

# Legislative Council

Tuesday, 7 April 1992

**THE PRESIDENT** (Hon Clive Griffiths) took the Chair at 3.30 pm, and read prayers.

## MOTION - ORDERS OF THE DAY

*Acts Amendment (Game Birds Protection) Bill to be Considered before  
Address-in-Reply*

**HON J.M. BERINSON** (North Metropolitan - Leader of the House) [3.36 pm]: I move -

That Order of the Day No 1 be taken after Order of the Day No 5.

Question put and a division taken with the following result -

### Ayes (13)

Hon J.M. Berinson  
Hon Kim Chance  
Hon Cheryl Davenport  
Hon Graham Edwards  
Hon Kay Hallahan

Hon Tom Helm  
Hon B.L. Jones  
Hon Garry Kelly  
Hon Mark Nevill  
Hon Sam Piantadosi

Hon Tom Stephens  
Hon Bob Thomas  
Hon Doug Wenn  
(Teller)

### Noes (15)

Hon J.N. Caldwell  
Hon George Cash  
Hon Reg Davies  
Hon Max Evans  
Hon Peter Foss  
Hon Barry House

Hon P.H. Lockyer  
Hon Murray Montgomery  
Hon N.F. Moore  
Hon Muriel Patterson  
Hon P.G. Pandal  
Hon R.G. Pike

Hon Derrick Tomlinson  
Hon D.J. Wordsworth  
Hon Margaret McAleer  
(Teller)

Question thus negatived.

## LIQUOR LICENSING AMENDMENT REGULATIONS - DISALLOWANCE

Order of the Day read for the resumption of debate from 1 April.

Debate adjourned, on motion by Hon Tom Helm.

## ADDRESS-IN-REPLY - EIGHTH DAY

### Motion

Debate resumed from 2 April.

**HON B.L. JONES** (South West) [3.44 pm]: I too would like to express my thanks and appreciation to His Excellency the Governor, Sir Francis Burt on his excellent Address at the recent opening of State Parliament. I also pay tribute to both he and Lady Burt for the excellent manner in which they have carried out their duties in representing the people of Western Australia.

It gives me great pleasure to welcome Hon Kim Chance to this Parliament. Having heard his maiden speech recently, I believe he will be a valuable addition to this House. I also appreciated the words of Hon Muriel Patterson, who said that in her opinion he was on the wrong side of the House - clearly because she appreciated his worth.

I also would like to pay a tribute to Hon Jim Brown, who served this Parliament for many years. He was also a loyal member of the Australian Labor Party. I know he worked hard and long on behalf of his constituents. I wish him well in the future.

I congratulate Hon Garry Kelly on his elevation to Chairman of Committees and I am sure he will discharge that duty in the competent manner he has exhibited when acting in that capacity.

It is rare that one subject has dominated the media and the public in general, church groups and various organisations both here and interstate as has what is loosely referred to as "juvenile offending". I am deeply concerned that the attention has largely had a single focus; that is, the Crime (Serious and Repeat Offenders) Sentencing Act. I am concerned about that because it seems to me that the public as a whole feel that the Act was the whole thrust of the Government's response to juvenile offending when it was, in fact, only one prong of its total juvenile justice policy. In my speech today I will discuss those other areas of Government policy; that is, prevention and intervention.

Before doing that, however, I will say a few things about the Crime (Serious and Repeat Offenders) Sentencing Act. Most people know that that Act addresses the here and now of serious crimes. It was a response to public demand that something be done about serious offences. I believe a genuine fear was held by members of the public that they were at risk from violent offenders. I support the Government's intention in this matter, but hold some rather grave concerns about comments that have been made regarding the Act and the possibility that people at whom it is not directed may be caught in its net. I am told that the Act could lead to some misinterpretation of the Government's intention, and that concerns me. The Legislation Committee is considering this Act and I am sure that if the claims I have mentioned are considered possible, the committee will have a serious look at them and address any problems and make recommendations. A watchdog committee has been appointed and must report back to the Parliament within three months. I am hopeful, if the claims that I have heard are true, that they will have been addressed by then. I recognise the need to deal with those who have already demonstrated that they are a potential threat to society. However, my great concern is that we work towards preventing the climate which led to those offences because prevention is obviously a darn sight cheaper than building bigger and better gaols or detention centres. More importantly, the saving in cost of human lives and a reduction in pain and suffering and the life of misery of our youth who find themselves caught up in the prison system is something the community should work towards.

I am sorry that Hon. Eric Charlton is not in the Chamber today, but no doubt my comments will be reported to him. In his Address-in-Reply speech he once again demonstrated that he has absolutely no understanding of the underlying problems that lead to some of our youth feeling that they are outsiders in their own country. He rightly pointed out that we have high truancy rates, particularly among Aboriginal people. His solution, however, was to tell them to go to school; he actually said in his speech that these children should be told they must go to school! That approach was so simplistic that it was frankly laughable. It was not perhaps surprising that that came from Hon Eric Charlton when one takes into account some of his comments which were reported in the *Albany Advertiser* last January and which called for the widespread reintroduction of corporal punishment. He was also reported as saying that pain was the only thing that some people understand. He obviously considers that any attempt to intervene in the potential for offending before young people get into trouble is a waste of time. He sees the introduction of any programs to this end as soft and counselling as a dismal failure. Those were his words.

What then should we do with these children? Should we wait until they offend, give them a good flogging and send them to gaol indefinitely? I think not. I believe strongly that people should have the opportunity to hear the Government's policy on this matter because it is working towards prevention and intervention. I do not believe that knowledge of this is filtering through to the general public.

Hon Derrick Tomlinson: That is because the Government is not doing enough.

Hon B.L. JONES: I have heard the Premier, Carmen Lawrence, the Leader of the House in this Chamber, and others talking about Government policies. However, that is not getting through, generally speaking, to the people out there who seem to think our main thrust is catching offenders and putting them in prison. That is far from the truth; that is dealing only with the here and now. Obviously we must look at what leads to the offending and intervene when we can to stop it progressing.

Hon P.G. Pandal: Your own Brentwood branch opposes what you are doing.

Hon B.L. JONES: The member can make his own response later, if he wishes. The fact is that the number of offences has been steadily declining. That is some of the good news I have to tell the House, and I think credit should be given to the successful programs which

are already in place. Before doing so, however, we should look at some of the social problems which have led to these children offending in the first place. I am repeatedly calling them children because in my opinion most of them are still children. Daily we see a host of negative role models paraded before us on the electronic media. The fact that we as parents allow our children to sit and watch television - and frequently watch with them, without comment - and see them looking at the changing sets of values and the violent behaviour depicted on our screens is really giving tacit approval to that sort of behaviour.

Hon P.G. Pendal: Hear, hear!

Hon B.L. JONES: When young children first start watching violent cartoon characters that knock people over and kill them, we as parents say to them, "It is all right, that is not real life. That does not really happen, it is just a cartoon character." Yet when our adolescent children, at an impressionable age, are watching television alone - and it frequently happens that children are left to watch television alone - they gradually come to accept that behaviour as normal. If we know our children are watching programs which are depicting something which we believe is not right for them to see, we as parents should at least sit down with them and discuss it afterwards, and talk about what we have seen and whether it is correct behaviour and what impressions we gained from it.

Hon P.G. Pendal: Well spoken!

Hon B.L. JONES: I am glad the member agrees with me. We must also recognise that many parents are affected by job restructuring and high mobility, and their children are subjected to being uprooted from their homes and are frequently sent from school to school. This creates a great many problems because children find it very difficult to break into friendship groups that have already been formed at schools. Most of us know that children who regularly go to school form groups with which they are comfortable, but when children go to a new school they find children who are perhaps in a similar situation to theirs; they are on the fringe and perhaps they feel antisocial because they cannot break in to a group, find it difficult to make friends and have no stability. Regrettably many of these children are the ones who get into trouble at school. Many children also have parents who have been unemployed for many years. Again regrettably, it is now not uncommon for unemployment to span two generations. Obviously those parents are frustrated. They start to have a feeling of negativity and a poor self-image, and in time that is communicated to their offspring. Too often children without roots have no-one with whom they can communicate except their contemporaries, which in many cases is simply a reinforcement of their own poor self-image. This in turn leads to a negative attitude to those in power, or feelings of anger towards those who have as against those who have not.

I am certainly not attempting to either defend or excuse offenders, but in seeking to find answers surely we must first understand some of the causes so that we can know where to start. Many studies have been done around the world and perhaps it is timely to remind people that young offenders are not unique to Western Australia, or indeed Australia. We can and have learnt from other studies, and while I agree with Hon Eric Charlton - surprise, surprise - that in the past many of our policies and programs have not worked and that money has been misdirected on some occasions, we certainly have learnt from those experiences and are now endeavouring to rectify those mistakes.

There is now a new direction aimed at prevention and intervention which is proving successful. A measure of its success can be demonstrated by an evaluation of the local offenders' programs, which showed a downward trend in 1991. I am told the more recent figures show a continuation of that drop and I have here an evaluation which shows those figures. If anybody is interested, I am happy to table it.

So how are these figures being achieved? Firstly, it is recognised now that a multi-agency approach in working with people by bringing families into discussions and counselling - that word Hon Eric Charlton does not like - and by coming to understand their background difficulties helps us to understand how to tackle the problem. I want to talk about two particular programs, the early education program and the home support scheme. The early education program focuses on mothers, and I would hope it includes fathers who have responsibility for rearing their children, although I am not sure it does right now. They are given guidance on how to stimulate their preschool children through interaction and suitable play, and how to help to broaden their children's vocabulary by talking to them and by using

better verbal skills. It may surprise some people to know that these skills do not come naturally to some people, and many parents neglect the need to communicate with their small children and give them learning experiences outside the home. I suppose we all fall back on our own childhood experiences and how we were taught and how our parents talked to us or helped us gain understanding about the world around us, and if some people's early childhood was remiss, how can they have the skills when it comes to rearing their own children? Some people certainly need help in this area. Counselling and talking to those parents and getting them involved in activities may, and does in fact, help to break the cycle. I think most people would agree that the most important teaching takes place in the home before children go to school, or it should. The early education programs take place in the home, on a one to one basis, or in centres with groups of mothers and children, and perhaps fathers. I must inquire about the latter.

The home support scheme has recognised that in the past many programs have been staffed only by non-Aboriginal people and as a result Aboriginal children who should have benefited have often missed out. Steps have now been taken to address the needs of Aboriginal children by the introduction of a program which engages in training Aboriginal education officers with teaching qualifications to assist families who are experiencing difficulties in coping with mainstream education. I suppose that applies to non-Aboriginal as well as Aboriginal children, but it is particularly the case with many Aboriginal children. Members may recall that in a speech last year I pointed out that it was only about the 1950s that Aboriginal people had their first opportunity of going to schools, and they were mission schools. Those children are now grandparents. They were the very first ones able to take part in education, and if they were not able to take full advantage of that at the time, it is today's children's parents who have missed out. Therefore it is logical that they need all the help and support they can get, because mainstream education is a difficult process for most parents to help their children in, never mind those who have had only a recent introduction to it.

Obviously it will take time for Aboriginal teachers to become skilled and qualified, and it will take further time to train them as education officers, but it is vital that we do so. We certainly are making breakthroughs; there are quite a number of Aboriginal teachers in our schools now and I know there are further plans to increase that number. Later on I will outline other strategies in answer to Hon Eric Charlton's comment about the huge Aboriginal truancy problem. Certainly, all programs are clearly more likely to succeed than simply telling them to go to school, as Hon Eric Charlton suggested. As I am particularly concerned about this aspect of the problem of Aboriginal children missing out on education, I made some inquiries of the Minister for Education and her ministry. I asked whether they could give me recent information on what the Government was doing to address this problem. I now comment on the information provided to me.

Obviously, it is important to make the curriculum relevant, and this is a matter of involving Aboriginal people in the classrooms. It may surprise members to discover that Western Australia is considered a national leader in this area. An Aboriginal studies program has been developed which is being piloted in 42 schools. The Premier launched a new textbook on 24 March this year, and I am told that this text will be made available to all schools throughout the State by 1995. It is designed to give recognition to Aboriginal culture.

An Aboriginal language program has been developed so that Aboriginal people can preserve their sense of identity. This language program is being piloted in 12 schools. These programs involve local community members actually working in the classrooms. Also, 118 Aboriginal student support and parent awareness committees - or ASSPA committees - have been established over the past two years. These committees are attached to schools and involve parents making decisions in programs to help their children. The employment of Aboriginal education workers and liaison workers is a key strategy in the increased involvement of Aboriginal people in education. These workers aim to bring schools and the communities closer together, and 224 such programs are in place in Western Australia.

The Ministry of Education intends to increase the number of Aboriginal teachers by providing study release options to allow people to obtain teaching qualifications. To ensure early intervention in students' problems, special preprimary school programs for four year olds provide for Aboriginal children, and currently 29 Aboriginal preschools are operating. It is self-evident that if we can get our Aboriginal children into preprimary schools where

they can mix with other children, and through which they are gradually introduced into the schooling system, this will make the transition process less alienating and the system meaningful for them.

These are some of the Government's strategies to help combat the huge truancy problem, about which I know Mr Charlton is genuinely concerned. As part of the first step literacy program the ministry commenced in 1991 an English literacy for Aboriginal students project. This program has received \$200 000 in Federal funding and is designed to help teachers improve literacy skills for Aboriginal children. Under this project 10 additional literacy specialists are employed to work with teachers in over 20 schools to develop strategies needed to help the children. This involves schools in the metropolitan area, the wheatbelt, the great southern and the eastern goldfields. The ministry is also providing Aboriginal education workers at preschools with a large component of Aboriginal children.

All these programs indicate that the Government is serious about early education and intervention programs. It is a matter of getting to these children early and providing every assistance we can.

Hon Derrick Tomlinson: What if they do not get to school?

Hon B.L. JONES: That is precisely the point of my comments. The preschool children must obtain the benefits of these programs.

Hon Derrick Tomlinson: Where?

Hon B.L. JONES: I have already indicated that they will operate across the metropolitan area, the goldfields and in various other places. The liaison officers communicate between the youths, their families and the schools. The children and their parents need all the help they can get to understand the relevance of education because a lack of such understanding results in many children not attending school. Strategies developed through the programs help them gain this understanding.

Obviously, education is a family matter, and I would like to see preventive intervention programs at primary school level. This is a matter I have discussed with both the Minister for Community Services, Mr Ripper, and the Minister for Education, Hon Kay Hallahan - who I know agrees with me on this point. I suggested that we must get to children during their early school years. In the past many programs have come into play when children reached high school, but if children have difficulties when they reach high school it is an uphill battle to get through to them; they have already had seven years in primary school feeling nothing but failure and they have already developed a poor self-image. By the time they reach high school they often seek attention through misbehaviour. However, I do not suggest setting up a Big Brother approach at primary school.

From grade 2 and 3, children can sometimes be identified as having problems through their antisocial, aggressive or disinterested behaviour. I realise that all children go through difficult phases at different times, but a continuation of poor behaviour or recurring patterns of bad behaviour can be recognised at school. These children should be targeted at a young age, and it is matter of becoming involved with the parents to try to determine why a child is having problems. Recently the Minister told me that it would take a great deal of money and resources to institute these programs across all schools; however, this is something we must work towards.

I would like now to talk about the Killara project, which is designed to help young people at the pre-arrest stage. I do not know whether members are aware of this program, which is a joint initiative of the Police Department and the Department for Community Services. It is an out of hours and weekend welfare service for young offenders and their families, and its role is to provide a preventive service for young people who are just starting to offend; it attempts to divert young people from an early entry into the formal justice system. Killara provides a support system to the police and complements the cautioning system.

Copies of all cautioning notices are sent to Killara, which follows these cases up by contacting the families and offering assistance. Involvement of the family is voluntary. If the family feels that it is having problems with the young person and desires help it can arrange for someone from Killara to meet with the child and its family. Strangely enough the effectiveness of this service came to my notice recently when a young child I know quite well was cautioned. I was told by his mother the other day who said that she was surprised

that she had been contacted by Killara with offers of assistance. I believe they are arranging a meeting this week.

This service started slowly, but it is gaining momentum. It seems that at first the police were a little disinclined to refer offenders to the service, but they are finding that the system now works well and the referrals are increasing daily. The cautioning system arose as a result of research from interstate and overseas which indicated that the majority of offenders offend on only one or two occasions. Therefore, it was concluded that there was no need to use the formal court system to deal with these people. Figures in Western Australia indicate that the vast majority of young people who are dealt with by the panel never re-offend; those who do, usually appear once, twice or perhaps three times, but do not return. The use of the cautioning system was seen as an opportunity to re-establish the family at a point of juvenile offending and to deal with the issues of the child's offending. Killara's role is to follow up juveniles who have been cautioned and brought to the attention of the police.

The main reasons for the children coming to the attention of the police in the first place are that their circumstances are causing public concern; they appear to lack accommodation, or there is a lack of parental supervision or care. The majority of the children referred to Killara are in the 13 to 16 age group, although the ages can vary slightly either side. The value of the cautioning system and of agencies such as Killara is in their ability to help prevent young people coming into contact with the criminal justice system. That system is more likely to increase the risk of reoffending and mixing with other offenders may lead to their being labelled. The role of Killara is to provide assistance to families in resolving problems which may have led to the offending. Killara's intervention may provide the first time that the parents and their child have sat down with a third person to discuss their problems. I am sure most members know the pattern which can develop: Children reach a certain age and think they know everything and want to do what they want. The parents answer by saying that while they are in their house the children must obey their rules and a head-on confrontation develops. Consequently the child marches out. He or she may return and resolve the problem or become another child of the streets.

Hon Derrick Tomlinson: It usually happens when the child turns three and a half!

Hon B.L. JONES: Yes; but we can still control them then. By the time they reach adolescence the situation is much different. The people from Killara, who work on weekends and during the evening, sit down with the parents and provide them with an opportunity to get their feelings off their chest. Probably 90 per cent of parents genuinely have concern for their children and establish rules because they want to protect them. The child may be in the full flush of youth and feeling his oats as it were; and thinks his parents are being bullies. Convincing them to discuss their problems enables each side to hear the argument and listen to the other person's point of view for perhaps the first time.

It is important that the police who refer these children to Killara receive feedback. Once Killara has contacted the families and instituted the appropriate action it contacts the police who referred the juvenile in the first place and informs them of the situation. The statistics are already proving the success of this program. I asked the people from Killara how success could be measured. They said that, ultimately, not having the children cautioned again or subsequently appear in the Children's Court means that something has happened to change their pattern of behaviour. That may have been the first time the juvenile did anything wrong and he or she may not offend again, but the fact is, fewer juveniles are re-offending.

Other programs about which I wish to talk briefly include the 12 local offenders' programs which are targeted at specific needs throughout the State. They were introduced in 1988 as part of the "Kids and Crime" package and they have close involvement with targeted local communities. The program involves providing activities and recreation as well as advice or counselling for young people at risk of offending. Each program is run by an advisory committee comprising representatives of local government, the police, Department for Community Services and the Aboriginal community. The key to the success of these programs is the involvement of multi-agencies and the local community. They design programs and develop strategies appropriate to their needs. A number of these programs are situated in various parts of the State each of which has specific needs. The committee which controls the program helps to design strategies. In 1991 this philosophy was credited with causing an average 25 per cent drop in juvenile crime throughout the north of Western Australia.

Western Australia has also achieved a first in its programs for education and training in Longmore and Riverbank detention centres. Longmore has been linked to technical and further education and young people can now undertake accredited courses in metal work, welding, carpentry and joinery. I know that in the past many people have talked about programs which have been of little value to the children. It has been said they had nothing to do all day except play ping-pong, watch television or read comics. That is certainly not the case now. These accredited courses run for six hours a day with some time out for recreation. The result is that the children leave the centres with meaningful skills. An additional six education officers have been appointed to the detention centres. I am interested in the fact that before the children enter Longmore they are assessed for their literacy and numeracy skills. If an offender is sentenced and sent to that centre for detention, he can be offered specialised education. That is a comparatively new process and of vital importance in providing these children with the education which they probably missed at school for one reason or another.

Numerous programs are in place, but I have had difficulty in picking out particular ones to discuss in the time allocated. Two in particular are worthy of mention: The first is the steering clear program which is designed to help parents cope with teenagers. As I said before, parents often need help to cope with their teenage children. So far 657 parents have participated in the steering clear courses. The second is the mentor program, which is fairly self-explanatory: Community members are recruited to act as role models and provide support for young people who have been released from detention or from other court orders. Many male juveniles, particularly those who have run away from home, may have had no role models. Perhaps they did not have a father or perhaps those who do are unable to communicate with them. The program involves people who volunteer to act as mentors and provide a stable role model with whom the children can talk over their difficulties. It is a new program, but it will have a great impact.

Obviously other programs exist such as drug and alcohol abuse prevention programs. I am pleased to hear of plans by the Federal Government to provide more money for this area. Most members will be well aware that alcohol, glue sniffing and various other substance abuse are the downfall of many children. At Longmore recently, some of the children who were involved in horrific traffic offences reported how they felt during those crimes. Apparently they were so high on substance abuse that they did not recognise themselves as being the people involved. They said it was like standing outside themselves and seeing someone else committing the offences. That is a dreadful state of affairs. Most of the young offenders who commit crimes are under the influence of such drugs. That is clearly an area which we need to concentrate on and allocate more resources to.

I refer now to community work orders. In the past I have heard a number of people criticise the community work order system. They have referred to offenders not turning up or not doing the job properly. I inquired about how the system worked for juvenile offenders and I was told that those complaints did not relate to juvenile work orders. They are very strictly monitored and comprehensive records are kept on where each child went, when, and how the work was completed. Their progress must be reported to the Children's Court within three months. Part of the problem with community work orders for adults is that they are given approximately two years in which to complete their work. That is too long. Quite often the offenders turn up to do a specific job, only to find it had already been completed. I am assured that approximately 90 per cent of juvenile work orders are carried out satisfactorily.

Many more programs are in existence or to be introduced shortly but time does not permit me to elaborate on them. However, one scheme I will mention is the new victim-offender reparation scheme which will be established in Kalgoorlie. Pilot schemes are operating already in Bunbury, Northam and Midland in conjunction with the Children's Court. Under the scheme, victims are brought face to face with offenders in supervised meetings so that they can discuss acceptable solutions to the crimes committed. I know that that is something for which the community has been calling for quite a while. This is now in existence and it will continue to grow because we must consider victims of crime, and we need to make offenders realise the effects of their crimes on their victims.

I have spoken about education, out of hours help for parents and multi-agency approaches combined with community involvement. That is clearly where we should be heading. No single agency working in isolation can hope to address the multifaceted problems facing our

youth. It is essential also that the Aboriginal community be involved when working with Aboriginal youth and that all agencies include Aboriginal workers to help liaise with Aboriginal families.

Finally, with so much media attention focused on young offenders, it should be emphasised that, contrary to public opinion, only 4.3 per cent of Western Australian young people have appeared in the Children's Court and only one-quarter of one per cent of the juvenile population is considered repeat offenders. Over the past few years, 74 per cent of those who came into contact with the Children's Court did so for a maximum of three times and were never in trouble again. These statistics should be more widely known and acknowledged to balance the exaggerated assumption by many people that our youth are getting out of control. I am afraid that is the perception of the general community. They see headlines and hear all sorts of negative comments about youth and say, "I don't know what they are coming to; they are out of control. They should be put in gaol for increased prison terms."

I was interested to see an article in a newspaper the other day echoing the theme on the participation of the community about which I have spoken before. The article appeared in *The West Australian* under the heading, "In a class of their own" and referred to a project being undertaken at the Lockridge Primary School. It states -

The faces of learning are now many and varied for the children of Lockridge junior primary school where adult volunteers are being used to help in classes and to raise student self-esteem.

For nearly 18 months volunteers ranging in age from 23 to 65 have attended the school to help individual students through the Learning Assistance Program.

Hon Sam Piantadosi: It's a changing area.

Hon B.L. JONES: Yes, but this is something that I highly recommend. The article continues -

LAP co-ordinator Ann Graham said the program had proved a great success with students and school staff who had benefited from the extra help.

Ms Graham said volunteers had included a retired teacher, university students, parents, retired business people and others keen to help young children.

She said a key component of the program was the close relationship formed between individual students and volunteers who worked together twice a week.

Volunteers were not expected to be teachers but to be friends to the students and their parents.

They helped staff emphasise oral language development and reading skills and monitor the welfare of students and their families.

"The program involves volunteers working on a one-to-one basis with children who are seen by their teachers to have special needs," Ms Graham said.

These children could be picked for reasons including aggressive behaviour, little communication, lack of parental support, unwillingness to join class or group activities, low self-esteem affecting progress, inappropriate social behaviour or non-English speaking backgrounds.

That is the sort of behaviour I spoke about earlier when I said we needed programs in primary schools to identify these children. I am happy that Lockridge Primary School is involved in doing that. Actually, I used to be a teacher at the Lockridge Senior High School and I saw many students who would have benefited from this sort of program. The article continues -

"More than two-thirds of the volunteers are from surrounding suburbs, most with no prior connection to our school," Ms Graham said.

"We believe their involvement has helped improve the image of Lockridge by bringing people into the suburb and into the school grounds."

Volunteers are trained through specialised workshops to help children with reading and writing skills, to listen and communicate effectively.



School principal Laurie Pond said the program had been received enthusiastically by the Lockridge community.

"The LAP provides the one-to-one interaction that is not always easy to get in the classroom," he said.

Anyone interested in joining the Learning Assistance Program can contact Ms Graham or Mr Pond . . .

A telephone number is then given. I commend that program. It is a clear demonstration of the community taking responsibility for its children.

I have attempted and, I hope, achieved my aim of providing information which I hope will filter down to the general community. Not enough is known about what we are doing. We hear many sarcastic remarks about do-gooders and money being thrown away. I have attempted to show that we are now putting into place programs that directly affect the welfare of our children. If we can prevent the problems and intervene at an early stage in their lives, we will be well on the way to reducing the number of offenders. I do not pretend for one moment that my suggestions are a cure-all. It will take great commitment and resources and a change in the attitudes of people to improve the situation, and that can be done only over the long term. However, we are now heading in the right direction and the decline in juvenile offending proves that. I support the motion.

Debate adjourned until a later stage of the sitting, on motion by Hon Murray Montgomery.

[Continued on p 833.]

## RETIREMENT VILLAGES BILL 1991

### *Second Reading*

Debate resumed from 26 November 1991.

**HON MURIEL PATTERSON** (South West) [4.28 pm]: Last Wednesday evening, the President expressed great concern about the duck legislation because he believed the ducks would die of old age before the legislation was passed. It is my concern that retirees will do likewise because it has taken so long for the House to deal with this legislation after the first rather disastrous attempt.

The Government should be commended for introducing such a timely and comprehensive piece of legislation and also for having the vision to consult with Queensland, Victoria, New South Wales and South Australia before considering the needs of the two quite distinct groups in the west, elderly retirees and the proprietors of retirement villages. It was quite an achievement to strike a reasonable balance between the residents and the obligations of management. That will be done by giving considerable powers of discretion to a tribunal which will be able to mediate wherever and whenever required or invited to by either party to the contract. This may seem trivial to the central issue, but there is often a risk of over sentimentalising the aged by forgetting that personal characteristics can change over time so that formerly lucid and reasonable individuals can become demanding and disruptive with advancing years and, sadly, the onset of senility. Should that happen, it may be necessary for the management of a retirement village to vary the terms of the original contract with the person, for everyone's sake. The Bill allows for this to be done, within strict guidelines, by appealing to a tribunal. Equally, the residents' right of tenure appears to be given the same degree of protection. However, there remain a few points in this area which require further clarification. I have some concern and add a caution about tribunals. They are proliferating without any thought to their constancy, and perhaps this matter should be considered by the House at a later date. It was stated in the second reading speech that -

the Securities Industry Code formed almost the only regulation of the retirement village industry. These did not have wide enough scope to cover the various legal and financial arrangements prevalent in the industry. In response to the release of the draft code of practice and in anticipation of this legislation these provisions were repealed in April 1990.

This seems to suggest that Western Australian retirement villages have been operating for the past two years without any protection, while the Bill has been working its way through the Parliament. I am sure that many people would like an assurance that this is not the case. A

further point which requires clarification is the statement in the second reading speech that -

The Retirement Villages Bill aims to provide the same levels of protection for all types of resident funded schemes. Without this Bill people who purchase under a lease for life or similar tenure arrangements are in an extremely vulnerable position in the event of a financial collapse of the village. Despite paying an amount possibly equivalent to the market value of the unit, they have no equity in their property. This has not always been made clear to them.

Frankly, it is still not clear to me how the Bill provides the necessary protection for elderly persons about to make the last major financial decision of their lives. Again, this needs to be spelt out in greater detail at this stage of the passage of this Bill through Parliament. I reiterate the necessity to spell out very clearly the details of this legislation, as purchase into retirement villages is vastly different from buying a house, and exacerbating the problem very often is the advancing age of the purchaser. Currently 225 000 Western Australians, 13.5 per cent of the State's population, are over the age of 60 years. There is a remarkable trend in Western Australia for retiring people to change their abode. The census of 1986 showed that 70 per cent of people over the age of 60 years lived in separate homes, and eight per cent lived in institutions, nursing homes or hostels. In my opinion retirement villages will increase in popularity because they are practical solutions to aged accommodation. In the discussion paper on retirement villages in Western Australia, issued in May 1987, the common financial arrangements for retirement villages were highlighted, and I bring some of the comments on those schemes to the attention of the House. Under an unconditional strata title -

The resident has the subsequent right to dispose of the property within the prerequisite conditions for residing in the village.

Under a conditional strata title -

The resident has clear title to the property, however, the conditions imposed may limit the extent to which that right can be exercised.

A purple title - so called because it is made on purple coloured paper -

is basically a tenancy in common agreement. As such its security is not recognised as being as complete as a strata title by financial institutions as all tenants must consent to movements in ownership. Some villages using purple titles have reduced the effect of this problem by providing for a trustee to act for the body of tenants as signatory on their behalf.

The discussion paper states on the subject of lease or licence based arrangements -

Schemes using a lease or licensed based arrangements for residence in a village provide the resident with rights over the use of their unit for life (licence) or for a specified lease term.

The difference between lease and licence is that a lease specifies a lease period (for example 21 years) whereas a licence scheme provides the resident with life long right of occupancy. Both options may have clauses allowing the residents to be moved from the village where failing health prevents independent living.

In these schemes the resident is buying the secured right to occupy and to receive the benefits associated with being in a village such as use of common facilities. The resident is NOT buying the property.

There is also a full price lease agreement under which -

The resident has the right of sale over the lease on the unit within the terms and conditions provided by the lease agreement.

These normally require

- management approval of sale
- management option to buy
- capital gains to be shared between management and resident (for example 60% to management 40% to resident). Alternatively an annual percentage is taken from the sale price as a depreciation charge.

There is also a term lease, which is part refundable, about which the following statement is made -

On termination of the lease the resident is refunded a proportion of the ingoing fund. This proportion may be calculated on the basis of the ingoing price less an annually deducted percentage.

The paper also states on the bond payment arrangement -

This form of tenancy may provide secure tenure for life or for a fixed term. The agreement may constitute a simple rental arrangement with the relationship between the resident and management being that of tenant/landlord. As such the resident may not have secure occupancy.

Under the heading "Contributory Schemes" the paper states -

The resident pays an ingoing donation usually between \$7,000 and \$11,000, plus an interest free loan for the residue value of the unit. . . .

Tenancy may be for life or for a fixed term.

During the first three years of occupancy a resident wishing to withdraw from the scheme may receive partial refund of the ingoing donation. The refund is determined on a reducing scale over the three year period.

I shall not take up further time of the House by discussing subsidised schemes and donations, but these also exist.

A draft code of practice on the retirement village industry was produced in November 1989. The following point, made at page 11 of that paper, is a very good one which must be emphasised -

#### Legibility and Presentation Requirements

The residence contract and any other contract between management and a resident of a retirement village shall:

- be written in clear, concise and plain English;
- be printed in a size not less than 12 point type face.

That is twice the size of the average type face and is in much bolder print. It continues -

The following statement shall appear and be included in the contract:

I acknowledge that I have been given the opportunity to take a copy of the contract away and obtain independent advice.

All this covers the situation well for honest people. However, I reluctantly believe that a code of practice, backed by appropriate legislation, is necessary to deal with disputes and unfair practices in this State. I have spoken to people in the retirement village industry and they are largely in favour of this Bill now that it has been rewritten and their concerns have been addressed. Those concerns were: Misleading advertising, buying of lifestyle, sale of unit, promises of support, lack of dispute mechanisms, and the individual's inability to take dispute action. Mr President, an article appeared in *The West Australian* on 13 November 1991, under the heading "Act pitfall for retirees", which contained a warning from Mallesons Stephen Jaques partner, Mrs Linda Key, a property lawyer, who stated that -

. . . the legislation, which was designed to protect consumers, may not afford them the effective protection required and the new bill could be improved.

Ms Keys said the proposed Act worked to create a charge over land in a retirement village to protect the refundable part of a resident's in-going payment.

But this security could be of very little value to a resident where the developer had already mortgaged the land to a financier.

"People purchasing a right to reside in a retirement village should be aware that the protection given by the proposed Act will operate only from the time that the person agrees to go into the village and signs the contract," says Ms Keys. "Any mortgage to a financier of the developer or operator registered before the person enters into a residence contract will still operate to put that financier ahead of the resident.

"The Act then will only really protect a resident's refund to the extent that the land is worth more than the amount already owed to financiers."

Ms Keys said another problem with the Act was it did not require a statutory charge for a resident's refundable payment to be registered on a land title although owners of retirement villages would need to lodge a memorial stating the land was a retirement village.

Consumer legislation designed to prevent unscrupulous promoters and traders from ripping off the public came at this cost. She said the Torrens land system, which afforded potential owners full knowledge of all charges over property, was being interfered with under the proposed Act.

This legislation has drawn upon the most appropriate experience of other States, and, provided the Minister can assure the House on the questions I have raised, I am sure it will become the prevailing standard for the management of retirement villages in Western Australia. I support the Bill.

**HON J.N. CALDWELL (Agricultural) [4.42 pm]:** The National Party supports the Retirement Villages Bill. In May 1987, the Government set up a working party to examine the need for control and options for regulation of resident funded retirement accommodation. In April 1981, the Western Australian Government decided that a code of practice backed by legislation was the most practical option for the regulation of the retirement village industry.

We have all heard it said that the Australian population is ageing; in other words, the proportion of elderly people in the population is increasing. We know from the Census data that, in 1986, over 13 per cent of the population of Western Australia was over 60 years of age, and it is estimated that this proportion will increase to 20 per cent within the next 40 years. Therefore, retirement villages will become increasingly necessary in the future. Members may ask why was I selected to speak on this Bill for the National Party.

Hon Tom Helm: It was because of your expertise.

**Hon J.N. CALDWELL:** It was probably because I am the elder statesman of my party and will probably be the first NPA member to live in a retirement village. I wondered also why the very nice looking Muriel Patterson was selected by the Liberal Party to talk about retirement villages. I congratulate Hon Muriel Patterson on the way she looks today. When I commented on her appearance, she told me that today is her 41st wedding anniversary. I am sure all members will join me in wishing her a happy wedding anniversary. While I am throwing bouquets around, I must say how nice Hon Beryl Jones looks today. I heard Hon Phil Pandal throw bouquets to the Government benches and I thought today must be a day when we are being nice to everybody.

One of the most important aspects of the growth in the aged population is that the fastest growing group in the population is people aged 80 and over. In 1986, the number of people aged 80 and over resident in Western Australia was 24 700. It is estimated that, by the year 2016, that number will increase by over 200 per cent to 78 000. It is obvious that this trend in the growth of the aged population will have ramifications for accommodation and ongoing care. I have visited many retirement villages in my capacity as spokesperson for the aged, and I have been quite pleased with the way that most retirement villages have been set up. However, there is a lack of retirement homes in country areas. It appears that the private sector is not willing to risk its capital in country areas. That is a shame, and Governments of all types could assist people who retire in country towns. Some local councils have assisted by donating the land for retirement villages. That assistance has been well received, and small retirement cottages have been built on that land. I refer in particular to Katanning, where at least eight retirement homes have been built over the last two years. The unfortunate aspect of this is that the cost of those types of retirement homes in Katanning is approximately \$65 000, and an elderly couple who own a home in the town and find it too large for them to look after, and who would love to move into a smaller retirement home, may find that they cannot afford to do so because their home is worth only \$30 000. Therefore, they find it impossible to move. The cheaper we can build this accommodation in country areas, the better it will be, but building cheap accommodation is almost impossible these days. However, I am sure that with local, State and Federal Government help, some assistance could be provided.

The elderly people's home in Katanning is subsidised by the Lotteries Commission. The Government has suggested that the Lotteries Commission give \$2 million to the Film Council of Western Australia to help it to produce films. I am sure the commission was not set up to give such an enormous amount of money to a particular area of the arts, and that will probably have a detrimental effect on other areas of the arts, which will miss out on assistance in the future. It is fair enough that the Film Council be assisted out of the Consolidated Revenue Fund, but it should not be assisted by the Lotteries Commission. I am sure that retirement villages, elderly people's homes and nursing homes will miss out on funding because of that decision to give \$2 million to the film industry.

The Bill has a long history. The Government has done a reasonable job in the preparation of this legislation. About two years ago it was brought forward but the Government had not done its homework and the industry was not satisfied. As a result of pressure by the Opposition and the industry the Government was forced to change its Bill. I am disappointed that the Government did not find time to introduce the legislation last session. It should have proceeded at that time.

I have a letter dated 27 November 1991 from the President of the Retirement Village Association of Western Australia (Inc), Mr Russell Halpern, which I received last year when the Government was preparing this legislation. The letter reads -

Dear John,

re: Retirement Villages Bill - Upper House

Following our conversation today, I confirm that my Association has a significant interest in seeing the Bill passed through the Upper House at the earliest possible time to bring a degree of certainty to the Industry and its Residents.

We are satisfied that the Bill serves Industry participants and Residents adequately and recognise that it will go into review in the short term during which time both the Industry, Consumer groups and Government will have had the opportunity to resolve any minor issues.

We therefore ask for your support in overcoming any deals which would ensue from a referral from the Upper House.

I am surprised to see the number of proposed amendments to the Bill. It appeared at the end of November 1991 that the Retirement Village Association was very happy with the Bill, so I wonder why so many amendments are proposed by both the Government and Hon Peter Foss. I hope that the Government and Hon Peter Foss have done their homework. Perhaps the amendments are only machinery matters. I hope also that the Retirement Village Association has been consulted and has agreed to the amendments.

I am happy to see the Bill proceed through this place.

**HON PETER FOSS** (East Metropolitan) [4.54 pm]: All too often when consumer protection legislation comes before us we have the feeling that the effect of it will be to inconvenience 90 per cent of the industry that is playing it straight but have no effect on the 10 per cent that is not playing it straight. It is always the problem with increasing amounts of legislation to protect consumers that we might end up not protecting consumers but in fact making a legislative nightmare for the people already trying to do the right thing. I am pleased to say that I do not believe this legislation falls into that category. It is one of the fortunate pieces of legislation that, generally speaking, is setting a form of conduct or requirements to be met which the majority of owners or promoters of retirement villages, in this instance, already are prepared to meet; so, I do not think it will impose on them any new obligations which they would find unduly onerous. There are technical things to do and a few offences contained in the Bill but I do not believe that the majority of organisers of retirement villages will find the legislation too great a burden. That is encouraging. What is more, there will be a measure of protection given to the occupiers of retirement villages, even against unscrupulous operators; so, it has a chance of being successful legislation.

I have put on the Notice Paper for the Committee stage some amendments which have been noticed by Hon John Caldwell. I am pleased that they have been agreed to by the Government. They are mainly of a technical nature and not directed to the essence of the legislation, and they should overcome problems with some of the minor parts of the Act.

Hon J.N. Caldwell: Is the industry happy with them?

Hon PETER FOSS: I do not think that they will affect the industry all that much. What concerns me is the matter raised by Hon Muriel Patterson, one which will require more than just putting amendments on the Notice Paper. It may be that the Government takes the view at this stage that it does not want to meet the problems raised by Mrs Key, a former partner of mine. They are valid points, and perhaps this Parliament takes the view that at this stage we should leave in the deficiencies because at least they give people more than they have under the present law. As Hon Muriel Patterson said in her very informative speech, there are considerable difficulties in setting up a legal framework for people to have security of tenure in retirement villages. All the current ways to protect that legal tenure have difficulties and administrative problems which make it expensive and impractical to give proper guarantees. This Bill takes that further. The matter is complicated as well as expensive, and it is difficult to make the law effective. Giving legal tenure to an individual is difficult. The types of legal tenure that Hon Muriel Patterson mentioned are multitudinous. All are difficult and all have complications, so the idea of this is, without necessarily setting up a new form of tenure, to give at least some form of protection to the people involved.

As pointed out by Mrs Key, there may be some ineffectiveness in the legislation. That is not entirely to be unexpected when setting out a new form of doing things. As she has pointed out, although intending to create a charge over land it will not always be effective, because like many charges it takes precedence in the order in which it goes on to the land. We had a problem under the Sale of Land Act when Group Ownership Land Development went into liquidation many years ago; we brought in the Sale of Land Act because of the problem people had when purchasing an undivided interest in the land where that land had already been mortgaged by GOLD and the money owed to the owner of the land had not been discharged and so their interest came after the people who sold the land. They missed out when GOLD went under. That is the same serious problem which is raised here. How realistic a problem it is I do not know. How frequently it will be encountered I do not know. It is a problem that is not properly met by the Act. As stated by Mrs Key -

People purchasing a right to reside in a retirement village should be aware that the protection given by the proposed Act shall operate only from the time that the person agrees to go into the village and signs the contract.

Any borrowings and mortgage prior to that date of course will take precedence. Mrs Key states -

Any mortgage to a financier of the developer or operator registered before the person enters into residence contract will still operate to put that financier ahead of the resident.

I do not suggest there is a simple solution, but it is important that people understand that the protection they receive is not an absolute one. The next point Mrs Key raises is difficult to deal with in any event. She states -

The Act then will only really protect a resident's refund to the extent that the land is worth more than the amount already owed to the financiers.

Obviously if the finance is a large amount of money and the deposits which have been taken are more than the residue after meeting that finance, people would not be protected. People should not get the idea that this is an absolute protection. It is not a guarantee that they will get their money back, but it is certainly a better measure than they have at the moment.

Mrs Key also pointed out that it does not require a statutory charge for residents' refundable payments to be registered on a land title, although owners in retirement villages would need to lodge a memorial stating the land was a retirement village. That is an administrative problem that should be addressed.

[Questions without notice taken.]

Hon PETER FOSS: Although the terms of this Bill provide for memorials to be lodged relating to the fact that something is a retirement village, it does not actually deal with the amounts of money that have been secured by provisions of the Act in each case and for each of the deposits. That may be a sensible administrative decision because people then at least know there is a retirement village and therefore a risk there will be an amount owing to

somebody as the result of a deposit being paid, and that there may be a priority. Therefore, before one lodges a mortgage one should first deliver requisitions to find out how much money is being held.

I do not believe it is beyond all practicality to make that provision work from a conveyancing point of view. A slight problem arises that it does to some extent detract from the purity of the Torrens title system; that is, that if charges are being created by virtue of payments being made under the Act they will have priority over any subsequent mortgage. Again, I think that is a decision that must be made. It is one, perhaps, with the Government because it must take responsibility for the administration. It is a decision that could go either way. Therefore, the Government must make a decision as to which way it will go. It is important that the House be conscious of the fact that we will to some degree be detracting from the Torrens title system and not giving a 100 per cent guarantee to people investing in retirement villages but merely giving them better protection than they have currently.

I turn to a couple of matters related to the principle of the Bill. The first is its proclamation and commencement date, which has been affected by the fact that the Bill has been some time coming before the House. I think the House has indicated that, as a matter of principle, it does not like to have multiple proclamation dates in legislation because that then allows some bits to come in and other bits not to come in. We do not like open ended proclamation dates. In answer to questions on notice today the House was told that the Mental Health Act and the Spent Convictions Act are both on the Statute book but have not been proclaimed. The Mental Health Act goes back to 1981 and the Spent Convictions Act to 1988. Members will see from the answer to the question asked about that legislation that the Mental Health Act 1981 will never be proclaimed, according to the Government, and the Spent Convictions Act requires an amendment before it can be proclaimed. Those answers related to questions 110 and 174. They illustrate the problem. I do not believe such legislation should disappear into some sort of void which is out of the control of this Parliament. That happened, in the case of the Mental Health Act, for 11 years. The intention in relation to that Act was that it never be brought into effect, yet this House said it would be brought into effect. If it was believed it was inappropriately brought into effect, repealing legislation should be introduced. The Spent Convictions Act cannot be brought into effect until amendments to that legislation are introduced. We have no idea when that will happen, so another legislative statement by this Parliament has been ignored. The system should be that legislation should come into effect come what may after a certain time. The Parliament then would maintain control over that legislation and if something about it is unsuitable then it must be brought back before the Parliament and have something done to it. That is the way things should be.

A matter upon which the Leader of the House and I have agreed to some extent relates to automatic appropriations as contained in clause 9 of the Bill. I have an abhorrence of automatic appropriations. I believe all appropriations should be made annually and that it is possible to cater for such things and to allow for them in the Budget. I would rather see as few as possible of these automatic appropriations in legislation.

Another matter of concern is the protection of officers. I am quite happy for officers to be protected when carrying out their duties, but I do not like the possibility that a person affected by a wrong carrying out of a duty has no remedy against the State. It is perfectly clear there should be a remedy against the State as against an officer acting improperly in his duty. I would like to see the situation where, if people are hurt by a wrongful act of an officer, that officer gains protection but the State does not.

Another recurrent matter is the question of reversal of the onus of proof. This also relates to the case of vicarious liability for criminal action. Reversal of onus of proof and giving vicarious liability have always been a problem. I have been able to discuss that matter with the Government and believe a more appropriate remedy has been put in place which will hopefully lead to the right people being prosecuted and an appropriate onus of proof being established. I will deal with that matter in detail during the Committee stage of the Bill.

Another matter which surprises me, which again I suppose is due to the length of time this Bill has taken to come before the House again, is another matter of principle; that is, the proposed retirement age of 70 years for official referees under this Bill. The interesting thing is that the appointments shown here are not intended to be without any limit whatever; they

are not totally open ended. The extraordinary thing is that we are here dealing with retirement villages and the people being dealt with are past retirement age. Notwithstanding the Government's statement that it will be introducing legislation to prevent discrimination on the ground of age, it is proposing that a referee appointed pursuant to this Bill should be incapable of appointment if he has attained the age of 70 years. It seems to me that probably in this instance the sort of person who would be most appropriate to be appointed to the position of referee would be someone who had attained the age of 70 years. It could very well be that a retired judicial officer would be just the right person to deal with this matter because he obviously would be better able to understand the concerns of the people involved in retirement villages. It is even more peculiar when one considers that it is this Government's announced statement that it will abolish discrimination on the ground of age, but we find that very discrimination contained in this Bill.

My other principal concern with this Bill arises out of a provision which is also contained in the consumer protection provisions in this State; that is, the ability of the commissioner to take over the conduct of an action on behalf of the residents. I have no problems with the idea that it be taken over by the commissioner, but in order to make life a little easier for the commissioner he is discharged from doing many things which he might otherwise think he had an obligation to do. For instance, having taken it over - admittedly with the consent of the resident - he is not obliged to consult or seek the consent of the resident in the conduct of the proceedings. I can see why, from an administrative point of view, it might be thought a good idea not to be obliged to seek the opinion of the residents, but I hope that as a matter of good sense and good public relations the commissioner would consult to some degree with the residents, because the biggest single complaint people have when involved in litigation is that they are not fully informed or consulted. So although I understand the administrative necessity for taking that duty away, I hope that as a matter of plain commonsense the commissioner would say to a resident who wanted to know what was happening with his case, "This is what is happening. What do you think about it?"

As well, the commissioner is entitled just to settle the case, without the consent of the resident. It seems that there is a possibility that the commissioner, in pursuing what he sees as being the public interest, may take himself down a path which is not seen by the resident as being in his interest. I believe that we should not, as part of an administrative convenience, take away the obligation of the commissioner not to act in conflict with the interests of the resident and I would like to see a provision in the Bill which would ensure that the commissioner did not act at odds with the interest of the resident. Members should bear in mind that this Bill is principally for the purpose of protecting residents and I believe a number of its provisions are perhaps a little draconian when dealing with people, especially elderly people.

I have a question about the provision contained in clause 51(2)(c), whereby clause 56(4) has been singled out as one of the reasons for an appeal to the District Court without any further justification.

Hon John Halden: I think that is the subject of an amendment.

Hon PETER FOSS: I see. Another matter, which again is a matter of principle, is that under the regulations in clause 82 a dispensing power has been given to the Crown to exempt people from the requirements of the legislation. Again, this matter has been of considerable dispute over the centuries. The Tudors made quite a play of their ability to dispense with compliance with Acts of Parliament; Charles I also made a play of his dispensing power and he lost his head; and finally, James II was deposed partly because of his wish to exercise a dispensing power. Admittedly this would be a dispensing power conferred by Parliament, but I would be loath to confer on the Government a dispensing power which has been resisted by the Commons over the years. I think it is also contained in the Bill of Rights, but we have blithely put it in as a regulation.

Hon Mark Nevill: You could disallow it.

Hon PETER FOSS: Yes, we have that right, but if the dispensing power is there in the first instance it is an opportunity for the Parliament and the Government to say that is what the law is and we must actually go about disallowing it. However, I have been assured that the reason for this regulation is not any difficulty in the future that people should comply with the law. The difficulty it was intended to deal with relates to the current retirement villages



that do not quite fit into the scheme we have here. So as to avoid a procrustean solution by lopping off those that do not quite fit into the legislation we are putting down, it is intended to be a dispensing power which would allow existing institutions to have a dispensation where necessary, either because of something that already existed or because of something that needed to be done in the future because of an existing set of circumstances. It is possible to dispense not only with current agreements that do not fit in, but also with future agreements that may be required in a particular form because of certain current circumstances. Given that it is intended to be a sort of grandfather clause for current retirement villages that this dispensing power should exist, I believe it is far less objectionable. It is facing the fact that although the Parliament is saying, "This is the way it will be", villages already exist where this is not the way it is; and although it is right for the Parliament to say, and expect, that that is the way it will be done, I can understand that it would be a little too inflexible if we were not prepared to accept that for current villages there may very well be difficulties in complying with this legislation and that to impose a further burden on them to completely change their current arrangements would obviously be unrealistic and inconsistent with the spirit in which this legislation has been approached to date. Therefore, on the basis that some amendment be made to make it quite clear that the dispensing power which is being conferred is for that purpose only, I do not have the same problems with it.

All in all, this is a better piece of legislation as regards consumer protection. It should, with good fortune, not impose too much of an extra bureaucratic obligation on the people involved. It should allow those proper operators to continue without too great a change in their way of operation and it should have an effect on the people who are not acting properly. I hope the problems that have been raised by Hon Muriel Patterson will be addressed by the Government to determine why it made the decision in the way it did and why it has not dealt with the problems seen by Mrs Key. When I hear those explanations I will be prepared to say that it is a decision that could go either way. It may cause problems, but sometimes it is better to get up a simple piece of legislation which appears to deal with 99 per cent of the occasions, and wait and see whether the 100th occasion ever occurs. Accordingly I support the Bill.

Debate adjourned to a later stage of the sitting, on motion by Hon Fred McKenzie.

[Continued on p 822.]

## GUARDIANSHIP AND ADMINISTRATION AMENDMENT BILL

### *Second Reading*

Debate resumed from 18 March.

**HON DERRICK TOMLINSON** (East Metropolitan) [5.49 pm]: The principal Act which the Guardianship and Administration Amendment Bill seeks to amend completed its third reading in this place on 23 August 1990. The Act was assented to on 7 September 1990, and, unless my information is incorrect, it still has not been proclaimed. I understand that the Government is desirous of having it implemented by 1 July; therefore, some urgency is involved with the amendments now before the House if that timetable is to be met.

The amendments are very sensible given the intent of the principal Act, and in many respects the amendments are obvious and simple in construction. The principal Act establishes a Guardianship and Administration Board comprising three persons, and the amendment contained in this Bill provides for some flexibility in the composition of the board. It provides for the appointment of a chairperson, and a deputy chairperson, and the appointment of 10 other persons who, according to the nature of the matter to be decided, and at the decision of the chairman, may sit in various combinations to deliberate. The Bill provides that a board may comprise one person or three persons. Also, the Bill provides for a procedure for review by which an aggrieved person affected by a decision of a board comprising one person can have the matter considered by a full board.

Although I have described the amendments as obvious and sensible, to understand their purpose it is necessary to refer to the second reading speech of the principal Act made by the Attorney General, Hon Joe Berinson. The Guardianship and Administration Bill - now the principal Act - was introduced into this place on 11 July 1990, and the second reading speech

indicates that the Bill was a response to the recommendations of the mental health legislation review committee of 1984. I was somewhat surprised that the principal Act had completed its passage through this Parliament in August 1990, and until now it still has not been proclaimed; I was similarly surprised to discover that some urgency was expressed by the Attorney General regarding the passage of this legislation to allow its implementation by 1 July; however, I was even more surprised to see, in referring to the second reading speech of the principal Act, that the gestation period of that legislation began in 1984.

In the second reading speech to which I refer the intentions of the then Bill were stated. These were to establish a guardianship board and office of public guardian, and to allow for a degree of flexibility in determining the competence of a person for whom guardianship or administration was sought. Prior to this legislation, competence had been regarded as a positive or a negative; that is, one was either competent or incompetent according to the provisions of the law. However, the principal Act provides for a degree of competence.

This recognises persons who may not be totally incompetent such as those suffering from various forms of senile dementia, or a degenerative disease such as Alzheimer's, or those who have been brain damaged as a result of a motor vehicle trauma, an illness or some form of substance abuse. However, such a person may not have the intellectual capacity to deem that he or she is competent to determine his or her life in all things. That is a rather interesting proposition. I would certainly agree that to deem a person to be either competent or incompetent is to disregard the complexity of the human condition, and I respect the intention of the principal Act to recognise those degrees of competence. However, I am not quite sure how it might operate when it comes to the appointment of a guardian, because the question would arise: At what times would that person be deemed to be competent and no longer subject to the appointment of a guardian?

Also, I have difficulty with a situation in which a person is deemed to be incompetent and therefore subject to the appointment of a guardian when, for example, a person is suffering from a progressively degenerative disease such as Alzheimer's. We are aware that in the early stages of that disease the manifestation of aberrant behaviour is irregular. At times of aberrant behaviour, a person could be deemed to be incompetent and not capable of making decisions about his or her welfare; that is, not about his or her goods and finances but regarding the control of his or her life. However, in the periods when that person does not suffer the dementia, he or she would not need to be under the care of a guardian. As the effects of Alzheimer's disease progress, so the rate of deterioration progresses and the length of aberrant behaviour increases. Correspondingly, the length of competent behaviour diminishes. I anticipate that the principal Act will have to provide for those degrees of incompetence.

Likewise, a person suffering from intellectual disability is not necessarily incompetent by virtue of that disability. Such a person might be, in the old terms, measured as having an IQ of 70, 60 or even 50 and be regarded in modern parlance as having development delay. Even though those persons are developmentally delayed, they are capable of making some decisions for themselves. They are not by virtue of their degree of developmental delay totally incompetent, and they will be legally competent to decide some things; for example, marriage.

*Sitting suspended from 6.00 to 7.30 pm*

Hon DERRICK TOMLINSON: The intention of the principal Act was to provide for the appointment of guardians and those degrees and intermittent phases of competence. As our understanding of intellectual capacity becomes increasingly sophisticated we understand that not only is there a progressive intellectual incapacity in some instances and degrees of intellectual incapacity in other instances, but also there are aspects of incapacity which need to be taken into account. A person deemed to be disabled in intellectual capacity in one area of competence may not be incapacitated in all areas of competence. Hence, when a board of three persons as constituted in the principal Act is given the task of deciding flexibility to make allowances for those various degrees and periods of incapacity, it is being asked to make judgments of Solomon. Perhaps it is being asked to make judgments which rely on specialised and sophisticated knowledge.

To allay any concerns that the Attorney General may have about my purpose for raising these matters, I indicate that I am not raising them as problems to be dealt with in

amendments to the Bill or to the principal Act. I anticipate that with the passage of time and the application and interpretation of the principal Act the need for amendments will arise. I commend the recognition of degrees of intellectual incapacity and the need for flexibility in guardianship. However, I also recognise that opens a potential minefield of legal interpretation and challenges to decisions of the guardianship board or, in some cases, the courts where decisions of the board are challenged. However, that is a matter for the future. At this stage I raise these points simply to demonstrate the commonsense which prevails concerning the amendments before the House.

The Bill to amend the principal Act replaces the Guardianship and Administration Board of three persons with the flexible arrangement to which I referred earlier. It provides for the appointment of a chairperson who shall be a judge of the Supreme Court or who has been a judge of the Supreme Court, the District Court or the Family Court of the State and who has been recommended to the position of chairperson by the Chief Justice. The Bill also provides for the appointment of a deputy chairperson who is or has been a legal practitioner or who is a registrar of the Supreme Court. In the absence of the chairperson the deputy chairperson may act. More importantly, it provides for the appointment of up to 10 other persons by the Governor. Given the acknowledgment that considerable variety and flexibility exists in the application of the law to the particular case, there is good sense in providing for a variety of persons who may sit in judgment on cases. Section 15 of the principal Act provides that the board may inform itself on any matter in such manner as it thinks fit. The amendment before the House does not change that. Section 15 also provides that the board shall act informally. In other words, it will not have the trappings and intimidation of the court proceedings, even though it shall have the force of law.

The proceedings shall be informal, but because of the complexity and the degree of sophistication required in making judgments about intellectual capacity the Act provides that the board may inform itself on any matter in such manner as it thinks fit. That is commendable. However, I think it has been acknowledged by the Chief Justice, who I understand recommended these amendments to the Attorney General's office, that even with that advice the members of the board, in some instances, will require sophisticated professional knowledge simply to understand and interpret the advice which may be given to them. Therefore, the amendment is to provide for up to 10 persons, additional to the chairperson and deputy chairperson, who may be appointed to constitute a board. It also includes the complementary provision that, at the decision of the chairperson, the board in a particular case may comprise of one or three of those 12 persons. The chairperson or deputy chairperson is not necessarily one of the three persons who is appointed or designated as the board in a particular instance. Where the chairperson or deputy chairperson is not a member of a board in a particular instance, the decisions of the board still have the full force of law and the presiding officer, or the person who presides at that board, is a person nominated by the chairperson. Given the matters that the guardianship board will be required to address, the need for flexibility, and the diversity of information that must be addressed in making the decisions, it is commendable that the Government is responding to the advice that there needs to be flexibility in the composition of the guardianship boards. For that reason the Opposition supports the Bill.

I now touch on another matter that is contained in this amendment, more as a consequence, whether it is an intended consequence rather than a principal feature of the guardianship board; that is, the amendment makes it quite clear that management of the boards rests with the chairperson. The appointment of the chairperson and the deputy chairperson is on the advice of the Chief Justice. It is stated in clause 6(1) and (2)(b) that the Governor is to appoint a person as chairperson only if that person has been recommended for appointment by the Chief Justice. Under the provisions of clause 6B the chairperson, once appointed -

- (a) is responsible for the arrangement of the business of the Board; and
- (b) subject to subsection (2), is to specify, for the purpose of any particular matter or any particular class of matters, the member or members who is, or are, to perform the functions of the Board for the purpose of that matter or those matters.

Not only are flexibility and diversity possible, but in those clauses there is quite clearly direction that management of the board shall be with the board. Not only is the board to

manage those matters contained in clauses 6 and 6B, but also under the provisions contained in schedule 1 part B the chairperson will decide who presides, as I have already indicated. The point to which I wish to draw attention in those provisions is that the Government is moving towards the functional autonomy of the board. It is not very far removed from the functional autonomy which already exists with the courts. The courts, at the decision of the Chief Justice, shall decide the order of business, who shall preside, and so on. The provisions in clauses 6 and 6B and the amendments to the schedule recognise or provide for the same management of the business of the board as is provided in the business of the courts. That is commendable.

I hope also that since this is a set of amendments which has been proposed by the Government on the advice of the Chief Justice, the Government is indicating sympathy towards a greater degree of functional autonomy of the courts. Already the business of the courts is managed by the courts, but there is a strong argument that not only should the courts manage their own business, but also that the courts should be functionally autonomous bodies responsible for their own resources and for the allocation of their own resources, and should be independent from another Government department. As it now is, the courts are subject to the oversight - perhaps I use that term ambiguously although it is not intended to be so - of the Crown Law Department. They are functionally autonomous with respect to the management of their functions, but they are dependent on the Crown Law Department for the allocation of resources or the competition for resources within that portfolio. There is an argument that the courts should be completely separated from Government departments, and that they should be entirely responsible for the management of their own affairs as though they were a department of Government in their own right, or a judicial council. In the Sir Leo Cussen memorial lecture delivered on Friday, 8 November 1991, Sir John Young, who retired as Chief Justice of Victoria in December 1991, canvassed the notion of a judicial council which would be responsible for the management of the courts - in this instance, one would assume the courts of Victoria. He was simply advancing an intellectual or academic argument. Sir John Young asked in the peroration of his address the question: What possible advantages might flow from the setting up of a judicial council? He replied -

I have already referred to some, inferentially at least. A unit dedicated to running the courts should be able to do so more efficiently and more effectively than one concerned with other, sometimes, competing interests. Forward planning might be much more effectively carried out: at present the judges play little, if any, part in forward planning. It should also be possible to develop better career structures for those who work for the Courts, a very important aspect about which I have said little. It is the particular province of the Personnel Sub-Group which I mentioned earlier.

In that address Sir John Young was focusing principally upon what might be deemed to be industrial advantages in the management of courts. In a study by Thomas Church and Peter Sallmann, published by the Australian Institute of Judicial Administration Incorporated, "Governing Australia's Courts", the same issue is canvassed but there is a much more important matter than that raised by Sir John Young. Having canvassed the matters which I describe as industrial matters in the management of the courts, Sir John Young stated -

Advantages of the kinds I have mentioned might be achieved by a body which was not a judicial Council but was dedicated to the running of the Courts. These advantages do not spring directly from the fact that the body envisaged is one under the control of the judges. That it should be under the control of the judges is in order to make the judicial arm of government independent of the other two arms and thereby to give effect to the philosophy of John Locke and Montesquieu viz. that liberty is most effectively safeguarded by the division of the three functions of government, legislative, executive and judicial between separate and independent bodies.

That is moving a long way from the Bill, and I thank the Attorney General for his indulgence, but the point needs to be made. There is in the Bill to amend the guardianship board progress towards the functional autonomy of the board: The management of its own affairs, the decisions about its own ways of proceeding, and so on. That is commendable. However, that is only one step towards a major policy shift which, if this Government does not pursue, a Government subsequent to February 1993 will certainly pursue; that is, to separate the administration of the courts from the Executive arm of Government so that there

can be that separation of powers and so that the judicial system will be totally autonomous of Government. It will certainly be dependent upon Government for the allocation of resources but it will not competing for resources with the prosecution or other aspects of the Crown Law Department. I thank the House for its indulgence in allowing me to make that point.

The PRESIDENT: Order! It is not the indulgence of the House that you should seek; it is the indulgence of President, and I can tell you that I was sorely tested for a long time.

Hon DERRICK TOMLINSON: Mr President, I thank you for allowing me to test you so sorely and I thank you for your indulgence.

The Opposition supports the principal elements of the Bill. The thrust of the amendments recognises the complex nature of the matters upon which the board will be asked to judge. Other amendments contained in the Bill are merely functional: To separate the title of "registrar of the board" from the registrar of the court, and to create the title of "executive officer of the board" so that there is no confusion between the registrar of the board and the registrar of the court. There is also a move to remove gender discrimination by changing "chairman" to "chairperson". We have no objection to those amendments. In spite of the personal objections that some members of my party have expressed about the emasculation of the language, I commend the Bill to the House.

HON J.M. BERINSON (North Metropolitan - Attorney General) [7.54 pm]: I thank the Opposition for its indication of support for the Guardianship and Administration Amendment Bill. I acknowledge also the importance of the matters discussed by Hon Derrick Tomlinson in respect of the parent Act. However, as he acknowledged, the present Bill goes almost exclusively to administrative matters rather than to questions of principle; the latter were dealt with fully when the parent Act was considered by the Parliament. In fact, the questions of administration also explain a good deal of the delay between the passage of the Act and the proposed operation of the board from 1 July this year.

Just to give a brief history, the original Act was worked up by the Health Department on the basis of mental health considerations, and very thorough going inquiries and consultations were involved in that process. At the end of the day, it was decided that the administration of the board, operating as it must within an essentially legal framework, should come within the administrative role of the Crown Law Department. In the intervening period, an enormous amount of work was done to ensure that the anticipated extremely heavy initial load on the board could be dealt with both properly and expeditiously. The reason for the urgency of the present amendment is that it has only emerged from more recent inquiries that it was desirable to have a deputy chairperson as well as the expanded board and the ability, in appropriate cases, for a single member of the board to operate alone. The advice which came to the Government from both the department and the judicial officers concerned was strongly to the effect that we should not proceed until these further arrangements were in place. That is the reason that the Bill has been given the priority which it has on our Notice Paper.

The question which Hon Derrick Tomlinson raised towards the end of his remarks about the functional autonomy of this board and the desirability of further autonomy for the courts constitutes a separate subject. I have had the benefit of the address to which Hon Derrick Tomlinson referred, and I will say no more, given that I am now joining Hon Derrick Tomlinson in going beyond the boundaries of this present Bill, than to say that at the end of the day and with the best will in the world it really is quite difficult to appreciate any significant difference between the present structure and the structure envisaged by Sir John Young when everyone accepts that Budget allocations must remain with the Government. I do not suggest that the Government has a closed mind on this question. However, from my experience, the elimination of the Crown Law Department as the middle man, so to speak, has very limited advantages to offer given the weight which is always attracted in any event by the views and claims of the judiciary, which they are certainly not hesitant to put, and neither should they be. The Government is very well aware of the pressures on the courts and of the need to meet them to the best of its capacity. I do not take that issue further.

I thank the Opposition for its support of the Bill. It is a minor Bill in the sense that it goes to administrative matters only; on the other hand, the administrative matters as such are very important and will be of great significance to the many individuals and the many families who will have occasion to make use of the facilities which the Act, as about to be amended, will offer.

Question put and passed.

Bill read a second time.

#### *Committee*

The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon J.M. Berinson (Attorney General) in charge of the Bill.

**Clauses 1 to 8 put and passed.**

**Clause 9: Section 19 amended -**

Hon DERRICK TOMLINSON: Section 19 is contained in part 3 of the principal Act and deals with procedures for appeal against a board decision to the Full Court of the Supreme Court. Clause 9 defines the board as one which consists of three members; that is, a distinction between a board comprised of one member and a board comprised of three members. The Bill introduces a third complication with reference to a full board. Clause 4 states that a full board means one constituted of the chairperson or the deputy chairperson and two other members. The Bill provides that where a person is aggrieved by the decision of a board comprised of one member, that person has right of appeal to a full board comprising three members. Does the amendment to section 19 clarify that the board should consist of three members? Is that amendment also to make clear that an appeal to the full board against a decision of a board comprising one member can also be appealed to the Supreme Court?

Hon J.M. BERINSON: The language of the various clauses is important, even though in practice what follows might appear to be the same. Under the review provisions provided by this Bill, the decision of a board constituted by a single member does not go on appeal to the full board but goes for review to the full board. The difference between review and appeal is very deliberate, and it has the effect that a determination by a single member board upon review effectively becomes the determination of the full board. It is to the full board's determination that the appeal provisions apply so that it would not, for example, be open to seek to appeal to the court from the single member board's determination without first having the review by the full board.

**Clause put and passed.**

**Clauses 10 to 18 put and passed.**

**Title put and passed.**

#### *Report*

Bill reported, without amendment, and the report adopted.

#### *Third Reading*

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

### **RETIREMENT VILLAGES BILL 1991**

#### *Second Reading*

Debate resumed from an earlier stage of the sitting.

HON JOHN HALDEN (South Metropolitan - Parliamentary Secretary) [8.08 pm]: I thank the Opposition members who spoke on the Bill for their general support of it. I thank the House for the opportunity to have time to clarify the issues raised by Hon Muriel Patterson. I hope that my response to those points will satisfy her concerns. It is true to say that the Bill is the result of a consolidated period of consultation, and comes from experiences in the Eastern States some of which were tragic for people involved in retirement villages. Those events took us down the path of extensive consultation, eventually leading us to this point. The major players both inside this House and outside Parliament agree with the contents of the legislation.

Hon Muriel Patterson raised the issue of the proliferation of tribunals. Tribunals in this area have a special popularity in the community. They are less formal, cheaper to run, and less legalistic in their forums and the way in which they deal with people and the specialised

topic for which they are responsible. Of course, tribunals specialise in narrow areas and therefore build up expertise in those areas. Hon Muriel Patterson referred to the second reading speech relating to the current effect upon strata and purple titles, licences, leasing, and the protection offered by those four areas to persons who enter retirement villages. The realities are that licensees and lessees currently have no protection and that experience in Victoria saw in one instance people who had invested their life savings losing those savings and the roofs over their heads. That caused shock waves throughout the retirement village industry and in consumer groups that protected those who had bought into that industry.

Hon Muriel Patterson then raised the issue that had been raised by Mrs Key of Mallesons Stephen Jaques. In trying to explain the points raised by Mrs Key one must realise that what is proposed by this legislation will not, as Hon Peter Foss said, give 100 per cent protection, but will give a far greater degree of protection than is currently the case because it is clear that in certain areas there is no protection whatever. The situation can perhaps best be illustrated with these examples. In the situation where the owners of a retirement village have entered into a mortgage and a memorial is placed on that mortgage, the memorial and the claims upon the premium and the charges will come after the claim of that first mortgage. That is what the industry thought would be best, what financial institutions believe would be best, and what, after considerable negotiation, the Government now sees would be fairest and most reasonable. The intention of this Bill is not to destabilise the retirement village industry. It is a growth industry and it serves a very important niche within the construction field. The last thing that would be desirable would be to destabilise the industry causing a downturn and all sorts of problems to the industry and consumers. The second example, after the proclamation of this Bill, is a mortgage which is taken out to develop a retirement village. The memorial must be placed on the title to protect the consumers' interest so that the first claim for both premium and charges goes back to the consumer and not to the financial institution. The memorial is not specific - and that must be said - and it relates to the contents of the Bill. The memorial will make it clear that anyone who sees the memorial on the title needs to refer to the Retirement Villages Act to understand the priorities that that memorial places upon the person proposing to lend money. In fairness the point put by Mrs Key is accurate - some difficulties exist but they are only minor and there is no doubt that the general position of consumers is improved considerably.

Hon Peter Foss: It is important that the public not be deceived as to how much security they have. People must be conscious that they do not have absolute security and they should be careful as to who they are dealing with.

Hon JOHN HALDEN: I would not object to that at all.

The second point that Mrs Key raised is the suggestion that the amount of the charge could be noted on the title. The reality is that in normal circumstances that would be reasonable; however, how the charge is worked out can vary considerably so it is not possible to put on the title at any point an accurate figure except for individual titles. Therefore, as time passed one would have to change every title, every day, every month, every year, depending on the arrangement that had been struck between the consumer and the owner. As reasonable as it may be in general practice to put down the exact nature of the charge, in the reality of this industry that is not possible to do.

Hon Peter Foss: That is probably no worse than an all moneys mortgage anyway.

Hon JOHN HALDEN: No.

Hon Muriel Patterson also raised concerns about purple titles, licence holders and lease of life holders and the protection they would be offered under this Bill compared with what they had now. As I said before, licence holders and lease of life holders have very little protection if any at all. This Bill proposes that the retirement village tribunal will be the only authority which can terminate the resident's contract. It binds successive owners to the title and if the administering authority goes into liquidation clause 22 prevents the village being sold off or used for other purposes. A retirement village scheme cannot be terminated without Supreme Court approval. The other difficulty, which could be protected under this Bill, is that although current owners may have a strata title or purple title, the reality may be that the owners of the retirement village are made bankrupt. They can sell the common property - that is, the recreation facility, the dining hall, the billiards room or whatever it happens to be - and make it into a delicatessen or whatever. It can be sold off or privatised into the

marketplace and the entity that people had originally bought into is changed forever. That cannot happen under what is proposed in this Bill. I hope that answers the concerns raised by Hon Muriel Patterson.

Hon John Caldwell raised the issue of the private sector in country areas selling these units at considerably higher prices than people can afford to pay after they sell their own house. This is not a problem peculiar to country areas and is a problem in many parts of the metropolitan area and of course depends upon the value of the person's house, where they have bought, and what they have done to their home over the years they have lived in it. This Bill provides some hope for country areas. I do not think it provides hope for those who grow old in very small country towns, but in towns like Katanning and Narrogin I am sure that a stabilised industry where consumers feel confident in what they are buying will encourage the private sector to become more actively involved in pursuing the construction of retirement villages. Hon John Caldwell mentioned the many amendments that are proposed to the Bill. The amendments that are before the House have been agreed upon with some modification between myself and Hon Peter Foss and I can assure Hon John Caldwell that when we get to the Committee stage there is not a great deal to discuss except common agreement. I hope that that situation still remains.

Hon Murray Montgomery: Hon John Halden will have to wait and see.

Hon JOHN HALDEN: I always do. I do not take too much for granted, but I understand that is the situation. Hon Peter Foss also raised the issue of the Torrens transfer of land system which is the system we currently use. Basically the Torrens system tries to list the encumbrances upon a title in a ranking order and that is the way we have worked in this State and in a number of other jurisdictions throughout this country. This Bill will have a minor impact on that; however, that has been worked out with the Office of Titles and it is now satisfied, as are all the other players in this field, that the provisions of putting the consumer ahead of mortgages taken out after their purchase is reasonable.

Hon Peter Foss covered a number of issues including automatic appropriation, the protection of officers, the reversal of the onus of proof, the retirement age for officials being 70 years and the consumer protection provisions vis a vis the commissioner and residents coming into conflict, even when they were in agreement at the beginning of a matter. I have spoken to the member about all those matters and we are now in agreement. The amendments on the Notice Paper reflect that. Another amendment will adequately cover the dispensing powers. I believe people's concerns have been accommodated and adequately answered in the Bill.

The passage of this Bill will provide yet another valuable cog in this State's consumer protection legislation, a cog which has been needed for some time. It has not been easy for the Government to get all the players together and to come to agreement. However, that has now happened. Comments were also made that this Bill was delayed through some fault of the Government's in the final stages of last year's sitting. My recollection of that is somewhat different, but I do not want to enter the pettiness of who was responsible for delaying this legislation. The industry is clear about where that responsibility lies. The issue for this Parliament is the passage of this legislation and I hope all members will support it.

Question put and passed.

Bill read a second time.

#### *Committee*

The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon John Halden (Parliamentary Secretary) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Commencement -

Hon PETER FOSS: I move -

Page 1, line 7 - To delete the words ", or days as are respectively," and at the end of the line add the following -

and in any event shall come into effect if not proclaimed, 6 months after Royal Assent



The matter of the proclamation of Bills has been raised many times in this Chamber. I am sure that this clause is in its present form purely because it has taken such a long time to come before the Parliament and that had it been a more recent Bill it would have been in a more acceptable form. The amendment I move is acceptable to the Government and will bring this Bill into effect on a date no later than six months after Royal assent.

Hon JOHN HALDEN: The amendment has been agreed to in discussions and is accepted by the Government.

**Amendment put and passed.**

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

**Clauses 3 to 8 put and passed.**

**Clause 9: Commissioner may institute or defend proceedings for a party -**

Hon PETER FOSS: I move -

Page 8, line 27 - To delete the word "shall" and substitute the word "may".

This will change what is presently mandatory into permission. That is, the clause will state -

if any party to the proceedings alleges another cause of action, or if the resident on whose behalf the proceedings are being defended has another cause of action, the Tribunal or the court hearing the proceedings shall, on the application of the Commissioner, order that the proceedings for the other cause of action be heard separately and that the party or the resident as the case may require be a party to those proceedings in his or her own right and may make such other orders or give such other directions in that behalf as the Tribunal or the court thinks fit.

The affect of that will allow the tribunal to make that order without necessarily requiring it to do so.

Hon JOHN HALDEN: The amendment will be agreed to by the Government.

**Amendment put and passed.**

Hon PETER FOSS: I move -

Page 9, lines 16 to 19 - To delete subclause (6).

Often it is difficult when one reads *Hansard* to work out what the amendments are about and to find out what is being deleted. This clause will give automatic appropriation from the Consolidated Revenue Fund for any money which the commissioner becomes liable to pay by virtue of this clause. That will now have to be handled by an appropriation in the annual Appropriation legislation which would allow that money to be used for this purpose. I do not know whether it would be a single line item but it would be covered in some way by a departmental allocation.

**Amendment put and passed.**

Hon JOHN HALDEN: Again, the Government is in agreement with Hon Peter Foss and the Opposition on this amendment. I move -

Page 9, line 16 - To insert a new subclause as follows -

(6) Notwithstanding anything in this section, if the Tribunal or the court hearing the proceedings is satisfied whether on application by the resident or otherwise that any proceedings taken by the Commissioner under this section in the name of a resident are not in the interests of the resident the Tribunal or the court, as the case may be, shall order that the proceedings shall be -

(a) discontinued;

or

(b) continued so as not to affect the interests of the resident and only in accordance with such directions including directions as to costs, as the Tribunal or court, as the case requires, thinks just.

If the commissioner decides to go before the tribunal with a case he believes is established to

be in the public interest and should it at any point become obvious that the case could actually go against the interests of the individual, it can no longer be pursued. As it says in subclauses (a) and (b), there are two options: Either the commissioner can discontinue or "continue so as not to affect the interests of the resident and only in accordance with such directions including directions as to costs, as the Tribunal or court, as the case requires, thinks just". This amendment realistically protects the interests of the residents. Hon Peter Foss said in discussions we had that this is a piece of consumer protection legislation. This amendment which we negotiated comes to the final conclusion that at no point can a consumer or a consumer's interest be placed in jeopardy by the commissioner. Therefore, the amendment is reasonable and should be passed.

Hon PETER FOSS: I agree with the remarks made by Hon John Halden. This clause has been carefully drafted by Parliamentary Counsel. Of importance is the nature of the tests to be applied to determine whether there has been a conflict of interests. I was concerned in one of the drafts that there would be an obligation on a resident to prove that some mental element relating to the way in which the commissioner was conducting the proceedings showed that, in his mind, there was a conflict between what he saw as being right and what the resident saw as being in the resident's interests. It is intended to be a far more easy test than that. If the resident says that it is not in his interests, it is not up to the commissioner to deny what is being done is not in his interests. It is an objective test satisfied by the resident saying, "I don't like what you are doing" and, merely by that observable fact that the resident considers that the action being brought is not in his interests, the jurisdiction of the tribunal or the court is invoked. The court then may decide in which of the two ways it will be dealt with and it may decide to require it to be discontinued or it may use a very wide power of giving directions that the tribunal thinks just. Therefore, there is a broad discretion on the tribunal or court with very broad power to give directions to ensure that the conflict is disposed of.

The intent of this amendment is to give as broad as possible discretion to the court or tribunal to prevent prejudice to a resident who thinks that the proceedings are not in his interest and to allow the court to deal with that. Obviously we hope that in most cases this will not occur. However, it is important where we have protective legislation intended to look after residents, particularly elderly residents, that we should leave them in a position where, if they do not like what is being done supposedly in their name, they are able to say so, and the tribunal or court should have an obligation to look after that interest by causing discontinuance or requiring it to be continued in a way that it directs. The power to give directions would be a continuing power; in other words, if the directions turned out not to be satisfactory, the directions, as is normally the case with any direction, could be reconsidered by the court and further orders made.

I think we are dealing with a fairly remote situation. However, it will be important to the commissioner, when seeking the consent of a resident which is a prerequisite to his being able to bring the action, that he be able to say to the resident, "If you are worried that it will not be conducted in your interests and if it turns out against your interest, there is a power in subclause 6 and you can go to the tribunal or court and say that you do not think it is in your interests and the court will be able to ensure that your interests are being looked after because it has ample power of direction, or it can say that that is the end of the case." It will be a reassuring measure useful to the commissioner, but more importantly, protective of the people whom the proceedings are set up to protect.

Hon MARK NEVILL: I am surprised that Hon Peter Foss has claimed a hand in drafting this amendment.

Hon Peter Foss: I said that it was drafted by Parliamentary Counsel.

Hon MARK NEVILL: I thought he said that a lot of thought had gone into it. After reading this amendment, I have perused other provisions of the Bill. The word "otherwise" is used in this amendment and throughout the Bill as an adjective. The amendment refers to a "resident or otherwise". I do not know whether that means a resident or not or another person. In my view it seems to include everyone. I find this clause very difficult to understand and I do not know how a pensioner in a retirement village would get his mind around the amendment. Clause 9(3) is a sentence of 250 words. It is amazing. We have dealt with Bills that have been very well drafted. After looking at this Bill, I would not include it among them. There

is an inconsistent use of the word "money" in subclause (3). The word "moneys" is used in subclause (3)(d) and the word "money" is used in subclause (6). The old word "moneys" is redundant nowadays. Subclause (3)(b) uses the words "the Commissioner thinks appropriate and proper". Paragraph (e) refers to the words "the Tribunal or the court thinks fit". I think the words "appropriate and proper" could be easily used in that context.

As I said, the word "otherwise" is used on a number of occasions throughout the Bill as an adjective, but it is an adverb.

Hon Peter Foss: Why did you say it was an adjective?

Hon MARK NEVILL: Because it refers to "the resident or otherwise". "Otherwise" means "under other circumstances".

Hon Peter Foss interjected.

Hon MARK NEVILL: I do not know whether the amendment refers to a resident or a body corporate. I thought it referred to a body corporate.

Hon Peter Foss: It would be ungrammatical to say that.

Hon MARK NEVILL: It is ungrammatical as it is.

This Bill took two years to prepare. When compared with the Pearling Act it is obvious it could be improved dramatically. I am a member of the Constitutional Affairs and Statutes Revision Committee. This would be an ideal Bill to refer to it. I am amazed that there are spelling errors in the Bill even though it was typed in WordPerfect. Obviously, it has not been spell checked which should be a fairly standard process. This Bill could be improved by its being referred to a committee of this Chamber.

Hon PETER FOSS: The point made by Hon Mark Nevill is an interesting one because it brings out a point that I did not make that I probably should have made. As I have mentioned, the word "otherwise" governs the word "satisfied" and is a perfect grammatical use of the word "otherwise". The court can be satisfied either by an application by a resident, or "the resident" in this case, or possibly on its own motion; in other words, without any application being made to the court it may come to the conclusion that that is the case. That is why the word "otherwise" appears - it does not require an application by anybody. It can be satisfied because somebody made an application or it can be satisfied "otherwise".

Hon Mark Nevill: "Otherwise" what?

Hon PETER FOSS: That is a perfectly normal use of the word "otherwise" in legal drafting. I do not intend to examine the whole Bill. I do not claim authorship of the Bill or this clause, but it is perfectly clear to me what is meant; that is, it is possible for the court or tribunal to be satisfied by an application by the resident and it is also possible for the court to be satisfied in any other way; that is, "otherwise". That is an important point and I am glad that Hon Mark Nevill raised it, because in the discussions that took place it was suggested by the parliamentary draftsman that it should be such that it did not require an application by the resident but should be possible of being satisfied "otherwise". That is exactly what it says and I agree with it.

Hon JOHN HALDEN: I accept and agree with the interpretation given by Hon Peter Foss. The issue is that perhaps in this Bill, in the spirit of compromise, there may be some minor grammatical errors. However, in my interpretation, this matter is perfectly clear. That may be because I have been dealing with it and talking to Hon Peter Foss about it. In the spirit of cooperation I point out that there may be clauses of this Bill where the wording could be improved. I am happy to discuss those clauses with Hon Mark Nevill during this or any other stage of the Bill. My purpose is to look at the word usage in the Bill, but principally to see it pass.

**Amendment put and passed.**

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

**Clause 10 put and passed.**

**Clause 11: Protection of officers -**

Hon PETER FOSS: I move -

Page 10, line 7 - To add at the end of the clause the following -

but nothing in this section shall relieve the Crown of any liability that it might have for the actions of such persons but for this section

A problem always exists with vicarious liability. If one takes away the liability of the person for whom one is vicariously liable, it is arguable there can be no vicarious liability. I am trying through this amendment to indicate that although no liability is attached to the commissioner or the delegate of the commissioner, or any officer of a department, it does not relieve the Crown, in whose name those people are acting, of that liability. This does not impose any new liability and leaves the Crown in exactly the same position it would have been in had this clause not been put in the Bill to protect officers. Those officers are protected in everything they do but there may have been some residual liability in the Crown had there been such a liability but for this clause. I am not saying that there is, or is likely to be, any such liability. It is unlikely that there will be any liability, but the fact is that we must not remove the possibility.

Hon JOHN HALDEN: The Government believes the Bill is already specific about indemnity given under clause 11 and that the Bill only applies to officers. Having had discussions with Hon Peter Foss, I sought a legal opinion and it reinforced that position. The amendment moved is not central to the Bill and the Government is happy to support Hon Peter Foss' wishes and agree to the amendment because it will have no great effect on the operation of the legislation.

**Amendment put and passed.**

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

**Clause 12 put and passed.**

**Clause 13: Residence contract -**

Hon JOHN HALDEN: I move -

Page 11, line 18 - To delete "An owner" and substitute "A person, including an owner,".

The amendment made by the insertion of new subclause (6) widens the scope of prosecution of persons who make misleading representations in contravention of the Bill. The changes in terminology will have the effect of encompassing not only an owner as previously intended but also an agent and/or developer. The wider effect of this prohibition is balanced by removing the reverse onus of proof originally imposed by subclause (6) and by providing a limited range of defences.

Hon PETER FOSS: I support the amendment, although it really can only be discussed in conjunction with the following amendment to subclause (6). I would not be supporting this amendment if that amendment were not to be moved. It only makes sense in conjunction with that amendment to subclause (6). The problem with subclause (5) is that it imposes a penalty on an "owner". That is a limited class of people. The definition of "owner" in clause 3 states -

"owner", in relation to land under the operation of the *Transfer of Land Act 1893*, means a person who alone or with others is registered as the proprietor of an estate in fee simple;

Such a person may very well give other people the job of developing the retirement village and, in particular, selling interests in that village. It seems strange that the only person who can be prosecuted under this legislation is the one registered on the title and not the person who may make the representations which lead to the problem. Therefore, this amendment is to widen that scope so that if a person goes around making all sorts of representations and causing all sorts of difficulties the owner will not be the person prosecuted as the person who engaged the agent and whose only excuse for what happened is that the person he engaged was not acting in the course of his employment or agency. If the person was so acting he would be within his or her employment or agency. As a result the person registered on the title would be unable to get out of a prosecution while the person who made the representation would be able to get out of it. The wrong person is being targeted. We are moving to ensure that the person who made the misrepresentation will be caught. There are

different defences involved which I will deal with after the next amendment is moved. The first part is this: It was a little illogical before, but with the combination of subclauses (5) and (6) a person who is making the representations may escape prosecution, but a person who had not made the representations could be found guilty without even knowing those representations had been made or wanting them to be made, and in fact possibly even having told them not to make those representations, depending on how one interprets subclause (6).

**Amendment put and passed.**

Hon JOHN HALDEN: I move -

Page 11, lines 27 to 30 - To delete subclause (6) and substitute the following subclause -

(6) In any proceedings taken for an offence against subsection (5) it is a defence for the accused to prove -

- (a) being an owner, that any representation was made without the consent or knowledge of the owner;
- (b) being a person other than an owner, that the representation was to his or her belief a true representation;
- (c) in any case, that the consent of the Commissioner was given in relation to the representation.

Hon Peter Foss has said that this amendment is consequential upon the amendment we have just passed. Basically it delineates the range of defences that are possible and reverses the onus of proof. It is very simple.

Hon PETER FOSS: I support the amendment. The significant difference is to be found in subclause (6)(a). Under the present provision a representation made by an employee or agent of an owner will be taken to be a representation of the owner unless the owner proves that the person was not acting in the course of his or her employment or agency. That gives a very difficult onus to an owner to prove. It still shifts the onus to some extent, because it is not a matter of the Crown's proving the knowledge of the owner but a matter of the owner's showing that representation was made without the consent or knowledge of the owner. It will still be possible to carry out prosecutions where there is some connivance between the owner and the agent, where the representations are really taking place and where the owner knows they are taking place, but in this instance it is up to the owner to show, if he wants to get off, that it is without his consent.

As well, because it has been extended to people other than owners, they may not know the contractual situation between the owner and the residents. Therefore there is a defence to these third parties if they can show they genuinely believed they were telling the truth as opposed to making a wrong representation. A further one has been added. I am not quite sure how it got in, but it has to do with the consent of the commissioner being given in relation to representation. I do not have any objection to that but it was not made at my suggestion. It seems to me to be a perfectly reasonable addition.

**Amendment put and passed.**

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

**Clauses 14 to 23 put and passed.**

**Clause 24: Eligibility to hold office as referee -**

Hon PETER FOSS: I move -

Page 21, line 18 - To delete paragraph (b).

This amendment is to remove from the disqualifications of appointment of a person to the position of referee the fact that he or she has attained the age of 70 years. It seems to be inappropriate in the light of the Government's legislation to remove discrimination on the ground of age, particularly where these people are to be referees with regard to retirement villages. It would seem that people over the age of 70 years are eminently suited to be referees. Members will notice that pursuant to the preceding clause referees are to be appointed for a term not exceeding seven years, so we are not even talking about people who are receiving a judicial appointment and who will then go on indefinitely. We are talking

about people who have a maximum period of appointment for seven years and I cannot see any difficulty in appointing a person for an appropriate period but at the same time not disqualifying people merely because they have reached the age of 70 years.

Hon JOHN HALDEN: Obviously the clause as it stands is inappropriate with regard to the Government's position on age discrimination, and we support the amendment.

**Amendment put and passed.**

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

**Clauses 25 to 50 put and passed.**

**Clause 51: Appeal -**

Hon JOHN HALDEN: I move -

Page 35, line 18 - To insert after "Tribunal;", the word "or".

Page 35, line 20 - To delete "appeal; or" and substitute "appeal."

Page 35, lines 21 and 22 - To delete paragraph (c).

The first of these amendments is purely a grammatical correction to accommodate the deletion of paragraph (c).

Hon PETER FOSS: We need to know why paragraph (c) is to be deleted. If it was thought to be a good idea when the Bill was originally drafted, and having looked at the other clause to which paragraph (c) refers, I cannot see why we would not allow an automatic right of appeal under that. I want to know what change of mind has come over the Government that it feels it would not be a good idea to keep paragraph (c).

Hon JOHN HALDEN: Subclause (2)(c) deals with service contracts and allows an automatic right of appeal to the District Court. It is felt that if there were an automatic right the court could be flooded with what could be quite minor matters that have already been dealt with by the tribunal. However, matters that are covered in clause 51(2)(a) and (b) - that is, appeals involving a question of jurisdiction or a question of law - are still able automatically to be referred to the District Court. The reason for the amendments is that the head of the District Court wrote to the Attorney General alerting him to the problem that is likely to occur. As a result of those concerns and consideration by the Attorney General and the Minister it was felt that an individual's rights would not be placed in jeopardy by this rather small amendment.

Hon PETER FOSS: I have often thought that the strongest lobby group in the whole State is the judges, because I have seen all sorts of weird amendments floating through this Parliament. To a couple of those Bills I have offered the "most useless piece of legislation" award because we appear to be fiddling around with a piece of legislation that would otherwise last fairly well until something else came up, but if the judges want an amendment we always seem immediately to tug our forelocks and put it in. Frankly, I do not see that a flood of appeals from the tribunal would occur unless it was something to do with the operation of the Act or the operations of the District Court. I am inclined to want to retain this part of the Bill and to reject the amendment. In considering this matter firstly the department decided that it was a good idea. Let us wait and see whether the District Court experiences an unreasonable flood of appeals we can then consider the matter again. I am reluctant to allow the amendment from the lobby group to succeed.

Hon JOHN HALDEN: Historically it has been a successful lobby group. It is recognised that this amendment would have the greatest impact on the industry, which has said it is prepared to accept that in this area it would not have an automatic right. If a problem arises, I suggest that the place for that to be reviewed is in the first annual review of the legislation. The difficulty is that, if we go down the course suggested by the member, we may well see a number of matters before the District Court which are not central to people's rights; they may well involve the issuing of moneys. I see no advantage in clogging up the District Court when in essence these issues are not central to rights. If a problem exists, it can be resolved at the annual review.

I admit it is a particularly strong lobby group, but as the head of the District Court said, it will place greater stress on the court, and this matter is not central to the administration of

this legislation. The position suggested by the head of the District Court is not unreasonable; therefore, it is appropriate that we consider their opinions and realise that the suggestion would have no great impact, and that options would be still open to people. We should accept that point of view.

Hon PETER FOSS: Who in the first instance thought that an automatic right of appeal should be included under clause 56(4)? The clause deals with matters under clause 5 relating to specific performances of a service contract for reopening of service contracts and obtaining a sum of money. As the Parliamentary Secretary rightly indicated, it deals with the payment of moneys. I can see no problem with the District Court being flooded with people lodging applications for the payment of moneys. That is its job; it is there to deal with writs, and people can wander into the court at any time and say, "I want a payment of money." It is an unusual situation to take jurisdiction away and to give it to a tribunal.

We should bear in mind that we are not giving a new jurisdiction to the District Court as such; we are giving a new jurisdiction to the tribunal and saying that a little part of this should go back to the District Court when a person is dissatisfied. That is more limiting because the fact finding will already be done by the tribunal, and the court will be dealing only with people who are dissatisfied. The prospect of the District Court being flooded with claims for money is saying that the District Court will be doing business as usual; anyone wishing to issue a writ for the payment of money at the District Court can do that today.

When this amendment was put to the industry, did it say, "Yes, we would like that", or was it, "If we need that to get the legislation through without delay, we will go along with it"? The differing attitudes must be distinguished. If this Bill including this amendment was wanted by the Government and by the industry, and is now to be taken out at the request of the District Court and reluctantly agreed to by business, we should not agree to it.

Hon JOHN HALDEN: On the question of why this matter was included in the first place, the consultative committee was given some responsibility of drawing up the contents of the legislation. In that consultative process the Bill comprised only paragraphs (a) and (b); paragraph (c) was added in the lower House.

Hon Peter Foss: By whom?

Hon JOHN HALDEN: By the Minister. As I understand the arrangement, owners wanted to bind people as they moved into units of service contracts. If they were unfair contracts, the opportunity would still exist under paragraphs (a) and (b) under a question of law or jurisdiction for a right of appeal. However, to the best of my knowledge, it was amended in another place, but this was not part of the consultative process. It was not advocated by various groups involved in the consultative process. Why the Minister made this change - presumably upon advice - I do not know.

Hon Peter Foss: It is a very surprising provision. It has appeared from nowhere and is disappearing to nowhere, yet nobody knows from where it has come - that is, apart from the judges.

Hon JOHN HALDEN: I am not in a position to give the member an exact answer - I am sorry. I cannot say with any authority from where the amendment comes - this is rather confusing, I admit. However, the result is that its inclusion is causing concern among a lobby group. The lobby group sought comment from the Attorney General, who agreed with that opinion. It was decided that we would be better off back where we were with the form produced by the consultative process.

**Amendments put and passed.**

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

**Clauses 52 to 55 put and passed.**

**Clause 56: Disputes in relation to service contracts -**

Hon JOHN HALDEN: I move -

Page 38, line 7 - To delete paragraph (b).

This amendment will prevent the disputes tribunal from reconsidering and possibly adjusting the terms of service contracts once they are entered into. It leaves intact the tribunal's power

to order specific performances or the payment of sums of money by way of compensation or damages. This amendment was added to the Bill in the lower House.

Hon PETER FOSS: I am very happy to see this paragraph deleted. Who in the lower House put in the paragraph and who wanted it out; was it the judges or the industry?

Hon JOHN HALDEN: Firstly, there was a demand from the industry for service contracts to apply to successive incoming residents. This is the compensating consumer protection for that allowance which has been agreed to by both sides to balance the scales of fairness. It was placed in the Bill by the Minister in agreement and consultation with the Labor Party. Its deletion is a result of recommendations made by the head of the District Court and the Attorney General and agreed to by the industry.

**Amendment put and passed.**

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

**Clauses 57 to 81 put and passed.**

**Clause 82: Regulations -**

Hon PETER FOSS: I move -

Page 53, lines 15 to 19 - To delete subclause (4).

**Amendment put and passed.**

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

**Clauses 83 to 86 put and passed.**

**Schedule 1: Savings and transitional provisions -**

Hon JOHN HALDEN: I move -

Page 55, line 27 - To add the following -

**Exemption**

3. (1) The Minister may by order exempt any -

- (a) administering body that administers a retirement village established before the commencement date;
- (b) retirement village established before the commencement date,

from all or any of the provisions of this Act to such extent as the exemption relates to any matter arising before the commencement date and either unconditionally or subject to such conditions as are specified in the order.

(2) In subclause (1) -

"commencement date" means the date on which this Act comes into operation.

The provisions under schedule 1 limit exemptions of certain villages from the Act. However, the exemption applies only where hardship exists to villages which do not comply with the requirements of the Act because they were entered into before the Act came into effect. It is a grandfather clause.

Hon PETER FOSS: I understand the amendment goes a little further than that. It applies not only to existing circumstances and contracts, but also to something which may be done in the future provided the reason for its being done is something that has happened in the past. For instance, a new contract may be entered into in a continuing form which does not comply with the Act. However, one may need to continue entering into contracts in that form because of the village's financing structure. Retirement villages are organised in a manner in which they cannot suddenly have new contracts in a form which complies with the Act, otherwise they would have to change the whole contract. The relevant words are "the exemption relates to any matter arising before". In other words the matter can happen after the commencement date, but must relate to a matter that arises before the commencement date. If there is a causal relationship between what happened before the Act and what is being done now the regulations can be passed. For example, a retirement village which



comes into existence after the commencement date of the proposed Act cannot possibly qualify under this provision. Many retirement villages may be in existence which also cannot receive benefits under this legislation because it is not necessary owing to the matters which existed prior to the commencement date of the legislation. The amendment is to allow for the fact that some people will not be able to comply and it is not reasonable to expect them to comply. However, they may continue, not just by some static condition but by some continuing need to enter into contracts, to depart from the strict wording of the proposed Act.

Hon JOHN HALDEN: Hon Peter Foss' interpretation is correct. Schedule 1 has been used to reduce the uncertainty which may occur within the industry. The decision is based on potential hardship. The Minister must make a decision and once that decision is gazetted it cannot be changed. Clearly, for industry the factors of uncertainty are minimised by this amendment. It provides a sound basis for the continuation of this industry both in the interests of the industry itself and for consumers.

**Amendment put and passed.**

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

**Title put and passed.**

**Bill reported, with amendments.**

### **ADDRESS- IN-REPLY - EIGHTH DAY**

#### *Motion*

Order of the Day read for the resumption of debate from an earlier stage of the sitting.

Debate adjourned, on motion by Hon Murray Montgomery.

### **ACTS AMENDMENT (GAME BIRDS PROTECTION) BILL**

#### *Second Reading*

Debate resumed from 1 April.

HON MURRAY MONTGOMERY (South West) [9.19 pm]: As stated by my colleague, the National Party is not in favour of this amendment to the Wildlife Conservation Act. It would be wrong of me not to put the rural community's point of view and that of the people who enjoy eating duck and game birds. The Bill refers specifically to ducks and other game birds such as quail. It would also be wrong if I did not say that many people believe, for their own reasons, that duck shooting should be banned and for that I commend them. I do not accept that point of view. However, I represent a point of view which believes that, in shooting game birds, we should take account of the environment and the conservation of certain species of birds. We cull many animals, whether they be sheep, cattle, goats or kangaroos. Often the culling process is very discriminatory. The shooting of game birds is a form of culling which has been developed in this State over the last 200 years. We have created an environment that allows ducks to breed because we have constructed dams on agricultural properties and have grown grains and vegetables which ducks seem to like very much. Last night I was told how a farmer had lost a valuable horticultural crop which had just reached its marketable stage; ducks had done a fairly good job of cleaning it up. That was a significant loss to that producer. Anything which has a specific breeding cycle provides us with an abundance of food at times, whether it be animals, game birds or crops. In this instance, if we do not do something to prevent that abundance of food by culling it, nature will eventually take its course and in doing so it can be very cruel, and many deaths would take place. It is not a pleasant sight seeing kangaroos dying in times of drought. Sometimes we should be kind to animals and shoot them. A problem with that is that it is such a waste to shoot them and leave them. We should use the food that we cull.

In the last 200 years we have cleared land for agriculture and farming. However, we have also built up our urban areas and destroyed our wetlands. We have encouraged housing on areas close to the wetlands and destroyed the habitats of many species of duck. Conversely, we have created other places in rural areas of the State that have offset that. One of the objections to duck shooting is the scattering of lead shot around the countryside and on the bottoms of the lakes that form our wetlands. However, because of our geological structure,

the bottoms of many of the lakes are sand. I believe that the lead shot drops until it hits a hard layer of sand which, in many cases, is much deeper than the layer at which the ducks would feed. Research into the ingestion of lead shot has been carried out in America and there is a need for it to be carried out in this State. However, that is not an indication that we should change the shot being used from lead to steel.

In 1987 the National Parks and Nature Conservation Authority undertook a workshop into duck shooting in Western Australia. I am concerned that many of the issues raised in the report were ignored. The report indicates a loss of wetlands and I do not dispute that. However, that has been offset by the construction of dams which provide great breeding grounds for ducks.

Hon John Halden: What is the report?

Hon MURRAY MONTGOMERY: The workshop was carried out by a fauna committee into duck shooting in Western Australia. It was set up by the National Parks and Nature Conservation Authority in 1987.

It indicates also some concerns about our climatic changes, but it is interesting to note that, on the south coast and in other areas, we have experienced increased rainfall during this year. I am sure Hon David Wordsworth would agree that areas around Esperance have had some very heavy falls and north of Esperance in the Salmon Gums area there have been falls of up to 12 inches which have provided wonderful areas for ducks to breed and for them to find food from the grain produced in the last 12 months. The working party unanimously agreed that it should look at ways of preventing the loss and degradation of wetlands and that an inventory should be prepared. It also agreed that there was an urgent need for an ongoing annual assessment of the abundance of waterbirds. I concede that we need to protect species of low numbers and it is at those breeds that we are directing our concerns. However, I am not suggesting that we should shoot ducks indiscriminately. Shooters should be educated and licensed so that they know what they are shooting.

The working party states that the assumption has been made by professional wildlife managers that shooting birds in the post-breeding period harvests a proportion of the population which would otherwise die of natural causes. Natural deaths will occur and for that reason we should harvest that resource as food. The working party also believes that it is an accepted wildlife harvesting principle that cropping the population by hunting during a declared duck season enhances growth and survival of the remaining birds and that is something which should be investigated.

The working party could not agree on some issues which I will highlight. First, it could not agree on whether meat eating is moral. I am of the opinion that meat eating is moral and as a farmer I produce meat. Madam Deputy President (Hon Muriel Patterson) I know that you produce meat on your property and you would find it difficult if it was decided that meat eating was not moral. I am sure that other members in this House who represent the rural regions will agree with me.

Hon P.G. Pental: What did the working party decide?

Hon MURRAY MONTGOMERY: It could not agree on whether meat eating was moral and it put that issue aside.

Second, the working party could not agree on whether duck shooters should support research through personal effort. It has been stated previously that many duck shooters enjoy eating the ducks they shoot and that they should contribute to research into ducks. Duck shooters in Victoria are contributing to research and they have established duck breeding areas. If it has not already been done I am sure a similar scheme could be implemented in this State. I am sure that duck shooters would agree to pay a licence fee which could be used for research. The research would ensure not only that duck shooters are doing the right thing by culling ducks, but also that the uncommon species are protected. It would be a commendable thing to do.

Hon P.G. Pental: The wetlands throughout the USA have millions of dollars injected into them each year by that method.

Hon MURRAY MONTGOMERY: The point is that research dollars must be raised from somewhere and the obvious means of raising those funds is by duck shooters paying a

licence fee. Duck shooters often ask for my permission to shoot on my property. I have allowed them to do that and they have certainly conducted themselves in a proper manner. After they have finished I have surveyed the dams and I have not found any trace of a maimed duck. The shooters have collected the ducks they have shot and have taken them home. I do not like eating duck, but if others do they are welcome to it.

Hon Reg Davies: I don't like eating dog or cat.

Hon MURRAY MONTGOMERY: Neither do I, but that is another issue.

The working party could not agree on whether duck shooting is more cruel than nature itself. Nature is cruel and I find it difficult to understand that people do not believe that. My assumption is that duck shooting is not as cruel as nature. The working party concluded that there is no evidence that the present low level of duck shooting in Western Australia, given the control measures in place, is having a detrimental effect on the status of waterbird populations. If that is the case I wonder why we are debating this Bill, because it really is a nonsense Bill in the sense that a declared duck shooting season would allow for the appropriate culling of ducks.

It is of concern to me that this Bill may pre-empt the outcome of a case which is before the courts. We should not proceed with this legislation until that case has been finalised and, therefore, the Bill should be left on the Notice Paper. For these reasons the National Party does not support it.

**HON D.J. WORDSWORTH** (Agricultural) [9.38 pm]: I have listened with interest to the sentiments expressed by members on the Acts Amendment (Game Birds Protection) Bill. We have heard a great deal about wiping out native wildlife. The truth of the matter is that this Bill is about stopping white people from shooting ducks, but allowing Aborigines to shoot what they darn well like.

Hon John Halden: That is not true. It is an absolute outrage and you know it.

Hon Doug Wenn: Only you can turn this into racist propaganda.

**HON D.J. WORDSWORTH**: It is true and I will happily explain my reasons for saying that.

In his second reading speech the Minister said that the principle on which this legislation is based is that our native wildlife should be protected. He said that this Bill seeks to protect indigenous ducks, geese and quail from being shot for recreation. What a lot of rubbish! How many ducks which are shot are indigenous? One has to read the Act to ascertain whether the legislation is about indigenous animals and it is not. It is interesting that the Minister said this Bill will consolidate the Act. This Bill contains five amendments to the Act and it is hard to obtain an amended copy of it. In fact, the Minister can declare that all animals and birds are to be protected. The Bill is not all about our native species at all. I have borrowed from the Parliamentary Library a book called *Introduced Birds of the World*, which is a series of articles collected by John L. Long, and the contributor from Australia happens to be none other than Dr D.L. Serventy, who is a rather well known name in Australian nature circles. The book states at page 18 that -

In Australia, the Mallard . . . breeds with the native Black Duck . . . and it is thought by hunters that the hybrid produced is a less desirable game bird. This species also hybridises with the Black Duck in New Zealand and there the cross has become so numerous in some places that it threatens to replace it altogether.

People may not realise how many animals or birds have been introduced into Australia.

The book states at page 16 that -

The number of exotic species which have been released in Australia is difficult to assess. At least seventy-one and probably more, perhaps eighty or ninety, are known to have been liberated, but many more may have been released before the time of acclimatisation societies and the somewhat-better documentation of events.

Many of the birds that we shoot have been introduced. I mentioned the mallard, which is probably one of the main bird species that is shot in Western Australia. Some of the others are the spur winged goose, the Canadian goose and the Egyptian goose. I do not have to tell members about the mute swan because that happens to be the white swan found on the river at Northam, and that was introduced in 1897. Fortunately, it is not being shot. It is

interesting that the Cape Barren goose has been reintroduced in various parts of Australia, much to the detriment of agriculture. The book states at page 41 that -

On Flinders and other islands in Bass Strait, Cape Barren Geese have substantially increased in numbers, probably due to the clearing of Atriplex scrub and subsequent conversion to pastures.

That backs up a previous statement by Hon Murray Montgomery that man has increased the places where ducks can live and breed and that there are probably more ducks here now than there were when the white man first came. It continues -

... these increases have led to the appearance of certain sensitive areas where goose pressure upon agriculture has become intolerable. Farmers complain that the geese eat and trample young crops, foul crops and water holes and damage clover pastures. Guiler suggested management to reduce the damage and preserve the status of the birds.

I do not know of anyone who shoots Cape Barren geese, but it is interesting that they have been reintroduced in some parts where they were not native anyway. Canadian geese were introduced unsuccessfully into Hawaii and Western Australia, and several other breeds have been introduced and have not succeeded, but there was a period during the last century when the shooting of ducks was very popular and it was not uncommon to introduce animals and birds from other lands and, indeed, fish such as trout.

I turn now to the wood duck or maned goose, which causes considerable damage. The books states at page 49 that -

In Australia the species occasionally visits grain fields and causes some damage. At times, when open waters are scarce, they may settle with other species in large flocks on man-made dams where they are accused of fouling the water.

I will not refer to many other birds, but I want to refer to the mallard, because that bird is quite common in Western Australia. The book states at page 54 that the mallard was introduced successfully in the eastern United States of America, Bermuda, Australia, and New Zealand. The book states at page 55 that -

In Western Australia Mallards were breeding on a number of ornamental waters around Perth prior to 1912... They have remained established there to the present day but do not show much inclination to spread or increase in numbers greatly... They are, however, occasionally found in the south-west of the State.

The Mallard is now common in city parks and gardens in most of the larger cities in Australia and also some country towns. They are occasionally found in the wild (away from human habitation) e.g. in the interior of New South Wales, in south-eastern South Australia, and the south-west of Western Australia.

It is interesting that when I was Minister for Lands and responsible for the Perth Zoo -

Hon Tom Helm: Is that where your office was?

Hon D.J. WORDSWORTH: Please take a bit of interest. One of the embarrassments was the crossing of the mallard with our native species, and, although we take much interest in these native birds, unfortunately many of the ducks at which we are looking are not only introduced but are also crossbred. So much for these being our native fauna!

I refer now to *The Australian Encyclopaedia*, fifth edition, 1988, which states at page 1045 that -

The maned duck... is a grazing bird, widely distributed throughout southern Australia, where it is a familiar sight sleeping or preening in flocks on the banks of farm dams. It may be commoner now than before European settlement because clearing has provided good grazing as well as many permanent fresh waters.

It states at page 1044 that -

Mallards... have been introduced to south-eastern Australia and New Zealand. In New Zealand mallards and Pacific black ducks have hybridised to the point where fifty per cent of the black duck population is of hybrid origin. In southern Australia few hybrids are reported. Perhaps hybridisation is discouraged by Australian climatic

conditions, but nevertheless it is still a cause for concern, and suggestions have been made to exterminate mallards.

Another issue is whether duck shooters are of benefit to the preservation of our wildlife in that they can be used to reduce the numbers of some of the duck species that were introduced and are causing havoc with our native species because of competition, crossbreeding, and the like. It would be unwise to remove the ability of the Minister to declare a shooting season. The shooting season controls the ability of most of our population to go out and shoot. However, Aborigines are allowed to shoot when and how they wish. The Minister well knows that, and although he may say that I am trying to bring this in as a side issue, that is not so. Section 23(1) of the Wildlife Conservation Act states that -

Notwithstanding any other provisions of this Act, a person -

who is "a person of Aboriginal descent" as that term is defined in section four of the Aboriginal Affairs Planning Authority Act, 1972,

may take fauna or flora -

upon Crown land or upon any other land, not being a nature reserve or wildlife sanctuary, but where occupied, with the consent of the occupier of that land,

sufficient only for food for himself and his family, but not for sale -

Unfortunately, as members know, in the south west of this State some Aborigines overdo shooting our native bustard. We are all rather keen to preserve our wild turkey. On my property I have employed Aborigines from time to time, and whenever they hear of a wild duck or turkey in the area they have a go at it. They think it is great sport; they do not regard it as the sport of aristocrats -

Hon Tom Stephens: How is that species going in that area?

Hon D.J. WORDSWORTH: A few of them are breeding on my property. They are not being wiped out, fortunately. Many other species are not so fortunate.

Hon Tom Stephens: They are very prolific in the Kimberley.

Hon D.J. WORDSWORTH: They are not a problem in the south west of this State.

Hon Tom Stephens: I am surprised that they remain on the endangered species list.

Hon D.J. WORDSWORTH: I am glad the member says that, because that applies to the very birds this legislation is designed to protect. I quote now from *The Status of Endangered Australasian Wildlife* by the Royal Zoological Society of South Australia. The book contains an article by S.J. Cowling as follows -

This paper reviews the status in Australia of species in the families Anatidae and Plataleidae, and reviews the present information on wetlands.

The review of the status of species is based on published data, on information from biologists consulted for the purpose, and on distribution data collected up to 30.6.1978 by the Atlas of Australian Birds Project of the Royal Australasian Ornithologists Union. Consideration of wetlands is essentially based on published data, as well as some unpublished data provided by colleagues.

The available information suggests that only the Cape Barren Goose, Freckled Duck, Burdekin Duck and White Pygmy Goose warrant appraisal for possible listing as endangered species at this stage. Furthermore, present data suggest that:

- (a) the Cape Barren Goose should no longer be listed as 'Endangered' but rather as 'Out of Danger';
- (b) the Freckled Duck should be listed as 'Intermediate';
- (c) neither the Burdekin Duck or White Pygmy Goose should be listed.

It is difficult to draw definite conclusions on the status of wetlands in Australia in the absence of nationwide surveys... Information to date indicates that the value to waterbirds of many wetlands has been reduced by man-made changes. In particular, those wetlands most affected are the shallower marshes in agricultural areas, those

wetlands adjacent to major streams, and the coastal wetlands in the vicinity of urban, industrial and tourist centres. The rate of change is not readily apparent, but does not appear to be diminishing.

In contrast, there may be some benefits to waterbirds of some types of man-made water impoundments.

Hon Tom Stephens: He is probably wrong about the freckled duck.

Hon D.J. WORDSWORTH: Perhaps we can talk about the freckled duck. We have heard a lot about the fact that people can go out and shoot them by mistake, and we need identification training. Indeed, a great proponent of non-duck shooting is Hon Reg Davies. He suggested that most duck shooters are drinking when they go south to shoot ducks.

Hon Reg Davies: I did not say that. You are misquoting me.

Hon D.J. WORDSWORTH: The member suggested that drinking was associated with duck shooting.

Hon Reg Davies: I quoted one of your colleagues who said in a newspaper article that most shooters go out for a social drink; they use the occasion for social drinking.

Hon D.J. WORDSWORTH: I am glad of that information. On the identification of ducks, I quote again from *The Status of Endangered Australasian Wildlife* -

Many hunters are unable to recognise Freckled Ducks, which are totally protected in all States and Territories. Of 56 000 ducks examined in hunters bags during four Open Seasons (1972-78) in New South Wales, South Australia and Victoria, 189 were Freckled Duck . . .

So, shooters are making them an endangered and rare species.

Hon Tom Stephens: They are very hard to see because there are so few of them.

Hon D.J. WORDSWORTH: How many are there?

Hon Tom Stephens: Not very many.

Hon D.J. WORDSWORTH: That is where the member is entirely wrong. I have stated that there are so many freckled ducks now that they are no longer regarded as endangered species. Even if they were endangered, they are not being shot; so much for the theory that people go out and blaze away at everything alive.

Hon Reg Davies: Some people are irresponsible and some are responsible.

Hon D.J. WORDSWORTH: Of the 56 000 they found -

Hon Reg Davies: In Western Australia?

Hon D.J. WORDSWORTH: No, from all States. Is the member suggesting that Western Australians are less intelligent than South Australians?

Hon Reg Davies: That could prove the point that the duck is a rare and endangered species - they do not show up in books.

Hon D.J. WORDSWORTH: I should have read the previous sentence. The point is made -

Many waterfowl managers are concerned about the possible effect of hunting on the populations of Freckled Duck. In southern New South Wales and northern Victoria, during the summer and autumn months, when there is an open season on certain species of water fowl, flocks of Freckled Ducks are often seen in association with Black Duck.

That is why they went to look at what was in hunters' bags. Very few were being shot. That is rather interesting because it shows that duck shooters have the ability to identify the various ducks.

Hon Reg Davies: And to shoot only a few.

Hon D.J. WORDSWORTH: Most are not native species. That is the misconception being spread by the Minister and others. It has nothing to do with protection of endangered species. As it happens, most of the quail are introduced species. I will not bore the House by going through the research on quail.

I was interested in the comment by Hon Reg Davies that duck shooting was a pastime for aristocrats.

Hon Doug Wenn: When common people go shooting, they are called poachers.

Hon D.J. WORDSWORTH: I do not go duck shooting but if members considered the situation they would find that duck shooting is a sport indulged in by the general public; it is not identified as a sport for one particular group of people.

I have addressed the false nature of the Bill. If we say that we do not want duck shooting we ought to give the reason - because we do not believe animals should be shot. We should not refer to native wildlife legislation; that is insincere and incorrect. Most ducks that are shot are introduced species. What effect does duck shooting have on the duck population?

Hon Reg Davies: It kills them.

Hon D.J. WORDSWORTH: I quote again from *The Australian Encyclopedia* under the heading "Duck Shooting and Conservation" -

Ducks have been shot in Australia since the early days of European settlement. Duck shooting is now subject to strict regulations enforced by the national parks and wildlife services in each State. Many waterfowl populations have annual mortality rates of 70 per cent. Their populations are sustained by a high reproductive rate. Since European settlement populations of black swan, wood duck and other species have increased as a result of changes in land use.

That is really saying, as Hon Murray Montgomery said, that ducks do not have a very long life - whether people shoot them or not. This reference states that the annual mortality rate is 70 per cent; so only 30 per cent manage to survive through to the next year.

Hon Garry Kelly: It is a short, happy life.

Hon D.J. WORDSWORTH: Yes, it can be a short, happy life.

Hon P.G. Pandal: A bit like your parliamentary career, Mr Kelly.

Hon D.J. WORDSWORTH: Duck shooters are having little effect on the duck population. The encyclopaedic reference states -

The CSIRO makes an annual survey of the numbers of ducks in Victoria, South Australia and New South Wales prior to the opening of the duck shooting seasons each year. Determination of the bag limits and length of service are influenced by the results of these surveys; they also reveal how ducks and geese come to terms with life in an arid continent. The birds will survive provided an adequate national system of refuges is maintained for their use.

That is what the shadow Minister for the Environment is getting at. The Liberal Party policy is that wetlands can be protected, particularly that set aside for wildlife. Man has probably doubled the area of land where ducks can breed and live. Although I am not a duck shooter, I accept that there is a case for shooting ducks on private land and for setting aside delicate areas of wetland entirely for breeding and not for shooting. At times we may need shooters to reduce the numbers of animals or birds. We could say "animals" because we want to reduce the number of foxes and other animals, and if we disallow duck shooting altogether we might lose our recreational shooters.

Hon Garry Kelly: They can go bunyip shooting.

Hon D.J. WORDSWORTH: Clay bird shooting is very popular, so they do not have to go shooting buniyps.

It is rather interesting that the Labor Government in Victoria has not banned duck shooting.

Hon Doug Wenn: They don't have any ducks.

Hon D.J. WORDSWORTH: The Victorian Government has recognised that the Western Australian Opposition policy has a lot to commend it. It will set aside areas for duck shooting and will phase out the use of lead shot. I am not sure what would be used in place of lead shot. Perhaps steel shot, which is more expensive and I have an idea it might also wear out the barrels of guns and do a few other detrimental things. We should examine whether that is really necessary. This legislation is an utter sham and that it is being

introduced every year just for the fun of it. The Liberal Party has the sensible approach to it.

Hon Doug Wenn: You have failed for 10 years to have a sensible approach to anything.

Hon D.J. WORDSWORTH: Most of us do not like blasting away with shotguns. I do not think I have ever shot a duck and I rather love the quail on my property. Nevertheless I will not be carried away with this sort of legislation which the Government claims has been introduced to protect wildlife.

**HON JOHN HALDEN** (South Metropolitan - Parliamentary Secretary) [10.04 pm]: This debate has been remarkable if nothing else. It would be unwarranted of me not to say that I would like to respond to some of the comments of Hon Phillip Pental and Hon Peter Foss. I am not sure whether they were contributing to the content of the Bill or taking exceptional liberties in this House to vent their spleen upon the Attorney General, the Government and others. I do not think they contributed a great deal of sensible debate.

Hon P.G. Pental: Why must you suddenly reduce the debate to that level? It was a good debate until you got into it.

Hon JOHN HALDEN: This debate was shot the moment Hon Phil Pental opened his mouth. People in the public gallery have telephoned me to comment on the member's disgraceful performance when he, firstly, attacked the Attorney General and, secondly, made stupid platitudes in this House to people who had a considered opinion about this issue and generally tried to wheedle his way down a middle path. He failed miserably on both counts. I do not want to go into that in great depth except to say that my views on the debate are well known. I do not want to lower myself to that level.

Hon P.G. Pental: You have done that successfully in your opening remarks.

Hon JOHN HALDEN: I hope not. I do not want to go on like Hon Phillip Pental did for an hour. Although other members contributed a different view to the one I hold I accept that they had, and still have, concerns about this issue. Hon Bill Stretch raised a number of matters and I was able to put him in contact with an adviser to have a number of those concerns clarified, particularly that concerning the conditions on damage permits vis a vis whether they are regulations. One can feel somewhat aggrieved at the particular tack of Hon Phillip Pental but at the same time one must compliment Hon Reg Davies for the content of his speech. Again, whether one agrees with it or not one must say that it was well researched. I compliment the thoroughness with which Hon Reg Davies researched the issue, as he has obviously spoken to a wide array of people with various views on this matter. Hon Phillip Pental, besides his personal attacks, raised a number of what can only be described as furphy issues.

Hon P.G. Pental: Incidentally, when are you going to argue the substance of what I was complaining about in respect of the Supreme Court action?

Hon JOHN HALDEN: If that is the substance of what Hon Phillip Pental was debating, there was not too much to it, but he has never been known to lay much of a glove on anybody.

Hon Peter Foss: Do you admit that is a fact?

Hon JOHN HALDEN: I do not think it is a fact and I do not propose to concede that point.

Hon Phillip Pental raised the furphy of wetlands conservation. Suddenly he had become a convert to the idea of wetlands conservation. This Government has been aware of the problem and the necessity for wetlands conservation throughout its term, and in spite of Hon Phillip Pental's statement that he discovered the issue in 1989, I can assure him that it was discovered by others well before then; his intervention in the process was not needed.

Hon P.G. Pental: We gave you a bit of political spine to do what you had said you were going to do.

Hon JOHN HALDEN: Hon Phillip Pental's argument that the cost of allowing duck hunters to shoot would be offset by the collection of revenue from fees is fallacious. The fees collected would nowhere match the cost of employing rangers to supervise the duck hunting season. If the annual licence fee were \$30 it would be \$170 short of the cost of the CALM officers required to supervise such a shoot. The member's reference to the proposed amendments to the Health Act concerning possums is irrelevant to the debate. The Health



Act amendment defined the word "game" and was needed because in Tasmania possums are shot as game for human consumption.

Hon P.G. Pental: Your Bill talked about taking possums in the wild; do not disguise that. That is why the Government took it out of the Bill.

Hon JOHN HALDEN: It was raised in the Health Bill because the meat was unfit for human consumption. The member can twist and turn; he has never liked this fact, but he must sit and listen to it.

Hon Doug Wenn: You sound like the President.

Hon JOHN HALDEN: I probably do sound like Mr President but I happen to have my feet on the floor. The issue of kangaroos was raised. Kangaroos taken under kangaroo management programs are another legal source of game and are provided for in the Health Act. However, kangaroos are culled under approved kangaroo management programs. There is no hunting season for kangaroos and they are culled primarily for damage mitigation. Damage mitigation is provided for in this Bill through damage permits. The issue of Supreme Court action, whether it be successful or fails, will not stop this House deliberating on this matter and coming down with a decision. If litigation of any nature is before the Supreme Court it does not mean that we should stop the processes of this House or this Parliament pending an outcome. In 1980 I recall members opposite referring to matters relating to matters occurring in the Supreme Court. That is not a new practice. This Parliament is considering a perfectly reasonable proposition. The action in the Supreme Court can continue or be withdrawn as the parties see fit.

I did comment on the words of Hon Reg Davies. I refer to a letter I received from Phil Jennings, President of the Conservation Council of Western Australia. He writes in regard to the opening of the duck shooting season at Lake Wannamal and states -

We . . . were appalled by the brutality of this so-called "sport". In an instant a tranquil scene on a beautiful wetland was transformed into a slaughter of innocent wildlife by a callous group of hunters. The cries of pain from the birds were inescapable and many wounded birds swam away to die slowly and painfully in the reeds. After the shooters left we collected many dead and wounded birds from the Lake. We do not believe that there is any excuse for such a barbaric practice in a humane, civilised society.

We do not oppose shooting as a sport and we support the culling of feral animals which are damaging our national parks and pastoral lands. In those cases the survival of native species is not threatened. However duck populations in WA are small and declining and we can no longer allow a small group of people to have the privilege of using our remaining wildlife for target practice. If people wish to shoot for fun they have ample opportunity at their local rifle range. If they like the taste of the duck they could raise their own or buy one from their local supermarket. If farmers' crops are threatened by ducks they can easily get a damage permit from the Department of Conservation and Land Management to cull them. The proposed legislation will not remove these rights.

I understand that members opposite do not want to hear an alternative view, but there are alternative views and members opposite do not hold universal truth. The comments in that letter probably typify the views of many Government members.

I will also quote from an article in *Shooters of Tomorrow*, an official organ of the Western Australian Field and Game Association. There was some criticism of Hon Reg Davies' comment that duck hunting was often associated with alcoholism. The article states -

On the weekend of 24th, 25th January some 30 odd P. & G shooters and a portable freezer travelled to Coolgardie to take part in an organized duck shoot arranged by Blue Wing and three Kalgoorlie members . . . The arrival time was 1300 hours outside the Coolgardie Town Hall but being patriotic sandgropers we all met at the local pub to watch on T.V. Kim Hughes break the record and sample the local brew.

A quick count was taken to ensure all were present and then in convoy a very eager mob set out for the lakes some 50 miles North West of Coolgardie.

Two stops were made to check that no one was lost (one stop too many said Dean T).

Prior to reaching the lake, the final stop was at the camping site on the West side of Rowles Lagoon. The local organisers had set up the camp which consisted of B.B.Q's, tressles, portable power unit and lights plus two important items one being the duck plucker, the second a keg of the famous Hannans lager.

Hon Reg Davies: But they don't drink!

Hon JOHN HALDEN: That information is from an official organ of an official duck shooters' association.

Hon Peter Foss: They should be prosecuted.

Hon JOHN HALDEN: Perhaps they should. I have the person's name if Hon Peter Foss wants to pursue the matter. Hon David Wordsworth was quick to attack Hon Reg Davies but he should listen to the words of this duck shooter.

Hon D.J. Wordsworth: At least my references were easier to read.

Hon JOHN HALDEN: The article continues -

Cars and ute's were then unpacked and camps set up and shooters relaxed over a bottle or two prior to the briefing on the lake system and the placing of shooters on the Lagoon and surrounding lakes.

Hon P.G. Pental: Sounds like a Labor Caucus meeting.

Hon JOHN HALDEN: It sounds more like the Opposition at Ashburton on the weekend drowning its sorrows. Any time Hon Phil Pental wants to swap it I am only too happy to do so. The article further states -

Don Lithgow conducted the briefing and explained the nature and size of the lakes and then called for volunteers to go to Clear Lake and the very "ominous sounding" Boggy Lake . . .

With blast off time set for 6.00 p.m. at 5.30 p.m. cartridge laden hunters moved out of camp and were ferried to their positions. All very eager and armed to the teeth.

6.00 p.m. - Bang and more bangs then bang recurring till approx. 7.30 p.m. when all were requested to return to camp.

8.00 p.m. . . . A rough count showed approx. 400 birds . . .

Kick off time Sunday morning 5.30 a.m. came around very quickly and you guessed it, lots more banging till approx. 8.00 a.m. and another pile of birds to clean up. A quick count showed approx. 300 birds.

In a space of less than 24 hours, 700 birds had been killed. The article goes on -

After an enjoyable breakfast those that were heading home thanked the local boys in Bob, John and Don for a fine shoot and then headed back to Perth.

Some shooters stayed on to shoot Sunday evening and Monday morning and then headed back home.

As one of the organisers I would also like to thank . . .

So it continues. Any suggestion that hunters do not see this as an occasion for a bit of a booze up is obviously refuted by this hunter's article in this official organ.

Hon J.N. Caldwell: How long ago was that?

Hon JOHN HALDEN: In 1981. It has also been suggested in this House that hunters could be licensed and that they would be able to discriminate between endangered species and non-endangered species. I refer to the experiences in 1992 of duck hunting seasons in other parts of Australia. I will inform the House of the variety of birds that were shot on Barren Box Swamp and Lake Cowal.

Hon D.J. Wordsworth: Where are they located?

Hon JOHN HALDEN: They are in New South Wales. The shooters there must be fairly discriminating because they actually shot two black swans, two seagulls, four coots, six freckled ducks of the type Hon David Wordsworth referred to and a variety of other endangered birds. Of the 200 birds shot 16 per cent were protected native birds. Of more

interest is another analysis taken in Victoria, where the endangered birds collected during the 1992 duck shooting season in that State included 209 Eurasian coots, 128 freckled ducks, 79 black swans, 24 hoary headed grebes, 13 grebes, nine musters and seven blue billed ducks. They even shot seven straw necked irises and it is beyond me how anyone could mistake an iris for a duck. The list goes on and unfortunately it includes three seagulls. Members must get the message from these facts that duck shooting is nothing more than indiscriminate shooting by people wanting to have a weekend out; a weekend in which they will consume varying amounts of alcohol regardless of whether it is lawful.

Hon David Wordsworth also raised the issue of indigenous people being allowed under this proposal and under the current Act to hunt for game on private property, with the permission of the owner, to obtain enough food for themselves and their families. To listen to him and other members one would consider this to be an outrageous proposition in some sort of universal context. I advise members that the right of indigenous people to hunt for food for themselves and their families is not a right peculiar to this State or this country. That right exists for the Indians in the United States, for the Eskimos, the Maoris and for a range of other indigenous peoples. There is nothing wrong in this procedure continuing. The indigenous people of this country, in the 40 000 years that they were here prior to white settlement, successfully managed the balance between the number of native fauna to kill and the number they required to eat.

Hon D.J. Wordsworth: It was before the days of shotguns.

Hon JOHN HALDEN: Obviously, but a person can only eat so many ducks and the law is very clear about that. Whether ducks are shot or speared, the hunter and his family can only eat so many.

Hon Bob Thomas: There is not much meat on them.

Hon JOHN HALDEN: That may be the case but I have not eaten one.

Hon D.J. Wordsworth: Can they shoot on Crown land?

Hon JOHN HALDEN: They can, but only in certain areas and with permission.

Hon D.J. Wordsworth: There is no mention of certain areas or permission in the legislation.

Hon JOHN HALDEN: We will debate that later. It is obvious that my understanding of the legislation is different from the member's.

Hon Reg Davies asked for clarification on two points. One referred to damage permits and the notion was that people could go onto private property -

Hon Reg Davies: I was referring to an amendment to the CALM regulations.

Hon JOHN HALDEN: That is right. It would allow people to shoot native fauna under the damage permit conditions and to then remove the carcasses for their consumption or for whatever reason.

Hon Reg Davies: It was only for personal consumption.

Hon JOHN HALDEN: Currently carcasses are buried on site. I am able to advise the member that the Minister for the Environment is only too happy to look into this matter.

Hon Peter Foss: Does it mean you will do something about it?

Hon JOHN HALDEN: Yes. I am saying that we will look into it and it does mean we will do something.

The difficulty with the suggestion is that it could result in a de facto shooting season to allow people to remove carcasses, but we will not know who is allowed onto the property. People can say that Joe Bloggs allowed them to shoot on his property and that they have shot so many birds. If that can be controlled by way of regulation it will be considered. However, we will not allow an open season for people to get around the intention of this Bill.

Hon Reg Davies also raised the issue which was also raised by Phil Jennings in his letter which I read to the House; that is, hunters being able to track feral animals on private and Crown land. Again the Minister has no problem with that but again we must be careful about where, how many, what times and so on. It would be unfair of me to make a blanket commitment when clearly what the Government does not want is 500 or 1 000 hunters

running through a national park tracking foxes. However, in a controlled situation and in certain circumstances and at certain times it is a distinct possibility.

Hon D.J. Wordsworth: That can already be done under the existing Act.

Hon JOHN HALDEN: It probably can. This debate has been characterised by a large number of furphies.

Hon D.J. Wordsworth: The biggest one was yours.

Hon JOHN HALDEN: We should all learn one thing from politics but it appears that Hon David Wordsworth has not yet learnt it; that is, when the numbers are counted we know who wins and we will find that out very shortly.

Hon Derrick Tomlinson: That does not decide who makes the biggest furphies.

Hon JOHN HALDEN: It will decide who wins the debate. The situation is that a number of furphies have been made in this debate. However, the Government does not believe that duck shooting is an appropriate sport in which people should be involved in 1992. The community's habits are such - this point was raised by Hon Reg Davies by way of interjection - that people in this country no longer eat cat and dog because they have refined their taste buds. The Government is now prepared to extend that to take in ducks. In my opinion and in the Government's opinion, duck hunting is not a sport; it is a vile and somewhat unfair action on the part of some people and if they want to be involved in the sport of shooting they should do so in a more appropriate way.

Hon George Cash: Will you be introducing a Bill to deal with fish?

Hon JOHN HALDEN: I have referred to the furphies which have been made during this debate and I will not retread that ground. I commend the Bill to the House.

#### *Division*

Question put and a division taken with the following result -

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Ayes (13)		
Hon J.M. Berinson	Hon Kay Hallahan	Hon Bob Thomas
Hon Kim Chance	Hon Tom Helm	Hon Doug Wenn
Hon Cheryl Davenport	Hon Garry Kelly	Hon Fred McKenzie
Hon Reg Davies	Hon Mark Nevill	(Teller)
Hon John Halden	Hon Tom Stephens	
Noes (12)		
Hon J.N. Caldwell	Hon P.H. Lockyer	Hon D.J. Wordsworth
Hon George Cash	Hon Muriel Patterson	Hon Margaret McAleer
Hon Max Evans	Hon P.G. Pendal	(Teller)
Hon Peter Foss	Hon R.G. Pike	
Hon Barry House	Hon Derrick Tomlinson	

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#### *Pairs*

Hon T.G. Butler	Hon N.F. Moore
Hon Graham Edwards	Hon W.N. Stretch
Hon Sam Piantadosi	Hon E.J. Charlton
Hon B.L. Jones	Hon Murray Montgomery

Question thus passed.

Bill read a second time.

#### *Committee*

The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon John Halden (Parliamentary Secretary) in charge of the Bill.

Clause 1: Short title -

Hon P.G. PENDAL: I do not want to spend a lot of time at the Committee stage and I

certainly do not want to retread the arguments put previously. However, I cannot let pass some of the more superficial remarks that peppered the speech of the Parliamentary Secretary in his response to the second reading debate. In particular, I impress upon the Government the need for it to turn over a new leaf with regard to taking real and serious measures to protect Western Australia's wildlife. The Government has made out a case - albeit a poor one - that this Bill is concerned with the protection of Western Australia's wildlife. Of course, it is nothing of the kind. This Bill was introduced after seven years of inaction by the Government with the intention of rescuing a somewhat tattered reputation among people who take this issue seriously. If the Government were serious about wanting to make an impact on the state of affairs with regard to Western Australia's wildlife, it would have committed significant resources for dealing with feral animals - a matter raised in the speeches of several Opposition members. I am trying to draw to the attention of the Committee, the media and the public to the very active steps the Government has taken to ban duck shooting - that has effectively now been achieved with the passage of the second reading - and the very casual and, to some extent, non-existent resources the Government puts at the disposal of the fight against the feral animal problem.

For those who may misunderstand the nature of that problem, I quote from the popular magazine in *The Weekend Australian* of 28-29 March. It was written by none other than Barry Cohen who was most recently the Minister for the Environment in the Hawke Government. At the beginning of the article his comments are paraphrased as follows -

Environmentalists aren't excited by it and owners can't believe it, but the big threat to Australia's endangered wildlife, argues Barry Cohen, is the cat (including yours) and the fox.

Hon Reg Davies: That is precisely what I said.

Hon P.G. PENDAL: I am pleased that the Opposition has made an impact on Hon Reg Davies in the course of this debate.

Hon John Halden: You did not.

Hon P.G. PENDAL: Hon Reg Davies took a serious interest in the matter, which is more than could be said about many people on the Government side.

The CHAIRMAN: Order! Although the speech on the short title clause can be fairly wide ranging, the member is stretching the bounds somewhat by introducing matters which are more fitting to a second reading debate. I ask him to bear that in mind and to make his comments relevant to the Bill.

Hon P.G. PENDAL: I seek some latitude, Mr Chairman, because I want to stress the importance of understanding that the Government has its priorities wrong. It has spent enormous resources on this Bill and it has not spent any resources on the real problem. I quote briefly from the article to which I referred -

An oft-quoted example of the latter is the Conservation Commission of the Northern Territory's attempt to re-establish the rufous hare wallaby (mala) in the Tanami Desert, 400km north-west of Alice Springs. Once occupying 25 per cent of inland Australia, this "small and beautiful member of the kangaroo family" lived in the spinifex deserts and peripheral shrublands of Western Australia, South Australia and the Northern Territory. In the past 50 years, it has declined almost to extinction and is now known to exist on only two small islands off the West Australian coast . . . and the Tanami Desert where, until four years ago, two small separate, wild populations remained.

It goes on to say other interesting things, but I will not press the point.

If this Government is so wedded to the concept of protecting our native wildlife in Western Australia, in view of the quote I have just read to the Chamber I ask where that concern expresses itself in the Government's most recent publication touching on the resources of these things; namely, the Program Statements of 1991-92 for the Department of Conservation and Land Management. I will not insult the officers of that department by saying that they do not know the extent of the problem. The problem is that they know the extent of it but the Government does not reflect it in its budgetary priorities. I refer to pages 346 to 348 of the Program Statements, which become a detailed explanation of how the

Government's dollars will be spent in the next year; and that, by extension, means that it proves to the public's satisfaction what is and what is not important.

I will not say, for example, that there are no references to feral animals in the Program Statements, because there are. However, there is no reflection of the seriousness of the problem we face. Certainly bringing in a Bill of this kind does nothing to underscore that seriousness. I will give one quote from page 346 of the Program Statements under the heading "Issues and Trends" picked up by the department in the course of the previous year, as follows -

Increases in the rate of degradation of natural habitats and in the rate of regional extinction of many plant and animal species.

Good - the problem is recognised. What I am saying is that the solutions are ignored. We may well be on the way to getting to the bottom of some of these serious matters if the Government were half serious, if it were not as cynical as it has been in bringing in this anti-duck Bill, and if it had been prepared to put aside the resources that are warranted in the fight against feral animals, for example, instead of putting them into a largely concocted, largely self-created set of arguments surrounding duck hunting. That is my regret. I will not pursue the point beyond that.

The Parliamentary Secretary handling the Bill made his pitch to the conservation movement and about the response he received from people over the weekend. I will leave him with this message, if he learns nothing else from this debate: He should not get carried away with the fact that the conservation movement in this State holds the Australian Labor Party in terribly high esteem. The Australian Labor Party in fact is held in low esteem because it has been promising the world and it delivers very little.

Hon Tom Stephens: We have just won a by-election, for goodness' sake!

Hon P.G. PENDAL: I was very encouraged to learn that the split up in the Green vote was something like 54 to 46 in Ashburton.

Hon Tom Stephens: No, they were the early figures. You did not see the final ones.

The CHAIRMAN: Order!

#### *Point of Order*

Hon JOHN HALDEN: On a point of order, Mr Chairman -

Hon P.G. PENDAL: That is the very point I am making. The Labor Party is losing the debate with the people amongst whom it counts the most.

Hon JOHN HALDEN: Mr Chairman, there is obviously no point of order if the member has finished speaking, but the relevance of his comments to the Bill was nil.

#### *Committee Resumed*

Hon JOHN HALDEN: Hon Phillip Pendal rose to speak about the superficial and the real and serious issues here just after he had been advocating duck hunting or some quasi or de facto arrangement that will lead to duck shooting. He takes little account of the impact of duck shooting upon wetlands, and calls for self-regulation of duck shooters when the history of duck shooters would show that self-regulation is probably an impossibility.

Hon P.G. Pendal: The Victorian Labor Government has just made the decision we are advocating. You are the people out of step.

Hon JOHN HALDEN: The impact of duck shooting in terms of lead content and the destruction of flora are not considered by this man, who calls us the ones in this debate who are superficial. The real and serious issues are that this Government is committed, and was committed well before Hon Phillip Pendal raised the issue of wetlands, and makes commitments to that in a real and financial sense.

Hon P.G. Pendal: We know you knew the problem, but you did nothing about it.

Hon JOHN HALDEN: Further, the issue of this Bill, duck hunting, sees this Government put forward full protection for ducks in the conservation estate. It minimises the impact of certain groups by concentrating upon fragile areas where duck hunting goes on. Identification tests advocated by the Opposition have been shown to be nearly useless in protecting ducks.

Hon P.G. Pental: It has just been supported by the Labor Party in New South Wales.

Hon JOHN HALDEN: I do not mind what the Labor Party in New South Wales or Victoria said; I am telling the member what this Labor Government is doing.

Hon P.G. Pental: No-one believes you lot.

Hon JOHN HALDEN: They believed us enough for us to win on Saturday. The member keeps falling for it but I will keep giving it to him. The issues here are very clear. Only one set of false premises is being put forward, and it is not being put forward by the Government; it is coming from the Opposition and the person who has been speaking on its behalf. If there is any need to highlight superficiality members need only to have listened to the speech made by Hon Phillip Pental a moment ago.

**Clause put and passed.**

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

**Clause 4: Section 14 amended -**

Hon PETER FOSS: This clause relates to the question raised by Hon Reg Davies, from which I know the Government has back-pedalled somewhat as to whether or not there will be damage licences.

Hon John Halden: There will be damage licences; there is no question of "or not".

Hon PETER FOSS: The Parliamentary Secretary is going to look into the matter?

Hon John Halden: No, we are looking to change the conditions, as the member said.

Hon PETER FOSS: I suggest that the effect of this amendment may very well prevent damage licences operating under certain circumstances, whether or not the regulations are amended. That is a slight problem. The first thing the Government is doing here is making all of the sections of the Wildlife Conservation Act, from section 14 on, subject to proposed section 15A, a new section the Government plans to insert. As I think was dealt with in the second reading speech, the scheme of the Wildlife Conservation Act is that section 14 provides that all fauna is wholly protected throughout the whole State. Section 14(2) says -

(2)(a) The Minister may from time to time declare -

that any of the fauna is not protected or is protected to such extent for such period of time throughout the whole or such part or parts of the State as he shall think fit,

Perhaps we should skip past section 15 for the time being and go to section 17B, which will be deleted. That section provides that -

(1) The Minister, in respect of any species of wild duck, goose and quail or other prescribed species of game for which, in any specified part or parts of the State, an open season has been proclaimed or declared pursuant to section fourteen of this Act, . . .

- (a) declare that species to be a game species in that part or those parts;
- (b) limit the number of species that may be taken . . .
- (c) limit the number of species that may be in the possession . . .
- (d) specify such other conditions . . . as he thinks fit to impose, respecting the taking during that open season of the species.

Section 14(1) of the principal Act contains a statement of total protection, and section 17B provides power to the Minister to declare certain species of game for an open season. Also, even a closed season can be called in connection with some other parts of the closed season reference in sections 15. Section 15(1) says that the Minister may, in addition to any licences required under section 17, 17A or 17B in the Act, issue such licences as are prescribed. That is a fairly broad power. The licences to be issued in sections 17, 17A and 17B are very much restricted. I would have thought that they would certainly not allow for any damage licences whatsoever. Therefore, the only power which allows damage licences to be issued is found in section 15(1).

Admittedly we have been talking about regulations as the basis for the damage licences but

they cannot be granted except under the power of the Wildlife Conservation Act. However, it is not possible to issue a damage licence under regulation if the Act states that you cannot kill the species. Therefore, the statutory power is required to issue damage licences, and that can be found in section 15. Section 15 will be subject to proposed new section 15A, which deals with the fact that the Minister shall not make any declaration under section 14(2)(a) that would allow the taking of any species of ducks, geese or quail for purposes of sport and recreation. I am unsure why we are making this subject to section proposed new 15A if that is read literally for it only talks about a declaration under section 14(2)(a). Therefore, why in this instance are we making section 14(1) subject to proposed new section 15A? Is it possible to read in proposed new section 15A an attempt to prevent any activity taking place which would allow the taking of any species of duck, goose or quail for the purpose of sport or recreation?

Section 28 does not allow the making of regulations or the prescribing of any licences under section 15(1) which will allow for the taking of any species of duck, goose or quail for the purpose of sport or recreation. Again, we have a further qualification regarding section 28, which deals with regulations. It states that one is not allowed to prescribe any licences under section 15(1) - which is the one I said dealt with damage licences - that would allow the taking of any species of duck, geese or quail for the purposes of sport or recreation. Proposed new section 15A(3) reads -

In subsections (1) and (2) references to "the purposes of sport and recreation" include, subject to section 23, one or both of those purposes whether or not combined with the objective of taking ducks, geese or quail for food.

Proposed new section 15A aims to prevent any taking of ducks, geese or quail, where it is combined with the purpose of doing so for sport and recreation.

#### *Progress*

Progress reported and leave given to sit again, pursuant to Standing Order No 61(c).

### ADJOURNMENT OF THE HOUSE - ORDINARY

**HON J.M. BERINSON** (North Metropolitan - Leader of the House) [10.55 pm]: I move -

That the House do now adjourn.

#### *Adjournment Debate - Grayden, Hon Bill - 36th Anniversary*

**HON P.G. PENDAL** (South Metropolitan) [10.56 pm]: I do not wish to hold up the House for too long, but I draw its attention to a matter of some bipartisan interest that was expressed in another House today; that is, today marks the 36th anniversary of the election to the lower House of the Parliament of the member for South Perth, Hon Bill Grayden. Members will be aware that Mr Grayden has been a member of Parliament for much longer than that because he served in both the Federal and State Parliaments prior to being elected as the member for South Perth in 1956. It was an appreciated gesture that some notice was taken of that anniversary in the lower House today; I believe it was recognised in more pleasant circumstances outside the House subsequently.

It is also something of a nice coincidence that that gesture by his colleagues in the lower House virtually coincided with the preselection of the excellent candidate to follow Mr Grayden in that seat, Mr Roger Hussey.

**Hon Tom Stephens:** From Mosman Park.

**Hon P.G. PENDAL:** Yes, I believe that he is from Mosman Park, but I would be unhappy if it disqualified a member when he happens to live less than 10 miles from the electorate he represents. I am surprised that the member who interjected made those comments given the fact that he certainly lives more than 10 miles from the electorate which he represents.

**Hon Tom Stephens:** Touchè.

**Hon P.G. PENDAL:** Mr Grayden is the longest standing member of the Parliament of Western Australia, and he served a distinguished period as a Minister of the Crown in the Government of Sir Charles Court. Of course, by indicating his intention of stepping down at the next State election, it emphasises how infrequently these days people have the



opportunity to serve in Parliament for as long a time as that member; he has served 36 years without interruption. He should be given some sort of award for gallantry for having served that long! I pay tribute for all his achievements in a long and colourful period as a member of Parliament. I know that that view was expressed in bipartisan terms elsewhere today. Without creating a stampede of speakers in this Chamber, perhaps all members of this House might join me in expressing to Mr Grayden our tribute and congratulations on a long and distinguished career.

**HON FRED MCKENZIE** (East Metropolitan) [11.00 pm]: On behalf of members on this side of the House, I also have a few words to say about the 36 years of service that Mr Bill Grayden has given to the Parliament. I have been here for only 15 years and yet have been here longer than anybody on this side of the House. Therefore, 36 years is a hell of a long time.

Hon Tom Stephens: That is continuous years. He had Federal and State service before that.

Hon FRED MCKENZIE: I was not aware of that. I too am retiring at the end of this term. Thirty-six years service should make him eligible for an award of gallantry. It is a pity we do not have one because he certainly deserves it. He has had a long and distinguished career and I am pleased that the Leader of the House gave me the privilege of supporting the remarks of Hon Phillip Pandal on behalf of members on this side of the House. Irrespective of our political differences, we can only look at a member's record and comment on our personal experiences with that member. I have had a cordial relationship with Bill Grayden, although during his early days in Parliament he was a controversial figure. He was not afraid to speak out if he had a point of view. I remember the member he replaced in the Federal Parliament indicating to me that he was harsh in his treatment of that member - I speak of Don Mountjoy. I know Don because he was a railway worker before he went into Parliament.

Hon P.G. Pandal: He was also the subject of a famous pamphlet.

Hon FRED MCKENZIE: I have seen that pamphlet. Those days were pretty tough.

Hon J.M. Berinson: Not like now!

Hon FRED MCKENZIE: I remember the latter part of those very bad days and they were pretty tough times. I think things are easier today, although Mr Berinson has a tough job. He is a strong adversary.

I pay tribute to the long service that Bill Grayden has given to the Parliament because it should not go unnoticed. Thirty six years is a long time. During that service he has been involved in a number of activities, particularly Aboriginal matters. In fact, he could be considered an authority on Aborigines. We might not always agree with him but we cannot dispute his wisdom in those matters. He has served the Parliament well and we congratulate him for reaching that milestone of 36 years.

**HON GARRY KELLY** (South Metropolitan) [11.03 pm]: I would also like to be associated with the comments made by Hon Phillip Pandal. My comments refer to what will pass as a footnote to Hon Bill Grayden's career of 36 years. In 1974 he was opposed by a 26 year old Garry Kelly in the State elections. I report to the House that I did not win that election. I extend my congratulations to Bill on his 36 years of service to the Parliament.

#### *Adjournment Debate - "Leeuwin" Program*

**HON PETER FOSS** (East Metropolitan) [11.04 pm]: I also associate myself with the remarks made by Hon Phillip Pandal and congratulate Mr Bill Grayden. I also wish to refer once again to the *Leeuwin*. Hon David Wordsworth has also been on the *Leeuwin* and has given me a few other points that I thought should be dealt with tonight. The "Leeuwin Update" is issued by the Sail Training Association of Western Australia and has provided some of the facts and statistics about the operations of the *Leeuwin*. It states -

The *Leeuwin* program was designed for young people and as I think most of you are aware, we do not at present have an upper age limit.

During last year 23% of our trainees were over 25; 19% were between 20 and 25 years of age and 58% were 19 and under.

The internationally recognised age range for Sail Training is 16 to 25 years and 77% of our trainees fell within that age range.

During the year we averaged 80% occupancy and whilst this result is quite pleasing, it still meant that there were spaces for some 172 young people to benefit from the Leeuwin Sail Training programme. Despite the economic climate we are improving our occupancy level year by year and obviously our target is to obtain 100% occupancy.

It continues -

Voyages are available to trainees of both sexes and last year 56% were male and 44% were female. . . .

The marketing of the Leeuwin programme is still heavily slanted towards schools and other educational institutions. Because Leeuwin does not receive any State or Commonwealth grants the full fare has to be met by the participants. It is therefore surprising and encouraging to see the high participation from the Government Schools. Last year 28% came from Independent Schools, 53% from Government Schools, and 19% from other educational institutions such as TAFE and Universities.

Since the start of the Leeuwin programme, considerable effort has been made to obtain sponsorship for those unable to afford the full financial cost of the fare. Last year, over 40% of all our trainees received some financial sponsorship and support and this assistance ensures that our programme is available to a broad cross-section of the community. . . .

Sponsorship for trainees comes from a variety of sources and approximately one quarter of all those receiving sponsorship have been assisted by the Captain's Fund.

The Captain's Fund receives donations from individuals and half of all the STAWA membership is put towards this Fund. In general it is believed that the sponsored trainee has more commitment to the programme if they have contributed even in a small way to the fare. Part sponsorship is therefore preferred.

This is an important program doing a great deal for the youth of our State and a large number of people are contributing to make it a success. I hope anybody in this House who has the ability will assist to make it a success.

Question put and passed.

*House adjourned at 11.06 pm*

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**QUESTIONS ON NOTICE**

**GOVERNMENT DEPARTMENTS - MINISTER FOR JUSTICE**

*Bodies Administered; Current Organisational Structure; Employment Positions*

53. Hon PETER FOSS to the Attorney General representing the Minister for Justice:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon J.M. BERINSON replied:

The Minister for Justice has provided the following reply -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR ABORIGINAL AFFAIRS**

*Bodies Administered; Current Organisational Structure; Employment Positions*

57. Hon PETER FOSS to the Minister for Education representing the Minister for Aboriginal Affairs:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?

- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The Minister for Aboriginal Affairs has provided the following response -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR MULTICULTURAL AND ETHNIC AFFAIRS**

*Bodies Administered; Current Organisational Structure; Employment Positions*

58. Hon PETER FOSS to the Minister for Education representing the Minister for Multicultural and Ethnic Affairs:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The Minister for Multicultural and Ethnic Affairs has provided the following response -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR SENIORS**

*Bodies Administered; Current Organisational Structure; Employment Positions*

59. Hon PETER FOSS to the Minister for Education representing the Minister for Seniors:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The Minister for Seniors has provided the following response -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR HEALTH**

*Bodies Administered; Current Organisational Structure; Employment Positions*

62. Hon PETER FOSS to the Minister for Education representing the Minister for Health:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?

- (7) With respect to each of the abovementioned positions, who holds those positions; and
- (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

The member is referred to the Premier's response to question on notice 49.

#### GOVERNMENT DEPARTMENTS - MINISTER FOR PLANNING

*Bodies Administered; Current Organisational Structure; Employment Positions*

63. Hon PETER FOSS to the Minister for Education representing the Minister for Planning:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The Minister for Planning has provided the following reply -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR LANDS**

*Bodies Administered; Current Organisational Structure; Employment Positions*

64. Hon PETER FOSS to the Minister for Education representing the Minister for Lands:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The Minister for Lands has provided the following reply -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR LOCAL GOVERNMENT**

*Bodies Administered; Current Organisational Structure; Employment Positions*

65. Hon PETER FOSS to the Minister for Education representing the Minister for Local Government:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?

- (7) With respect to each of the abovementioned positions, who holds those positions; and
- (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The Minister for Local Government has provided the following reply -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR COMMUNITY SERVICES**  
*Bodies Administered; Current Organisational Structure; Employment Positions*

66. Hon PETER FOSS to the Minister for Education representing the Minister for Community Services:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The following answer has been supplied by the Minister for Community Services -

The member is referred to the Premier's response to question on notice 49.



**GOVERNMENT DEPARTMENTS - MINISTER FOR DISABILITY SERVICES**

*Bodies Administered; Current Organisational Structure; Employment Positions*

67. Hon PETER FOSS to the Minister for Education representing the Minister for Disability Services:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?
- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon KAY HALLAHAN replied:

The following answer has been supplied by the Minister for Disability Services -

The member is referred to the Premier's response to question on notice 49.

**GOVERNMENT DEPARTMENTS - MINISTER FOR SOUTH WEST**

*Bodies Administered; Current Organisational Structure; Employment Positions*

77. Hon PETER FOSS to the Minister for Police representing the Minister for South West:

With respect to your department and to each of the bodies administered within that department -

- (1) What are the bodies administered within the department?
- (2) What is the current organisational structure of your department and those bodies?
- (3) What are the senior executive service positions within your department and those bodies?
- (4) What are the other senior positions within your department and those bodies?
- (5) What are the policy adviser positions within your department and those bodies?
- (6) What are the public relations positions within your department and those bodies?

- (7) With respect to each of the abovementioned positions, who holds those positions; and
  - (a) what is their period of service within the Public Service or in employment by the Government or contracted to the Government;
  - (b) what were their previous positions held within the Public Service or in employment by the Government or contracted to the Government and the dates for which they were held;
  - (c) what was their experience immediately prior to entering the Public Service or contracting with Government;
  - (d) are they presently on contract and what is the date of expiry of that contract?

Hon GRAHAM EDWARDS replied:

The Minister for South-West has provided the following reply -

The member is referred to the Premier's response to question on notice 49.

#### OPTICAL DISPENSERS ACT - AMENDMENTS

##### *"Review of the Optical Dispensers Act 1966"*

90. Hon GEORGE CASH to the Minister for Education representing the Minister for Health:

- (1) Does the Government intend to introduce amendments to the Optical Dispensers Act 1966 in line with the discussion papers titled "Review of the Optical Dispensers Act 1966" which was circulated to various optical dispensers in September 1988?
- (2) If yes, when will the amendments be introduced to the Parliament?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

- (1) No decision has been made about amending the Act. However, a number of the review's recommendations will be addressed by amending the regulations.
- (2) Not applicable.

#### JUVENILE OFFENDERS - CARNARVON

##### *Repeat Offenders Concern*

95. Hon P.H. LOCKYER to the Minister for Education representing the Minister for Community Services:

- (1) Has concern been expressed by the Shire of Carnarvon that a small hard core number of serious repeat offenders are continuing to cause problems in the Carnarvon area?
- (2) Has the Minister received a list of names of these offenders?
- (3) If so, what steps are being taken to protect the people of Carnarvon against these offenders?

Hon KAY HALLAHAN replied:

The following answer has been supplied by the Minister for Community Services -

(1)-(2)

A meeting was held with the Carnarvon Shire President during which he provided some names of young people in a group causing a social problem in Carnarvon.

- (3) A number of steps have been taken to reduce juvenile offending in Carnarvon, the most recent being the funding by the State Government of a local offending prevention program for \$60 000 to be commenced

shortly. The Shire of Carnarvon is the sponsoring body along with a local management committee targeting both employment and the educational needs of young offenders. In addition, the Carnarvon Youth Services Committee is funded for \$44 903 to operate a support service for local youth. A community policing officer has also been posted to Carnarvon and commenced duties in November 1991.

A representative from the local TAFE college recently met with the local offender committee to consider alternative education courses to address the needs of young people who have been suspended or expelled from school. On 11 March 1992, \$18 000 local offending prevention program money was granted to TAFE to establish a program for young people excluded from or refusing to take part in school.

The program has commenced and involves normal curriculum with emphasis on industrial skills. Fourteen youths have inquired about the program; eight to 10 attend regularly, including those six youths identified.

#### MENTAL HEALTH ACT - PROCLAMATION DATE

110. Hon PETER FOSS to the Minister for Education representing the Minister for Health:

- (1) When is it expected that the Mental Health Act 1981 will be proclaimed?
- (2) Why has it not been proclaimed?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

- (1) The Mental Health Act 1981 will not be proclaimed.
- (2) The Mental Health Act 1981 was not proclaimed for the following reasons -

The Act was not consistent with the developments in legislation which were occurring in other States of Australia and other developed countries - particularly those relating to mechanisms for the protection of patients' rights.

The administrative arrangements within the Act did not reflect the changed structure of mental health within the then newly formed Health Department.

#### PASTORAL LAND TENURE LEGISLATION - INTRODUCTION DATE

120. Hon BARRY HOUSE to the Minister for Education representing the Minister for Lands:

- (1) Is the legislation to establish secure tenure over pastoral leases to be introduced into Parliament this session?
- (2) If yes, will the latest amended draft be circulated to interested bodies for their comment prior to its introduction to the Parliament?

Hon KAY HALLAHAN replied:

The Minister for Lands has provided the following reply -

- (1) Yes.
- (2) Copies of the Bill will be provided to industry groups prior to introduction into the Parliament. Drafts have previously been provided and several comments made have been incorporated into the redraft but there are still some differences on issues which require further comment.

**ROBERTS, MICHELLE - EAST PERTH REDEVELOPMENT AUTHORITY  
APPOINTMENT  
Current Position**

124. Hon P.G. PENDAL to the Minister for Education representing the Minister for Planning:

- (1) Is Michelle Roberts, a Perth City Councillor, being considered for appointment as a member of the East Perth Redevelopment Authority?
- (2) What is her current full time job?
- (3) If she is a Government employee, does the Minister have any concerns over possible conflicts of interest arising out of such an appointment?

Hon KAY HALLAHAN replied:

The Minister for Planning has provided the following reply -

- (1) Michelle Roberts and the Lord Mayor are the nominees of the Council of the City of Perth to the East Perth Redevelopment Authority in accordance with section 7(1)(a) of the East Perth Redevelopment Authority Act. Pursuant to the legislation passed by this Parliament the Minister is obliged to appoint both of them to the board.
- (2) Public servant.
- (3) No, but in any event that is a matter for the Perth City Council.

**AGE DISCRIMINATION - NEW LEGISLATION**

*Introduction Date*

126. Hon P.G. PENDAL to the Minister for Education representing the Minister for Seniors:

- (1) What progress has been made on preparing legislation relating to age discrimination?
- (2) When is it envisaged that this legislation will be introduced into the Parliament?

Hon KAY HALLAHAN replied:

The Minister for Seniors has provided the following response -

- (1) Amendments to the Equal Opportunity Act to make discrimination on the ground of age unlawful were introduced in the last session of Parliament. The second reading speech was given by the Minister for Justice on 28 November 1991.
- (2) Not applicable.

**TRAFFIC ACCIDENTS - COLLIER ROAD-BEECHBORO ROAD, MORLEY,**

**17 SEPTEMBER 1991**

*Injuries - Charges*

128. Hon GEORGE CASH to the Minister for Police:

- (1) Did a traffic accident occur on Saturday, 17 September 1991 at the intersection of Collier Road and Beechboro Road, Morley at approximately 10.07 am?
- (2) What injuries were sustained as a result of the accident?
- (3) Was any person charged as a result of the accident, and if so, what was the charge?
- (4) Was a blood test taken from any of the parties involved in the accident, and if not, why not?
- (5) Has this case been heard by the appropriate court, and if so, what was the result of the case, and what was the penalty applied in respect to this matter?

Hon GRAHAM EDWARDS replied:

- (1) Based on the information supplied, there is no record of a traffic accident

having occurred at 10.07 am on Saturday, 17 September 1991 at the intersection of Collier Road and Beechboro Road, Morley. A further search of the database can be attempted if details such as the registration numbers of the vehicles involved or the names of the parties involved are provided.

(2)-(5)

Not known.

#### POLICE - GERALDTON DISTRICT

##### *Break and Enter Offences, Motor Vehicle Theft Offences*

131. Hon GEORGE CASH to the Minister for Police:

- (1) For the period 1 July 1991 to 31 December 1991, what was the total number of offences reported in the Geraldton district in the following categories -
  - (a) break and enter; and
  - (b) motor vehicle theft?
- (2) How many offences were reported in the Geraldton district in the year ended 30 June 1991 in the following categories -
  - (a) break and enter; and
  - (b) motor vehicle theft?

Hon GRAHAM EDWARDS replied:

- (1)
  - (a) 717
  - (b) 203
- (2) (a)-(b)  
Not readily available.

#### POLICE - OFFENCES REPORTED STATISTICS

##### *Indecent Assault; Assault on Police; Common Assault; Stealing; Damage; Fraud; Arson*

132. Hon GEORGE CASH to the Minister for Police:

How many of the total number of offences reported to Western Australian police in the following categories during the year ended 30 June 1991 were cleared, by charge or otherwise -

- (a) indecent assault;
- (b) assault on police;
- (c) common assault;
- (d) stealing;
- (e) damage;
- (f) fraud; and
- (g) arson?

Hon GRAHAM EDWARDS replied:

	Reported	Cleared
(a)	715	557
(b)	857	820
(c)	5 236	3 345
(d)	74 368	14 107
(e)	28 068	3 907
(f)	11 041	8 415
(g)	140	59

**POLICE - OFFENCES REPORTED STATISTICS**  
*Stealing with Violence; Indecent Assault; Assault on Police;*  
*Common Assault; Stealing; Damage; Fraud*

133. Hon GEORGE CASH to the Minister for Police:

How many of the total number of offences reported to Western Australian police in the following categories during the year ended 30 June 1990 were cleared, by charge or otherwise -

- (a) stealing with violence;
- (b) indecent assault;
- (c) assault on police;
- (d) common assault;
- (e) stealing;
- (f) damage; and
- (g) fraud?

Hon GRAHAM EDWARDS replied:

	Reported	Cleared
(a)	526	214
(b)	1 398	1 178
(c)	841	800
(d)	5 101	3 581
(e)	63 872	13 000
(f)	23 658	4 797
(g)	9 776	5 003

**STATE TENDER BOARD - BUDGET RENT A CAR PTY LTD**  
*Contract Replacement Arrangements*

140. Hon P.H. LOCKYER to the Attorney General representing the Treasurer:

- (1) What steps are being taken to replace Budget Hire Cars with a similar hire car arrangement with the State Tender Board?
- (2) When will the new arrangements be in place?

Hon J.M. BERINSON replied:

The Treasurer has provided the following reply -

- (1) The State Supply Commission has agreed to continue the existing car rental contract with the newly appointed Budget WA franchisee. Budget WA has provided assurances that it will meet the WA Government's requirements throughout the State and will be operational this week. Budget has agreed to provide the service at the same rates and conditions as specified in the original contract. The current contract expires on 12 August 1992 and it is intended that the State Supply Commission will call public tenders for the new period shortly.
- (2) Not applicable.

**ANSTEY, MURRAY - LOCAL GOVERNMENT DEPARTMENT EMPLOYMENT**  
*Private Audit Work Conflict of Interest*

151. Hon GEORGE CASH to the Minister for Education representing the Minister for Local Government:

- (1) Is Murray Anstey currently employed by the Department of Local Government?
- (2) If yes, what position does he hold and for what period has he been employed?
- (3) Was Mr Anstey the successful tenderer for the City of Kalgoorlie-Boulder audit for the next three years?

- (4) Is it usual for an employee of the Department of Local Government to act as an auditor to a local authority whilst still employed by the Department of Local Government?
- (5) Will a conflict of interest arise in respect of the private audit work and Mr Anstey's official position?

Hon KAY HALLAHAN replied:

The Minister for Local Government has provided the following reply -

- (1) Yes.
- (2) Principal advisory officer. He has been employed at the Department of Local Government since 25 June 1981.
- (3) I am informed he was.
- (4) If Mr Anstey accepts the position as auditor, he will have to resign from the department.
- (5) It would not be appropriate for Mr Anstey to retain his official position while undertaking private audit work.

**PRISONS - PARDELUP PRISON FARM**  
*Closure Consideration*

157. Hon MURIEL PATTERSON to the Minister for Corrective Services:

In the current review of the prisons system in Western Australia, is the Minister looking at the possible closure of the Pardelup Prison?

Hon J.M. BERINSON replied:

See answer to question without notice 48 on 1 April 1992.

**WATER AUTHORITY OF WESTERN AUSTRALIA - WATER SERVICES**  
*Essential Service Consideration*

169. Hon P.H. LOCKYER to the Minister for Police representing the Minister for Water Resources:

- (1) Is the provision of water to customers regarded as an essential service?
- (2) If yes, is it correct that no water service will be disconnected for non-payment of the account and rather that water service is restricted to the customer?
- (3) How long has this policy been in place?

Hon GRAHAM EDWARDS replied:

The Minister for Water Resources has provided the following reply -

- (1) Yes.
- (2) The water service may be restricted to the customer after other actions to recover overdue charges have been unsuccessful. The authority may still disconnect supply as a last resort, but this is very rare for residential customers. Disconnection without prior restriction of supply would only apply in such cases as companies ceasing operations or going into liquidation, etc.
- (3) Since the establishment of the authority on 1 July 1985.

**DROUGHT - PILBARA, EAST AND WEST GASCOYNE**  
*Transport Assistance - Streamlining Drought Declarations*

170. Hon P.H. LOCKYER to the Minister for Police representing the Minister for Agriculture:

- (1) Is the Minister aware of continuing drought conditions existing in the east and west Gascoyne and parts of the Pilbara?
- (2) What steps are being taken to provide assistance for the transport of stock or fodder from, and to, the area?

(3) Is the Government streamlining the criteria to have areas drought declared?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture has provided the following response -

- (1) Yes. Some stations in the Gascoyne area have remained drought declared since 1989. Stations in the Pilbara and Meekatharra areas declared in 1991 remain drought declared at this date.
- (2) Transport subsidies were available to "drought declared" producers under the Commonwealth-State agreed national drought relief arrangements - NDRA - until 1989. In that year the Commonwealth withdrew drought from the NDRA, insisting that drought assistance be made available through the rural adjustment scheme - RAS. Currently transport assistance is available indirectly through RAS to eligible producers. Producers are not required to be "drought declared" to be eligible for RAS part B assistance.
- (3) The drought consultative committee has an established procedure to consider applications for drought declaration. There is not, however, the same need for drought declaration under the new arrangements.

#### SPENT CONVICTIONS ACT - PROCLAMATION DATE

174. Hon PETER FOSS to the Attorney General representing the Minister for Justice -

When will the Spent Convictions Act 1988 be proclaimed?

Hon J.M. BERINSON replied:

The Minister for Justice has provided the following reply -

The Commissioner of Police has a number of concerns about the practical administration of this Act which relate to the certificate required to be supplied by him and the searches he needs to do before he issues the certificate. While it was hoped that this could be overcome by placing administrative procedures in place, it now appears that amendments to the legislation will be required.

#### WATER AUTHORITY OF WESTERN AUSTRALIA - HEADWORKS CHARGES

##### *New Residential Developments Increase*

179. Hon GEORGE CASH to the Minister for Police representing the Minister for Water Resources:

- (1) What is the rationale behind the new scale of headwork charges for new residential developments?
- (2) Were builders given any advance warning of the introduction of the new headworks charges?
- (3) If yes, how and when were they advised?
- (4) Is the Minister aware that a number of builders have declined to proceed with developments because the massive increase in headworks charges has destroyed the economic viability of the project?
- (5) Does the Minister concede that the increased headwork charges have had an adverse effect on employment opportunities in the building industry?
- (6) If no, why not?

Hon GRAHAM EDWARDS replied:

The Minister for Water Resources has provided the following reply -

- (1) Every new service places an incremental demand on the capacity of the headworks of a system, whether it be water, sewerage or drainage. This capacity has already been, or will have to be, provided by the Water Authority, every new development is required to contribute towards this cost of the headworks commitment. The term "headworks" refers to facilities such as dams, wellfields, water



treatment and wastewater treatment plants, pump stations, trunk mains and main sewers. The assessment of headworks contributions required from developers of all types of residential developments should be as fair and as equitable as possible and share the cost for the expansion of the headworks between its consumers.

The change in the level of headworks contributions was required in order to bring the rate of recovery back to approximately 33 per cent, the original level as agreed to by the development industry in 1981. Prior to this the Water Authority was only recovering approximately 22 per cent.

(2)-(3)

Yes, representatives from various bodies associated with the development industry were briefed on the proposed changes in March 1991. The Housing Industry of Australia and the Master Builders Association were represented. A phase-in period for the new policy was implemented between 1 July 1991 and 1 October 1991 to ease the impact of the amendments, and the increase in the level of contributions.

(4)

I am aware that some builders have expressed concern over the amended level of contribution; however, whether builders proceed with a project or not is a matter for their own commercial judgment.

(5)-(6)

No. Industry representatives have not presented any evidence to substantiate such a claim while acknowledging the overall economic situation.

### QUESTIONS WITHOUT NOTICE

#### WESTERN WOMEN FINANCIAL SERVICES PTY LTD - CROWN LAW DEPARTMENT

#### *Investors' Compensation Payments Advice - Government Budget Provisions*

72. Hon GEORGE CASH to the Attorney General:

In view of a report in *The West Australian* on 6 March 1992 which indicated that the Crown Law Department had advised the State Government in 1991 that it could be liable for certain of the losses incurred by investors in the failed Western Women group, can the Attorney General advise -

- (1) Whether funds were set aside in the 1991-92 State Budget for compensation payments to investors referred to the Western Women group by the Women's Information and Referral Exchange?
- (2) Whether funds are to be set aside for compensation payments to the Western Women group investors in the forthcoming 1992-93 State Budget?

Hon J.M. BERINSON replied:

(1)-(2)

That question has two aspects. One relates to the Women's Information and Referral Exchange and the other to Budget provisions.

Hon George Cash: It relates to Crown Law Department advice.

Hon J.M. BERINSON: No, not to Crown Law Department advice but to budgetary provisions. Neither the referral centre nor the question on Budget provisions comes within my portfolios and I therefore ask the Leader of the Opposition, if he wishes to pursue these questions, to put them on notice.

STATE ENERGY COMMISSION OF WESTERN AUSTRALIA - DAYLIGHT  
SAVING

*Energy Savings Assessments*

73. Hon P.G. PENDAL to the Attorney General representing the Minister for Fuel and Energy:

Some notice of this question has been given.

- (1) What assessments were carried out by the State Energy Commission of Western Australia to monitor the effects of daylight saving on energy savings during the 1991-92 summer?
- (2) Will he table any such assessment?
- (3) Can he also say what impact any reduced fuel burning had on atmospheric emissions?

Hon J.M. BERINSON replied:

The Minister for Fuel and Energy has provided the following reply -

(1)-(3)

Electricity demand in Western Australia is influenced by a number of factors, including general levels of economic activity, population growth, changes in household characteristics, levels of disposable income, energy prices, technological developments, environmental and conservation measures, weather effects and daylight saving. Over the period November 1991 to February 1992 SECWA supplied 3 214 gigawatt hours of electricity to its south west interconnected system. This compares with 3 119 GWh for the same period of 1990-91. This increase of three per cent is a result of a combination of all or some of the above factors. The effect of daylight saving cannot be isolated. SECWA supplies electricity to domestic and industrial/commercial customers. The electricity consumption patterns of these customer categories vary considerably over any day and season of the year. Daylight saving, for example, would result in darker mornings and lighter evenings for domestic consumers. This may have some effect on domestic lighting and air-conditioning. The savings to atmospheric emissions resulting from daylight saving cannot be accurately evaluated.

EDUCATION, MINISTRY OF - FIVE YEAR OLDS

*Full Day Schooling Program - Discussions*

74. Hon REG DAVIES to the Minister for Education:

Are discussions taking place in the Ministry of Education with a view to introducing all day schooling for five year olds?

Hon KAY HALLAHAN replied:

Members would be aware that at the Premiers' Conference held in at Adelaide last year the question of providing - for want of a better term - some national uniformity on the age that students commence school in Australia was discussed. This led to discussion about the question of giving five year olds access to a full program rather than that to which they have access at present in Western Australia. It emerged that Western Australia and Queensland are the only two States not offering five year olds a full five day a week program. Consequently, the ministry has been looking at the implications of Western Australia offering that five day program, not on a compulsory basis; it is not compulsory in other States either. I understand that quite a lot of debate is taking place on this subject because people want to know whether that is what is proposed. I cannot give the member a definitive answer on that today because it is an issue which needs to be looked at very carefully. At this point there has been no discussion with community groups because there is nothing to put before them except that there was a meeting of Premiers in Adelaide where the matter was raised.

**TERTIARY ENTRANCE EXAMINATIONS - REPLACEMENT TIMETABLE**

75. Hon DERRICK TOMLINSON to the Minister for Education:

Does the Ministry of Education have a timetable for the replacement of tertiary entrance examinations with a form of school assessment?

Hon KAY HALLAHAN replied:

If I have understood the question correctly the answer is no. If I have not understood the question correctly I do not know what the answer is.

**ACTS AMENDMENT (GAME BIRDS PROTECTION AND MANAGEMENT)  
BILL - PRIORITY CHANGE**

76. Hon P.G. PENDAL to the Leader of the House:

Why did the Government place such a high priority on the Acts Amendment (Game Birds Protection and Management) Bill last Thursday, and why does that priority appear to have disappeared today?

Hon J.M. BERINSON replied:

It is in the ordinary course of events that the Notice Paper changes from time to time.

Hon George Cash: It changes hour by hour.

Hon J.M. BERINSON: Frankly, since the Opposition seemed last week to be so resistant to continuing with the Acts Amendment (Game Birds Protection and Management) Bill I brought up the Retirement Villages Bill.

Hon P.G. Pendal: You have a vested interest in retirement villages.

Hon J.M. BERINSON: As far as I can tell no-one has any difficulty dealing with that Bill and no-one denies its importance. I can advise the House that, all things being equal, we will continue to follow the Orders of the Day as listed today to the extent that the Opposition is prepared to allow orderly debate.

Hon P.G. Pendal: It is not such a political toy today as it was on Thursday.

Hon Kay Hallahan: Hon Phillip Pendal would be the master of that game.

Hon John Halden: It did not help the Opposition in Ashburton.

**YANCHEP MARINA - CURRENT LESSEE**

*Lease Area; Lease Review; Professional Fishermen Consultation*

77. Hon GEORGE CASH to the Minister for Education representing the Minister for Lands:

Some notice of this question has been given.

- (1) Who is the current lessee of the Yanchep Marina?
- (2) What is the area of land the subject of the lease, both above and below sea level.
- (3) Is the lease subject to review, and if so, at what periods, and when is the next review due to take place?
- (4) Will there be consultation with the professional fishermen who currently lease boat pens at Yanchep as part of the consultative review process?
- (5) Will the Minister table a copy of the lease, and if not, why not?

Hon KAY HALLAHAN replied:

I thank the member for having given some notice of his question. The Minister for Lands has provided the following reply -

- (1) WA Utilities Pty Ltd.
- (2) The area of the lease is 23.0247 hectares, being all that portion of the sea bed and the shore as exists from time to time and so much of the

space above and below and the soil below the said sea bed and the said shore limited to -

- (a) a depth of 10 metres below low water mark Fremantle, and
  - (b) any improvements constructed or provided by the lessees.
- (3) The lease is for a term of 21 years commencing on 10 December 1972 and is subject to rental reappraisal at the expiry of every seven years. The lease arrangements provide for the replacement by a new lease for a term equal to the difference between 50 years and the expired portion of the present lease, subject to fulfilment of certain conditions and negotiations of fresh terms.
- (4) Yes.
- (5) Yes. I seek leave of the House to table the lease.

[See paper No 85.]

#### INDECENT PUBLICATIONS - DISPLAY LAWS REGULATIONS

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

- (1) What laws, if any, govern the display, especially outside and within newsagencies, of posters, magazine covers and other material of an increasingly explicit kind?
- (2) What direct steps are being taken to enforce any such laws and regulations?
- (3) Is the Minister aware of the increasing concern that such material is offending some members of the community?
- (4) Will the Minister take steps to bring such concern to the attention to both publishers and newsagencies to ensure that the provisions of the law are adhered to?
- (5) If not, why not?

Hon KAY HALLAHAN replied:

- (1) I thank the member for giving notice of this question. The Indecent Publications and Articles Act protects the community from exposure to indecent material.
- (2) The Western Australian Police and the censorship office strictly control compliance with the Act. The State Government's tight regulations in this area are known to be the strictest in the nation.
- (3)-(5)

The State Government continues to take action in ensuring that unsuitable materials are restricted so that only those who wish to see such publications do so. The Government has been carefully monitoring magazines available without restriction for some time. The 4 March edition of *People* had what was deemed to be an offensive cover showing a naked young person on hands and knees wearing a dog collar and leash. I accepted the recommendation of the State advisory committee to restrict that magazine. It is now an offence to sell it to minors; it may be sold only from restricted premises and it cannot be displayed or advertised. I have also asked the state advisory committee on publications to consider urgently restrictions on all future editions of that magazine. This limit would continue until it was clear that the publisher had adopted a more responsible approach. I will make further announcements on that in the future.

I take this opportunity to refer to the Bill proposed by Mr Tubby which deals with this matter. The proposals of the Opposition in that Bill are harsh and unfair because they would threaten the livelihood of newsagents and small business proprietors.

Hon P.G. Pendal: I am sure Mr Tubby will look at suitable amendments.

Hon KAY HALLAHAN: The Bill contains fundamental problems because it wants shop proprietors to become censors. That would mean they would have to read every page of every publication they sold and assess the material against the imprecise and woolly guidelines in that Bill. Mr Tubby has used words such as "if the material was prurient" as a guideline. It would be hard for a newsagent to decide in legal terms what was prurient. If a newsagent or a delicatessen owner made a wrong judgment in perusing the pages of publications he could be imprisoned for up to six months or fined \$4 000. While I understand the concerns of the Opposition, I urge it to consider that method of censorship seriously because it would be unworkable. Although the system we now have is not perfect -

Hon P.G. Pendal: You have just applied your own censorship.

Hon KAY HALLAHAN: Absolutely, because that is one of my responsibilities. While it is attractive to adopt other means of doing things, they must be done in practical and workable ways.

**SCHOOLS - BRIDGETOWN HIGH**  
*Building Program Delay - Ministerial Visit*

79. Hon BARRY HOUSE to the Minister for Education:

- (1) What are the reasons for the Bridgetown High School being continually passed over for building programs so badly needed at the school?
- (2) Is the Minister prepared to visit Bridgetown or despatch, posthaste, an officer from the Ministry of Education to gauge the enormous pressure being placed on the facilities available to preprimary, primary and high school students caused by the rapid population growth in that community, so that urgent approvals may be considered in this year's Budget?

Hon KAY HALLAHAN replied:

(1)-(3)

This matter is a merry go round. I thought I was asked a question about the Bridgetown High School last week, but perhaps it was the week before.

Hon W.N. Stretch: We didn't get much of an answer.

Hon KAY HALLAHAN: I provided an answer. I have visited the school and the Chief Executive Officer of the Ministry of Education has visited the school, and I have made it clear I was very impressed with the leadership at that school. However, I forgot to mention that Hon Murray Montgomery was present on the occasion of my visit to the school.

The PRESIDENT: Order! I remind honourable members that the time set aside for questions without notice is not a discussion period. It is the time when members ask questions and Ministers answer them. If the Minister believes that the question has already been asked, it is out of order and she should bring that to my attention, not to the attention of Hon Barry House or any other member. I take a very close interest in the questions and follow them carefully. I cannot recall having heard this question before, but if the Minister thinks that it has already been asked I can make a ruling.

Hon KAY HALLAHAN: The reason you, Mr President, did not recognise that this question has been asked before was that it was posed differently. However, part of this question asks if the Bridgetown High School is being overlooked. I must answer that because the school is not constantly being overlooked. It is true that that school has experienced an increase in student numbers and that it needs new library resources, the upgrading of the home economics and photography areas, and other facilities. On the day I visited the school, Mr Paul Omodei, a Liberal member from the other House, was present. So too were Hon Doug Wenn, who was representing the Labor Party and the Government's interests, and Hon Murray Montgomery. It was an important visit for the community. The shire president was present and we carefully looked at the provisions in that school. The Budget is approaching and it will

not be expansive, as the economy is still slow in recovering as are State revenues. The Government will do its best to meet the needs of all schools which have particular needs. The Bridgetown school will be fully considered in that process.

# **LAW REFORM COMMISSION - MEDICAL TREATMENT OF THE DYING REPORT**

## *Legislative Response*

80. Hon DERRICK TOMLINSON to the Attorney General:

Does the Government intend to introduce in this session of Parliament a legislative response to the Law Reform Commission's report on the medical treatment of the dying?

Hon J.M. BERINSON replied:

I dare not start answering this question by saying that I think I have responded to a similar question earlier because I may be confusing myself. The report is still under consideration by the Government and I am unable to provide a timetable for further action on it.

# **EDUCATION, MINISTRY OF - FIVE YEAR OLDS Full Day Schooling Program - Trialling Data**

81. Hon REG DAVIES to the Minister for Education:

(1) Is data being collected by the Ministry of Education with a view to trialling a full day schooling program for five year olds?

(2) If so, when?

Hon KAY HALLAHAN replied:

(1)-(2)

Mr President, that question has already been asked.

The PRESIDENT: I think it is the same question which the member has already asked. If the member thinks it is a different question he should tell me.

Hon Reg Davies: I feel it is a different question because the first question related to the introduction of full day schooling for five year olds and this question asks whether the ministry is collecting data in relation to trialling.

The PRESIDENT: Yes, it is a different question.

Hon KAY HALLAHAN: I can advise members that it has the same answer.

The PRESIDENT: It can have the same answer. The Standing Orders refer only to asking the same question.

Hon KAY HALLAHAN: As I explained previously, at a meeting of Premiers held in Adelaide last year the question of the starting age for students was discussed. It transpired that Queensland and Western Australia were the only two States which do not have full day, five days a week, schooling for five year olds. As a result, I presume Queensland is looking at the situation; and Western Australia is certainly looking at it.

Hon Reg Davies: Are you going to trial it?

Hon KAY HALLAHAN: That has not been decided. If I had more information to give the member, who is a good worker for his constituents and is interested in the schools in his electorate, I would provide it to him. I know there is some speculation about trialling and maybe one of the things the ministry is considering is what the impact will be. However, I advise the member that no decision has been made about trialling, but there is a need to look at what the impact will be and whether it is something the Government will want to pursue. If it is determined that it is something the Government wants to pursue I will advise members in this House and the many relevant community groups. It will include the people associated with the nought to four year olds because the four year olds will be impacted on as will be the junior primary

section. I do not need to point out to members that there would be a considerable capital cost as well as a recurrent cost. Also, the debate in the community must be considered because some people think it is a magnificent idea and others think that it is not.

At this stage I cannot add to that debate because there is no position to put to the community for it to respond to. The debate has begun and Queensland and Western Australia are looking at what they will be faced with if they choose to bring their systems into line with the other States.

## WESTERN AUSTRALIAN SPORTS CENTRE TRUST - AUDITOR GENERAL'S REPORT

### *One Year or Ongoing Practices*

82. Hon MAX EVANS to the Minister for Sport and Recreation:

In the Auditor General's first general report for 1992 three pages are devoted to the Western Australian Sports Centre trust. It is an alarming report and it was not mentioned in the trust's annual report which was tabled in this place in February. The report recommends that the trust should implement practices which will ensure prompt and effective monitoring and control of its expenditures and financial position in compliance with the requirements of the Financial Administration and Audit Act.

- (1) Did this happen only in the last financial year or has it been ongoing for some years?
- (2) If it has only just happened does he know why and what has taken place since last June?

Hon GRAHAM EDWARDS replied:

(1)-(2)

It is difficult to respond in the way the member is seeking. I suggest he lists a series of questions which I will respond to. I will then be able to make sure that he receives the information he is after. I am happy for the member to receive a briefing from the board. The matters referred to in the Auditor General's report have been addressed over a period of time. One of the reasons for audits is to ascertain whether a practice is wrong and if there is something wrong to address it. That is exactly what the board has done in a thorough and complete way. If the member wants to take up my suggestion I will respond to his questions.

## WESTERN AUSTRALIAN SPORTS CENTRE TRUST - AUDITOR GENERAL'S REPORT

### *Management Change or Lack of Control*

83. Hon MAX EVANS to the Minister for Sport and Recreation:

This question is supplementary to my previous question. It is strange that all of these have come up in one year. Has there been a change in management or is there a lack of control which has been ongoing for a number of years?

Hon GRAHAM EDWARDS replied:

Of course there has been a change in management, which resulted in a change in practices. The board is always looking at the practices of the Superdrome and is constantly reviewing them. It is very helpful to have the Auditor General's report because it helps one to focus on those things which need to be addressed and reviewed and to that degree the report has been helpful. However, changes to other areas were put in place before the Auditor General's report was finalised.

**CRAYFISH - YANCHEP MARINA**  
*Facilities Dispute*

84. Hon GEORGE CASH to the Minister for Police representing the Minister for Fisheries:

Notice has been given of this question.

- (1) Is the Minister aware of a dispute between a number of professional cray fishermen and the lessee of part of the Yanchep marina facility over the right to cart crayfish from the marina facility to processing plants in Perth?
- (2) If so, what is the nature of the dispute and what action has been taken by the Minister to resolve this matter?

Hon GRAHAM EDWARDS replied:

The Minister for Fisheries has provided the following response, and I thank the member for notice of the question.

- (1) Yes.
- (2) The dispute has arisen due to the exclusion of Kailis Bros as tenants from the Two Rocks Marina. In fact Kailis Bros had a sublease with the Fremantle Fishermens Co-op Society Ltd. I have sought advice from the Crown Solicitor's Office as well as approached the management of the Tokyu Corporation towards finding a solution which would allow Kailis Bros to receive rock lobster at the marina on behalf of fishermen. The lessee of the marina is not under any obligation to provide wharf facilities and is entitled to refuse Kailis Bros' request to set up a receival depot. The State has very limited powers to intervene and it is unfortunate that this dispute could not be mutually resolved between the parties. However, it is noted that the lease expires in November 1993 and the Government will consider its position at that time in an attempt to limit the effect of disputes of this nature.

**PERTH THEATRE TRUST - AUDITOR GENERAL'S REPORT**  
*Catering Facilities Deficiencies*

85. Hon MAX EVANS to the Minister for The Arts:

It is mentioned in the Auditor General's report that the Perth Theatre Trust does not have sufficient personnel with relevant accounting experience to meet the requirements of the Financial Administration and Audit Act and, as a consequence, the trust is not in a position to adequately monitor the contractual arrangements in relation to the catering facilities, which are inept. I did the original accounting for the trust many years ago and it was tightly run. The matter is serious and I ask the Minister whether the matter has been attended to.

Hon KAY HALLAHAN replied:

The Auditor General's report was regarded very seriously. Another senior officer has been appointed to the staff of the Perth Theatre Trust and these matters are being addressed. The question of catering at the trust's venues has been considered. It has become much more efficient and it is attractive to patrons. The Perth Theatre Trust is responsible for venues such as His Majesty's Theatre, the Perth Concert Hall, the Playhouse Theatre and the Quarry Amphitheatre. The trust has a number of outlets at which catering is a significant adjunct to the performances being held. As Hon Max Evans brought that matter to my attention today, I will double check it. However, my memory is that a senior officer was engaged to overcome deficiencies highlighted in the Auditor General's report.



**TERTIARY ENTRANCE EXAMINATIONS - DISCONTINUANCE AFTER 1995  
PROPOSAL**

86. Hon DERRICK TOMLINSON to the Minister for Education:

Does the Ministry of Education intend to discontinue the tertiary entrance examination after 1995?

Hon KAY HALLAHAN replied:

I do not know what the ministry intends to do about that matter; it has certainly not put that proposition to me. I wonder where the question comes from.

Hon Derrick Tomlinson: From my mouth.

Hon KAY HALLAHAN: It may have come out of Hon Derrick Tomlinson's mouth, but it also may have been prompted because of the new certificate of secondary graduation that will be provided.

Hon Derrick Tomlinson: No, it comes from the restructuring of curriculum areas committees and syllabus committees, and the restructuring of the functions of the education authority.

Hon W.N. Stretch: The Minister had better get to know her department.

Hon KAY HALLAHAN: One of the reasons that I was late coming into the Chamber today was that I was attending a meeting where matters of this nature were being discussed, but not this particular matter. At that meeting people put different points of view about these matters. Hon Derrick Tomlinson should place his question on notice so that a considered response can be provided. His question is a little mysterious.

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