosure of the confidential information referred to in the clause allocating the purchase price between the various items comprising the interest sold. The agreement was chargeable with ad valorem duty in respect of the former matter, but nominal duty only in respect of the latter. That is, the value of the value added or the information on the property.

Farmers need to look at this matter. The Valuer General can give a value for land in certain areas from his own statistical information but it may turn out that one farmer has been more productive and has run his farm better than other farmers in the area. On that basis legal advisers believe they could look at the valuation of land well above what it would be under the old basis of the Valuer General's external valuation. They are worried about the whole interpretation of the value of mining tenements. To determine this question, one must look at the notional transaction of the sale and purchase price, including that of a hypothetical purchaser. Here we have a real case study of a real company going to the courts; the company is involved in the interpretation of the legislation which was introduced last year. At the time of its introduction the legislation was already coming under criticism but it was not realised then how seriously it would affect the mining industry.

I believe that legislation was a most unfortunate piece of work because normally when legislation like that is dealt with all the relevant industry groups are advised at the time and are consulted with prior to its passage through the Parliament. Members may recall that last year there was no consultation whatsoever between the Minister and the industry in respect of the valuation of mining tenements. As I said before, when the Press release went out in January there was no mention of mining tenements; it was only when we read the Bill in this place that there was a definition of land referring to mining tenements. The Bill was virtually through this House before the mining industry was aware that it had implications for it - particularly its retrospectivity - and it did not have time to look at the aspect of valuation. The industry is requesting that serious consideration be given to this before it goes any further because it will affect many companies, which will pay too much duty. Companies are not in the business of avoiding stamp duty. This is based on an interpretation of the Act, and it is making companies pay a lot more stamp duty. They would have paid normal stamp duty and transfer fees, but the problem relates to the interpretation by the Commissioner of Taxation of the provisions relating to the valuation of tenements. This was not known last year; it was not even discussed with the industry prior to the introduction of the legislation; the industry at that stage did not even know it would affect it. The legislation only talked about real estate.

Hon Mark Nevill: If there is a company takeover, is duty paid on all the transferred tenements?

Hon MAX EVANS: If it is a public company, this will not affect it. That is what happened last year. With the takeover of a public company, stamp duty is paid only on the normal net worth of the company. Non listed companies, or private persons or subsidiaries will have to pay it. The top companies just switch it along; they get by it very cheaply, as the member probably realises. That is what has been happening. I do not know whether we discussed this last year, but there were a couple of very big public company takeovers at that time, which paid a minimal rate of 0.6 per cent of the net worth of the shares of the company with no relation to the stamp duty on the total value. Being a listed company, it would be very hard to do anything else.

The Association of Mining and Exploration Companies (Inc) believes it is now time for a review of the legislation. It is asking that a public review be held and for the Government to call all interested parties to put their case and to look at this matter very closely so it can be rectified and discussed with the industry, and to ensure that all parties know the rules of the game for the future. The association wants to discuss with the Minister and with whoever is to review the matter the impact the legislation will have on the industry. As I said before, the whole matter of trying to impose stamp duty on what in other cases is called intellectual

property is just the value added or the interpretation of the value of that land at a rate of 4.25 per cent, which is a serious imposition on the companies. It will affect an area about which Hon Mark Nevill knows a great deal - that is, the gold mining industry. In that case, \$1 million here or \$1 million there has a big impact on companies, particularly exploration companies, which raise money to do exploration work and not to be caught up with the high cost of stamp duty at a later date.

The mining industry requests that serious consideration be given to a review of this legislation, particularly the interpretation of the value of mining tenements by the Commissioner of Taxation. I have already mentioned the effect this legislation will have on farmers. The Pastoralists and Graziers Association is looking at that aspect of the legislation now to see how it will affect farmers.

HON KAY HALLAHAN (South East Metropolitan - Acting Leader of the House) [3.06 pm]: It is quite absurd to raise this complex matter in the absence of the Leader of the House. I can see Hon Max Evans nodding his head in agreement with me. I have to say to him, "So he should", because the Leader of the House last night read to the House his proposed sitting times.

Hon A.A. Lewis: We have no dearth of talent on the front bench of the Government. Hon Tom Butler tells us about it all the time.

Hon KAY HALLAHAN: There is no lack of talent on the front bench but if people are serious about the issues they bring to this House, one would presume they would want to be heard, and responded to, by the most informed person on the subject matter. Hon Max Evans is accepting my point; he and I are not in disagreement about that. Last night the Leader of the House set out the proposed times of sitting for next week, which indicated quite clearly that we would be sitting all next week. Certainly he gave times for Tuesday and Wednesday, and if we need to sit any longer, we will do so.

Hon A.A. Lewis: There was a certain amount of threat.

Hon KAY HALLAHAN: No, he made a clear statement about the proposed sitting times. I am astonished at the action of Hon Max Evans in raising this matter today. For that reason, there will be matters referred to by the honourable member to which I will not be in a position to respond. However, a couple of things need to be said: Firstly, I was unhappy to hear the Leader of this House accused of not consulting, and I think it is unfortunate that such an accusation was made in his absence. I cannot respond to that in any useful way, but it stands on the record that he has been accused of that.

Hon Max Evans: I was referring to last year. It was a fact of life with the debate last year that the industry was not consulted.

Hon KAY HALLAHAN: Arguing about the new method of determining the value of mining tenements is quite irrelevant because the Act did not set down the method for determining values.

Hon Max Evans: That is right.

Hon KAY HALLAHAN: We are agreed about that.

Hon Max Evans: There is the interpretation.

Hon KAY HALLAHAN: No, that is not the case. None of that is in the Act; the Act does not include that. The Act does not set down the method of valuation. But I think the member's first point in the motion indicates some confusion about that because the Act never has done that and it still does not do that.

Hon Max Evans: In the 1987 amendments, the Government brought mining tenements in and then started interpreting.

Hon KAY HALLAHAN: But that has nothing to do with the method of valuation; that is a separate issue. At the moment an appeal to the court is pending, dealing with the subject. It is purely a technical matter as to what factors should be taken into account in valuing mining tenements. The valuation is made by the Valuer General's Office which is where valuations are made in accordance with valuation principles as they are understood. I make the point again that these principles are not set down in the Act. It is true that stamp duty revenue increased last year but no increases occurred in stamp duty rates. Rather, the increase was

caused by the increase in economic activity. We all know that the economy is buoyant at present, and that has caused a great increase in revenue from that area. It is apparent that the case described by the member is the one which is currently the subject of appeal.

Hon Max Evans: That is correct.

Hon KAY HALLAHAN: In the circumstances the issue has sub judice implications, I am advised. The court will decide the issue and the Commissioner of State Taxation, as well as the taxpayers, will be bound by the precedent thus set.

Hon Max Evans: That is right.

Hon KAY HALLAHAN: When the court gives a decision, any uncertainty which may now exist will be removed. It seems to me that the case will remove the alleged uncertainty that is said to be present for some people. The Valuer General and the officers who undertake the valuer's task are a highly skilled and professional group. They are very well qualified indeed to carry out their duties, so we have good service in that regard.

Referring to the second point in the motion, I find difficulty in understanding why it should be thought that the 1987 amendments have created uncertainty about the cost of stamp duty. I emphasise again that the determination of valuation for stamp duty purposes of a mining tenement - which is transferred direct from one person to another, not through the transfer of company shares - is no different from the way in which valuation would have to be determined when the transfer was effected through the transfer of company shares and attracting provisions of Part IIIBA. That part of the Act did not introduce procedures for determining valuations. Provisions applied in the past still apply today. That is the very clear and strong advice which I have received today. Having had the member's motion for a short while I have had the opportunity to seek advice.

Hon Max Evans: The legal advisers with whom I am working have not seen the valuing of the leases in that way - to bring in all the information to maximise the value of the leases at the present time.

Hon KAY HALLAHAN: That might be a separate area of activity, in my view, about what is being valued. Perhaps that is where the confusion arises in the motion.

Turning to the third point in the motion, the Association of Mining and Exploration Companies recently sent a submission to the Minister for Budget Management about the provisions of Part IIIBA of the Stamp Act and suggested a meeting to discuss the issues raised. I understand that the Minister has agreed to meet with AMEC as early as possible. I am sure that the member will be pleased to hear that.

The fourth part of the motion appears to be a little ambiguous in that the meaning of pro-rata exemption is not clear. It could relate to a situation where corporate reconstruction involves some component changing in terms of beneficial ownership.

Hon Max Evans: That is right.

Hon KAY HALLAHAN: And the pro-rata exemption would apply only to that portion of the reconstruction unaffected by any change in beneficial ownership. There is no provision under Western Australian tax legislation for stamp duty exemption for corporate reconstruction except where the reconstruction is on the basis of the sale of the assets of a company by a liquidator. The policy of the Government generally has been not to provide exemptions because of the precedent and the potential revenue loss. The Government has held that clear position. In addition, we are not convinced that stamp duty relief is necessary for the majority of reconstructions to proceed. That is, the benefits of a corporate entity flowing from a reconstruction generally far exceed the associated stamp duty costs. When I interjected with regard to that, I said there would be some benefit in companies' restructuring. The member said, "Yes, that might cost \$1 million but they would be restructuring in such a way that they would be dealing with \$50 million to \$100 million." That brought me back to the point that the policy of not exempting was probably very sound. Perhaps it is my naivety in the field - for which I need to be forgiven - which leads me to that conclusion.

The uncertainties concerning the level of benefits to the State from reconstruction vis-a-vis the cost of stamp duty forgone have been a consideration of the Government over time. Nevertheless, we monitor the situation; we are unaware of any industry inefficiency that has

resulted from our existing policy. I am sure that if the Minister for Budget Management could have brought to his attention a situation whereby problems were arising from that policy to which he is adhering, he would consider that aspect fully. One would presume AMEC would outline such circumstances during the future meeting with the Minister.

I regret that this matter has had to be dealt with by a Minister stepping into the Leader of the House's shoes. I do not understand why this matter was raised today but members can be assured that the Minister for Budget Management will be meeting with AMEC about the issue. Cases put to him will be considered, together with the revenue loss to the State. We will all support him in that consideration. I ask members to vote against the motion.

HON MAX EVANS (Metropolitan) [3.19 pm]: I thank the Minister, as Acting Leader of the House, for her reply. I hope her colleagues will tell the Leader of the House when he returns, "You had better watch out, she is handling the job very well indeed."

Hon A.A. Lewis: She said nothing as well as the Leader of the House does.

Hon MAX EVANS: She is far more straightforward than the Leader of the House. I thought she did a very good job. As I mentioned before, I had discussions with members of the industry who were concerned about the lack of consultation.

When the Loan Bill was introduced on Tuesday the Minister for Budget Management said that he hoped to clear up debate on it by next Tuesday. I told members of the industry that as I could not bring forward this matter yesterday I would do it today, as we might have finished debate on it tonight. I will still have a couple of things to say next week on different subjects. That is the reason I raised this matter today, and I intended no disrespect for the Minister. We appreciate that there will be consultation in the very near future because it is important.

The Valuer General is doing a good job to solve the problem, but it is a question of interpretation; that has widened the scope and brought in more revenue than ever before. When leases were transferred from one party to another before, it was based on the mining tenement, depending on the area and the land. Now the value is worked out according to the value of the land and the work done on it, which nobody can see if there are no documents like a geologist's report.

If the Valuer General has an opportunity to see such information he may put a high value on the land. Normally, if the assay results are not good they would probably not be shown to a purchaser, who would have to do his own work to establish what price he wants to pay. He might pay more than the land is worth.

Hon A.A. Lewis: It sounds like WADC, doesn't it?

Hon MAX EVANS: The department has been very efficient but overzealous in trying to maximise its revenue. After all, that is what the department is there for. This comes back to the interpretation of what is fair. There have been a lot of reports in the newspapers about income tax and how the department has been overzealous in its interpretation of the Act.

The reason I am bringing forward this matter is that we are worried about precedents. Precedents are important if a matter goes to court. Once a precedent has been established it becomes even more difficult for the industry. It may be that the value will not be based on the property, and that will have to be decided, but any information available must be used in interpreting the Act.

The Minister for Community Services is quite correct in that the legislation last year did not bring in the method of valuation, but it did bring in a high rate of tax on mining tenements. The stamp duty of 0.6 per cent on the net worth of shares is minuscule compared with 4.25 per cent on the value of mining tenements. Shares may be worth \$1 million, but with a \$900 000 liability the net worth of those shares would be \$100 000. Now, the stamp duty of 4.25 per cent would be applied to the whole \$1 million. This is a difficult matter and maybe why it has become important for the commissioner to work even harder to get more money. We appreciate the relief given by way of exemptions; the problem lies with the method of valuation, and in fairness to the industry that matter needs to be addressed.

I thank the Acting Leader of the House for her reply. I seek leave to withdraw my motion.

Motion, by leave, withdrawn.

SHIPPING AND PILOTAGE AMENDMENT BILL

Committee

Resumed from 29 November. The Deputy Chairman of Committees (Hon John Williams) in the Chair; Hon Graham Edwards (Minister for Consumer Affairs) in charge of the Bill.

Clause 1: Short title -

Progress was reported after the clause had been partly considered.

Hon E.J. CHARLTON: I have received a couple of phone calls regarding this Bill. There has been concern in the port area about the content and ramifications of this piece of legislation. I would like an undertaking from the Minister that the effect of this Bill has nothing to do with increased charges or rates of usage of tugs within the Fremantle Port area.

Hon GRAHAM EDWARDS: I am happy to give that assurance.

Hon D.K. Dans: The companies set their own rates.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 5 amended -

Hon G.E. MASTERS: I take this opportunity to raise a matter which has been drawn to my attention over a period of time and has gradually become the subject of debate to the stage where, in the *Daily News* dated 30 November, there was an article headed "MP Seeks Probe Into 1984 Yacht Sinking". Hon Des Dans, I am sure, would know the matter about which I am talking. This matter was raised in another place by Mr Bert Crane, a renowned mariner who is building his own boat. He probably feels as strongly about this subject as I do.

Four years ago a steel ketch by the name of *Leschenault* was owned by Bill and Gwenda Wales of Bassendean. They purchased the boat a good many years ago - I knew them then - and gradually became experts in sailing. They went further afield and eventually took part in the *Parmelia* race. They later headed around the world and on their last trip sailed around Australia. I am giving these facts because it is important to recognise that these two were extremely experienced sailors, with a knowledge of the sea and its dangers. They were good navigators and seamen, who knew what they were about.

Four years ago Mr and Mrs Wales were completing a voyage around Australia and entered the port south of Rottnest, coming through the south passage, as Des Dans would know. Coming into Fremantle they struck a submerged object. That object was a beacon which had been damaged and part of it had broken off and was submerged. This beacon was obviously a great danger to shipping. There had been an attempt by the Fremantle Port Authority to place markers to warn shipping, but that was nowhere near effective enough, and the Fremantle Port Authority failed to carry out its proper duty. It did not mark the submerged beacon properly and did not take the precautions required to warn vessels by radio that this obstruction was floating loose just below the surface. The yacht struck the beacon only a couple of days after another boat had brushed it and had warned the Fremantle Port Authority. So, this 40 foot yacht was holed and sank. It is necessary to bear in mind, Mr Deputy Chairman, that these two yachtsmen, Mr and Mrs Wales, had sailed all over the world over a number of years. When they were within shouting distance of their hometown they struck this underwater obstacle. They have tried for years and years to get compensation and lay the blame where I believe it belongs; that is, at the feet of the Fremantle Port Authority. They have tried to gain some compensation but have failed all along the line and have now given up sailing.

When their boat sank they were threatened by the Fremantle Port Authority that if they did not move it - how they would move it, I do not know - the authority would blow the vessel up to make sure that there was no danger to other shipping. I think that the port authority has been very slack. I understand that legislation protects it from legal action, but even if that is the case surely there is an obligation on the authority to play fair and to do all that it can to compensate these people. For one reason or another the Fremantle Port Authority said that it was not its fault, even though the obstruction was not marked properly and these people lost their boat and all their worldly goods, as they had been living on that boat for a long time. It is a scandalous situation and one that should be addressed by the Government out of fairness.

Whether it was a Labor Government or a Liberal Government I would argue the same way. The Government could have accepted some responsibility and paid some form of compensation to these people. That did not occur and the reason that I am raising this matter now is to appeal to the Government and the Minister - I know that he is not the responsible Minister - to pass on my concern and the concern of the House, in addition to the concerns expressed by Mr Bert Crane, that something should be done. Again I point out that, if we were in Government, I would be arguing exactly the same way. It is not a political matter at all. A marine inquiry could be established which could result in some resolution of the matter. I know that the Ombudsman was involved and he could do nothing; I believe that that was because he was reading the law to the strictest letter. I have no argument with the Minister as the law itself is clear - incidentally, it was introduced by a Liberal Government, so I am making no excuses -

Hon D.K. Dans: The law is no different anywhere else.

Hon G.E. MASTERS: - and has allowed the Fremantle Port Authority to get away with this. It was not the intention of my party, or the Minister who introduced the legislation, for this to happen and the Opposition at the time believed that the law was to be used in good faith and to take account of things such as the matter I am describing now. I put on the record an appeal to the Minister and to the Government to reconsider the matter and to take some action to compensate these people because it was no fault of theirs whatsoever. An obstacle was created when a Japanese tuna boat smashed a buoy and as the couple were approaching their home harbour, after months away, their boat struck the obstacle and the boat went down. The Fremantle Port Authority did not carry out its duty because the law states that it did not have to compensate these people; it read the law to its strictest letter.

Clause 4 of this Bill deals with the prescribed control area outside of the port. I want to refer to clause 5 of the Bill -

The DEPUTY CHAIRMAN (Hon John Williams): Order! We are dealing with clause 4.

Hon G.E. MASTERS: All right. Clause 4 inserts the words -

control the movement of vessels in a prescribed control area outside the port.

I will make a quick reference to clause 5 because I do not intend to speak on the Bill after this clause. Clause 5 substitutes the words -

within a port and a prescribed pilotage area outside a port

The point I am raising is that the principal Act makes reference to the responsibility of the harbour master in relation to certain actions, and makes reference to wreckage. When we are talking about the control of the movement of the vessels, we are also talking about the responsibility of the Fremantle Port Authority for the handling of wreckage. If it is handling vessels, it is also controlling and monitoring wreckage that exists within that area.

I put it to the Chamber most sincerely that the Government of the day ought to promote a marine inquiry and, in fairness to these people, some compensation ought to be paid no matter what the Act may say. The strict interpretation of the Act is unfortunate, and recently it has been the practice that the Minister's interpretation of a Bill has been relied upon very heavily. I do not believe that that sort of application of the description and intent of the debate was taken into account. If this legislation were to be introduced today, both the Minister and the Opposition would make it clear that it was intended to cater for the sort of example that I have given. With those few words, I once again ask the Minister to direct my comments and complaint to the responsible Minister.

Hon D.K. DANS: I agree with what Mr Masters has said as I remember the case very well. I must admit that possibly the only way the people will get compensation from the Fremantle Port Authority is if an ex gratia payment is made.

As Mr Masters would well know, the markers are only navigational aids - which may be all right for big ships - and it was extremely unfortunate that this yacht hit that marker buoy. I do not know how one would approach this matter in any other way. The port of Fremantle is the same as the Port of Sydney in that it provides navigational aids, and whether people use them or not is up to them. I believe that that particular buoy was out of action for quite some time and the defence of the port authority rested upon the fact that mariners had been notified that it was not working. With this Bill I do not see how responsibility could prevail on the

Fremantle Port Authority, but I would agree with Hon Gordon Masters. I was not aware that nothing had been done and I believe that we should make an approach to the appropriate Minister, and from there on to the port authority, to see whether some compensation, if not the whole amount to cover the loss of the boat, can be made in the form of an ex gratia payment. I cannot see any other course of action being successful because to admit liability to that would mean admitting liability to a whole host of things that are outside the control of the Fremantle Port Authority. Anybody entering the port enters at his own risk. It was argued that they should not have been relying on the light and that their navigation should have been spot on. I have never been on a ship that was on course so that is a pretty flimsy argument.

I am prepared, with Mr Edwards, to make a joint approach if Hon Gordon Masters thinks it would assist.

Hon G.E. MASTERS: I sincerely thank Hon Des Dans for those comments. He knows the waters better than I and knows the operations of the port better than I. He also understands that Mr and Mrs Wales were coming into waters they knew well. With that sort of underwater wreckage around, one may wonder what would have happened if a fully loaded Rottnest ferry had hit it.

Hon D.K. Dans: No, they knew it was out.

Hon G.E. MASTERS: Yes, but the results could have been horrific, especially in rough weather. I hope the Minister heard Hon Des Dans' comments and that he will arrange to see the Minister, with Mr Dans and me.

Hon D.J. WORDSWORTH: As a former Minister for Transport, I support the two previous speakers. A further complication existed in that the Fremantle Port Authority had placed a buoy on the beacon which was half submerged. The difficulty was that the buoy was not the proper international buoy required for the purpose. There probably should have been a legal fight over what happened, but maybe the owners did not have the money.

Hon D.K. Dans: It would have been a hard one to win.

Hon D.J. WORDSWORTH: Unfortunately, yes, although I know the Fremantle Port Authority would not want a fight. We might get somewhere with this matter if the Government cooperates.

Hon GRAHAM EDWARDS: I thank members for their comments. I give an undertaking to raise this matter with the Minister and reply to the members who have raised concerns about it.

Hon D.J. WORDSWORTH: Clause 4 seeks to amend section 5 of the principal Act in subsection (1)(c) by deleting "and". The word "and" occurs three times in that paragraph. Can the Deputy Chairman advise which of the three is to be deleted?

Sitting suspended from 3.43 to 4.00 pm

[Questions taken.]

The DEPUTY PRESIDENT (Hon John Williams): Honourable members, I have been asked for an opinion on clause 4 of the Bill. It is a complex matter and I have started my inquiries, which are not complete. My advice therefore is that I will have to leave the Chair until the ringing of the bells.

Sitting suspended from 4.18 to 4.22 pm

Deputy Chairman's Ruling

The DEPUTY CHAIRMAN (Hon John Williams): I have asked that a copy of my ruling be handed to Hon D.J. Wordsworth and the Minister in order to clarify the position.

The scheme of the amendments proposed to section 5 by clause 4 is to enable the addition of a new paragraph (e). Paragraph (a) of clause 4 deletes "and", but the deletion must be read and construed, as with any written law, to give effect to the intent of the clause; that is, to insert new paragraph (e). Contextually, the only conjunction that could be deleted in paragraph (c) of section 5(1) while retaining the sense of the paragraph is that linking paragraphs (c) and (d). This view is reinforced by the intent of paragraph (b) of clause 4 which deletes "therein" and substitutes "therein; and". Both paragraphs (a) and (b) of the

clause make provision for the insertion by paragraph (c) of a new paragraph (e) in the subsection. Accordingly, I rule that the meaning of paragraph (a) of the clause relates to the "and" joining paragraphs (c) and (d) of the subsection as presently enacted.

Hon D.J. WORDSWORTH: I thank the Deputy Chairman for his very explicit and plain explanation. I accept it wholeheartedly.

Clause put and passed.

Clauses 5 and 6 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

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

HORTICULTURAL PRODUCE COMMISSION BILL

Second Reading

Debate resumed from 29 November.

HON NEIL OLIVER (West) [4.26 pm]: I understand this legislation was initiated by the table grape growers of Western Australia, and principally those from the Swan Valley. In the past a levy has been imposed on exporters of table grapes through the Grape Growers' Association of WA. That is commonly called the grape pool and it has been administered by the association in conjunction with the Swan Settlers Co-operative Association Ltd. It has operated for many years and the method of handling the marketing and shipment of the product has been varied from time to time. It has passed through the era of merchants, and is now handled by a pool in a more direct way with agents, particularly in South East Asia. Unfortunately, in recent years due to the strong competition from other States in Australia, particularly Victoria, and the inability initially to deliver to those markets, Western Australian table grape growers have been at a disadvantage. This delivery problem has been caused by the limited number of scheduled aircraft operating between Perth, Singapore, Kuala Lumpur and, to a lesser extent, Djakarta - which is not very receptive to trade with Australia because, although the quantity and quality have been satisfactory, the price has not been satisfactory in recent years.

The exporters of table grapes have been paying a levy, but this was considered to be inequitable; and it was felt that it would be better to spread that levy across the industry, involving also the producers who supply the local trade. The purpose of the levy has been readily received right across the industry. I have been advised in a briefing from departmental officers that a levy is not provided for under the Act and, in fact, it is a fee. These fees will be allocated mainly to fund the areas of research, marketing and testing of the sugar content of grapes. The testing of grapes for their sugar level has always been a contentious issue. It has been undertaken by officers of the Department of Agriculture from deliveries made to local markets. As the table grape season commences some growers jump the gun; that is, they deliver grapes to the market that have an insufficient sugar content to be accepted generally as being in a marketable condition. This has, to some extent, led to public rejection of grapes at the beginning of the season, which has in turn been detrimental to those grape growers who have played the game in the right way.

There has been a change in the varieties of table grape available because of grape replanting programs implemented mainly for the purpose of extending the table grape growing season. There will be a considerable number of new varieties of grapes on the market which will not follow the pattern set under the previous table grape growing program, which basically revolved around the Emperor table grape. A situation has been reached where the season will be longer, which will be better for the grower. New varieties of grape will be coming onto the market and will need to be tested as if it were the opening of the season.

An initiative of the former Liberal Government was to instal chiller/freezers at the Swan Settlers Cooperative to enable first picked grapes for export - which are destined ultimately

for air shipment - to be stored in sufficient quantities to become aircraft container loads. As the season varies part of the freezer space is utilised for the local market. This enables growers to spread their deliveries across a wider period of the season thereby removing gluts with their accompanying lower prices, so the season can now be extended and they can get better prices for their grapes. This system has led to a better overall return to growers.

It is significant that in times when we never hear of the cost of handling produce being reduced the Swan Settlers Cooperative installation cost per carton exported was reduced in its first season because the freezer units were on site and close to the vineyards resulting in reduced handling costs. I doubt that there is a member of this House who is aware of another instance where handling costs have actually been reduced, but that occurred in relation to this program.

Grape growers had previously used some surplus freezing accommodation at Robb Jetty. It was necessary for them to pick their grapes very early in the morning, transport them to Robb Jetty and, ultimately, remove them from Robb Jetty to bring them back to the Perth international terminal for export. Members can understand that the installation of that on site freezer capacity in the valley has been of great benefit.

I am pleased that the Government has allowed this legislation to remain on the Notice Paper and has allowed adjournments so that proper consultation could be undertaken with the people who will be affected by it. The table grape growers initiated this idea. It does not have the total support and approval of all growers, but it does have the support of the association and many growers who are not exporters but who believe it is inequitable that only certain growers have been paying the levy while others have not been obliged to make a contribution. This legislation introduces a compulsory fee for all grape growers which will be paid into an account and which I am assured will be allocated specifically for their use, apart from a small amount to be used as an administration fee. I am told that administration fees will be kept at the lowest possible level and the growers were comforted when I passed that information to them.

When one sees the word "commission" appearing in legislation heralding the incorporation of another Government instrumentality - and I know you, Mr Deputy President (Hon John Williams), as chairman of the Standing Committee on Government Agencies, would be disturbed to see another commission come into existence - one becomes concerned. I share the reservations held by some people about the introduction of an all encompassing commission. I also share the concern held by some people that the commission was initiated by, or the embryo of, the table grape growers of Western Australia, and that the Government has seen fit to extend it over a wide spectrum of products some of which are totally unrelated and have no comparable marketing strategy or seasonal compatibility with grapes.

I will not delay the House with this, but there must be many factors which affect the compatibility of the various products. I was assured at the briefing that it is intended that there will be grower committees relevant to the industries producing these products, which will have a high degree of control over the way in which the funds will be used. I have also been assured - and the Minister may care to correct me if I am wrong - that the board of the commission will contain a grower representative, who will come from a particular area. The appointment of that grower representative will be widely canvassed to ensure that the representative is acceptable to a broad spectrum of the horticultural industry.

I have already mentioned market research and testing. In the past, testing has been undertaken by the Department of Agriculture, which has also, through its consultation with the industry and exporters, undertaken research into the product varieties that are more acceptable to overseas and local markets. I presume that the Department of Agriculture will continue to undertake that ongoing research function in respect of these products, as it does with all other products of an agricultural nature. I have been very disappointed with the performance of the Government in respect of the marketing of table grapes in the export area. Over the past six years, the Government has made an electoral promise to growers, particularly in the Swan Valley, that they would receive a higher return for their grapes. However, that has not occurred, despite the fact that there have been some excellent seasons, and as a consequence the markets and the financial returns have declined. The Government's undertaking to grape growers to assist them in marketing has been a total failure. I have had the opportunity of observing the activities of the Victorian Department of

Agriculture, which has assisted the growers in that State in a very commendable and extremely professional manner. I know that the Western Australian Department of Agriculture is limited by the amount of funds made available to it by the Government. Therefore, I place its deficiencies, and the broken promises to grape growers, at the feet of the Government.

I have always been interested during my travels in observing the manner in which our products are marketed overseas. Approximately three years ago I was at the World Trade Centre in Singapore, which is indeed a magnificent exhibition. There was at the time an ASEAN hotels exhibition, which covered the entire tourism industry of all the hotels in what is regarded as the Pacific rim: Thailand, Indonesia, the Philippines, Malaysia, and Singapore. No-one would contradict me when I say that without doubt that area has the fastest rate of economic growth in the world. One needs to be at the World Trade Centre for about two or three days to be able to see all the exhibitions. The Victorian Department of Agriculture had leased an area at the World Trade Centre, at which it displayed fresh and chilled varieties of the grapes produced in Victoria. Those grapes were available for sampling, and after people had sampled the grapes, they were asked to fill out a questionnaire and to comment on the product. They were asked to state their nationality, because we know that Japanese, Malaysians, Singaporeans and Filipinos have different likes and dislikes for certain products. I can assure members that they would have been impressed by the professional nature of the marketing approach adopted by the Victorian Department of Agriculture. I am disappointed that this Government has not taken any initiatives -

Hon T.G. Butler: Any initiatives for what?

Hon NEIL OLIVER: I am sorry; the member who has been in the House has obviously not been listening to what I said. He might like to refer to *Hansard*, because it is not my intention to be repetitious. I suggest that in future he take note of what I am saying, because I understand that under the electoral redistribution, he will represent some of these people, so he should take a greater interest.

It is a widely held philosophy that the establishment of the commission comes under the category of what is called orderly marketing. I hope that notwithstanding the complexity and the variety of the commodities that will be handled by this commission, the administrative costs will be kept to a minimum. Although I have been given this assurance, and I feel comfortable with the officers who gave me that briefing, they will not necessarily remain with the department there when this legislation is proclaimed and as it operates over the years. I only hope that this commission will fulfil the role for which it is proposed, and it will not become a quango, or a vast organisation which will swallow up the administrative costs and leave very little for marketing and research. I understand the Bill contains a proviso that should that occur, a committee, which may well be the grape growers' committee, will be able to make strong representations to ensure that growers receive a fair go. While confining my remarks totally to the table grape industry, I support the legislation.

HON GRAHAM EDWARDS (North Metropolitan - Minister for Consumer Affairs) [4.51 pm]: I thank members opposite for their contributions to the debate, and what I hope will be their support for a Bill about which I am very enthusiastic, and which I feel will be beneficial to the State. I was fortunate enough to be member of a Select Committee which looked at the fruit and vegetable growing industry across the State. We managed to get across to Sydney, Melbourne and Brisbane, so that we were able to compare what is taking place in our industry with what is happening in those other States. In some areas I was very pleased with our performance; in others I thought we were lagging behind, particularly in marketing.

Whatever my own thoughts, of one thing I am sure, and that is that the industry has a tremendous potential for continued growth and success in this State. One of the ways to achieve this is by creating a framework which will enable and indeed encourage growers to pay greater attention to the industry, particularly when it comes to quality. No matter where we went, quality was the keyword. The committee was chaired by Hon Philip Lockyer. It was a very interesting committee, and one from which I gained a lot of knowledge. Also on that committee were Hon Sam Piantadosi and Hon Graham MacKinnon, who has left the House. Despite the chairman, I thought a very good report was produced.

Hon P.G. Pental: Wait until he hears what you have said!

Hon GRAHAM EDWARDS: I thought he had gone home.

Hon P.G. Pental: I will go and fetch him.

Hon GRAHAM EDWARDS: Growers will be defined by regulation for specific industries or situations. Regulations are, of course, open for possible disallowance in the Parliament. It is very difficult to define growers precisely in what is a very broad industry; it is simply not possible to do so in an Act. The only way to do it is by regulation.

I am very impressed, as a result of serving on the committee, by the tremendous job the Department of Agriculture is doing in this State. It will continue to service the industry as it has done in the past, particularly in areas of marketing. Some activities, for example quality inspections, will if necessary be funded by the industries concerned. The fruit growing industry, for instance, already funds its own quality inspectors. Let me assure the House that no industry will be "organised" as a result of this Bill. Let me also assure the House that the industry vacancy will be widely canvassed and a knowledgeable person appointed.

In terms of funding, initially the Department of Agriculture will provide some small financial support which is not expected to be more than about \$5 000 a year; certainly not the \$500 000 suggested by Hon P.H. Lockyer. The Bill has not been established to accumulate funds; its purpose is to oversee the activities of committees; and funds will not be transferable between committees. The committees will be able to do those things which are allowed by the poll, and the commission will not intrude unless matters of accountability are involved. This seems to me, and I hope to the House, to answer the question of autonomy.

Charges will be established by the commission on the advice of committees. The Minister will be able to override charges, but will be unlikely to do so unless a committee is being unreasonable. A penalty is to be introduced by way of amendment to provide for failure to supply information required. Offenders could incur a fine of up to \$1 000, depending on the nature of the offence, although one would expect that to be very low. We will go into that aspect later.

I thank Hon Phil Lockyer for what he interpreted to be support and recognition for the Bill from the Carnarvon province. Those people see it as a measure to allow them partially to govern their own industry, and we should encourage that, because that in turn encourages a greater interest in the industry itself. Reference was made to the Kununurra growers. The Kununurra growers, or any other group, could set up a committee in any area of the State. As I mentioned earlier, there is no suggestion that we will be injecting something like \$500 000 into the commission; the figure will be closer to \$5 000.

With those comments I feel I have covered most if not all the points raised during the course of the second reading debate, and if any clarification is required I shall be happy to provide it during the Committee stage. I ask members to support the Bill.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon P.H. Lockyer) in the Chair; Hon Graham Edwards (Minister for Consumer Affairs) in charge of the Bill.

Clause 1: Short title -

Hon W.N. STRETCH: I thank the Minister for arranging the extensive briefings we have had on this Bill. The Bill came upon the industry somewhat by surprise and, as Hon Neil Oliver said, in the time we have been given to debate the Bill there has now been a very widespread dissemination of information within the industry and it has evinced more support than was first apparent. As members would be aware from my second reading speech, I could find absolutely no-one in support of it at first. I think my antagonism for the legislation aroused many supporters of the Bill, as well as several who still have serious reservations about it. I thank the Minister for having his staff talk to us. I believe we are now in a much better position to deal with the Bill in Committee in an informed and, I hope, quicker way.

Hon J.N. CALDWELL: On behalf of the National Party I also thank the Minister for arranging our briefing this afternoon. Some of the fears I had have disappeared; if not entirely, then in part.

One of the major fears I had was that grower committees could be set up for the whole of the State rather than be restricted to certain areas. It was confirmed that the committees can be restricted to certain districts. An example would be where the Carnarvon and Geraldton tomato growers could override the growers in the Albany district, where there are only half a dozen tomato growers. In that case the committee in the north would overpower the small number of growers in the south; but as the committees can be set up for certain areas that fear has been overcome.

Hon D.J. WORDSWORTH: As I missed the second reading debate, I take this opportunity to express my concern about this legislation. People will know my very strong views against the Lamb Board, and I use that terminology although it may be called something else now. The people who have tried to put this Bill together have endeavoured to overcome the problems that arose with the Lamb Board, and it is very interesting that a committee has been formed in Esperance, representing an alliance between the Pastoralists and Graziers Association and the Western Australian Farmers Federation, entirely on the basis of trying to get rid of the Lamb Board for the district. It has brought together two rival organisations - that is how serious the issue is in that area. I can see that in this legislation similar sorts of organisations will be set up and at a later stage people will try to get out of them. We seem to have a form of agrarian socialism in politics in Western Australia that draws people together with these sorts of cooperatives and there is great difficulty in removing them. I draw the Committee's attention to the fact that we have been trying to get rid of the Honey Pool for years, and it is still hanging around.

Nevertheless, I do not deny anyone the right to be able to get together and form an organisation. I would have to admit the conditions in the Bill are fairly stringent. I am not quite of the opinion of Hon J.N. Caldwell, who feels the smaller districts will be safe. I cannot see why, for example, a few growers in Esperance or Albany will not be overpowered by the vote of others, if the vote of the whole of the State is taken into consideration. I think they could be overpowered; although I think the conditions are much better than those followed when the Lamb Board was created. In this case 75 per cent of the eligible voters must vote and 70 per cent must be in favour; I must admit they are fairly stringent conditions.

Some provisions in the Bill do worry me. It would appear, for example, that these growers' committees could require compulsory spraying of crops and I sense there is a very strong tendency nowadays, particularly on the part of younger people, to produce vegetables and other horticultural produce free of spray, although they realise they will not get the production they otherwise would. Clause 12(1)(b) of the Bill empowers the growers' committees to -

control or develop the means of controlling pests and diseases if there is a likelihood of those pests or diseases affecting the quality or volume of output of the horticultural produce;

That, of course, could apply to anything. Once again, I wonder how many people will be excluded from producing, because in clause 12(1)(i) the growers' committees may formulate schemes for declaring growers of horticultural produce to be accredited growers. In other words, they have the right to accredit, and I wonder if the small person will end up being accredited. I can see great difficulty arising with the small growers - not the market gardener but almost the home grower; we could call them alternative lifestyles. Certainly it would appear that under this legislation they will have difficulty in the future.

I find the powers to require information a bit horrific - growers can be forced to supply information as to what they produce, and how. Nevertheless, I will not vote against the legislation; but I do forewarn those in the horticultural industry that other organisations have been set up in this manner, and that they can have a few downsides as well as good sides. I remind honourable members once again of the Lamb Board, where the fat lamb producers of Western Australia who produced the lamb that was ideally suited for the table thought they were voting for a board that would help them market their product; and what happened? The merino breeders got hold of it. The vote was taken on anyone who produced a lamb, and the merino breeders who produced 100 lambs ran and controlled that board and caused it to be set up. I warn the vegetable growers of that situation.

Hon GRAHAM EDWARDS: I will try to respond to a couple of those points because they may have a bearing on the way the debate develops. Firstly, I thank members for taking the

time to go to the briefing; I am sure it was beneficial. There was some fair consultation, which was obviously not as wide as perhaps it could have been, and the feeling was that people were more intent on waiting to see how the system evolved before they supported it or not.

The Bill allows districts to establish their own committees. I am aware, for instance, of the differences in needs of Geraldton tomato growers compared with Albany tomato growers, so there should not be any conflict there at all. They are different situations with different marketing pressures and so on. It needs to be said too that in putting this Bill together a lot was learnt from the Lamb Marketing Board and hopefully what has evolved since then will be to the benefit of growers. There is autonomy here and certainly there is no intention to create a quango. Committees cannot force compulsory spraying; they can have a compulsory scheme in terms of fees for services but they cannot make individuals spray their properties. The growers' committees can be dissolved so nothing will be created which is set in concrete. Clause 15 deals with the dissolution of a growers' committee as follows -

(1) If the Commission takes a poll among the growers concerned for the dissolution of the relevant growers' committee and the poll is by a simple majority of the persons entitled to vote in favour of the dissolution of the relevant growers' committee the relevant growers' committee, shall on and from a day appointed by the Commission being a day not later than 6 months after the taking of the poll by notice in the *Gazette*, proceed to be wound up.

That is an assurance that we are not setting things in concrete. We are creating that autonomy and we certainly are not putting together a quango. As I said, we think a lot has been learnt from the Lamb Marketing Board and this is reflected in the Bill.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Interpretation -

Hon W.N. STRETCH: I refer to the definition of grower, which as members know took much of our time previously. Can the Minister give the admittedly broad parameters of the definition of growers? I accept that the Minister cannot say exactly what they are, although I think he accepts we have some idea of what he is aiming at. I also wish to know whether it will be small, medium or total.

Hon Graham Edwards: Could you repeat that?

Hon W.N. STRETCH: We would like to have the general view of how the Minister sees the definition of grower. I accept the Minister cannot give a definitive answer at this stage, but I would like some indication in *Hansard* of the awareness of the importance of a fair distribution of voting rights through such a committee.

Hon Graham Edwards: Could you repeat that point? I want to get it clear in my own mind.

Hon W.N. STRETCH: The definition of grower will be set by regulation. I accept that, but I would like the Minister to give me some idea of the direction he is heading in in setting this definition. I would like to see some sort of quote in *Hansard* about the direction the Minister is heading in, whether it will be total franchise - as I said, one daffodil - or a commercial grower or whether it takes in backyard growers, people growing for themselves and so on. What sort of parameters are we looking at?

Hon GRAHAM EDWARDS: I thank the member for repeating that. I suppose the best way to explain it is to say that a grower who will be affected by the definition will be one who is a part of the industry. It is very difficult to explain here but the real needs of the grower will be reflected in the definition.

Hon W.N. STRETCH: I am sorry to be pedantic and delay the Committee. Is it going to be restricted to commercial growers only?

Hon Graham Edwards: Yes, it is. You cannot include a person who is growing some produce in his backyard.

Hon W.N. STRETCH: We are not quite sure who will set this up, but presumably it will be set up under the auspices of the Department of Agriculture. Presumably that department will

have some idea of whether it will be the volume producers, who underpin the industry, or whether it will be the fringe producers, to which my colleague Hon David Wordsworth referred, who will be able to vote or possibly outvote more significant producers. Could the Minister give the Chamber an indication of the direction he is taking in that regard?

Hon GRAHAM EDWARDS: It is one which will go across the range of the industry and which will have complete balance within the industry.

Hon W.N. Stretch: Fair enough.

Clause put and passed.

Clause 4 put and passed.

Clause 5: Constitution of the Commission -

Hon W.N. STRETCH: I have heard from people who are suspicious of the make-up of the personnel who are to be appointed to the commission. They feel quite strongly that there is no representation of their interests on the commission of three; they do not have a representative of their own who is an active grower. While it would appear that subclause (2) allows the Minister to appoint such a person, they are very concerned that that person will not be an active grower. They do not want a person who was growing vegetables 10 years ago, nor do they want someone who was a Minister for Agriculture five years ago; they do not want someone who was brought in from private industry, as happened with the Meat Commission. While they do not quibble about the job that person did in the Meat Commission, the industry was unhappy. Is the Minister in a position to give the assurance that a person on the committee will be a grower who is up to date with the industry's requirements?

Hon GRAHAM EDWARDS: I cannot give an assurance that a person like that can be found. Certainly that is the type of person they will be looking for - someone who has that current knowledge. We cannot turn around and say that will be a grower although it may well be. We cannot say that because a grower may not nominate. However, the person appointed will be as knowledgeable and as practical as possible.

Hon W.N. STRETCH: The commissioners' positions will be part-time positions. Therefore, the question of unavailability would rule out a person of distinction such as Mr Sumich.

Hon Graham Edwards: The positions will be part-time positions.

Hon D.J. WORDSWORTH: This is the first time that I have witnessed the creation of a commission without a farmers' organisation representative appearing on the board. I do not know whether that represents a down side, but I take the opportunity to be the first person to congratulate the Minister for breaking away from the tradition.

Hon Graham Edwards: The difficulty is to find someone with common interests across such a diverse industry.

Clause put and passed.

Clause 6: Functions of the Commission -

Hon J.N. CALDWELL: I notice in subclause (3) that the commission is subject to any direction given by the Minister. Could the Minister explain exactly what type of direction that means? It appears that with the setting up of the commission, the Minister is to be top dog over the whole organisation.

Hon GRAHAM EDWARDS: The words were included to provide a safeguard. That power would only be acted upon when necessary and for the purpose of accountability.

Hon W.N. STRETCH: This clause states that the commission may dissolve growers' committees. Is there any way under this Bill that a committee of growers can remove a commissioner?

Hon Graham Edwards: No.

Clause put and passed.

Clause 7: Funds of the Commission -

Hon W.N. STRETCH: The Minister has stated that the \$500 000 is a figment of someone's imagination but that figure was brought to my notice. Obviously, the Minister's advisers have sketched out some sort of budget for the operation of the commission covering salaries for part-time positions, support staff, and so on. Is the staff to be seconded from other areas?

The funding for the commission will be via an advance from Treasury. Will that be in the form of a grant or will the funds be stripped from another department, such as the Department of Agriculture which, in my view, is not in a position to forego such funding without this impacting on the department's operations in other areas of the State?

Hon GRAHAM EDWARDS: The figure will be in the vicinity of \$5 000 and will be provided via the Department of Agriculture. The initial staff required would be existing staff of the department.

Hon W.N. STRETCH: I assume the \$5 000 will cover mainly the stationery and the part-time salaries of the directors. Will there be a contra for the work done by the Department of Agriculture?

Hon Graham Edwards: No.

Clause put and passed.

Clause 8: Application of funds -

Hon W.N. STRETCH: The recoupment of funds by Treasury after the commission is up and running causes some concern to people who have contacted me. I gather that the Treasury might or might not call for a refund. If the funds are provided from the Department of Agriculture budget, the department would not be in a position to call for a refund. If the funds were to come from Treasury, recoupment could be an expectation.

Hon GRAHAM EDWARDS: This would be a temporary measure to get the commission up and running. Treasury may recoup moneys advanced. As far as possible, we envisage that the commission will be self-funding.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Preliminary requirements for the establishment of growers' committees -

Hon D.J. WORDSWORTH: This clause sets up growers' committees and the conditions applying thereto. The clause provides that before appointing a growers' committee the commission shall publish its intention. That worries me a little. The word "publish" is a worry. Where and how would the publication take place so that people would see it? Subclause (2) states that such a publication will specify the horticultural produce the subject of the proposal, the class or variety, and the part of the State.

How do we ensure that the advertisements come to the notice of people who are not in the industry at the time? How does such a person respond? How do I know that, say, my son does not want to be a tomato grower in three years' time? That is the difficulty in making rules for the future. At the moment, there is no hope of becoming a dairyman in Esperance. The same thing happened when districts were established and Esperance was not in the district. A farmer set up a business and invested hundreds or thousands of dollars but the industry killed him, with the aid of the Minister of a coalition Government. They set about killing his business, and did so. They rendered him inviable, which is easy to do. It was done on behalf of a committee like this one - it happened to be the Milk Board with grower representatives on it. It was very sad.

The point is that if a committee is set up now to deal with, for example, apples, which used to be found all around Donnybrook, it will lay down conditions which are admirably suitable for Donnybrook. What about people who wish to join the industry in Esperance, where there are different varieties? This Bill means that the whole State can be declared to be the area. If it only declared smaller groups, and did not allow them to get any bigger, it would be better. It appears from this Bill that the whole State will be able to be declared the area. I can see that in future people will be prevented from starting up in an industry. I am thinking particularly of Kununurra, which is now proving to be very successful at growing things. If this Bill had been before the House 10 years ago its provisions could have excluded growers in that area from getting into the industry.

I appreciate that if someone feels that the setting up of a committee will be to his financial detriment he can object and the commission will take that into consideration. Unfortunately, at the time a committee is set up many people would not realise that it will be to their detriment. I wonder if producers would ever have been able to grow bananas at Kununurra had such a board been set up five years ago. I think it could have looked after that industry very well, because it could declare who growers would be. I hope that people in isolated areas will complain if there is only one growers' committee in the State. A number of committees, confined to the smaller groups of growers which particularly want these sorts of provisions, should be established.

As I said before, the poll is a very sensible provision. It states that 75 per cent of those who are eligible to vote have to vote, and 70 per cent of those voting have to be in favour. I still think that people growing a product in an isolated area could find themselves included in this provision, vote against it, and still be dragged in against their wish. I note that the final part of the clause states that if the commission, having had a poll and done everything else, thinks that a committee will not work, it can decide not to go ahead and establish a committee regardless of the fact that all the provisions have been carried out. That is a sensible part of the clause and I support it.

Clause put and passed.

Clause 11: Establishment of a growers' committee -

Hon D.J. WORDSWORTH: I note that subclause (2) states -

The Commission shall not appoint a person to be a member of a growers' committee unless the Commission is of the opinion that the person is qualified to be so appointed in relation to the kind of horticultural produce in question.

I emphasise the word "qualified". Does that mean that person has to be a grower only? If it does, it seems odd that he has to be qualified. Perhaps he needs a PhD in marketing.

Hon GRAHAM EDWARDS: That is exactly what we are not saying. Such a person does not need a PhD in marketing. We are looking for a person who is knowledgeable about the industry in which he is involved.

Hon W.N. STRETCH: Subclause (1)(a)(ii) states -

whether the growers' committee is appointed in relation to the whole State or in relation to only a portion of the State . . .

Will this be a question of first in best dressed? Suppose the avocado growers in Western Australia are concentrated in one area, they are the only producers, and they register their interest in the production of avocados as being the growers' organisation of Western Australia. How exclusive is that organisation's right to say, "We are the sole organisation"? If another group wants to set itself up later on, does it have the right to do so in the same area? Can the first group say, "We have set up our committee and we do not want another committee impinging on the marketing structure which we have set up for avocados"?

Hon GRAHAM EDWARDS: In practical terms there can only be one committee in a geographical location, but there is nothing to prevent other growers who come along at a later date, who are growing in that geographical location, from becoming members of the same committee. I cannot see any way in which they will be able to start another committee in the same geographical location.

Hon W.N. Stretch: That is not what I am getting at.

Hon GRAHAM EDWARDS: The commission would refuse it permission to do so.

Hon D.J. WORDSWORTH: I am sure the Minister has recently tried to eat a peach in our dining room and found that it is completely inedible and green. We have already heard Mr Oliver say, on behalf of his producers, that they are trying to prevent their product from getting onto the market too early. Would the Minister agree that we should set up a peach board in Perth to prevent someone marketing his product in Geraldton before peaches from the majority of growing areas are ripe?

Hon GRAHAM EDWARDS: The determining factor in my experience is quality. There are always people who will try to get a poor quality product onto the market or get it onto the market too early.

Hon D.J. WORDSWORTH: I also ask the Minister if he has ever eaten a new potato in Western Australia. They are beautiful little things, of the small size I am indicating, when eaten with mint. They can be found everywhere else but in this State. Why? It is because no-one digs up early potatoes in this State.

Hon Graham Edwards: Marketing.

Hon D.J. WORDSWORTH: It is not marketing at all. The board decides to go with quantity, sets a price, and to the devil with quality.

Hon GRAHAM EDWARDS: The committees we are talking about will not be set up to regulate but to provide services. I would like to have an argument with the member about potatoes, particularly the smaller ones, because they have a lot of taste and it is a favourite subject of mine, but that is the situation.

Hon W.N. STRETCH: I was not totally satisfied with regard to the right of a body to claim State wide acclaim for a certain product.

Hon Graham Edwards: We are not talking about State wide. No one body could be set up in, say, Kununurra and be the body for the State when there is a completely different geographical location with completely different requirements in, say, Carnarvon.

Hon W.N. STRETCH: I refer to the situation of new products. We have seen the renaming of the Chinese gooseberry, and when somebody starts a new product, they, with reason, believe they are speaking for the State. Is the Minister saying that the commission will not allow any one grower body to set up an exclusivity clause? If the Minister can go along with that, it would be useful if he were to indicate this in *Hansard* at this stage because it will preclude anyone going ahead through the Interpretation Act, which could lead to demarcation disputes - if that is the right term - on who has the right to sell new varieties, bearing in mind that we are going into plant varieties rights and we will have a massive increase in new varieties, as well as the general species in existence at the moment. There is a danger with this legislation and we must try to foresee the pitfalls in the future, because I can see plenty.

Hon GRAHAM EDWARDS: It could be that the geographical location, in any instance, could be the State, but it will only happen after all the growers in this State have been canvassed.

Hon W.N. Stretch: So, nobody will get sole rights?

Hon GRAHAM EDWARDS: No.

Hon D.J. WORDSWORTH: If a growers' board were established, say, for apples, and the majority of apples were grown at Donnybrook, does the Minister say that the committee must come from and control only the Donnybrook area? The problem is that a variety of apples could be developed in Kununurra, and these growers have enough difficulties entering the market anyway under the free enterprise system; this board would make it very difficult for new growers in this situation.

Hon GRAHAM EDWARDS: The commission has a responsibility to appoint a committee that represents all of the growers. The difference is whether all those growers come from a small geographic location within the State or whether they, and I cannot think of an example to give, may come from across the State. Either way, the committee cannot be established until all the growers, whether it is a small location or the whole State, have been canvassed.

Hon S.M. PIANTADOSI: Clause 10(7) indicated that this process is needed and protection is given to those members within the State, not for a particular section of the State, and that protection will carry on.

Hon C.J. BELL: The debate has concerned me a good deal because I interpret from what was said by the Minister that there is a prospect of the Horticultural Commission controlling production through various means.

Hon Graham Edwards: It will not control production at all; it will provide a service.

Hon C.J. BELL: I hope that that is clear and explicit because I will speak against any prospect of the control of production. I think the point raised by Hon David Wordsworth is so true in that we do not know how the industry will develop, we do not know about plant

variety rights, and we do not know what genetic engineering will produce. One of the problems is that the growers wish to maintain the status quo and resist the challenges and wishes of the researchers and people who want to do things differently. History clearly illustrates what ultimately happens when people try to capitalise on this restrictive entry, which acts to the detriment of the whole community. I am very concerned that there should be no suggestion of restricting access, regardless of whether it is within a particular area or outside. The commission itself must be established on the basis of true marketing and that involves identifying the market and benefiting the market rather than restricting it.

Hon S.M. PLANTADOSI: Members may recall the Select Committee into this matter which you, Mr Deputy Chairman, chaired in 1984. If members opposite read the report of that committee, they will realise that some regulation of this industry is necessary. I am not talking about control, I am talking about regulation. The industry was in complete disarray and I think you, Mr Deputy Chairman, would concur with me. This commission and its intentions are well founded and well placed and reading the report I mentioned earlier will allay the fears of several of the members opposite.

Hon GRAHAM EDWARDS: What Hon Sam Piantadosi has said on both occasions that he has spoken in this debate is correct. He pointed out that in clause 10(5) of the Bill it states that the commission shall not establish a growers' committee in relation to horticultural produce unless the commission has, after complying with subclauses (1) and (2), conducted a poll among growers of horticultural produce, the subject of the notice referred to in the subclause. I can keep repeating that argument. What Hon Sam Piantadosi said about regulation is true although it is not part of this Bill; to look at the functions of the growers' committee it is necessary to refer to clause 12. I agree with everything that Hon Colin Bell has said about promotion and marketing and that sort of thing that we hear about.

Hon D.J. WORDSWORTH: It seems to me that we are trying to tell the horticultural industry that it has its problems and we recognise that. The same thing happened to us in the agricultural industry when we had the same sort of problems and a board was set up. I am warning members about the things that happened in agriculture. It is not possible to buy a new potato in Western Australia. Why not? They are eaten everywhere else in the world. It is not possible to have a dairy operation at Esperance, and the last dairy in Albany has just been closed. This is what happens with the orderly marketing that everyone seems so keen on. Twelve months ago the Minister was able to set down a charge for those who want to buy grain from the Grain Board, and I tried to buy some grain the other day and found the fees were very high. I had to pay the fees and those for research before I was allowed to go out and buy the grain; if I was not able to buy the grain, it was too bad and I lost my money.

Hon S.M. PLANTADOSI: My use of the word regulation earlier was possibly an error on my part because it hinted at some form of regulation by the board. I think that clause 12 will clearly indicate to everybody in the industry - as did the findings of the 1984 Select Committee - that some order is needed in this industry. At the moment there is total chaos in the industry and it is fragmented.

Hon W.N. Stretch: That is a bit wide; it is not total.

Hon S.M. PLANTADOSI: I speak with authority on this and I could take Hon Bill Stretch down to the market in any area and point out the trouble spots.

Hon W.N. Stretch: You would not find the growers at the markets.

Hon S.M. PLANTADOSI: I am not talking about the growers; the honourable member is talking about the growers. I am speaking about the industry and its severe problems. I believe that clause 12 will address some of its problems.

Clause put and passed.

Clause 12: Functions of a growers' committee -

Hon W.N. STRETCH: Does this clause give the commission the power to impose production quotas on the industry or sections of the industry?

Hon Graham Edwards: Emphatically no.

Hon J.N. CALDWELL: The clause refers to different services. Many of these are available already from the Department of Agriculture. Why have they been included in this Bill?

Hon GRAHAM EDWARDS: They may be available already from the Department of Agriculture but it may well be that the committees will want to pursue those services also.

Hon C.J. BELL: Paragraph (i) refers to formulating schemes for declaring growers accredited growers. I hope that committees will not be allowed to use this clause to control entry into the industry. Quite clearly the paragraph is there for the purpose of declaring growers accredited growers.

Hon GRAHAM EDWARDS: I give that assurance. Nowhere under the Bill will anyone be prevented from entering the industry. The Bill refers to the standards of the growers and of the produce. That is all this clause is about. It is about accreditation to different standards, not controlling entry into the industry.

Hon D.J. Wordsworth: What happens if you are not accredited?

Hon GRAHAM EDWARDS: Absolutely nothing. There is no compulsion. However, some people pursue excellence within a growing area which may be to the benefit of their own personal pursuits or business pursuits.

Hon D.J. WORDSWORTH: Other things could be read into this clause. One cannot be a dairyman now without being an accredited dairyman.

Paragraph (b) covers a wide variety of things. After all, diseases and pests control apply to all crops. Fruit fly control is very important and should be compulsory.

Hon GRAHAM EDWARDS: As I said earlier, there is no compulsion for people to have their properties sprayed. A compulsory scheme in terms of fee for service may exist, but there is no scheme which compels a person to have his property sprayed.

Hon D.J. Wordsworth: I know full well that the Japanese will not allow fruit into their country if there is a chance of its being infested with fruit fly. It could be reasonable, therefore, for the growers' committee to say that it will only accredit those people who control fruit fly.

Hon GRAHAM EDWARDS: Which means they would not be accredited.

Hon D.J. Wordsworth: That is right; which means you are forcing people to become accredited.

Hon GRAHAM EDWARDS: No.

Clause put and passed.

Clause 13: Power to require information -

Hon GRAHAM EDWARDS: I move -

Page 9, lines 20 to 30 - To delete subclause (1) and substitute the following subclause -

For the purposes of facilitating the establishment or operation or both the establishment and operation of the relevant growers' committee the Commission may by notice served on a grower require the grower to furnish in writing in the form of a form specified by the Commission within the time specified by the Commission such prescribed statistical information as is specified in the notice.

Page 9, line 33 - To delete "an advertisement" and substitute the following -
a notice

Hon D.J. Wordsworth: It sounds like a compulsion to me.

Amendments put and passed.

Hon W.N. STRETCH: This clause touches on the earlier question of mailing lists. I urge the Minister to allow for the growth of future committees when notices are being sent out. It is important that those people are kept informed of what is going on by the commission and by the growers' committees.

Hon Graham Edwards: That is agreed.

Clause, as amended, put and passed.

Clause 14: Power to impose charges in relation to services -

Hon J.N. CALDWELL: Can the Minister give me any idea of what the charges to be imposed will be? Will they be imposed on a gross sales basis, a commission basis or an acreage basis? I know it will vary from product to product, but there must be some way that the Minister can give us an indication of what they will be.

Hon GRAHAM EDWARDS: They would be the most applicable to the situation. They may be one of many or all of many, but they will be minimum fees calculated to provide the service.

Clause put and passed.

Clause 15: Dissolution of a growers' committee -

Hon W.N. STRETCH: I assume the commission is the incorporated body covering all of the non-incorporated growers' committees. Many growers' committees are already incorporated in their own right. In the event of a liquidator being appointed, will the liquidator deal with the commission or with the growers' committee?

Hon GRAHAM EDWARDS: The liquidator will deal with the committee.

Clause put and passed.

Clause 16: List of growers -

Hon C.J. BELL: I ask the Minister to outline how it is proposed to compile the lists of growers. Will the lists be compiled from people involved in the activities of the markets, from the Department of Agriculture, or from the roadside stall holders?

Hon GRAHAM EDWARDS: All of those things are based on the best information available.

Clause put and passed.

Clauses 17 to 21 put and passed.

Clause 22: Recovery of charges -

Hon J.N. CALDWELL: Under this clause the Minister can direct the commission to take the committee's funds from any bank it may have an account with. Under clauses 7(3) and 18(1) the committee should not have any money except that which is paid into the Horticultural Produce Commission's account. I wonder why the commission will be in a position to obtain money from other sources?

Hon GRAHAM EDWARDS: It is purely transitional money.

Clause put and passed.

Clause 23: Evidentiary -

Hon W.N. STRETCH: This clause worries me because it states that in any legal proceedings proof is not required of the constitution of a growers' committee, the constitution of the commission or any resolution of the commission or growers' committee. We appear to have reached a technical area and perhaps the Minister would prefer to report progress because of the hour. This clause appears to cut cross normal legal processes. What is needed in the way of proof?

Hon GRAHAM EDWARDS: I am advised that is not the case.

Hon W.N. Stretch: Proof is not required? The mind boggles.

Hon GRAHAM EDWARDS: It is a technical and standard clause.

Hon C.J. BELL: I am also concerned about this clause. A growers' committee may take a dislike to a grower and the committee could say that person has done something and it does not have to prove what he has done wrong. The committee does not have to produce minutes of the meeting to outline the area of concern.

Hon GRAHAM EDWARDS: I can only reiterate what I said earlier. The clause is worded in that way on the advice of Crown Law.

Hon W.N. STRETCH: Is the Minister in a position to inform the Chamber of other Acts in which this clause appears. Quite frankly, I have not come across such a blatant clause in my life. If this sort of clause is in our Statutes it is time we looked at them.

Hon E.J. CHARLTON: It certainly needs clarification by the Minister and he should give some examples of Acts in which a similar clause is in place. If we have to take the Minister's advice on face value it is obviously not the correct way to go about it. There could be a problem. The Minister should expand on this clause.

Hon C.J. BELL: Once again I would like to draw the Minister's attention to what is a common practice in country towns. If a regulation has been in place for some time and it does not cause concern someone could come along and throw a spanner in the works and say it does constitute a problem. The end result would be that the committee could be accused of not operating properly and of having done something which was outside the powers of the Act, and it could be taken to court. The commission could then be taken to court and the committee could be asked for proof of its agreeing to action being taken. The growers' committee could say that it did not need to provide proof. The Minister has said that it is common standard practice to have clauses of this nature in Acts. If that is the case I agree with Hon Bill Stretch and I would want the Acts reviewed.

Hon GRAHAM EDWARDS: I have again sought advice from Crown Law and I reiterate what I said earlier: The clause is in the Bill to avoid going through the process of proving formal matters in terms of bringing forward the secretary, the president or the vice president. A similar clause appears in other Acts on the advice of Crown Law.

Hon A.A. LEWIS: If it is the advice of Crown Law I am horrified. The Minister has been asked what other Acts contain a similar clause. I believe he should report progress and obtain the proper legal advice. If it is Crown Law advice, the whole Bill is open to question.

Hon GRAHAM EDWARDS: There is no need to report progress. This clause is a standard one. It prevents the necessity for people to drag the whole committee down when there might be some answer to a charge. It is purely a means of proving formal matters.

Hon C.J. BELL: I am very concerned about that because it seems that a matter could be taken before a court when an action is approved by a committee without having to prove that it happened. If an authorised person of the committee said it happened, then it happened. Given that we may well have a dispute as to whether it did happen, I have grave concerns about this provision. I hope the Minister and his advisers will at some stage advise us about all the other Acts that include this clause. I would ask that the clause be removed from all such Acts.

Hon GRAHAM EDWARDS: I am not in a position to provide that information. I can only reiterate that what I have said I have said on the basis of Crown Law advice and I do not have any reason whatsoever to doubt that advice.

Hon W.N. STRETCH: Could the Minister specify in what other Acts this clause appears?

Hon GRAHAM EDWARDS: Off the top of my head, no.

Hon A.A. LEWIS: If the Minister with the Crown Law advice he has cannot give that answer, perhaps this Crown Law advice differs from Crown Law advice in other Bills of this nature. Looking at the hour, I can see only one solution; either the Minister must report progress or we must come back after the suspension of the sitting for dinner to deal with the Bill.

Hon GRAHAM EDWARDS: In view of the very persuasive argument put up by Hon A.A. Lewis, I will report progress and seek leave to sit again.

Progress

Progress reported and leave given to sit again, on motion by Hon Graham Edwards (Minister for Consumer Affairs).

ADJOURNMENT OF THE HOUSE: SPECIAL

On motion without notice by Hon Kay Hallahan (Acting Leader of the House), resolved -

That the House at its rising adjourn until Tuesday, 6 December 1988 at 11.00 am.

House adjourned at 6.15 pm.

QUESTIONS ON NOTICE

OFFICE OF GOVERNMENT ACCOMMODATION - MELBOURNE PROPERTY
Sale

552. Hon MAX EVANS to the Minister for Consumer Affairs representing the Minister for Police and Emergency Services:

The 1987 annual report of the Office of Government Accommodation reported the sale of a Melbourne property.

- (1) Was it a policy decision to sell the property?
- (2) Was the sale of this property linked with the purchase of the Trades and Labor Council building, by providing the necessary funds for its purchase?
- (3) What is the exact location of the Melbourne property sold?
- (4) Who were the tenants and what was the net rental?
- (5) Was the property sold by auction or negotiation?
- (6) Was the sale advertised?
- (7) If so, by whom and on what dates?
- (8) If by auction, how was the reserve price arrived at?
- (9) If sold by negotiation, who did the valuation; and what was the date and to whom was it addressed?
- (10) What were the purchase price and the terms of sale?
- (11) Who purchased the property and was it an adjoining owner?
- (12) If the purchaser was a corporate body, who were the directors and major shareholders?

Hon GRAHAM EDWARDS replied:

- (1) Sale of the Government's shareholding in the property recommended to the Cabinet Budget Committee by the Government Accommodation Board, and approved by the Cabinet Budget Committee on 9 January 1987.
- (2) No.
- (3) Shops 2 and 3A Royal Arcade, Bourke Street Mall.
- (4) (a) Tenant was the Western Australian Tourism Commission;
(b) payment of rental was not applicable.
- (5) Neither. Sold by way of public tender.
- (6) Yes.
- (7) (a) Through the agency of Colliers International, Melbourne; and
(b) sign on property, several insertions in six newspapers, and various other forms of advertising during April and May 1987.
- (8) (a) Not sold by auction; and
(b) reserve price was the Melbourne Valuer General's Office assessment of market valuation - \$3.5 million.
- (9) Not sold by negotiation.
- (10) (a) \$6.16 million; and
(b) 10 per cent deposit on acceptance of tender; balance within 60 days of closing date of tender.
- (11) (a) Shares were purchased by Thomas Jewellers (Aust) Pty Ltd; and
(b) not known whether the purchaser was an adjoining owner.

- (12) Directors: James Alfred Thomas
James William Thomas
Helen Start Thomas
Leslie James Drury
- Secretaries: Cyril Lorimer Barbour
Judith Beth Dubberley
- Shareholders: 1 000 issued shares.
James William Thomas - 1 share
Helen Stark Thomas - 1 share
Fourth Oupan Pty Ltd - 998 shares.

PLANNING - SWAN BREWERY SITE

Tunnel Construction - Costs

553. Hon P.G. PENDAL to the Leader of the House representing the Minister for Works and Services:

Would the Minister detail for me the specific costs of the tunnel to be constructed on the site of the old Swan Brewery?

Hon J.M. BERINSON replied:

Cost of basic structure	\$1 025 000
Services	150 000
Internal finishes	35 000
	<hr/>
Total	\$1 210 000

LOCAL GOVERNMENT - TARIN ROCK CEMETERY

Reopening - Residents' Requests

567. Hon P.G. PENDAL to the Minister for Consumer Affairs representing the Minister for Local Government:

- (1) Has the Minister received requests from local residents and other interested parties to have the Tarin Rock Cemetery reopened and used for burials?
- (2) If so, what are the prospects of having the cemetery reopened?

Hon GRAHAM EDWARDS replied:

- (1) Yes, one request in 1987.
- (2) The closure of Tarin Rock Cemetery was initiated by the Shire of Dumbleyung which has reconsidered its decision on three separate occasions. It has decided against reopening the cemetery because it considers the district has adequate facilities at two nearby cemeteries and the Lake Grace Cemetery - within a 20 kilometre distance. On this basis, the council is not prepared to support the reopening of the Tarin Rock Cemetery.

MOTOR VEHICLES - REV

Private Sale - Debt Recording Procedure

570. Hon D.J. WORDSWORTH to the Minister for Consumer Affairs:

With respect to the register of encumbered vehicles (REV) -

- (1) If a car owner sells a vehicle privately to a person unable to pay the full cash price, in what manner should that debt be recorded?
- (2) Is it sufficient to record that debt with REV or is it necessary to record that debt separately and pay stamp duty on it?
- (3) How long has a vendor got to register an encumbrance with REV before a clear certificate is liable to be issued?
- (4) Once a clear certificate is issued, is it possible for a vendor to still contest an interest?

Hon GRAHAM EDWARDS replied:

- (1) If the car owner retains a security interest in the vehicle the interest can be recorded in REVS by completing and lodging the approved application form.
- (2) The question of whether stamp duty is payable is a question for the State Taxation Department.
- (3)-(4) If an encumbrance is registered a clear certificate will not be issued.
Should the member require further information I am prepared to arrange a briefing by a senior officer of the ministry.

TOURISM - MT BARKER TOURIST BUREAU

Downgrading

579. Hon P.G. PENDAL to the Minister for Consumer Affairs representing the Minister for Tourism:

- (1) Has the commission advised the Mt Barker Tourist Bureau of its removal as a category B centre to a category C centre?
- (2) If so, has the Mt Barker bureau been advised in specific terms why it has been downgraded?
- (3) Will she explain to the House the reasons for this downgrading and which criteria have been used to achieve this?

Hon GRAHAM EDWARDS replied:

- (1) The Country Tourism Review Board has advised the Mt Barker Tourist Bureau that it has been allocated a C category under the new regional tourism policy.
- (2)-(3) The review board advised the bureau that it has been placed in category C in accordance with the criteria of the new regional tourism policy, which has the full endorsement of the Country Tourism Association of Western Australia.

GAMBLING - TOTALISATOR AGENCY BOARD

Cricket - Betting Plans

584. Hon TOM McNEIL to the Minister for Consumer Affairs representing the Minister for Racing and Gaming:

- (1) Is the Minister aware of any plans for TAB betting on cricket?
- (2) If there is to be TAB betting on cricket, will the funds generated from such betting be distributed for cricket only, or to the three racing codes?

Hon GRAHAM EDWARDS replied:

- (1) TAB betting on cricket was launched yesterday under the name Top Score.
- (2) Profit from betting on cricket is paid into the TAB sport betting account. Funds from this account are allocated to sporting bodies at the discretion of the Minister for Sport and Recreation.

QUESTIONS WITHOUT NOTICE

SPORT AND RECREATION - SKATEBOARDS

Dangers - Safety Inquiries

448. Hon G.E. MASTERS to the Minister for Consumer Affairs:

- (1) Has the Minister read the article in today's *The West Australian* outlining the dangers of skateboards in which a medical researcher, Dr Ralph Cohen, said, "Unless precautions are taken, skateboards will become an increasing cause of serious injury and death"?
- (2) What investigations or studies have been or are to be undertaken by the

Government, due to the increasing prevalence and popularity of skateboards and the obvious lack of suitable facilities?

Hon GRAHAM EDWARDS replied:

(1)-(2)

The popularity, lack of venues and the safety factor in relation to skateboards have been issues for some time. The Department for Sport and Recreation, together with local authorities and the Health Department, has, for some time, been investigating a safety design for skateboards. A couple of weeks ago I attended the opening of a commercial skateboard venue. The Health Department had some input into the design of that track which is deemed to be very safe.

It is a very dangerous sport and no matter how many precautions are taken people risk injury. I am happy to obtain the full details of the work undertaken by the department and supply them to the member.

MOTOR VEHICLES - REV

Private Sale - Debt Recording Procedure

449. Hon D.J. WORDSWORTH to the Minister for Consumer Affairs:

Further to my question on notice 570 which reads as follows -

With respect to the register of encumbered vehicles (REV) -

- (1) If a car owner sells a vehicle privately to a person unable to pay the full cash price, in what manner should that debt be recorded?

The Minister replied as follows -

- (1) If the car owner retains a security interest in the vehicle the interest can be recorded in REV by completing and lodging the approved application form.

I can understand that, but I wonder whether it would be more appropriate if the words "should be" had been used. If the interest is not recorded it is my understanding that the person concerned loses his interest in the vehicle. Am I correct?

Hon GRAHAM EDWARDS replied:

This matter has been going on for some time.

Hon D.J. Wordsworth: I cannot get an answer.

Hon GRAHAM EDWARDS: It is not that I do not want to give the member an answer, but my department and I are confused about the information he is seeking. That is the reason I suggested at the end of the answer that if the member wanted further information I would be only too happy to arrange for a member of my staff to give him a briefing. If the briefing does not satisfy the member and he is still unable to obtain the information he is seeking I am happy for him to pursue the matter during questions without notice. Quite simply I am making that offer to the member because I am not sure what he is getting at. I am a little confused.

MOTOR VEHICLES - REV

Private Sale - Debt Recording Procedure

450. Hon D.J. WORDSWORTH to the Minister for Consumer Affairs:

Perhaps I could put the question a little more simply: Every Sunday when I read the *Sunday Times* I notice that there are at least 100 vehicles for sale. Presuming a person sells his vehicle through his advertisement in the *Sunday Times* and the purchaser is unable to pay all the money, what happens? In other words, I think the Minister would recommend that he register the vehicle in the register of encumbered vehicles.

Hon GRAHAM EDWARDS replied:

Bearing in mind the statements that were made in this House yesterday - one by my leader - I am tempted to respond in an endeavour to clear up the confusion which exists, but it may lead to something else.

Hon G.E. Masters: We would not do that.

Hon GRAHAM EDWARDS: I hope that no-one would purchase a vehicle privately on a Sunday. I hope that a person would say that he is interested in the vehicle, but before he purchases it he will check the REV on Monday to ensure there is not a financial encumbrance attached to the vehicle. If a person did that he would ascertain whether there was an encumbrance on the vehicle. It is then up to him how to proceed.

MOTOR VEHICLES - REV
Credit Providers' Interest - Credit Act

451. Hon A.A. LEWIS to the Minister for Consumer Affairs:

With respect to the register of encumbered vehicles, it is my understanding that credit providers are the people who are compelled to register their interests under the Credit Act?

Hon GRAHAM EDWARDS replied:

My understanding of the Act is that anyone who has an encumbrance attached to a vehicle can have that encumbrance registered.

MOTOR VEHICLES - REV
Credit Providers' Interest - Credit Act

452. Hon A.A. LEWIS to the Minister for Consumer Affairs:

I think the Minister misunderstood my question. Are the people who are compelled to register their interest under the Credit Act, credit providers?

Hon GRAHAM EDWARDS replied:

The Act is set up to enable credit providers to register their interest in a vehicle.

MOTOR VEHICLES - REV
Private Sale - Debt Recording Procedure

453. Hon D.J. WORDSWORTH to the Minister for Consumer Affairs:

I am trying to simplify this.

The PRESIDENT: Order! I hope the member does simplify it. The rules of the House state that a member can ask a question only once. We have heard this question four times.

Hon D.J. WORDSWORTH: As it happens, Mr President, it is six times and I cannot get an answer.

The PRESIDENT: Order! The Standing Order does not say that a member must be given an answer. The Standing Order states that a member can ask a question only once. I assume the member is going to ask a different question or is going to alter his question, but it does not mean that he will receive an answer.

Hon D.J. WORDSWORTH: I point out to the House that there are between 50 and 100 people trying to sell motor vehicles on a Sunday. If it takes a departmental officer and 10 questions in this House to find out what the Act states, how do members expect those people to get on? That is all I can say. Surely to goodness the Minister is the Minister for Consumer Affairs - I am trying to tell him what the average person in the street understands from this legislation. I repeat again that if a person sells a motor vehicle and the person to whom he is selling it says that he does not have all the money and asks if he can put down \$1 000 on it, how long does that person who sells the car have to register his vehicle in the register of encumbered vehicles? The Minister will not give me the answer.

Hon GRAHAM EDWARDS replied:

Mr President, I really resent that. I have tried. I have sat down with my officers and we have gone through the question in an endeavour to ascertain exactly what the member is asking. Because we could not determine that my departmental staff and I answered the question the best we could. We are more than happy to provide the information that the member wants but we need to know what it is. I would be absolutely appalled if someone were to leave \$1 000 as a deposit on a vehicle on a Sunday without first having checked the register of encumbered vehicles to ensure the vehicle did not carry with it a financial encumbrance. We are not trying to hide anything. We are not trying to deny the honourable member any information. If he likes to leave the matter with me, I will take it up with him when the House rises. I will go through it with him and see what it is that we cannot seem to get together on, if that is acceptable.

Hon D.K. Dans: They are all cash sales on a Sunday anyhow.

MOTOR VEHICLES - REV
Private Sale - Debt Recording Procedure

454. Hon A.A. LEWIS to the Minister for Consumer Affairs:

As I understand the register of encumbered vehicles, it is not compulsory for any person who has an interest in the car in the way suggested by Hon David Wordsworth to register that interest unless the person is a credit provider under the Credit Act. In explanation, if one of Mr Wordsworth's 100 cars is purchased and there is \$1 000 still to pay on it, that person, if he so wishes, can make application to have it put on the register and it would be intelligent for him to do so.

Hon D.J. Wordsworth: I asked the question: How long do they have to register it?

The PRESIDENT: Order! I am getting sick and tired of the way question time is going. The Leader of the House expressed the same concern yesterday. Members are not contenting themselves with asking the question; they are proceeding to give information as well. I cannot help it if Ministers do not answer questions to the satisfaction of honourable members, but that is not my part. Many facilities in our Standing Orders provide an avenue for taking a Minister to task if he fails to answer a question. I would be quite happy later to talk to honourable members and show them six or seven very legal ways to inflict retribution on the Minister. In the meantime, members should ask the questions and see whether the Minister is able to answer them to their satisfaction.

Hon A.A. LEWIS: I will rephrase the question, Mr President. I thought I had phrased it fairly well. As I understand it, a person who is not registered as a credit provider has a choice about whether he registers a vehicle with the department and people who are registered under the Credit Act and those who are not have exactly the same time to register their interest in a vehicle. Is that the case?

Hon GRAHAM EDWARDS replied:

From my understanding of the Act, that is correct.

BURKE, MR TERRY - HONORARY POSITIONS
Government Committees

455. Hon G.E. MASTERS to the Acting Leader of the House:

Some notice has been given of my question. Apart from being acting chairman of the revamp committee, the overseas relations committee and the sister state committee, what other honorary positions on Government committees are held by Mr Terry Burke?

Hon KAY HALLAHAN replied:

I thank the honourable member for notice of three questions which have been received. The answer to the question just asked by the Leader of the Opposition is none.

BURKE, MR TERRY - EXPENDITURE
Government Department Budget - Responsibility

456. Hon G.E. MASTERS to the Acting Leader of the House:

Under which Government department or instrumentality's budget are the costs of the provision of office space, staff and office expenses for Mr Terry Burke met?

Hon KAY HALLAHAN replied:

Shared office and secretarial support are provided partly by the Western Australian Development Corporation and partly by the Office of Overseas Relations.

BURKE, MR TERRY - TRAVEL
China - Cost

457. Hon G.E. MASTERS to the Acting Leader of the House:

Referring to question 559, will the Minister advise the all inclusive cost of Mr Terry Burke's four trips to China?

Hon KAY HALLAHAN replied:

This information is not readily available as the travel was undertaken over a period of approximately five years. If the member has any particular concern, he should forward details and they will be fully investigated.

Hon N.F. Moore: The question is his concern.

MOTOR VEHICLES - REV
Seller Problems

458. Hon D.J. WORDSWORTH to the Minister for Consumer Affairs:

The Minister has gone to great lengths to explain the benefits of his register of encumbered vehicles legislation to those who purchase vehicles. Will he go to equal trouble to warn those who are selling vehicles of the problems they could get into?

Hon GRAHAM EDWARDS replied:

I will take the member's question on board and have a look at it. The register of encumbered vehicles legislation is of real benefit to the community. I am honestly not aware of any downside to it such as that suggested by Hon David Wordsworth. But I will ask the department to have another look at it and if there is a downside to it, I will relate it to the House and to the public. In the meantime, Mr President, I refer the member to the Act.

MOTOR VEHICLES - REV
Seller Problems

459. Hon D.J. WORDSWORTH to the Minister for Consumer Affairs:

Is the Minister aware that an article in *The West Australian* with a photograph of a car with REVS on its number plate and the Minister beside it actually gave a small warning that people who were selling vehicles could lose money if they did not record the vehicle with the register of encumbered vehicles?

Hon GRAHAM EDWARDS replied:

I have indicated my answer. I will look at the matter in the manner that I have already suggested.

LIVESTOCK - SALEYARDS
Midland - Ownership

460. Hon W.N. STRETCH to the Minister for Consumer Affairs:

- (1) Who currently owns the Midland Junction livestock saleyards and, if that owner is a company, who are the directors?
- (2) Who is the current lessee, if any, of the Midland Junction livestock saleyards?
- (3)
 - (a) Is a lease being negotiated at present that will ensure the continuation of livestock sales at that site; and
 - (b)
 - (i) with whom is it being negotiated; and
 - (ii) over how long a period; and
 - (c) when is it anticipated that the lease will be signed?

Hon GRAHAM EDWARDS replied:

- (1) Pilsley Investments. The names of the directors of this company are available from the Corporate Affairs Department.
 - (2) The Western Australian Meat Commission, although lease negotiations have not been concluded.
 - (3)
 - (a) Yes;
 - (b)
 - (i) the lease is being negotiated with the Government with assistance from the Midland saleyard liaison committee; and
 - (ii) until 9 November 2001; and
 - (c) early in 1989.
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