Legislative Council

Wednesday, 25 November 1992

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

STATEMENT - BY THE PRESIDENT

Petition Presented by Hon John Halden, Letter from Hon Bob Pike

THE PRESIDENT (Hon Clive Griffiths): Honourable members will recall that, as a result of parliamentary business outside of the State, I was away for six sitting days recently. I returned from that absence only yesterday.

It has been brought to my attention that during my absence a petition from a private citizen was presented to this Chamber by Hon John Halden. I have had verbal information given to me in myriad ways, none of which fully enlightens me as to exactly what occurred or what subsequently occurred. From the point of view of my being, among other things, a politician I did not take a lot of notice of that information. I have been here a long time and have seen and heard all sorts of things.

Last night Hon Bob Pike, the Chairman of the Constitutional Affairs and Statutes Revision Committee, handed me a letter together with some other documents consisting of a copy of the petition, a copy of a majority report from that committee and a copy of a minority report from that committee. In his covering letter to me, Hon Bob Pike said -

> Dear Mr President
>
> I enclose a copy of the petition in regard to the Easton matter and the Final Report of the Committee.
>
> The Hon John Halden has prepared a minority report in which he seeks to raise issues relating to the adequacy of Police inquiries and the Official Corruption Commission inquiries into the petitioner's allegations.
>
> As you will see from the Draft Report the Committee has indicated that the petitioner's failure to mention that the Police and the Official Corruption Commission had concluded their investigations favourable to the persons he accused was a material omission and it had two effects -
>
> (1) It gave the public a false view of the facts; and
>
> (2) It also prevented the Committee from inquiry into the adequacy of the Police and the Official Corruption Commission investigations.
>
> I have therefore ruled out of order portions of the Easton Minority Report (as attached), those passages of the Report underlined in blue are the sections which I have ruled are not to appear for these reasons -
>
> (1) They are outside the terms of reference - they are not the subject of the petition.
>
> (2) The Committee has not commented on these matters and the minority report may not deal with them.
>
> In accordance with Standing Orders I ask for your ruling in this matter.
>
> Yours sincerely
>
> Hon R G Pike MLC

I got this letter late last night, but I was not in a position to read it then. I attended a meeting in Parliament House this morning that did not conclude until 11.00 am. I got hold of this report a little after 11.00 am with a view to reading it. I was already organised to leave Parliament House at 11.45 am to keep an appointment and, therefore, I had relatively little time to study what Hon Bob Pike was driving at and, indeed, what was contained in the two reports that would conflict with our Standing Orders. My inquiries then led me to find that running concurrently with this committee's consideration of the matter was, in fact, a Committee of Privilege. Subsequent to the presentation of this petition, the House had

decided that the petition be referred to a Committee of Privilege. I asked the Clerk to explain to me how that occurred and indicated to him that if I had been here it would never have occurred.

When a petition is referred to a Committee of Privilege in this place, it is tantamount to suggesting that the petition is not properly before the House. If somebody has breached privilege in presenting a petition, then it is not a petition. Therefore, the alleged petition cannot properly be referred to the Standing Committee on Constitutional Affairs and Statutes Revision. I suggested to the Clerk that I was not prepared, as your President, to give consideration to the majority and minority reports because, in my view, the matter was not properly before that committee. Until the Committee of Privilege reports and advises this House of the status of that petition, that committee cannot consider the petition and it should never have considered it. If the Committee of Privilege reports that the status of the petition is such that it is a proper petition put before this Parliament, then that is the time for that committee to have that petition referred to it for consideration and for it to make a report.

The net result of that is that should the petition be given legitimacy the Pike committee may well go away and come back with the same conclusion and I will be confronted with the same question to decide. I will advise the House, in case any member has a different view, what I said to Mr Pike in response to his letter. I have only recently handed him the letter after consulting with him and the author of the minority report. I asked them both to come and see me and I gave them the good or bad news, depending on how they accepted it, of what I was going to do today. My letter to Mr Pike reads -

> Dear Mr Pike
>
> SO 355 - RULING RE A DRAFT REPORT
>
> Thank you for your letter of November 24 1992 seeking my ruling under SO 355 on the application of SO 361 to a dissent appended to a report of your committee.
>
> This is the first indication I have had that the Constitutional Affairs Committee has proceeded to consider the Easton Petition before the Committee of Privilege on the same petition has reported its findings and recommendations to the House.
>
> My considered view is that despite the standing reference of petitions to the Constitutional Affairs Committee, the House, in its appointment of a committee of privilege has suspended the Constitutional Affairs Committee's consideration of the petition. One of the questions that the privileges committee will consider is the propriety of the petition. Until this question is resolved, any consideration of the merits of the petition is premature.
>
> I therefore rule that no further action on the petition is to be taken by the Constitutional Affairs Committee before the House, acting on the recommendation of the privileges committee, determines whether the petition should proceed or not.
>
> I intend to read this ruling to the House at today's sitting.
>
> Yours sincerely
>
> Clive Griffiths MLC
> President of the Legislative Council.

MOTION - SELECT COMMITTEE INTO WESTERN AUSTRALIAN POLICE SERVICE

Appointment

Debate resumed from 24 November.

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [2.47 pm]: Western Australia does not have a Police Force in crisis, it does not have a police State and it does not have a public which are badly served by this State's Police Force. I am reminded of the song "We don't need another hero"; certainly we do not need another inquiry. What we need is the capacity to get on and address the problems confronting the Western Australia Police Force. These problems can and will continue to be solved through the proper process of management and the implementation of new initiatives coupled, of course, with ongoing structural improvement of the Police Force.

In this debate I intend to deal with what I consider to be some of the major areas of concern expressed by Hon Reg Davies when he moved the motion yesterday. I say "some" because Mr Davies certainly adopted a scattergun approach in both the motion he moved and the arguments he put forward in support of it. I intend to refer to complaint procedures, the Irvine and Wardle cases, the tactical response group, corruption and morale in the Police Force, community policing, the proposed police board and the future direction of the Police Force.

In addressing the complaint procedures I remind members of the announcements made some time ago by the Premier that the Government intends to legislate for an independent tribunal to oversee complaints against police. Mr Davies suggested that since the Premier made that announcement nothing had happened. That certainly is not the case. For the benefit of the House, and particularly Mr Davies, Cabinet's decision was referred to various groups including the Ombudsman, who responded. That response is currently being addressed along with other matters including the second report of the Royal Commission. I refer members to that second report because in my view it would have been absolute folly to proceed on complaint procedures until we received this report. We could have assumed that the matter would be addressed, and it was. I refer members to page 4 - 26 and point 4.9.12 where the Royal Commissioners state -

> It should be within the authority of the proposed Commissioner to investigate complaints concerning police corruption and misconduct. We anticipate, however, that the Commissioner, in his or her discretion, would only investigate matters which justify the attention of the Commissioner, referring lesser complaints to the Commissioner of Police and other relevant officers within the police force, for inquiry and subsequent action as necessary.

In appendix 2 of the same report one can see the detailed proposals related to the establishment of the office of the Commissioner for the Investigation of Corrupt and Improper Conduct. It states in the first paragraph of appendix 2 -

> The Commissioner for the Investigation of Corrupt and Improper Conduct should be established by legislation according to the following requirements . . .

It then lists in alphabetical order a number of those requirements. The first to which I refer is (g) which appears in appendix 2.2, and which states -

> The principal function of the Commissioner should be to investigate allegations or complaints of corrupt or improper conduct.

At appendix 2.3 under paragraph (j) we find -

> A "public official" should be defined widely to include the holders of all public offices and all persons employed within the public sector, including ministers of the Crown, members of Parliament, and persons involved or employed within local government and the police force . . .

I draw attention to those matters because it seems to me that people may well have forgotten about some of the recommendations which appear in this second report. In my view, it would have been folly to proceed without waiting to have the benefit of this report.

A matter on which I will touch and which seems to have escaped many people when they have talked about complaint procedures is contained in a letter from Mr Ken Moore who has been chairman of the Police Appeals Board since 1 July 1987. He was asked for his comment through a document sent out showing Cabinet's position. A letter he sent to Mr Con Zempilas, Chief Stipendiary Magistrate of the Central Law Courts, stated in part that a more open forum of complaints procedure against police would be desirable in the present climate. I think everyone agrees with that and would have no difficulty with it. He continues that there is always the danger that criminals under investigation will use offence as a means of defence and will make complaints against the police to deflect attention from their own wrongdoing.

We could charge in and set up anything, but I think complaints procedures are complex and deserving of proper attention and full consideration. That consideration is current.

I draw in another perspective related to complaints. Mr Davies made much of the number of complaints lodged and the fact that that number had increased in the past year. I do not wish

to in any way diminish the seriousness of those complaints. However, I refer to a report of the Commissioner of Police in which he said that the issue of complaints against police and the investigation thereof has featured prominently in the public arena this year and that internal systems at present in place have adequately dealt with 1 311 complaints during 1991-92 with 757 of those being of a minor nature; it should be emphasised that there were in excess of 800 000 police public contacts throughout the year. I understand those to be formal contacts. I would imagine there were many thousands of other informal contacts. I draw this matter into the debate because it gives the member some idea of the number of contacts police had with the public in Western Australia in the past year. People might say that a relatively low number of complaints flowed from those contacts and that that happened because people did not have faith in the complaints procedures. I do not know. An immense amount of contact takes place between the police and the public in this State for one reason or another. We need to look at the number of complaints that have flowed from those contacts. We will continue to address this issue of complaints seriously.

I remind the House that about 1972 when the Tonkin Government brought forward the Ombudsman Bill the Legislative Council moved an amendment excluding the police from his embrace. It remained that way until about 1984 when the Police Complaints Bill came before this House and was also amended. If I recall correctly, a whole section was taken out and the period of 42 days was imposed against the will of the Government. I say in retrospect that if the Government had been listened to at that time and the Legislative Council had not used its ill gotten numbers we may not have the problem we have today relating to complaints.

Hon Derrick Tomlinson: Perhaps now is the time to right the wrong.

Hon GRAHAM EDWARDS: Exactly. I do not believe that anyone disagrees with that point. As I have said previously, we would all share the sentiments of Ken Moore when he said a more open forum of complaints procedures against the police would be desirable in the present climate.

I now move to the tactical response group. I know this is a matter of some concern not only to Hon Reg Davies but also to other members of the House and the community. I will refer briefly to the issues raised relating to Stephen Wardle and the Ombudsman's investigation. Members will recall that following the coronial inquiry into that matter there was an Ombudsman's investigation. The Ombudsman refers to the allegation that police had conspired to cover up the beating and murder of Stephen Wardle. Mr Davies did not refer to this aspect in his address yesterday. The Ombudsman's finding was -

> Stephen Wardle was not murdered. He died as the result of the toxic effects of propoxyphene, benzodiazepine and alcohol. There is no evidence to support an allegation that Stephen Wardle was beaten.

Hon Reg Davies: Have you seen the photographs of that dead body?

Hon GRAHAM EDWARDS: The member can make his judgments. I can only endeavour to put before him the judgment of the Ombudsman following the conduct of his exhaustive inquiry. The report continues -

> Nor is there any evidence before me of an attempt by police officers to cover up any such beating. I do not sustain this allegation.

At the end of the day, we need to make a judgment based on the findings of the Ombudsman, or anyone else appointed. Someone must be charged with undertaking inquiries, but if we are then to dismiss the findings we should seriously consider whether we should establish inquiries in the first place. By the same token, the Wardle matter has been an ongoing concern to the family and to others.

The other case I want to touch on briefly is that of Colin Irvine. The Police Union has sought and been granted the authority to appeal to the Supreme Court for a review of the findings of the Coroner's investigation into the death of Colin Irvine. I understand that matter is proceeding, and that represents another form of inquiry.

In order to address the matters raised by Hon Reg Davies in relation to the tactical response group, I remind the House that although a special armed offenders squad which drew on volunteer officers of the day was established as far back as 1968, a more positive move

towards the establishment of a better trained and better available, dedicated group was put into effect in 1979 when two operational police officers were fatally shot and three others wounded as a result of incidents in the State. Also needed was the capability to mount an emergency action in the event of a terrorist incident, prior to any aid to a civil power being mounted by the defence forces and the call-out of the forces being put into place. During 1982 one detective officer was shot and wounded, and in the years 1983 and 1984 a general duties police officer was also shot and wounded. The TRG was established on 1 July 1985 in response to a national agreement arising out of a conference of the Standing Advisory Committee on Protection Against Violence where it was resolved that each State in Australia would establish a specialist group to be trained and equipped and be capable of effective tactical deployment in combating terrorists and any armed offender situation. So the TRG does not have its origins in a policy statement. As best I can recall, the SAT-PAV meeting followed a terrorist incident in the Eastern States which led to the calling together of representatives from all jurisdictions.

Hon D.J. Wordsworth: We are having difficulty understanding when the Minister is quoting and when he is using his own words.

Hon GRAHAM EDWARDS: These are all my own words.

Hon D.J. Wordsworth: The Minister was quoting earlier, so it is hard to tell.

Hon GRAHAM EDWARDS: When I quote I will follow past practice and let the House know.

The TRG was established by the Commissioner of Police in 1985 when it was resolved to approve the creation of the unit. A committee was appointed to draw up operational guidelines and procedures, which have been documented. Since that time the committee has carried out two reviews addressing the scope and functions of the unit. Since its formation in 1985 the TRG has been involved in no less than 94 high risk category call-out situations. In those operations, two fatal shootings have occurred; one in the north west involving a multiple killer and, more recently, the murder suspect, Colin Irvine. It is interesting to note that, following the establishment of the TRG, a general duties police officer shot and fatally wounded a man attacking a woman at a suburban house, but until the present date one general duties officer has been shot and wounded, and that occurred in 1986.

As a result of advice by the Coroner following his inquest into the death of Colin Irvine, the Deputy Commissioner of Police conducted a review of orders and procedures. As part of that review, similar groups in other police forces in Australia have been studied, together with information relating to police forces in the United Kingdom and New Zealand. Arrangements are in place for the National Police Research Unit to examine the issue of police orders and procedures covering high risk situations, and that would include special units such as the TRG. Further to that, on 27 May 1992 all heads of the relevant units in Australia attended the National Police Research Unit, Adelaide, to provide input and supply research material. The consequent new draft national guidelines for the deployment of police in high risk situations was considered by the Australasian Police Ministers' Council at its meeting last week. I have a copy of the guidelines. They are not final because a couple of amendments were made. It is not a paper that I would want to table. If any member wants to look at it I am happy to make it available.

In addition, the Western Australian Police Force has had its procedures examined by an independent person who is considered to be an expert in police high risk operations and procedures. Brigadier M.H. McKenzie-Orr OBE, GM, RL, formerly of the United Kingdom, took up the task. Brigadier McKenzie-Orr was brought to Australia about 1982 to establish the Australian Bond Data Centre which is available to all police forces for all matters, not only terrorist-related. Later, Brigadier McKenzie-Orr served a term as executive deputy chairman of SAT-PAV, and for the past three years he has conducted a security consultant business in Canberra and Sydney as well as overseas. He maintains close association with police forces in the United Kingdom, the United States and with other western countries. He has attended coronial courts in both Sydney and Melbourne relating to police shootings as an independent expert witness. At the inquest into the death of Colin Irvine the Coroner identified some aspects of the operations of the police tactical response group in which it may have acted without authority to detain and to restrain people who are not under arrest. Rather than condemning that action the Coroner recommended the need for such a group and

for legislative changes to provide the police with lawful authority for certain aspects of their operations in certain circumstances. The Director of Public Prosecutions also identified instances of the TRG acting without lawful authority, but did not consider that those matters should be prosecuted. He too recognised the need for a specially trained and armed response group, and reinforced the Coroner's comments and suggested that the media's attention should focus on the Coroner's recommendations.

Matters requiring administrative change have already been addressed by the commissioner. The matters identified by the Coroner as requiring legislative change have been referred to the Attorney General, who is currently considering them. The TRG as a unit is not singularly accountable for the actions of its own officers; however, each member is accountable for his or her conduct and numerous forms exist for the assessment of those individual actions. In addition every item under Mr Davies' terms of reference is currently under scrutiny by the National Police Research Unit of the common police services, by an independent expert, by the Australasian Police Ministers Council and by the State Attorney General. There is no justification for a parallel inquiry, particularly as the Supreme Court will shortly be considering the Coroner's findings. It is important that we consider the matters that I have mentioned because there is a view, perhaps rightly or wrongly portrayed, that the TRG is some sort of cowboy outfit. I do not believe it is. It is a very disciplined group; however the officers are human and they can make mistakes. That is why the guidelines and the controls over such a group should always be kept under scrutiny and should always be highly maintained. The point is that we need such a group in order to protect the ordinary, every day police officers who go about their duties. Those police officers could face situations such as occurred in Kalgoorlie or, going back a bit beyond that, in the Kimberley situation with Schwab.

Hon Reg Davies: I readily acknowledged that yesterday.

Hon GRAHAM EDWARDS: I was not sure that Hon Reg Davies had. I do not think we would argue about the need for the group to be highly trained, very efficient and very closely controlled.

Hon Reg Davies: They must be accountable.

Hon GRAHAM EDWARDS: The internal affairs unit was established by the Commissioner of Police in 1988 as a pro-active approach in the fight against corruption. This initiative was prompted by publicity in relation to the Royal Commission in Queensland and events in New South Wales and Victoria. Strategies were developed after consultation with other authorities, and the internal affairs unit was established along what I consider to be sound, effective guidelines. In addition, the staff of the internal affairs unit are carefully selected ensuring high integrity and efficiency of personnel. Every police officer attached to the internal affairs unit acts autonomously in accordance with his or her oath of office, under guidelines established by police routine orders and the police manual. More particularly, chapter XVI of the Criminal Code provides ample sections on the administration of justice. There has been no evidence of individual members of the internal affairs unit covering up inquiries or failing to perform any duty assigned to them. Each inquiry undertaken is subject to scrutiny by the officer in charge of the unit, the Commissioner of Police or his department.

A further practice adopted by the internal affairs unit is to liaise with the Director of Public Prosecutions to seek his advice on the success or otherwise of potential indictable charges. The staff of the internal affairs unit have established a solid communication with the rank and file of the police service and receive most of their inquiries from serving police officers who now have an avenue to report the few corrupt people who work among them. The internal affairs unit exists as a preventive measure against corruption as it has ready access to all work areas of the police service and is staffed by experienced police officers who are aware of the areas of risk and potential corruption within the service. That is one of the reasons they are there. There are no examples of failures by investigators at the internal affairs unit to properly conduct inquiries which could justify any other body doing any better, but if Hon Reg Davies has any evidence of such examples I would be happy to look at it.

Hon Reg Davies: Is that the old "put up or shut up" argument?

Hon GRAHAM EDWARDS: It is a fair and reasonable request. If Hon Reg Davies has evidence, he should not sit on it. If he does not want to give it to me, he should give it to

someone else; but I am making the point that I am not aware of any failure by investigators at the internal affairs unit to properly conduct their business.

I want to deal with the matter of police morale. I do not know how Hon Reg Davies proposes, as is suggested in this motion, to measure morale in the Police Force. It depends on where one goes.

Hon Reg Davies: What is morale like at the moment?

Hon GRAHAM EDWARDS: It depends on where one goes and to whom one talks.

Hon Reg Davies: The Minister should have listened to Radio 6WF this morning when the President of the Police Union was telling the world how poor the morale in the Police Force is, and why.

Hon GRAHAM EDWARDS: I do better than that. I do not just make my judgments on what the President of the Police Union tells me or what some police officer who has been dealt with by way of disciplinary procedures and wants to go crook has to say. I get out and talk to active members of the Police Force across the length and breadth of the State. During the past four weeks I have been to Albany, Geraldton and Carnarvon and in those places the morale and effectiveness of our Police Force is extremely high. Mr Davies has been in the services and he knows how morale can fluctuate, how morale can be impacted upon by motions such as this, and by people who profess to be knowledgeable about the Police Force getting up and making statements.

Hon Reg Davies: If you have a good leader, you have high morale.

Hon GRAHAM EDWARDS: I know that is another shot at the leaders of the Police Force.

Hon Reg Davies: I was talking about the Minister.

Hon GRAHAM EDWARDS: I do not consider myself to be a leader of the Police Force. Hon Reg Davies is making his judgment on morale by what the President of the Police Union has had to say.

Hon Reg Davies: Never.

Hon GRAHAM EDWARDS: Why does the member not talk to the police who are doing the job?

The PRESIDENT: Order! I suggest to the Minister and Hon Reg Davies that although their private discussion is interesting, it would be more beneficial if the Minister addressed the Chair and the House proceeded to deal with the motion.

Hon GRAHAM EDWARDS: It is interesting to talk about morale and to hear that the President of the Police Union is being quoted as some authority, when only a few weeks ago he was being dismissed because he referred to members of Parliament as cockroaches. I do not want -

Hon Reg Davies: I do not know whether it was a senior officer speaking or the President of the Police Union.

Hon George Cash: An argument exists which could suggest that Mr Brennan did not refer to members of Parliament as cockroaches.

Hon GRAHAM EDWARDS: That was certainly the way it came across.

Hon George Cash: I invite the Minister to look at the newspaper items and headlines and see whether that is the fact.

The PRESIDENT: Order! All of that is very interesting, but I would prefer to listen to the Minister's views on the motion.

Hon GRAHAM EDWARDS: I am trying hard to return to them. However, in reply to Hon George Cash's interjection, I took up the matter with the person concerned, and regardless of whether the statement was made, it came across that way and did not do anyone any good.

Members must look at the fact that the Police Force is experiencing major changes, including the recent finalisation of the merit based promotion scheme. That dynamic process of change can be expected to produce some internal resistance. Accompanying that change police officers in Western Australia have been granted a pay package which is considered a

ground breaker in Australia. They have recently received a 12 per cent increase with a further increment to follow in January next year. This has occurred in a time of economic restraint. Police officers have indicated to me that they accept without a doubt that they have the best industrial conditions in Australia. There is no doubt that the focus on some of these matters causes the Police Force concern. No greater example of the old story of a good cop being bad news and a bad cop being good news can be given than during the recent weeks' activities.

I draw members' attention to some major changes which have occurred in the personnel area of the Police Force since March 1985. Firstly, in relation to recruiting, recruit entry criteria and selection processes were reviewed and modified to include the following: Upgraded literacy, numeracy and aptitude tests; targeted selection interviews; background and lifestyle checks; psychological testing and interviews; physical performance evaluation; bridging courses to assist Aboriginal and other ethnic applicants; ongoing monitoring and evaluation of criteria and processes; and selection criteria based on job related analysis research, using development dimensions and international methodology. In relation to training and education, job related analysis research using development dimensions and international methodology to identify behavioural dimensions appropriate to each rank level has been implemented. This now underpins all training and educational programs as well as recruitment positions and promotional selection criteria.

A training, education and development consultative committee was created and chaired by Professor Kerr with representatives from each university, TAFE, industry, commerce and the Police Force. An ethics committee was also created with representation from local government, the community and the Police Force. The development and introduction of tertiary courses was undertaken with an associate diploma and degree in police studies being offered in consultation with the Edith Cowan University. A centre for police research was also created within the Edith Cowan University. One of the Opposition's high profile candidates in a metropolitan seat is involved in supporting these sorts of processes.

Hon Reg Davies: Is that a former police officer?

Hon GRAHAM EDWARDS: No; it is a civilian candidate from the Liberal Party who is involved as strong supporter of the Commissioner of Police.

A probationary constable training and appraisal system was introduced together with a cadet traineeship at TAFE with DEET funding. Also introduced have been an Aboriginal cadet scheme; recruit training, redeveloped in conjunction with the Edith Cowan University and using job related analysis data to carry tertiary credits; office management courses; officer development courses; custodial care training programs; outreach training programs; cultural awareness trainee programs; and performance reappraisals. In relation to health and welfare the following have been established: An occupational physician to head the restructured health services division; and an employee assistance program including psychological counselling, welfare counselling, rehabilitation services, a safety officer, a chaplaincy service, a critical incident stress debriefing unit, a police officer support team, peer support and a counselling scheme.

Many other initiatives have taken place to which I could refer in relation to those matters. I raise those issues because I am not sure whether members know that these sorts of programs occur within the Police Force and whether members have visited the academy and looked at the sorts of retraining, new recruiting procedures and other support systems that have been implemented.

Hon Reg Davies: I hope members will read the annual report.

Hon GRAHAM EDWARDS: Those matters relate to police morale. I turn now to community policing, which is impacting on the morale of the Police Force. It is having positive effects in bringing the police and the community closer together with a beneficial impact on decreasing crime.

Hon Barry House: Not if you withdraw them from those duties.

Hon GRAHAM EDWARDS: Is the member fully aware that Bunbury has a new community policing officer? From time to time police officers want to change direction. I am sorry that the particular officer in Bunbury chose to change direction because he was doing an excellent job and was receiving support from the community. That is borne out in what I am saying.

Hon Barry House: I agree with that statement, but it must be resourced.

Hon GRAHAM EDWARDS: The member must be aware that another 15 people have almost all been put in place by now. The importance of community policing cannot be overstressed. I had a good opportunity to look at what the police are doing in Geraldton just a few days ago and also what they have done in Carnarvon and Roebourne. The achievements in those places are great. Police in Carnarvon have appointed a police and citizens' youth club officer and a school based police officer. I launched the PCYC on Monday night before a very enthusiastic crowd which strongly supported the initiatives taken by the community.

Extension of Debate

HON J.M. BERINSON (North Metropolitan - Leader of the House) [3.30 pm]: I move -

> That the time for the debate be extended to 3.45 pm or the completion of the Minister's speech, whichever occurs first.

Hon D.J. Wordsworth: Where will this appear on the Notice Paper tomorrow?

Hon J.M. BERINSON: The advice I have is that it will retain priority tomorrow and that the Leader of the Opposition is expected to have the call.

Question put and passed.

Motion Continued

Hon GRAHAM EDWARDS: I cannot overemphasise the importance of community policing. I know it represents a change of direction and I know also that some police officers are opposed to that process of dynamic change. However, it is the way we have to go with the Police Force if we are ever to expect our Police Force to work closely with and be supported by the community of Western Australia.

Hon Reg Davies referred to the establishment of a police board as a knee jerk reaction. Members do not get many knee jerk reactions from me, particularly in matters as serious as this. However, the aim of the police board will be to assist in the process of bringing the community closer together. In that regard, the board will assist the Commissioner of Police in policy development and implementation and will provide additional expertise in the process of problem solving. The board will focus on issues relating to the effectiveness and performance of the police service. Operational command or day to day management will remain the responsibility of the Commissioner of Police as it rightly should.

I have announced already that Keith Mattingly, a retired managing director of WA Newspapers Pty Ltd and past chairman of the WA Community Policing Council will chair the interim board. A senior judge of the District Court, Judge George Sadlier, has also been recommended. We have also approached Dr Irene Froyland from the centre of police research, Edith Cowan University. The Commissioner of Police will serve on the interim board and on the board when it is established. The terms of reference of the committee are to examine various structures and models of police boards that exist in Australia and elsewhere and to make recommendations concerning: The structure for a Police Board in Western Australia; the functions for a Police Board in Western Australia; the method of operation for a Police Board giving special consideration to minimising the risk of political interference; and, whether the Minister for Police should be able to direct the board on matters of policy and, if so, how this can be best achieved. Any direction should be sent to both Houses of Parliament. The other matters that will be addressed by the interim council include the most appropriate relationship that should exist between the police board and the Police Department, and the police board and the Minister for Police; the means by which the membership of the police board can be determined without political interference; the most appropriate support structure that should be established to enable the police board to effectively carry out its functions; and any issue considered appropriate by the committee that would enable the effective functioning of the police board in Western Australia. There is a chance that one other person may be appointed to serve on the interim board. However, that will be finalised in the next day or so.

I have had discussions with Keith Mattingly who has been appointed chairman. He has put forward what he considers to be draft objectives and strategies for a police board to be established by Statute. He sees its purpose as being to take a leading role in developing

community confidence in the Western Australian Police Force through civilian involvement in police policy decision making and to report to Parliament annually through the Minister for Police. Its objectives will be to assist the Minister for Police and the Commissioner of Police in ensuring that the Western Australian Police Force adopts the highest standards of professional management, accountability and ethical conduct in its duties. Its strategy will be to review and report on -

(a) the professionalism and appropriateness of police policies, priorities, corporate planning and management systems to improve efficiency and effectiveness;

(b) the extent to which police education and training at recruit, middle management and senior executive levels produce the skills, qualities of personnel integrity and appropriate career paths necessary for an efficient and effective Police Force;

(c) the adequacy or otherwise of police resources in personnel mobility, communications, equipment and other facilities, including accommodation, to reduce violence, crime and community fears;

(d) the ability of police leadership and management to motivate police towards the attainment of organisational objectives; and,

(e) police and community cooperation in ensuring a sense of community safety on the streets and security in the home.

Under the tentative recommendations, it should be stated that nothing in the purpose, objectives and strategies of a police board would interfere with the responsibility of the Commissioner of Police for the superintendence of the Police Force and its operational command and day to day management. It will not be the role of the board to handle complaints against police, although the board will consider any system weaknesses which may be involved in a complaint. That is a very important distinction to note. Also, the commissioner shall implement, by the exercise of the commissioner's function in accordance with law, decisions of the board, which is to be established by Statute. The board or a person authorised by the board in writing under the hand of the chairman will be able to enter police premises to seek information from any police person and staff necessary for the board to exercise its functions shall be employed under the Public Service Act.

That is, I suppose, my structured response to the matters which were raised in a shotgun manner by Hon Reg Davies. I do not say that in a derogatory sense. He covered a lot of issues in his motion and the subsequent argument he put forward. I hope I have identified and responded to what he considered to be major areas of concern. If I have missed any, I am sure he will let me know.

Hon Reg Davies: I am happy with the embryo concept of the board and the division of the board and the independent investigative body.

Hon GRAHAM EDWARDS: These matters are in early days and need to be developed. I have asked the chairman of the board, and put it to him in writing, to report not just to the Minister of the day but to both Houses of Parliament so that we know what work has been done and the end result of it. The Government cannot be much more open and up-front than that. I understand that the New South Wales board makes a report to the Parliament. I hope that work will not take the three months I initially envisaged it might. Although I do not want to hurry the board, and I want it to do the job properly, it may finish earlier than anticipated. I have not discussed the timing with the board.

I put these matters forward in an endeavour to positively address some of the problems confronting our police service, not just as a knee-jerk reaction or short term political response, but as a long term administrative structure that will assist the police service. Certainly, in my view it should give the public greater faith in the manner in which the Police Force is run, simply because of the civilian component in the policy making and administrative decision making processes of the force. The public seems to be very keen on that aspect. However, at the same time the proposal will allow the operational independence which is crucial for the Commissioner of Police. I ask members to reject the motion before the House. As I said earlier, the last thing we need is another inquiry. We need to get on with addressing the problems that we are aware of, and giving positive support to the police by assisting them to address those problems.

In conclusion, despite the incident that has been the focus of so much public attention - and rightly so - I am of the view that the police service in Western Australia is improving. Some of the initiatives to which I have referred today were first begun by John Porter and were strongly carried on by Brian Bull. It must be said that Brian Bull has been a reformer. He has set out to change the nature of the Western Australian Police Force. In doing that he has made enemies both within and outside the police service. Notwithstanding that, he has stuck to his guns and attempted to achieve the changes that a reformist-type commissioner should be seeking to achieve. I have been a very strong supporter of Commissioner Bull because he is seeking that change and he has been implementing the necessary steps to make the changes to which I have referred. If he had been sitting back doing nothing or burying his head in the sand, I would be taking a very different stance in my role as Minister. It takes time to effect change and the fact that the Police Act in this State is 100 years old is a reflection of the amount of change that has been achieved in the past decade. That change needs to continue and we must assist in the process of change. In my view another investigation would only inhibit the process of change that is already in place. I ask members to reject the motion put forward by Hon Reg Davies.

Debate adjourned, pursuant to resolution.

STATEMENT - BY HON JOHN HALDEN

Port Kennedy Development Agreement Bill - Squatters' Rights to Make a Claim

HON JOHN HALDEN (South Metropolitan - Parliamentary Secretary) [3.45 pm] - by leave: I thank the House for its indulgence. Last night when I was asked a question by Hon Reg Davies about the rights of squatters, I said that squatters had no rights but that they could make a claim. I have been advised today by Mr Max Poole, the adviser, that there may well have been some misunderstanding between me and the member and, if that is the case, I take the opportunity to correct it. When Crown land is involved the following section 36 of the Limitation Act takes effect -

> Notwithstanding any law or statute law now or heretofore in force, the right, title, or interest of the Crown to or in any land shall not be, and shall be deemed not to have been in any way affected by reason of any possession of such land adverse to the Crown.

I understand that means squatters have no rights whatsoever and, although they may make a claim they do not have the right to make a claim.

Hon Reg Davies: I will withdraw my Press release about your statement in the House last night.

Sitting suspended from 3.47 to 4.02 pm

EQUAL OPPORTUNITY AMENDMENT BILL

Committee

Resumed from 11 November. The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon Tom Stephens (Parliamentary Secretary) in charge of the Bill.

Clause 19: Part IVB inserted -

Progress was reported on the clause after Hon Peter Foss had moved the following amendment -

> Page 49, lines 23 to 33 - To delete the lines.

Hon TOM STEPHENS: Initially I was not persuaded to accept this amendment. However, having had the advantage of time for reflection on the range of very compelling reasons for this amendment I am able to indicate that the contributions from Hon Peter Foss and Hon Derrick Tomlinson have persuaded me to accept the amendment.

Hon Derrick Tomlinson: Into which magical mirror have you reflected?

Amendment put and passed.

Hon PETER FOSS: I move -

Page 50, after line 13 - To insert the following new subsections -

(6) Every body that has the administration of any written law, or has the capacity to enact any subsidiary legislation under any written law, shall within 18 months of the coming into effect of this Act, prepare and submit to the Commissioner a report stating -

(a) whether any written law which it administers or subsidiary legislation it has enacted contains any provision which discriminates on the ground of age; and

(b) if there is such a law, the nature of the discrimination, whether the body considers that the discrimination should be continued and the reasons why it so considers.

(7) The Commissioner shall include details of the statements received by the Commissioner pursuant to subsection (4) in the report to be tabled pursuant to subsection (3).

(8) Any body that pursuant to this section is required to prepare a statement shall include in any report that it is obliged to make under the Financial Administration and Audit Act 1985 a statement as to whether it has complied with this section and shall continue to include a statement until such time as it has complied.

I foreshadowed this amendment the last time we considered this Bill. It is designed to overcome a problem which the commissioner saw in that no automatic reviews were to take place with these laws. Therefore, no incentive would be provided on the people administering the law to consider whether the law should stay or go. An enormous incentive would be provided if the law were snuffed out like a candle after two years if these people did not act. They would then tell the commissioner the situation as soon as possible.

My concern, which was accepted by the Government, is that it is structured differently in the case of age discrimination. The people administering the law must consider the need to maintain the law for age discrimination. It they think it should be maintained, they would write to the commissioner who would then be better able to comply with subclause (5). This stipulates that the commissioner should report and undertake a review of written laws referred to in subclause (1) with a view to identifying circumstances where discrimination on the grounds of age occurs in substance or effect against any person or past persons. It must furnish a report of the findings of the review undertaken to the Minister. That report would then enable the Parliament to be in a better position to amend the law specifically regarding age discrimination.

Incentives would be provided for people to write in. If the information were not provided to the commissioner, the information would not be included in the report to the Minister. When the Minister was dealing with the legislation, he might well assume that no provision was discriminatory, or if one was, he would assume that it did not matter whether the provision was retained.

Also, it would require these points to be noted in the department's report under the Financial Administration and Audit Act. Of course, if the department did not present its report, the Auditor General would note that the department did not comply with the Act and this would come to the attention of the Parliament. This would provide a check for the Parliament because no-one is keen to be the subject of an adverse report by the Auditor General. However, the degree to which the review is carried out will vary from department to department, but that is always the case when such things are done.

New clause 41 is being circulated but, at the request of the Parliamentary Secretary, rather than including it at the end of the Committee stage as new clause 41 I have proposed new subclauses (4), (5) and (6).

Hon DERRICK TOMLINSON: I am not quite sure from whom to seek an explanation. My query would normally be directed at the Parliamentary Secretary, but it is Hon Peter Foss' amendment and he is in the habit of answering my questions! I note that on page 50 of proposed section 66ZS is subclause (5), which requires the Equal Opportunity Commissioner

to undertake, within two years, a review of written laws referred to in subsection (1) and to furnish a report on the findings of the review to the Minister. The amendment moved by Hon Peter Foss to clause 19, after line 13, inserts new subclauses (6), (7) and (8). We argued fairly strongly for the amendment accepted a few moments ago to delete lines 23 to 33 on page 49, because those lines dealt with, among other things, the review and translation of written law into subsidiary legislation by the commissioner, and we thought that was unnecessary duplication of effort. A proposal is now before the Committee to add a new series of subclauses (6) (7) and (8) which require, in addition to the commissioner's review in subclause (5)(a), a review by every body which has the administration of written law, or the capacity to enact subsidiary legislation to similarly review, and this time report, to the commissioner. If there is some logic to objecting to unnecessary duplication of effort by the commissioner and this Parliament, does not the same logic apply to unnecessary duplication of effort with the review of all relevant, written laws by the commissioner as well as every body that has responsibility for the administration of such laws, or that has the authority to promulgate subsidiary legislation?

Hon PETER FOSS: That was not my objection to those proposed sections. It was that, if we allowed subsections (2) and (3) to remain, at the end of two years those laws would be snuffed out unless two things happened: Firstly, the commissioner detected that such a law existed and was discriminatory, and secondly, the commissioner took an executive decision to continue the law. There appeared to be two ways in which that could go wrong: Firstly, the commissioner might miss the law altogether; it might disappear without trace and without redeemability even by regulation.

Hon B.L. Jones: Is that a sunset clause?

Hon PETER FOSS: Yes; I suggest Hon Beryl Jones read the Bill. Secondly, it would be an executive decision whether the effect of the law continued. Parliament could disagree with an extension, but not with a failure to extend; it would lose its control. I suggest that the removal of these laws at the end of two years should be done by Parliament and that it should advert to removing these laws. It should be something it does advisedly, rather than something which happens now, without Parliament's having any knowledge of what these laws would be. At present we do not know, neither does the commissioner, the extent of these laws. The only way Parliament could make that decision would be if it had the information before it. It is probably quite true that members of Parliament will not individually research the written laws of Western Australia and work out which ones contain discrimination and which ones do not and then draft a schedule indicating the effects of those. Obviously, someone else will have to do the work for them. It is quite appropriate that the person who does the work is the Equal Opportunity Commissioner. However, the commissioner validly raised the point that she could not do it without the cooperation of the people who administer and make the laws. She said that a snuff-out period of two years would provide an enormous incentive to them. She could write to the people concerned and advise that any discriminatory law would disappear in two years unless she was written to and asked to make regulations continuing that discriminatory law. If they have any concern about the effect of their laws they will have great incentive to tell the commissioner to keep certain laws.

The commissioner has a good way of seeking cooperation. However, the deletion of the snuff-out period meant the commissioner could write as many letters as she liked and possibly never receive a reply. The intent of the amendment was to get the leg work done for her by the individuals who wished to keep the legislation. In this case the same people who would have had to do the work before they could tell the commissioner which laws will be obliged to do the same thing. Members will notice that they will be required to do that in the eighteen months. That period was carefully chosen to allow six months between when they will have to report and when the commissioner will have to report. It is hoped that the net result will be that the leg work will be done by the individual administrators and sublegislators and the report will be prepared by the commissioner. Finally, legislation will come before this Parliament with a full report showing full justification for laws which should be kept and laws which should not be kept. The Parliament will then have a better idea of the laws with which it is dealing and be able to make an informed decision rather than a blanket decision with no knowledge of the laws it is effecting.

Hon DERRICK TOMLINSON: Far be it from me to disagree with one of my colleagues on

this side of the Chamber, but perhaps I will flex my newly found independence by doing so. It is gallant of Hon Peter Foss to propose that other people do the commissioner's leg work for her; however, I am of the opinion that the commissioner is very capable of doing her own leg work. I suggest to Hon Peter Foss that what he is trying to achieve by his amendment to insert new subsections (6), (7) and (8) could very well be achieved much more simply by including in clause 5 a further paragraph (c) which embraces his new subsection (7). The effect would be that the commissioner would undertake a review, as she will do anyway. The commissioner would prepare a written report of the review of all relevant laws and the effect of the Equal Employment Amendment Bill upon them. The commissioner would then furnish a report of the review to the Minister and then the commissioner would cause the review to be tabled. Parliament would then be informed of all the things that Hon Peter Foss wants other people to do the work on without there being unnecessary duplication of effort. I am one of those people who is in favour of less government, not more.

Hon PETER FOSS: The difference between these amendments is that the deletion of proposed subsections (2) and (3) is a matter of principle and the matters we are dealing with now are matters of detail. I am quite happy to go along with the administrative detail that the commissioner wishes. I do not regard it as a matter of principle; whereas I regard the other as a matter of principle. Hon Derrick Tomlinson may be right. If he wants to move his amendments, perhaps we could consider them. I think the commissioner is correct in saying that there is a great deal of inertia in Government departments. This seems to be a way of achieving the objectives of the commissioner.

Hon Tom Stephens: As the proponents of this legislation we are happy to accept the recommendations of Hon Peter Foss in this regard, and to accept his amendment.

Hon Derrick Tomlinson: One only has to bow to the weight of numbers.

Hon Reg Davies: The tyranny of numbers!

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 20 to 26 put and passed.

Clause 27: Section 93 amended -

Hon PETER FOSS: I move -

> Page 54, after line 34 - To insert a new subclause as follows -
>
> > (2c) Where a complainant who has been assisted by the Commissioner under subsection (2) is unsuccessful in that complaint to the tribunal, the Commissioner shall, on the application of the respondent, and to the extent of the monetary value of the assistance so provided to the complainant, reimburse the respondent for the costs incurred by the respondent in defending the complaint.

My concern with this clause is that there is always a problem when the State lends aid to one side of a case and not to the other. The result could very well be that an action is brought which would not otherwise have been brought, simply because a person has the full support and financial backing of the State.

This causes considerable concern if, as a result of the action being brought, the person against whom the complaint is made is put to considerable expense in defending the matter and is ultimately successful. Whereas it was always clear that people would have to pay to maintain their own cases, complainants would not have had any financial hazard simply because they received support by way of the State bearing the costs. It is almost a lose-lose situation. No matter what happens the person against whom the complaint is brought is put to the expense of defending it; whereas the other person has no way of losing because he or she knows that the State will bear the expense. The State should give an equal amount of assistance to the respondent to the complaint only where that person has had to fight with his or her own money the case which has been brought by the complainant and supported by the State.

Hon TOM STEPHENS: I appreciate the concern of Hon Peter Foss which has prompted him to move this amendment. I have taken the opportunity to refer that concern and the

amendment of Hon Peter Foss to the Minister and the commissioner for advice. I am able to respond in the following terms.

The provision of assistance in relation to police is acknowledged, but the commissioner has already been required to give assistance under section 93 of the Act which has been in place by regulation since 1989. Hon Peter Foss may be interested to know that it has not really amounted to any great increase in the work of the Supreme Court and the only appeals are those that have been taken on appeal by respondents. There have been a total of six since the inception of the Act.

The provision of assistance for appeals, unlike assistance by the tribunal, is at the discretion of the commissioner. This provision was made discretionary in order to ensure that the commissioner should not be obliged to assist frivolous appeals. It was seen as unnecessary in response to the appeal being made by respondents where complainants having required assistance at the tribunal had no means of subsequently defending an appeal. The extension of the present assistance will include, again at the discretion of the commissioner, fees for witnesses, such as specialists who could not be requested to give evidence to the tribunal if no financial assistance was provided.

It must also be remembered that the onus of proof is on the complainant and, therefore, there should be the means of allowing the complainant to present all the evidence to the tribunal. The proposed amendment of Hon Peter Foss represents, in the view of the Government, an extraordinary one and is without precedent in any other jurisdiction. It penalises the commissioner for carrying out her statutory duties. The commissioner has a role of investigation and conciliation. The commissioner is not judge and jury and does not decide matters of law. To penalise the commissioner with costs orders, for example in relation to Supreme Court appeals, is untenable. As I understand it - forgive me if I am wrong - the amendment of Hon Peter Foss would mean that the commissioner would be faced with costs for appeals to the Supreme Court and not just the smaller costs which would pertain to the Court of Petty Sessions.

The advice provided to me by the commissioner states that another analogy is where the Legal Aid Commission grants aid to a person who is subsequently unsuccessful. In that instance, the Legal Aid Commission is not required to pay the successful party the amount paid out in legal aid. It should be pointed out that it is not the commissioner who brings a complaint before a tribunal or the Supreme Court; the commissioner must receive a written complaint, which, under the Act, she is obliged to investigate and attempt to conciliate. If conciliation fails she is obliged to refer the matter to the tribunal.

The provision of assistance does not prevent the Supreme Court from making orders for costs in favour of the respondent against the complainant. The tribunal also has power, under section 125, to award costs where it dismisses a complaint on the grounds that it is frivolous, vexatious or lacking in substance and it can order the complainant to pay the respondent's costs. Therefore, there is already adequate protection for respondents in relation to costs and it would be inequitable and inappropriate to make the commissioner liable for costs where a complainant is unsuccessful.

I received this advice in response to the argument Hon Peter Foss put to the Committee in relation to his amendment. I remind the House that I am referring only to those matters which have been referred by the commissioner. To date only a very small number of complaints have been dealt with and in that context I hope the member will not persist with his amendment.

Hon DERRICK TOMLINSON: During the second reading debate I illustrated the need for equal treatment of the complainant and the defendant by reference to a complaint used to illustrate the work of the commission in its 1990-91 report. In that instance a complaint of unfair dismissal had been lodged on the ground of pregnancy. The complainant was granted a lawyer by the Equal Opportunity Commission to prosecute the case before the tribunal for unfair dismissal. The claim was for a four figure settlement. The defendant had to pay his own legal fees. The defendant, in the opinion of legal counsel, had a case which he could have won. If he had wished to pursue his case through the tribunal and, if necessary, through the Supreme Court the estimated minimum cost of his legal fees was $8 000. The cost to the defendant of settling the case was a payment of $1 700 with an additional $1 000 reimbursement of the legal costs. The defendant weighed in the balance the $8 000 which it

would cost him to pursue a principle of justice. It was $8 000 which he could not claim from any authority in the land and he had to meet it from his own pocket. He would be up against the full authority of the commissioner or the legal counsel appointed or granted by the commission to assist the complainant. The defendant's financial commonsense prevailed; it was far cheaper to admit liability and settle for $2 700 than to pursue justice for $8 000. That is the point which must be considered. We are talking about equal opportunity, but the Equal Opportunity Act discriminates against the defendant by providing assistance to the complainant but not the defendant. We are looking at a potentially small number of cases.

Hon Tom Stephens: Was the defendant in the case to which you referred an institution?

Hon DERRICK TOMLINSON: It involved a tavern and a part time employee of that tavern who was dismissed and later claimed unfair dismissal. The tavern was run by a company. If the Minister would like me to I will give him the details in confidence, but I do not intend to disclose the confidence here.

The Equal Opportunity Commission's 1991-92 annual report, published in August 1992, reveals that to 30 June 1991 a total of 263 cases were referred to the commission. Nine cases were outside the commission's jurisdiction; 79 cases lapsed; 22 complaints were not proceeded with for various reasons; 84 cases were resolved in conciliation; and 69, of which 34 were under investigation at the time the report was published, were referred to the tribunal. Of that 69, only 35 cases were heard.

Hon Peter Foss: How many were successful?

Hon DERRICK TOMLINSON: I am not sure. I would need to read further into the report to find that out.

We might argue that most of these cases are resolved in conciliation. I am sure they are. Most of the complaints are genuine because the complainants would not go to the commission if they did not believe they had a genuine complaint. However, there is a possibility that when an employer, an educational institution or a landlord is confronted with the full authority of the State, plus legal counsel representing the complainant in the tribunal, or the prospect of a defence counsel in a tribunal -

Hon Peter Foss: And the deep pocket of the State.

Hon DERRICK TOMLINSON: - and the deep pocket of the State, then the good financial commonsense which prevailed in the instance I referred to previously might prevail again. I suggest to the Committee that it needs to consider the possibility that one of the reasons that conciliation is successful is not that justice prevails - I am sure in most cases it does - but that unequal forces confront each another. I suggest that one must accept that by giving to a complainant the full support of the State, the principle of equality is diverted. If we have full equality the two protagonists - the complainant and the defendant - must be given equal opportunity, as they are at the conciliation stage.

No representation is allowed for either party at the conciliation stage. If the defendant wants to take counsel before the commission or the conciliator at the conciliation stage I know what the result would be; she would say, "Out! Out! Out! And don't come back foul spot," because there is that equality, However, there is not the same equality in the tribunal. If one is to have that equality at the conciliation stage then at the subsequent arbitration or litigation stage the same equality must prevail. That is the substance of the amendment before the Committee.

Hon PETER FOSS: A couple of points arise from this. The first is a reference to the District and Supreme Courts of prosecutions. That is a little inapplicable. Earlier the Parliamentary Secretary made a big point of the fact that it is not a criminal but a civil jurisdiction. It is usual for costs to be awarded against an unsuccessful party in a civil jurisdiction. Also, in that jurisdiction - in fact, even in the criminal jurisdiction - it is usual for a matter to be a tort to maintain an action. The tort of maintenance is an old one under which people were not allowed to provide financial assistance to a person to bring an action otherwise they rendered themselves liable for damages to the person sued.

A further tort called champerty is one where one not only maintains an action but takes a share in the outcome. Certainly, legislative authorisation is required to enable the commissioner to give this assistance without possibly being guilty of maintenance. It may be

argued that the commissioner has some sort of interest. Certainly, it would seem necessary, not only from the point of view of authorising the commissioner so far as a statutory authority is concerned, but also to ensure that the commissioner is not guilty of maintenance.

It is not an unusual concept that a person maintaining an action on behalf of another, whether it is authorised and therefore not illegal, should have some responsibility because he has maintained that action. Therefore, if one takes into account that it is a civil, not a criminal, jurisdiction the Parliamentary Secretary's remarks about the Crown being asked to pay if it loses a prosecution are not applicable; he should be looking at civil cases. I do accept the existence of one problem area which probably involves the drafting more than anything else; that is, that the type of support being given goes beyond mere legal assistance. It could very well be the sort of assistance the Minister mentioned to somebody who is handicapped. It may be that the clause is too broadly drafted as it presently stands.

The principle involved here is an important one and one certainly recognised so far as the Suitors' Fund Act is concerned in relation to appeals. Having had a quick look at that Act, I am not certain that even on appeal a person who lodges that appeal is able to recover his funds under this legislation. I would think it would be most unfair if this form of penalty were set up without giving the person who appeals, possibly all the way to the Supreme Court against an aided application, an opportunity to get back their funds from the Suitors' Fund Act when they are successful before, say, the High Court. It would seem to be quite improper if there were no mechanism somewhere along the line to ensure the person had that balance redressed.

One should not see this clause as imposing a penalty on the commissioner. It is a proper balancing. Costs should not be seen as a penalty as they are merely saying that costs have been incurred and somebody should bear them. In the end, why should someone who has been complained against and been successful with their case bear the costs? If the commissioner wishes to become involved that is fine. Normally, if one intermeddles in an action it means that one bears part of the costs. The fact that someone intermeddles without having his name added to the complaint does not alter the situation; he is intermeddling and therefore bears some responsibility. As Hon Derrick Tomlinson said, it is a matter of equality and fairness. It seems strange that the one Act of all the Acts in which we do not deal with equality and fairness is the Equal Opportunity Act.

Hon TOM STEPHENS: I accept the first point made by Hon Peter Foss regarding the Supreme Court decision. There seem to be a number of funnels through which complaints are being put. Those funnels include the role of the commissioner. This Parliament has said that the commissioner must satisfy herself about complaints in the first instance and that those complaints are not frivolous, vexatious, misconstrued, misconceived or lacking in substance. That is the first funnel through which complaints are put. This will clearly provide an opportunity to weed out a whole range of unfair or, if you like, unequal assaults on people in situations of power, to which Hon Derrick Tomlinson referred in his contribution.

In addition, members should remember that the Supreme Court and the tribunal have the opportunity to award costs against a complainant. In that context it strikes me as being another funnel through which complainants are being put to risk their own pockets, because if a complaint is dismissed the Supreme Court can decide that a complainant should have the costs awarded against him.

The substance of the matter is that we are dealing with an unequal relationship in the community. The parent Act and amending Bill endeavour to redress some of the inequities in the community related to this matter. That is the reason why the Opposition has supported the Government in bringing forward this Bill and reaching this point in the debate. Individuals rarely have the resources to pursue a complaint without assistance where, more typically, employers to a large extent have the resources to employ experienced lawyers, and so on, to contest such complaints.

Hon Peter Foss: In reality small business people probably get less out of business than a lot of other people do.

Hon TOM STEPHENS: We must keep in mind that the small business community, particularly the sensible ones, are associated with the Chamber of Commerce and Industry of Western Australia and have that level of support.

Hon Derrick Tomlinson: So too does the employee have the support of the union, so that argument holds the other way.

Hon Peter Foss: A lot of people cannot afford to join the confederation.

Hon TOM STEPHENS: Any employer would be placing himself at considerable risk if he was not a member of that confederation.

Hon Peter Foss: He may not be able to afford litigation, that is the problem.

Hon TOM STEPHENS: I accept that is the case to some extent, but it is not always the case. I accept that on occasion employers will not be in the category of which I speak but the category of which Hon Peter Foss speaks.

Hon Peter Foss: A lot of them, unfortunately.

Hon TOM STEPHENS: At the same time, many more are in the category of which I speak rather than the category of which Hon Peter Foss speaks. Surely Hon Peter Foss would agree with me that an employer would be silly not to be associated with a body such as the Chamber of Commerce and Industry of Western Australia.

Hon Peter Foss: If employers can afford it, you may be right. You assume that employers have money coming out of their pockets.

Hon TOM STEPHENS: I will not assume that. My advice to any employer would be to be associated with such a body.

Hon Derrick Tomlinson: But you would also pursue compulsory unionism!

The CHAIRMAN: Order! I have let this debate run on a bit, but can we formalise the proceedings.

Hon TOM STEPHENS: I make the point that, by and large, individuals are the ones within our community who are disempowered, and it is the respondents who are in a position of power. That is the philosophical discussion which we have been having. This Bill will redress some of that imbalance by ensuring that complainants will have the opportunity of proceeding with their complaint, and if they need support from the pocket of the State, they will have the opportunity of receiving that support in the process. The provision of financial assistance is a means of endeavouring to redress the imbalance and, at the same time, of achieving the objects of the Act, which are to provide equality of opportunity and to eliminate discrimination. The commissioner can do nothing to achieve these objects if people do not make complaints when unlawful discrimination occurs. She has no powers of self-initiation, even when she sees the most blatant act of discrimination.

Were the provision of assistance removed from complainants whose complaints had substance, then complainants - those individuals whom the Act seeks to protect and empower - would not use the provisions of the Act if they were to be taken to the tribunal each time without representation, because respondents could afford lawyers who produce complicated legal arguments and who know that complainants could not combat them because they would be unrepresented. I understand the point made by Hon Peter Foss, but he needs to keep in mind that I am in the process of receiving advice from the practitioner in this area, the Commissioner for Equal Opportunity, and she indicates to me that the theory is in fact her experience of the reality.

Hon Peter Foss: No-one has a deeper pocket than the Government. That is the problem.

Hon TOM STEPHENS: Keep in mind that there has to be a limit to the pocket of the Government because, in the end, we are dealing with taxpayers' money.

Hon Reg Davies: We have a new Minister who is actually concerned about the taxpayer! That is a wonderful change!

Hon TOM STEPHENS: I am surprised that the opposite view is being taken by members opposite on this occasion, because they have expressed regularly their concern that we should contain the expenses of Government. To either remove the assistance or to provide it to respondents indiscriminately would further disempower individuals. One should not forget that this Act is about the basic human right that people be treated equally without discrimination. To give assistance to respondents and to encourage them to continually challenge the Act will not ensure that complainants and respondents are treated equally,

because the reality is that they rarely start off as equals. Complainants are often from minority groups without power, and the provision of assistance in the limited circumstances that the Bill provides is an attempt to redress the imbalance of power and make the Act workable.

Hon Peter Foss raised points which have not gone unnoticed by the commissioner. I have had the opportunity of asking the commissioner what are her recommendations in regard to some of the concerns raised by Hon Peter Foss. For the purpose of trying to get this Bill through, I advise the Chamber - and I hope I will not upset the Minister in the lower House - that the commissioner has made an approach to her Minister in regard to some of the issues raised by Hon Peter Foss, and there may be the opportunity of addressing those comments through another process and not necessarily through amendment to this legislation; for example, by the suitors' fund. In that context, keeping in mind that at this stage we are talking about rare examples which come through the system, and of which the commissioner is aware, such as those examples about which Hon Derrick Tomlinson spoke, and keeping in mind also that the commissioner has been pressing this issue, I encourage Hon Peter Foss not to persist with his amendment at this time and to recognise that there is a risk that the Bill could falter at this point if the Chamber were to insist on this amendment. I am sure the member would not like to place the Bill at risk, because I know that he agrees with the thrust of the legislation and has made a name for himself in this area. I am sure that Hon Reg Davies would also be keen to ensure that the Bill does not falter at this point because of an opportunity in the future to resolve these issues rather than persist with them now.

Hon DERRICK TOMLINSON: There is a single flaw in the Parliamentary Secretary's argument; namely, his assumption that power and authority is necessarily linked to finance. Equality of opportunity, as addressed in the Act, is about an unequal distribution of power and authority, and is an attempt to redress that unequal distribution of power and authority as it relates to discrimination on the grounds of gender, disability, age, etc. Within those categories, the Act is limited to consideration of that discrimination in the workplace, in education, and in a limited range of social institutions. Were we to focus on the workplace, as the Parliamentary Secretary indicated in his contribution, the conventional wisdom is that in addition to the employer-employee relationship being an unequal position of authority, as it must be, it is also an unequal position of financial capacity, which favours the employer. Because the employer by his own effort or enterprise pays the wages of the employee, the assumption in the conventional wisdom is that the employer necessarily has a greater financial capacity for such things as the pursuit of justice before the law. That may be so in a majority of cases. Any undergraduate textbook of sociology will demonstrate a relationship between power and authority and finance. However, because in a majority of cases that may be so, that does not necessarily hold as a general rule. Even if it were to hold as a general rule, by the operation of the Equal Opportunity Act, in an attempt to redress the balance of power and authority, the Equal Opportunity Commission is empowered to give to the powerless the full authority of the State, the full support of the State, and the full resources of the State.

The argument that we have advanced previously is that a new position of inequality is created. It is no longer the employee as the powerless individual against the power and authority, including if necessary the financial power of the employer; it is now the position of the complainant supported by the full authority of the State against the individual defendant. It is now a position of the individual versus the State; there is no greater inequality. The only place that such inequality can be redressed is in a court of law.

[Questions without notice taken.]

Hon DERRICK TOMLINSON: Before question time I was making the point that in spite of any construct of inequality which might apply in an employer/employee situation by virtue of the operation of the Act, there is a new construct of inequality in place. I argued that if we accepted that there is a new construct of inequality of the individual versus the State, then to equalise the situation or strengthen the arm of the defendant in the tribunal in an equal opportunity hearing, we must accept the amendment moved by Hon Peter Foss; that is, where the complainant is unsuccessful in the tribunal the commissioner be empowered to reimburse the defendant to the value of his or her costs incurred or to an equal value of assistance given to the complainant. I put this as a principle of equality which should be pursued in the interests of fairness. I have argued previously that the Equal Opportunity Act needs to

address this question of inverse inequality by the operation of the Act. I did not pursue it by an amendment earlier because it represented a whole new dimension of inequality which is beyond the principles of the Bill. However, this question of inequality operating where the financial support is given to a complainant and an equal opportunity for financial reimbursement is not given to a defendant, is a matter which I feel should be pursued and is pursued in the amendment moved by Hon Peter Foss.

I make the point that we are merely talking about a successful defence; we are not talking about an unsuccessful defence. The prosecution of a case within the tribunal is on the referral of the commissioner or on the referral of the complainant. The defendant is merely a defendant. If the complainant loses or, conversely, if the defendant succeeds, we are arguing that the defendant should have the opportunity for equal reimbursement of costs. There is no concept there - as the Parliamentary Secretary seemed to be arguing - of reimbursing an unsuccessful defendant. We are talking about an unsuccessful complainant. If there is any confusion about the question of an unsuccessful complainant it might arise in the wording of a later amendment on the Notice Paper, but the amendment now addressed relates solely to a successful defence before the tribunal. It is merely intended to strengthen the arm of a defendant to equalise the authority of the independent by giving that independent an equal opportunity for financial support in a tribunal hearing to cover the costs of assistance, just as the Bill now before us offers to the complainant the opportunity of financial support to pursue his or her case before the tribunal on referral of the commissioner or on referral of the defendant himself or herself.

Hon TOM STEPHENS: I have listened to the honourable member's arguments with interest but I regret to advise that I will not be able to accept the amendment. I know the member does not want to put the Bill at risk but I am also told that I am to report progress in a couple of minutes. I fear that if we cannot get on and deal with this Bill promptly we will put it to a vote and let the members decide.

Amendment put and negatived.

Clause put and passed.

Progress

Progress reported and leave given to sit again at a later stage of the sitting, on motion by Hon Tom Stephens (Parliamentary Secretary).

[Continued on p 7130.]

CREDIT AMENDMENT BILL

Second Reading

Debate resumed from 4 November.

HON MAX EVANS (North Metropolitan) [5.40 pm]: This Bill was introduced because the Credit Act 1984 requires amendment because it applies only to contracts which, among other things, charge interest at a rate above 14 per cent per annum. In 1984 when the Credit Act was introduced, the framers of the legislation did not anticipate the present state of the consumer finance market. Since the Credit Act came into force, interest rates have moved mainly in the range of 16 to 25 per cent. In the present finance market, interest rates are now much lower than 14 per cent.

Hon Joe Berinson may remember in the early 1960s the famous case of Mayfair Trading versus Eastern Acceptance Corporation, which was brought under the Money Lenders Act. That case arose because if a higher rate of interest were charged than was provided for under the Money Lenders Act, the contract became void in respect of both principal and interest. At that time, the rate of interest provided for under the Money Lenders Act was 12 per cent, and under hire purchase agreements, Eastern Acceptance Corporation was charging a higher rate of interest and was challenged in the courts by someone who could not pay up. Mayfair Trading and Eastern Acceptance Corporation happened to be clients of my company at the time. That was a landmark case. The Money Lenders Act had been around for 20 or 30 years; that rate of interest had been fixed and had never been changed, even though times had changed. In the 1950s after the Second World War, the method of financing business and hire purchase agreements changed, and interest rates went up, as did a lot of other things. It is interesting for me to speak about this Bill when interest rates are going down rather than

up. In the last 40 years, we have gone full circle; rather than protect people when interest rates go up, we are now seeking to protect them when interest rates go below 14 per cent.

In the present finance market, the range of interest rates being charged by credit providers has changed so dramatically that a large portion of the personal lending presently being done is at a rate only slightly in excess of 12 per cent per annum. Although this is of benefit to many consumers, a side effect is that protection under the Act will be denied to a large number of recent borrowers. Present indications appear to be that although interest rates may vary slightly in the near future, they are unlikely to rise substantially for some time. To address this development, the Bill contains provisions which will allow the threshold interest rate, above which the Act will apply, to be varied according to the needs of the market.

This legislation is probably well overdue. I do not know how long it has been in the making. Interest rates of around 12 per cent have been with us for many months. I presume it is only recently that problems have arisen when people have found they were not protected because interest rates were below 14 per cent. Is it only because legal action is pending that the Government has become aware of the problem?

The Bill provides for the actual level of interest rates at any particular time to be fixed by regulation, thus avoiding the need to bring repeated amendments before the Parliament. I think we are quite well protected by the Standing Committee on Delegated Legislation, chaired by Hon Tom Helm, which scrutinises regulations, and it would be better to fix interest rates by regulation than to bring repeated amendments before the Parliament. It is probably only a matter of time before interest rates go up again.

This amendment Bill is a response to the early advice from the banking and finance sectors that interest rates were likely to decline below the existing Credit Act threshold. The finance sector has indicated its belief that fixing the threshold rate in the range of six to eight per cent will adequately address the situation. It is amazing how depressed the finance market is when all that can be obtained for the lending of money is an interest rate of six to eight per cent! That is a worldwide phenomenon. The Germans are putting up interest rates in order to encourage people to invest their money in Germany to save it from its currency problems.

The second area addressed by this Bill is that of insurance disclosures under the Credit Act. The existing legislation imposes strict requirements for disclosure in credit contracts to reveal the real cost of credit. That cost often includes ancillary costs such as insurance for a variety of risks such as life cover, sickness and accident insurance and unemployment insurance. If effected, these insurances and their premiums and any commission must be disclosed in the credit contract. To ensure as far as possible that the appropriate disclosures are made for each contract, a single penalty consisting of the loss of insurance charges is applied to failures to disclose that information.

It never ceases to amaze me that we try to introduce legislation to overcome all things and then, as we used to say years ago, we need a Philadelphia lawyer to look at it, and he suddenly looks at the minute detail and, if that minute detail is not correct, finds that the legislation may have effects which were not intended. It is sad that that happens all the time. The intent of the Act was obviously quite clear, but lawyers have tried to upset that legislation in order to challenge the legality of contracts entered into under it. The experience of the banking and finance industry indicates that the three types of insurance already mentioned are often sold together as a package. Even though the insurance may be effected as a single package, the present form of the Act requires separate disclosure for each insurance type effected. As a result, a number of credit providers are leaving themselves open to a loss of their terms charges for failure to comply specifically with the requirements of the Credit Act. However, on most occasions there has been complete disclosure of the total cost of the relevant insurances and complete disclosure of the total commissions involved.

Mrs Edwardes, who is responsible in the lower House for consumer matters, has talked to the bankers about this legislation, and they are quite happy with the proposed changes to the Credit Act. Hon Peter Foss has a recommended amendment to this Bill, which I have discussed with the Parliamentary Secretary and of which he is aware, and I think that amendment will be accepted.

I would like to read into *Hansard* a letter from Brian T. Paterson, General Manager, WA

Region, of Credit Union Services Corporation (Australia) Limited. The letter is addressed to Hon George Cash MLC, and states -

> Thankyou for the copy of the Credit Amendment Bill 1992 and Second Reading Speech which your office forwarded recently for our comment. We have two major issues which we wish to bring to your attention concerning the Bill.
>
> It is our view that the Bill further reflects the industry's belief that the entire Credit Act 1984, and in particular the civil penalty regime, requires major amendment. The Credit Amendment Bill 1992 is not, of course, attempting any such major improvements but by introducing amendments to the Credit Act 1984, the Government is recognising that the Act contains serious deficiencies which require attention.

This Act affects many people in the community. Credit plays a large part in our lives, and I hope this matter will be looked at. The letter continues -

> You may be aware that similar amendments have been made to Credit Acts in other states. Section 10 of the Credit Amendment Bill 1992 has caused particular difficulties. This section provides that when an application is made to the Tribunal under section 85 of the Act for a reduction of the credit provider's loss, an interim determination is made by the Tribunal and the application of the civil penalty is stayed pending disposal of the application by the Tribunal. However, the section goes on to provide that until the interim determination ceases to have effect (that is, until the matter is resolved) the credit provider must not take enforcement action against the debtor, refinance the loan or make a default charge. If the application to the Tribunal involves a systematic or technical error and therefore applies to an entire class or type of loan, the ramifications of the restrictions proposed to be placed on the credit provider are very onerous. It may mean that a credit provider could not refinance or take "enforcement action" on its entire loan portfolio for several years. It is our view that the Credit Amendment Bill should not provide the potential for such a restriction on a credit provider's business.

Hon Peter Foss will explain the amendments further and how they should be brought in to improve the legislation. The Opposition supports the legislation.

HON PETER FOSS (East Metropolitan) [5.51 pm]: Any amendment to the Credit Act fills me with some despair because the Credit Act must be one of the most suppurating pieces of legislation left around. It was badly written in the first place; it is incomprehensible. As a piece of consumer legislation it must rate as one of the least understandable pieces of legislation one could ever come across. It is hardly possible when reading the legislation to determine the principles. They disappear under one of the most incredibly complicated procedures. It has been one of those dreadful pieces of uniform legislation that we occasionally have imposed on us which we accept because that is what everyone else is doing. This one originally came out of Victoria and must have been written at a time when the then Labor Government was not too good at passing legislation; it was full of hope and good intentions but not too good at carrying them into effect. Putting it mildly, it is a disaster of an Act. The only hesitation I have in supporting any amendment to the Act is that it may put off the day when the Act is rewritten in terms that can be understood and with procedures that can be sensibly carried out.

Having put my initial protest to the Act itself, I support the general terms of the proposed legislation. I recall that under the previous provisions there were ways to set aside the provisions of the serious effects of the Act. That required, if I remember correctly, some consent from the consumer affairs people. At one stage that led to a massive degree of non-compliance in a minor way. The Minister at the time and the Commissioner for Consumer Affairs came up with the brilliant idea to consent to a mass application to set aside all these problems and allow them to keep their money, provided they agreed to dob in one or two million dollars to help provide a fighting fund for consumers to bring consumer action. It was a lovely idea and obviously very worthy in its intentions, but totally unlawful. It was a form of extortion. I understand that after it had been pointed out and persisted with for a time, the commissioner and the Minister eventually recognised that it was not on and that the Government should not be extracting large amounts of money from people for the purpose of getting consent under the Act; although at the time that occurred it was probably a fairly

standard approach by the Government if we are to believe the first report of the Royal Commission, which I confess I believe implicitly.

Some problems were raised. I received a letter from Blake Dawson Waldron in Sydney. It makes some points which I would like to bring to the attention of the House. It reads -

Dear Sir

THE CREDIT AMENDMENT BILL 1992
BILL FOR AN ACT TO AMEND THE CREDIT ACT 1984

In recent discussions between Mr Owens of our Sydney office and Mr Bodycoat of the Ministry of Consumer Affairs, Western Australia, it came to our attention that amendments have been proposed to the Credit Act. Mr Bodycoat has been kind enough to provide us with a copy of the proposed amendments, which are contained in the Credit Amendment Bill 1992. We write to express our concern with certain provisions of that Bill, which is presently before the Legislative Council.

The proposed amendments provide, amongst other things, for the insertion of a section 85B in the Credit Act. This section would provide that when a financier lodges an application for reinstatement of credit charges lost by reason of the "civil penalty" provisions of the Credit Act, the civil penalty is stayed until the outcome of the application is determined.

Whilst such a provision is prima facie a positive development in the credit laws in Western Australia, on closer examination, the proposed section is seriously flawed.

It is flawed because, although it introduces a stay of the civil penalty, it also provides that, until the Tribunal finally determines a financier's reinstatement application, the financier must not take any enforcement action or levy any default charge if the borrower fails to make payments, and the parties to a contract may not refinance that contract.

At the same time as recognising the potentially ruinous effect of the civil penalty on a financier's business and introducing a stay of that penalty, the benefit of that stay would be counteracted by removing the incentive to a borrower to continue making payments under the contract, pending the Tribunal's final order. The time when that order will be made is not within the control of the financier, and at present the Tribunal in Western Australia is taking up to and in excess of twelve months to hand down its final decision. The disastrous effect on the financier of being unable to refinance, or enforce payment under, contracts from the date of an application until the date of the final determination, is apparent, and represents a burden on the financier which would be in addition to the cost of the application and, of course, the penalty ultimately imposed by the Tribunal.

Borrowers will also be disadvantaged if the proposed section 85B of the Credit Act becomes law, as they will be prevented from refinancing their contracts with the financier at the lower rates of interest presently available. In addition, a borrower may mistakenly believe that the financier will be unable to recover any further amounts stated to be owing under the contract after the Tribunal makes its determination, and may, as a result of his or her decision to cease making payments under the contract, have difficulty complying with the Tribunal's final orders.

In contrast to the proposed amendment, we draw to your attention the equivalent provision presently in operation in New South Wales. In that State, there is no provision prohibiting the enforcement and refinancing of a contract which is the subject of a reinstatement application, pending the Tribunal's final order. The borrower is protected however, by the Tribunal's express power to make directions to protect a borrower's interests. Such a direction could be, for instance, that there be no enforcement or refinancing without the prior consent of the Tribunal.

We recommend this approach to you for your urgent consideration. The provision presently before the House would require the following simple amendment:

After the words

"the credit provider must not" appearing in line 2 of the proposed section 85B(3) in Clause 10 of the Bill,

insert:

"without the consent of the Tribunal".

Please note that we have discussed this suggested amendment with Mr Bodycoat of the Department of Consumer Affairs, and on that basis have taken the liberty of providing him with a copy of this letter.

If you require any further information, please do not hesitate to contact Mr Owens of our Sydney office on (02) 258 6840.

This appears to be a sensible provision. It makes the distinction between the final determination by the tribunal of the application and an interlocutory determination for the purpose of dealing with interim matters; so the tribunal could hear, on fairly short notice, an application, for instance, that the parties be allowed to refinance - should that be in everyone's interests - or that they be entitled to enforce. That would be done on an interim basis and any final adjustment could be made by the tribunal on the final determination of the matter.

If there is any concern about whether appeals can be made, being an interlocutory matter an appeal can be made only by leave of the court. Therefore, the possibility of appeal will be extremely limited. The result of the amendment would be considerably better. Even though I have my hesitations about the principal Act, this Bill with that amendment will certainly be an improvement to the law of this State.

Question put and passed.

Bill read a second time.

Sitting suspended from 6.01 to 7.30 pm

Committee

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

Clauses 1 to 9 put and passed.

Clause 10: New section 85B inserted -

Hon PETER FOSS: I move -

Page 9, line 15 - After the words "must not," insert the words "without the consent of the Tribunal,".

I have spoken to this amendment in the second reading debate.

Hon JOHN HALDEN: The Government has no problems with the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 11 put and passed.

Title put and passed.

Report

Bill reported, with an amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon John Halden (Parliamentary Secretary), and transmitted to the Assembly.

SALARIES AND ALLOWANCES AMENDMENT BILL

Committee

Resumed from 5 November. The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon J.M. Berinson (Attorney General) in charge of the Bill.

New clause 5 -

Progress was reported after the new clause had been partly considered.

Hon N.F. MOORE: New clause 5 was suggested by Hon Bob Pike. Members will be aware of some discussion on this on 5 November. I put what I thought was a compelling argument to the Attorney General as to why he should accept the clause. I have since read in the newspaper why he should not. However, I recall the Attorney General saying he was prepared to reconsider my position and would think about it. It would be only proper if he told us what he concluded, assuming what we read in the paper had nothing to do with the Government's position on the matter. Once we have heard that explanation, we will decide what to do with the amendment.

Hon J.M. BERINSON: I am not aware of having said anything outside the Chamber that I did not say inside.

Hon N.F. Moore: I was not referring to you; I said the Government's position might have been explained in "Inside Cover".

Hon J.M. BERINSON: It is true that I undertook to consult again with the Government on whether there was any room for movement between the Government's position and that argued by Hon Bob Pike. The Government has not changed its position; it believes, as I have outlined on a number of occasions, that nothing should be done which will open the way to any suggestion to the Salaries and Allowances Tribunal that members of Parliament should receive any additional remuneration for committee service. I therefore confirm my previous indication that new clause 5(a) of this amendment is unacceptable to the Government. New clause 5(b) which relates to the Clerks and Deputy Clerks of both Houses is acceptable. I think I am right in saying that it has been agreed that those paragraphs will be dealt with in turn so that each can be tested.

Hon PETER FOSS: It is interesting to read the second report of the Royal Commission on the role of committees in the Parliament. At page 5 - 13, under chapter five it reports as follows -

> . . . the legislative role of the Parliament is central to its existence. It is inappropriate that the Commission venture too far into matters relating to the law making power of the Parliament or into the ability of an elected government to seek parliamentary consideration and approval of its legislative proposals. However, we suggest that consideration be given to one matter affecting the legislative process which would enhance the consideration given to the actual detail of Bills and more fully inform the Parliament of the possible effects on the public a Bill is likely to have.
>
> The Commission has recommended that there be a review of the committee system of Parliament. Our earlier comments on committees were directed primarily at those committees the role of which is to review public finances, expenditure and the conduct of public administration. In addition, it would be advantageous to consider also committees on legislation.

At this stage one might feel hurt to read that there ought to be those committees in view of the fact that we have one. The report continues -

> The Commission notes that such a committee was established in the Legislative Council in 1989. The use of legislation committees to provide for a more effective examination of Bills than is possible by Houses of Parliament sitting as such, is a growing phenomenon in "Westminster" democracies. We refer here to the useful comparative study of this and other matters contained in the Electoral and Administrative Review Commission Issues Paper No 17, "Review of Parliamentary Committees".
>
> The legislative responsibility of the Parliament is an onerous responsibility. The community has entrusted members with the capacity to interfere with the rights, liberty and livelihood of citizens. That capacity should only be exercised after Parliament has given the best consideration of which it is capable to a legislative proposal. The use of committees on legislation is an important means through which such consideration can be given. The Parliament is not, and should not be allowed to become, the rubber stamp of measures put before it.
>
> It is not the role of such committees to prevent a Government from having its legislative proposals brought before the Houses of Parliament for endorsement or otherwise. The procedures adopted by the Commonwealth Senate for its committees

> on legislation, procedures which warrant close attention in this State, demonstrate that this is a contingency which can be avoided.

I might have hoped that the report referred to the excellent work done in this State which shows how much the committee progresses legislation, as opposed to preventing it from being properly brought before the House. The Legislation Committee system in Western Australia is probably one of the best, from what I have seen. Admittedly, it is limited to the number of Bills that it handles. Considering the number of Bills referred to it, I believe it has been a highly satisfactory process. Furthermore, it has now gained such a reputation for handling difficult questions and factual areas and is seen by many people as a good way to deal with difficult legislation. In a careful and dispassionate way the committee gets to the issues, reduces the emotion involved, requires people to deal with facts as opposed to argument and eventually provides to the Parliament recommendations which are extremely valuable.

The report continues -

> The value of committees on legislation, and it is one which inures to the benefit of the public, is that they can enhance consideration both of the detail of Bills and of their possible effect.
>
> In the review suggested by the Commission, attention must be given to procedures which will allow for public participation in the examination of legislation through public hearings and submissions -

Again, that is something that we do. To continue -

> Consistent with the democratic principle to which we have referred, it is entirely appropriate that where a Bill is sent to a committee on legislation for examination, those affected by it, those who can contribute to its consideration, should be given the opportunity so to do. In saying this, we would again emphasise as the Chief Justice of the High Court has recently done that the representatives of the public "have a responsibility to take account of the views of the public on whose behalf they act" . . .

In another part of the report the point is made that the committees referred to should be adequately resourced and given opportunities to carry out their work. There is another suggestion - I take it that it is for investigation rather than direct recommendation - with regard to Ministers in the upper House. The report recognises that that is not a minor change and would require other further alterations to the Constitution of this State if there were to be a responsible Government without a responsible Minister here.

I hope honourable members see a gradual emphasis in this Chamber on chairmen of committees, with that being our principal role as a House of Review, and fewer on Ministers and the Executive being the principal people in this place. I would like to see that. I realise that that will not happen overnight. Until such time as all these proposals have been read and the ramifications worked out, we could not contemplate that happening. However, it is something that we should seriously think about in relation to what our role is. I thought it was unfortunate that the Minister here made a political point that disregarded and misrepresented the very valid points made by Hon Bob Pike. Hon Bob Pike made it quite clear that he was not suggesting an immediate pay rise any more than were the references to Ministers' salaries.

Hon J.M. Berinson: I think you are misrepresenting the Minister now. He would support an immediate pay rise, but not an immediate rise to the level of a Minister.

Hon N.F. Moore: Rubbish! You believe your own propaganda.

Hon J.M. Berinson: Have a look. I am not making a big issue out of it.

Hon PETER FOSS: I am the one making the speech.

The CHAIRMAN: Order! Hon Peter Foss has the floor.

Hon PETER FOSS: The Minister has gone out into the public and for cheap political advantage made this point and ignored the very valid point which is consistent with the point made in the second report of the Royal Commission. We need to enhance, improve and generally strengthen the efficiency and operation of the committees of the upper House. We should be looking at that point. It is an unfortunate fact that the Minister has taken the

advantage of taking a cheap shot at the very serious philosophical point put forward by Hon Bob Pike. The Minister seems to have ignored this.

I would like to know whether the Minister supports Hon Bob Pike's ideals, that we should enhance the role of the committees; that we should encourage people to do that; and that we should encourage those members to put in considerably more work, as do Ministers, towards being chairmen of committees. I would like to know whether he believes in this matter, in principle; whether people should be paid for it is another matter. He may say, "When you work as a Minister you should get paid as a Minister and when you work as a chairman of committee you should not." I would at least like to know whether he endorses the principle that members in this Chamber ought to be encouraged to regard the chairmanship of committees as an important role which should be seen in our constitutional range as being of equal importance in the legislative processes of this State and the checks and balances to those of Ministers.

Hon J.M. BERINSON: I listened carefully to Mr Foss' quotes from the report of the Royal Commission. As carefully as I did that, I did not hear anything to suggest additional pay for members who serve on committees in this Chamber. Could I please ask the Committee to remember what we are talking about? We are not here talking about the desirability of the committee system; we are talking about a very small Bill to amend the Salaries and Allowances Tribunal Act.

Hon N.F. Moore interjected.

Hon J.M. BERINSON: Not at all. I will get back to that because that is a misrepresentation of what I have said. I think we can learn a great deal from the recommendations of the Royal Commission. Members will be aware of the Government's attitude to them. Even today in the Legislative Assembly the Premier introduced a Bill which will move to implement those and other recommendations. That will be done through the recommendations of the Commission on Government. However, we cannot take a reference about the potential value of committees out of the context in which it appeared in the Royal Commission report.

Of course, the Royal Commission supported a prominent role for committees. I do not believe the Government would disagree with that proposition. But that was in the context of a whole package which included many other matters, including a discontinuance of the Council's ability to reject Supply and the introduction of one-vote-one-value into the electoral system of this House to encourage the representation of minority groups. It has to be emphasised that both of those are very central to any serious suggestion of a significant change to a committee-based function for this Legislative Council. The reason they are so central to that general question is that, as the commission again emphasised, what is being looked for is more work by less politically motivated committees.

At the moment it is impossible to look at any committee which is given the duty to address a highly contentious political subject, as adequate to the task of attending to that in the sort of objective way that the Royal Commission contemplates.

Hon N.F. Moore: When were you last on a committee?

Hon J.M. BERINSON: I have read the reports and that is enough for me.

Hon N.F. Moore: The last time you were on a committee was in 1982.

Hon J.M. BERINSON: I can assure members that it is enough for all readers of the reports.

I repeat this is not an occasion for an argument about the virtue of committees. We are talking about the Salaries and Allowances Tribunal. With due respect to everyone's opinion on this subject, we have discussed this issue three or four times and we have looked again and again at the propositions affecting, firstly, chairmen and deputy chairmen of committees and, most recently, Mr Pike's extension of that proposal to one which would open the way to additional payment for chairmen, deputy chairmen and all other members of committees as well.

The Government is opposed to opening the way to additional payment to members on the grounds of committee service. The Salaries and Allowances Tribunal has made it clear that all the elements of a member's service as a member of Parliament are taken into account in arriving at its determinations, and that certainly includes an awareness by the tribunal of the committee component of a member's work.

Again with due respect, we have really exhausted this subject and I invite the Committee to now vote on it. I have made the position as clear as it could possibly be made from the Government's point of view and I do not have anything further to add.

Hon R.G. PIKE: What we have witnessed in the oration from the Attorney General are the two faces of Hon Joe Berinson. In this place we have had the reasonably logical, fair and competent former State debater-type presentation of an argument; publicly, and with a supercilious twist, we have had his announcements about massive increases in parliamentary salaries being unaffordable at this time. We have to look at the duality of his presentation and to do that we must consider the facts. The facts must be stated clearly, without emotion and in a very constructive way.

In 1975 the Salaries and Allowances Tribunal had placed within its purview members of Select Committees. The only Standing Committees which functioned then were the Library and the House Standing Committees. In 1982 I recommended the establishment of the Government Agencies Committee and in 1989 I moved a motion, which the Council supported, for the establishment of the Standing Committees on Estimates and Financial Operations, Legislation, and Constitutional Affairs and Statutes Revision. We now have a structure in an upper House review system where we have a competent and workable Standing Committee system.

I have made the determination in a private member's Bill which has purposely not been taken by me to the party room so that Liberal and National Party members are free to vote as they choose, that the Clerks of the Council should be within the purview of the Salaries and Allowances Tribunal and not subject to Executive Council. I also thought, in a quiet and unobtrusive way, that it was not unreasonable for members and chairmen of Standing Committees to be within the purview of the Salaries and Allowances Tribunal, as has been the case for 17 years with Select Committees. During those 17 years the Salaries and Allowances Tribunal, in its wisdom, has not seen fit to pay them one cent for their efforts. That point was emphasised by me on several occasions and there was no fuss or bother.

As a consequence of the quite valid contribution made by Hon Reg Davies I made the point - if members did not hear it I will make it again - that I thought a six to 12 months' time slot, during which time it could be reviewed, would be totally appropriate and it would be totally and absolutely inappropriate for it to be reviewed, measured and reintroduced immediately, which is the point Hon Joe Berinson made. He attached superficial validity to his point by offering the illustration that since it will become law they will have to so consider it. That may be the case, but if one says in this debate that it should not happen for at least six to 12 months I am sure the commissioners will take note of it.

What we need to do in a hurry, because time is running out, is look at the duality and the hypocrisy of the Government's argument. Some members may not be aware that it became a big deal in the Press; it was certainly a surprise to me that every time the reporters rang me, as some did - *The West Australian* certainly -

Hon John Halden: I understand you were upset about that.

Several members interjected.

Hon R.G. PIKE: We will hear more about that in a moment.

Hon John Halden: I know more about this than you and I am happy to take you on.

Several members interjected.

The CHAIRMAN: Order! Members will come to order.

Hon R.G. PIKE: I am quite happy if Hon John Halden wishes to take me on, but he must be prepared to wait in the queue.

We should look at the facts. The Attorney General has expounded in a very broad ranging debate that the Government is well disposed towards committees. However, we find that the first time a committee of this Chamber looked at WA Inc - I am coming to adversarial relationships here - it spent $178 000 in the first year mainly on the services of Mr Steggall, a senior auditor of Coopers and Lybrand, and of Robert Pringle, QC. In the second year the Premier, as Treasurer, contemptuously refused to extend the excess of the budget of this Chamber, thus giving the Premier and Treasurer a manifest partisan control over the finances

of this Chamber of the Parliament to the degree that I am informed its bill for the Government Printer was more than $100 000 and it could not been paid. The Legislative Council was bereft of funds. The Government-sponsored Select Committee structure - those which come to mind are the de facto relationships committee and Hon Phil Lockyer's committee on fisheries - ceased operating because the Council was bankrupt of funds because the partisan Lawrence Labor Government chose not to increase the excess of the Council.

Several members interjected.

Hon R.G. PIKE: The hip hip hoorays can come in later. The Labor Government chose to ignore the bona fide requirements of a House of Parliament and denied it access to funds for a long period of time to stifle the Parliament. I am speaking about this Government and the Attorney General, who has come to this place tonight with his duality of facts and said, "We are really not for this, but we stand on our record and we support committees." Like hell the Government does! When it had the chance to sprag the committees it denied them of funds and that is a fact of history.

If members want to deal with facts we have an additional one in regard to committees of this Chamber. If members have any doubts about funding they should contemplate the contemptuous, unbelievable obscenity of the Premier of this State proroguing Parliament three months' early and having a naivety in regard to her understanding of the Westminster system, which she still does not understand, by saying publicly, "The Government prorogued the Parliament to shut up the Foss and Pike committees." The Premier was so naive that she did not understand the implications of her insult to and assault upon the Westminster system.

Hon J.M. Berinson: We had one week of prorogation.

Hon R.G. PIKE: This is the Bovril and the rubbish that the Leader of the House brought to this Chamber. This matter was introduced by me three or four months ago, was not finalised, and was retreaded recently. We then had a break of three or four weeks. What happened then? I know for a fact that the Labor Party's media apparatchiki travelled around to media and television stations with a copy of *Hansard* asking them to look at the salary increase.

The Government thought it had a real election winner because it is guided and controlled by its political apparatchiki. However, they did not know that it was a private member's amendment and the parties were not committed to it. The Government thought it would make a fuss about the matter. Who appeared on television about this matter? Who was the man who presented with his duality of misrepresentation the one argument publicly and the other proper, reasoned one in this place? Hon Joe Berinson!

Hon J.M. Berinson: It is not a private member's Bill; it is a Government Bill.

Hon R.G. PIKE: My view is that the future of the Standing and Select Committees of this place is important. We now have this sample from the socialist Labor Party showing it is prepared to make this into a political hack issue coming up to an election. That is wrong. I am happy for this matter not to be looked at for 12 months. Members have heard me restate the principle which merely puts these committees in the same category as Select Committees have been for the past 17 years, and they have not received a cent. In order for the matter to be handled properly without the malarky and claptrap we hear from the Leader of the House, I seek leave to withdraw paragraph (a) of the new clause, leaving that part which deals with the Clerks of both Houses.

Leave granted.

New clause, as altered, put and passed.

Title put and passed.

Report

Bill reported, with an 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.

DARDANUP PINE LOG SAWMILL AGREEMENT BILL

Second Reading

Debate resumed from 10 November.

HON BARRY HOUSE (South West) [8.05 pm]: I indicate the Opposition's general support for the Bill. The Bill holds some major concerns for the Opposition which I will now outline. The Opposition supports the Bill to oversee the building of a world class pine log sawmill in Western Australia. This is necessary to efficiently develop the resource in the local market so that we can compete vigorously against international competition from New Zealand, Fiji, South Africa and the Eastern States of Australia.

We from the south west welcome the extra 50 to 60 jobs this project will provide and the economic activity it will generate. It is important for the south west and the State of Western Australia. I wish to establish from the start that this agreement Bill sets the scene for possible future conflict in the south west because there are many competing land uses which are bound to impact on each other when developments of this sort take place. I anticipate many future proposals involving sawmills, mining ventures and other industrial pursuits in the south west which will not be as easy to deal with as an area surrounded by Crown or lease land. So problems could creep into this situation.

In many respects the Bill is a bit of a mess. The Opposition has some difficulty with it and with the conduct of the Government and associated parties which should also be mentioned during this debate. The Opposition is wary of setting a precedent for future development in the south west using some of the provisions contained in this Bill. When buffer zones are necessary and developments of this nature are considered there needs to be a general principle in place that the company involved take responsibility for the buffer zone. That principle should be established at the outset of this debate because it is central to the problems I will expose later.

Adjoining freehold landowners to such projects such as farmers, and in most cases in the south west they will be farmers, should not be disadvantaged by such developments and are entitled to fair and reasonable compensation for their land. I will presently quote at length from various correspondence relating to this matter because it is important that these facts are on the record so that this saga is available for all to read in *Hansard*. First I will run through the history of this situation. As all members know, Dardanup is 15 kilometres from Bunbury and is in some respects a satellite township of Bunbury. This is surrounded by very productive farm land which has become an attractive area in which to live.

This episode began in 1975 with an agreement Act for Westralian Forests Industry Limited - known as Wesfi - to construct a particle board plant, which was established in 1977. The subsequent expansion took place in 1985 when a pine sawmill was established. This was a modern complex alongside Moore Road. The original plan was to have the sawmill located next to the particle board factory on location 354, or on an alternative site to the south. It was to be on the same side of the road as the particle board plant, but that option did not materialise because land was unavailable or its price was too high. Therefore, the company opted for a site on the other side of Moore Road.

It was intended for this to be one of four pine sawmills in Western Australia, and the understanding was that it was to have a capacity of 70 000 cubic metres per annum. In 1987 the expansion continued with the addition of an adhesive manufacturing plant next to the particle board plant. Therefore, a complex has developed on that site.

The current proposal between Wesfi and Bunnings Ltd is to produce a world scale sawmill, for which many good reasons exist. It is simply uneconomic to continue developing limited capacity sawmills in this State, as determined by economies of scale. The proposal is to expand the 70 000 cubic metre capacity to 400 000 cubic metres per annum, and this will involve a $50 million investment in the economy of the State - by no means an insignificant figure. Also, it is estimated that the complex when complete will be responsible, directly or indirectly, for the employment of about 1 300 people in the Dardanup and Bunbury regions.

In the meantime a problem arose in Padbury Fields and Copplestone, which are small holding subdivisions developed from 1979 onwards. These subdivisions are in reasonably close proximity to the site, and other landowners are adjacent to those areas. The adjoining landowners developed an expectation that their properties would be approved for special

rural zoning at some time in the future; obviously, that would add considerably to the value of the property. Recently an application was made to the Dardanup Shire Council from Mr Busher and Mr and Mrs Maher - adjoining property owners to the sawmill site - for rezoning. The plans were approved by the Dardanup Shire Council to the point of advertising publicly for objections. My understanding of planning principles is that this implies at least tacit approval was given to the rezoning by the Department of Planning and Urban Development. The shire would certainly have discussed the matter with DPUD, and it appears that unless any objections were received approval would be given. It appears that at least preliminary approval was given. Therefore, the planning authorities in this State were involved recently in this matter, as they were back in 1979 when the difficulties arose with the plants to be located side by side.

At the eleventh hour the only objection lodged to the rezoning of the properties was from Wesfi, the company currently operating the sawmill. The objection was on the grounds of the anticipated expansion and the proximity of the dwellings to the sawmill; it could foresee the difficulties. It was concerned about noise and traffic impact and suggested a buffer zone. I now quote from a letter to the shire from Chappell & Lambert, Wesfi's planning and design consultants. The critical paragraph is on the last page of the letter -

> While our clients do not object to the use of some of the land for 'Small Holdings', it is important that an appropriate buffer be incorporated to ensure that any future residential homes are located at least 1 kilometre from the plant sites.

That one kilometre buffer is critical to the whole argument. It is clearly indicated that such a buffer zone was preferred by the company, but this included the Busher and Maher land, which was all but approved for rezoning for special rural holdings. Also, the buffer zone impinged on Mr and Mrs Mason's, Mr Goyder's and a couple of other landowners' land. It also impinged on a dozen or so residences in Padbury Fields and Copplestone which are less than one kilometre from the plant. The recommended buffer zone was supported by the shire council. In a letter to me dated 29 October the Dardanup Shire Council indicated -

> Both the CER and Structure Plan has confirmed Council's previous opinion that the expanded Sawmill should be relocated to a site north of the existing Particle Board Factory. A letter forwarded to the Department of State Development on the 15th May 1992 following Council's consideration of the Draft Agreement, fully explains the reasons. The relocation still remains a Council priority, however, if that proposal is unobtainable it is the Council's view that the proponent should be required to purchase and manage an adequate 'Buffer' between the industry and the existing and proposed Small Holding areas. The value of the land should be commensurate with its otherwise potential use. The proposal to give Government power to resume land for a Buffer, under the Public Works Act, is unacceptable.

I will refer to that later. The one kilometre buffer zone was supported by the Dardanup Shire Council, although its preference was for a relocation of the proposed sawmill. This was also the first preference of most residents adjacent to the proposal, but that was ruled out by the company because it was anticipated that the costs of relocation varied from $10 million to $17 million. This is the birth of the dilemma created by this Bill. Although I support and encourage the expansion of the sawmill I appreciate that several landowners in the buffer zone have been disadvantaged and they are entitled to a fair and reasonable compensation; that is the nub of my concerns about this legislation.

Hon Mark Nevill: They can appeal against what they are offered.

Hon BARRY HOUSE: No, because clause 18(3) removes the right of appeal. This Bill was first introduced in the other place by the Minister for State Development in the last week of the autumn session, which was the first week of June. I believe it was then the Minister's intention to put that Bill through as quickly as possible and not allow any comment or scrutiny of the Bill. However, that was not to be and the Bill remained on the Legislative Assembly's Notice Paper for a couple of months; now it has been introduced into the Legislative Council.

The situation in Dardanup is a planning nightmare which began in 1979. Some adjacent rural properties have been subdivided into small rural holdings, and at the same time approvals were given for industrial areas. The environmental issue concerning the buffer

zone involves noise generated by the sawmill. The company appears to have made significant progress in assessing and containing noise levels. I have spoken to the company representatives, I have been to the sawmill site and talked with the company about what is proposed to counter the noise levels. Some of the topography around the area lends itself to forming a natural buffer zone, at least for the Padbury Fields area, but there are concerns for some of the other areas. One concern surfaced only yesterday in an article in the *South Western Times* headed "Problem on noise readings" and written by Kim Ferguson. It states -

> Inadequate noise readings were taken by Wespine Industries Pty Ltd when it compiled an environmental report on the $50 million Moore Road sawmill upgrading.
>
> The Environmental Protection Authority has told the company to take readings in more locations surrounding the mill.
>
> The EPA chairman Barry Carbon -

He was in Bunbury on Friday I believe.

> - said new readings would be taken in all wind conditions.
>
> A noise level impact assessment by Wespine consultants said the existing plant noise emissions complied with EPA criteria.
>
> The expanded plant would comply with EPA criteria also.
>
> But monitoring was only carried out at four sites - at two houses in Padbury Fields, the south end of Harold Douglass Drive at Copplestone and at the mill.
>
> Readings were taken from July 8 to 17.
>
> Maximum noise levels were recorded in Padbury Fields when a light east to north-east breeze prevailed.
>
> Noise emissions headed the EPA's list of most important issues to be addressed by Wespine.
>
> The company says it will comply with EPA regulations and carry out noise reduction measures if necessary.
>
> It would also conduct a monitoring program

I have already said that I believe the company has addressed a lot of those issues.

The noise monitoring is not complete, the EPA's assessment of the company's consultative environmental review is not complete and final recommendations will not be made until mid-January. Those findings will be the basis of the Minister's decision on the location of the buffer. Members will be aware that a map has been tabled with this legislation indicating blue and brown buffer zones. The blue buffer zone equates to an area of approximately 600 square metres around the sawmill; the brown area is land that could possibly come within the buffer zone when it is finally determined.

The increase in the volume of heavy traffic on country roads is always a difficulty when there is suddenly an increase in industrial activity in a semi-rural area. The traffic impact will present some problems to nearby residents as well as the shires which have the bulk of the responsibility for maintaining and improving those roads. Padbury Fields residents are concerned about the impact of increased traffic on Moore Road, which is the main road passing the particle board factory and the site of the expanded sawmill. I have seen a map of future road routes, and a road closure is planned. That will largely keep residential and heavy traffic apart and will go a long way to addressing those difficulties. Clause 13 of the agreement provides that the company will contribute to local road maintenance.

Another issue that needs some airing is the apparent 40 year monopoly over the resource grown by the Department of Conservation and Land Management, which is the major grower of pine. This is probably best addressed by the Conservation Council of Western Australia, which wrote to all members of Parliament on 2 November 1992. The letter stated -

> The Conservation Council wishes to draw to your attention the Dardanup Pine Log Sawmill Agreement Bill, 1992. This draconian Bill would give Westpine Pty Ltd effective control of WA's publicly-owned softwood resource possibly at below-cost prices, and provide other substantial subsidies.

> If the Bill is passed, the near-monopoly position of Bunnings Ltd in hardwoods and Westralian Forest Industries Ltd (WESFI) in softwoods will be further entrenched, with any potential for competition further reduced.

The Conservation Council urged members of Parliament to do several things in relation to the Bill. Although the language of the letter is a bit inflammatory, the *South Western Times* of 10 November reported that sentiment quite accurately. The headline is headed "WACC brands sawmill deal as 'WA Inc-style'" and states -

> The State may have to pay compensation to Wespine if up to six million cubic metres of softwood cannot be supplied to the Moore Road sawmill.
>
> The WA Conservation Council has painted the Agreement Act for the Wespine sawmill upgrading as a WA Inc-style deal.
>
> The council says the Act will give Wespine effective control of WA's publicly-owned softwoods, probably at below-cost prices.

The article continues -

> "Under the Bill, the State would lock itself into providing up to six million cubic metres of sawlog quality timber over 20 years.
>
> "What will happen if it cannot supply that volume of sawlogs because of declining rainfall or the outbreak of some pest or disease in pine plantations?"

That is the question posed in the article. Events such as bushfires may decimate that resource at any stage in the future. I hope that does not happen, but it is always a possibility of which we must be aware. The article continues -

> "Will the State then have to pay compensation?"
>
> Dr Schultz said the council was concerned that:
>
> > The companies involved would be exempt from up to $225,000 in stamp duty.
> >
> > A clause appeared to oust any other Act or law, such as the EPA Act.
> >
> > Rates would be set by the executive director of CALM and it appeared there would be no public scrutiny or accountability.

They are further concerns I would like addressed by the Parliamentary Secretary.

The 20 year option plus 20 years is a matter I have discussed with some private operators who are concerned that they would appear to be locked out of operating in the softwood industry of Western Australia in the future. I refer members to a submission provided to me by the Australian Forest Growers. It states -

> The background to this request is to have secured in legislation a commitment from the State and the Dardanup Sawmill Venturers, that Western Australia's Private Plantation Owners have fair access to the largest softwood processing facility throughout the term of the Agreement Act.
>
> We are aware that the Bill states that the sawmill shall ". . . be sourced in part from State Softwood Forests . . ." (Page 4, para (b)). Also in private discussion with a representative of the Sawmill Venturers, we have heard of likely resource access for Private Growers to the Sawmill. However, the desire to have legislative reference, particularly on an annual fair proportional basis, will be seen as important by current Private Growers who have for so long been denied fair access to significant portions of the WA softwood market. The formal commitment should also be seen as equally important for the Venturers and the State if future softwood plantation investment is to be encouraged in WA.
>
> This type of encouragement of Softwood Private Plantations has been lacking in the past. We consider that the legislative documentation will be a timely recognition of the importance that Private Plantations have in the future of the softwood processing industry.

The association has also suggested a few amendments to the legislation. I am keen to hear the Parliamentary Secretary's view on why we should not move those amendments to overcome the fears of the private softwood growers that they are being locked out of that industry.

I turn to the major concern to which I have briefly alluded about the buffer zone immediately surrounding the proposed expanded sawmill and the compensation that shall be paid to the adjoining landowners. As I have said, that arises out of compensation to adjacent landowners of higher property values based on the fact that their properties could have been rezoned for small rural holdings. It is also based on the uncertainty over the boundaries of the buffer zone. This issue will not be finally determined until mid January when the Environmental Protection Authority will report to the Minister and make some recommendations on where that fine line is drawn that becomes the true boundary between the blue and brown areas on the map which accompanies this Bill.

I received a letter from Mr and Mrs Toony Busher of Temily Downs, Dardanup which sums up this whole matter. Several other members have received the same letter. I will quote at length from this letter because it is necessary to record exactly what these people feel they are up against and the way that they feel the development is impinging on their livelihoods. The letter states -

> RE: DARDANUP PINE LOG SAWMILL AGREEMENT BILL 1992
>
> I write to you to express the concerns my wife Alison and myself have about the "Dardanup Pine Log Sawmill Agreement Bill" which is due to be debated before the Upper House shortly.
>
> Our primary concern is with that of the proposed buffer zone and the means by which it will be acquired under clause 18(2) and (3) of the Bill. The proposed buffer zone will encompass our entire property including our house which we built as owner builders and in which we have full intentions of residing for the rest of our lives.
>
> We purchased our property (Wellington Locations 293, 309 and part of 27) three and a half years ago knowing full well that the Particle Board Factory and the Pine Log Sawmill were located in the close vicinity of our neighbourhood and have never had any problems from them, and we thought that this harmonious relationship would continue into the future years. All this is about to change now with Wespines proposed land grab for a buffer zone for there proposed mill expansion. Listed below I have stated our concerns and feelings about this issue:
>
> 1. Our property is currently zoned for "Small Holdings" which is inconsistent land use with that of a mixed use buffer zone.
> 2. We brought our property with the full intentions to subdivide at a later date. The subdivision was to be our Superannuation policy. Wespines proposal will deprive us of a satisfactory retirement package.
> 3. We had our house site surveyed so that it was built on the building envelope of one of those future small holdings and our driveway was surveyed to follow the contour of Harold Douglas Drive for when we eventually subdivided. We have gone to a lot of cost and effort to plant trees along this future roadway so that they will be well established by that time.
> 4. The land has sentimental value. It was originally purchased by the Busher family back in 1873, we have the original hand written titles framed on our wall as a heirloom. It is for this reason that we had full intentions of retaining the ownership of the house and small holding on which it is built and to continue to reside here even after we had subdivided the remainder of the farm.
> 5. Our house is our dream home. We spent several years designing and building it, with the bulk of the construction work being done by ourselves.
> 6. In our talks with Wespine officials they continue to imply that it was our poor planning on our behalf and on the rest of the Copplestone and Padbury Fields residents and on the Dardanup Shire. The only poor planning that we can see can be directly attributed to that of Wespine.
> 7. The proposed buffer zone only reaches out to a distance of 560 metres on the Padbury Fields side, on our side of the buffer it reaches out for

approximately 1500 metres. The topography between our land and the sawmill makes a far better noise barrier than on the Southern Side of the sawmill and considering the fact that no noise monitoring was carried out on our farm, nor within approximately 500 metres of it, we wonder upon what scientific data Wespine based there decision to require so much land on our side of the buffer.

8. The proposal to expand the sawmill is a commercial decision on the behalf of Wespine. If the generation of noise is a result of that expansion, then it to should be a commercial choice for Wespine to either put effective noise abatement measures into place on site or if these measures prove to be to costly, as part of that commercial decision to expand there operations they may decide it would be cheaper to purchase adequate buffer zone instead. The purchase of land should be through the normal process of commercial negotiation with the individual landowners concerned. It should not be up to the individual landowners to provide Wespines buffer zone at there own personal cost and inconvenience.

9. In discussions with Wespines Chief Executive Officer Mr Bob Style, the Preston Industrial Park Structure Plan was mentioned and it was implied that regardless of the Consultative Environmental Review for the mill expansion, that our farm would probably be dezoned and made into a mixed use buffer zone as suggested in the Preston Industrial Park Structure Plan. As far as we are concerned this implication is not good enough as the Preston Industrial Park Structure Plan is only a draft discussion paper that may or may not ever be implemented and Wespine have no right to shirk their responsibilities by passing the buck on to another Government Departments report that may never even come to fruition.

10. Mr Bob Style indicated that Wespine did not feel it was their responsibility to acquire the land that fell within the buffer zone nor to pay compensation for the loss of value on our property if it was rezoned from small holdings to a mixed use buffer zone. We have sank our life savings into building our home which will then have no resale value as it will be in the middle of a non residential area. We do not feel that we should be up for the cost of providing the buffer for Wespines proposed expansion either.

Part of the Consultative Environmental Review process is to ascertain how much social impact the proposal will have on people living in the neighbourhood. With Wespines proposed buffer zone and the means by which they intend to acquire it through the "Dardanup Pine Log Sawmill Agreement Bill 1992" Clause 18 (2) and (3) it is hard to envisage how you could have a much greater adverse social impact on the people in the neighbouring area.

We feel that clause 18 (2) and (3) infringes on our rights as Freehold Landowners in the State of Western Australia and that it is a gross erosion of citizens rights to private land ownership. We see this as a test case that will set a precedent for buffer zones around industry in the future. We strongly object to part of our property being marked as a Buffer Zone with the remainder being marked as areas for possible future buffer extension at the Minister's discretion. We urge you to give the matter your sincere consideration when the Agreement Bill is debated in the Legislative Council. Please find attached a map with our property highlighted in blue.

Yours faithfully

A M Busher

The property is partly within that blue buffer zone and mostly within the brown area. I read that letter at length to give members a perspective and an understanding of the issue. The landowners in that area are not all like Mr Busher. Some of the landowners have already received approval for rezoning in various shapes or forms; others certainly have bought their properties in recent years with the expectation that the rezoning would be possible.

The clause of the agreement which is causing most concern is clause 18(3) which provides for the resumption of land under the Public Works Act. This clause is unprecedented in this type of agreement. The Western Australian Farmers Federation has taken up the cause on behalf of some of the landowners, as has a private consulting company, Landuse Australia. The overview is that, from some notes provided by the Western Australian Farmers Federation, clause 18(3) of the agreement creates a precedent by reference to resumption under the Public Works Act. It is a precedent that is unacceptable as it prejudices commercial negotiations that should otherwise occur between buyers and landowners without Government interference. The problem is highlighted by a couple of points in the notes which state -

> Clause 18(3) of the Agreement enables the resumption of surrounding farmland for the purposes of the agreement, under the Public Works Act.
>
> The selling or leasing of the resumed farmland back to the company.
>
> The waiving of Clause 17(2) to (7) of the Public Works Act, which denies the right of appeal by landowners to the resumption and compensation of their land.

That addresses the point raised by Hon Mark Nevill earlier about the right of appeal. The right of appeal appears to have been taken away from the landowners in this case as a result of the inclusion of this clause in the agreement. In other words, it establishes the Government as a land agent on behalf of the company and I am not sure that that is the role that the Government should play. The notes continue -

> The Bill enables the State to resume freehold farmland on behalf of a private company without specifying the basis upon which the land will be compensated and excludes certain relevant provisions of the Public Works Act, which have been enacted to ensure that a landowner does receive appropriate compensation.

The Western Australian Farmers Federation goes on to explain that it is unprecedented use of this type of clause in this type of Bill. The notes continue -

> In its first letter to the Deputy Premier on this matter (19.8.92), the WA Farmers Federation argued that the use of Clause 18(3) was unprecedented for freehold land in the southern half of Western Australia. Similar Clauses have been used for the Argyle and Hamersley Iron developments, but never in parts of WA where farming co-exists with mining and manufacturing industries.

I remind members that one-third of the mining operations in Western Australia occur in the south west, in nearly all cases in harmony with many other competing land uses in close proximity. It is sometimes overlooked that the south west is a major area of mining in Western Australia. We usually think of the Pilbara and goldfields as major mining areas. The notes provided by the WA Farmers Federation continue -

> The Minister's response (3.9.92) disagreed with our claim and attached a list detailing 53 Acts as containing a precedent.
>
> However the Minister's response avoided the key issue, that the power of the Clause undermined the commercial position of farmers.
>
> The WA Farmers Federation examined the 53 Acts and found the following:
>
> (a) out of the 53 Acts listed, only 6 applied to developments that occurred in the southern half of WA, and involved freehold farmland;
>
> (b) of those 6 Acts, 2 had no resumption Clause (Wesply Agreement 1975, Silicon Agreement 1987);
>
> (c) 3 of the Acts had resumption Clauses that did not waive the need for a gazettal and the right of appeal. Also those Acts required the cost of resumption and compensation to be covered by the company. As a result the companies would have been encouraged to not use the Public Works Act because the cost of resumption, appeal etc would be higher than the cost of reaching a commercial settlement with the landowner (Alumina Refinery Agreement 1969, Alumina Refinery Agreement 1978, Minerals Sands Allied Eneabba Agreement 1975);

(d) the only Act of the 6 similar to Clause 18(3) received a later amendment that allowed for compensation to be negotiated on commercial terms. The amendment required the company to reach agreement with the landowner for consent, compensation and restoration of the land prior to commencing mining or related operations. If an impasse was reached, then the negotiations went to independent arbitration, in the form of the Warden's Court (Alumina Refinery Worsley Agreement 1973).

Hence the use of Clause 18(3) is unprecedented.

The Deputy Premier's second response (29.9.92) avoided the issue again.

The consequences of clause 18(3) are noted as follows -

> By creating a precedent Clause 18(3) will dissolve the ability of the landowners to enter into commercial negotiations over the sale of their property without disadvantage and prejudice.

In other words, it leaves them in limbo. The clause states that there perhaps may be resumption by the Government which may do other things with it, but there is no compulsion on the Government to do anything and the owners might be left with their properties in a buffer zone with the values eroded considerably from the expectations they had as recently as a few months ago. The letter continues -

> The threat of resumption without any requirement for the company to reach a commercial agreement biases the whole process.
>
> The Bunbury-Wellington Planning Study, along with the recently released report on industrial developments in the south-west, clearly details the role of farmland in future development. If owners are not given the basic right to negotiate the use of their land without Government discrimination, then conflict will only occur.

That is the nub of the landowners' objections as they are represented by the Western Australian Farmers Federation. The argument then comes down to compensation and the valuations placed on their properties. I have copies of a couple of letters that expose a dilemma within the Government over the different valuations placed on this property. The first letter dated 12 August 1992 is from Mr Rutherford, the regional manager in the Valuer General's Office, and addressed to the Chief Executive Officer, Department of State Development, Cloisters Square, Perth. Written at the top is a scribbled note. I am not sure whose writing it is and it is not part of the original letter but it is a very important note. It states -

> Valuation based on expectation of subdivision & rezoning.

The letter states -

> With reference to your letter dated 29 July 1992 our report and comments are as follows.
>
> Due to the confidential nature of this request, value estimates can only be given based on 'kerbside' inspection and in-house research. Should any formal offers of purchase be considered it is strongly urged that formal valuations be requested.

The first point is headed "Values based on current zoning". I believe this letter is in response to a request from the Department of State Development for valuations on three properties - those belonging to Mr Busher, Mr Maher and Dr and Mrs Mason. The letter continues -

> The attached schedule totalling $1,800,000 is an estimate of fair current Market Values of the properties in question. No allowances for any compulsory acquisition have been included in this figure.
>
> No values have been provided for properties (9) and (10) as it would appear their present use (light industrial) does not present a conflict with the proposed mill expansion

I do not have the attachment but I understand the properties referred to in the paragraph are properties which contain Brookes Transport Co depot and a sandblasting operation. The second point relates to special rural subdivision and the first heading is "Factors on Development". It states -

Information from the Department of Planning and Urban Development indicates current zoning as per the attached schedule.

'Small Holdings' or 'Special Rural' zoned land does adjoin the subject properties with the subdivisions known as Padbury Fields and Copplestone.

In determining the attached values factors recognised include -

1. Current zoning;
2. Potential for rezoning: short term/long term?
3. Likely realisation prices for subdivided lots;
4. Expected lot yield;
5. Expected selling and development period;
6. Likely development costs;
7. The expected margin for Profit and Risk any developer would expect;
8. Holding costs such as interest and rates and taxes.

The letter then gives a series of valuations on a hypothetical subdivision -

The following is a static analysis of a hypothetical subdivision of land zoned and ripe for subdivision. This stage consists of 43.5 ha.

Gross Realisation - 17 lots at $47,500 average	807,500
Less selling and legal costs - 5%	40,375
	767,125
Less profit and risk, say 25% = . . .	153,425

I will not read all the figures but after deducting those two amounts, the total is $613 700. The letter details land development costs for road construction, survey, State Energy Commission, fencing, planning, shire fees and contingencies of $267 776. An allowance is made for interest on development costs over half the selling and development period; that is, 10 per cent over half of 18 months which is another $20 578. Taking off 10 per cent over half of 18 months for interest on land amounts to $23 217, less rates and taxes estimated at $250 per lot and stamp duty on purchase. The final figure arrived at is an en globo land value of $6 642 a hectare, giving a total value of $288 943. The critical figure is the $6 642 a hectare. The letter concludes -

Based on the above, a hypothetical purchaser would be prepared to purchase the land for $288,943, develop and sell the subdivision over 18 months and return a profit and risk margin of $153,425, being 25%.

Please note again that the above analysis is based on in-house records from other developments and that actual costs could vary considerably which would affect the en globo land value derived.

Available sales evidence of land with potential for subdivision does support the above value disclosed by the hypothetical subdivision approach.

That sentence is also critical. The letter finally states -

Should you have any further queries or require more formal valuations please contact this Office.

That letter was sent from the Valuer General's Office to the Department of State Development. This was requested after the introduction of the Bill into this Parliament in the Legislative Assembly this year. It represents to me an acknowledgment from the Valuer General that the land in question has potential use and higher valuation. It represents to me also that this should be taken into account during negotiations between the company and the landowners. The valuation principle is always that land should be valued at its highest and best use. It also represents an obvious attempt by the Government to keep this valuation secret. Apparently a copy of this letter was sent to one of the landowners with other documents and I imagine it was probably sent by mistake. The company and the Department of State Development obviously did not like this letter, and they did not like the valuation of $6 642 a hectare becoming public information. It seems that certain instructions were issued by telephone on 16 September 1992 to obtain a further valuation, and that gave rise to a second letter which was written - surprise, surprise - on 17 September, one day later. That letter was also from the Valuer General's Office and from the same officer, Mr Rutherford,

the regional manager, and was addressed to the Chief Executive Officer, Department of State Development, and marked, "Attention, Mr N. Ashcroft." The scribbled note at the top of this letter states that the valuation is based on current zoning only. That note is written in the same handwriting as the scribbled note on the top of the previous letter, which states that the valuation is based on expectation of subdivision and rezoning. The letter states -

> Further to my report to you dated 12 August 1992 and telephone call on 16 September 1992, further valuation advice is attached.
>
> As discussed the basis of valuations requested is current zoning having disregard for any future rezoning potential the land may have. No reduction has been made to land zoned 'small holdings' and 'small holding development area' as with a deferment allowance for planning processes, this land could expect to be subdivided.

The letter then refers to the brown map that was tabled with the legislation, and states -

> Some of the land in the Brown Buffer could also expect to have some potential for industrial uses such as medium/light industry.

This includes most of the property that is involved in the letter from Mr Busher, which I read out earlier. The letter continues -

> Please note these values are not the value land would have if designated as 'buffer' with inherent restrictions such as no dwelling permitted.
>
> The schedule of values provided on 12 August do recognise future potential by way of future rezoning to Special Rural lots and also industrial zoning. This approach is considered correct as it is in accordance with valuation principles and legal precedent on statutory land and acquisition cases. Briefly, two of the principles are:
>
> 1. The land is to be valued on its highest and best use as at the date of resumption;
>
> 2. In assessing compensation, any increase or decrease in the market value of the resumed land arising from the carrying out or the proposal to carry out, the purpose for which the land was taken shall be disregarded.

As a result of that letter, some of the landowners received a letter from the Department of State Development. A letter to one of the landowners, Dr and Mrs Mason, dated 22 September 1992, states -

> At the request of Mr G. Houghton of LANDUSE AUSTRALIA Pty Ltd, I have been asked to provide you with valuations of your property obtained by the Department of State Development from the Valuer General's office.
>
> Two valuations are provided for the position of Boyanup AA Lot 318 in the "blue" buffer area based on:-
>
> | | | |
> |---|---|---|
> | (1) | current zoning (general farming) | $75 000 (for 20ha in buffer) |
> | (2) | a possible expectation of rezoning and subdivision (whether realistic or not) | $90 000 (for 20ha in buffer) |

I have done a quick calculation since I received these figures about an hour ago, and I am mystified about where the second figure of $90 000 comes from. The top assessment under the Valuer General's criteria which I went through previously was $6 642 per hectare. When that is multiplied by 20 ha, which is the amount referred to in the letter, we get $132 840 net. If we wanted to be a bit silly about this matter, we could take the gross value initially. The gross value for 43.5 ha of the hypothetical subdivisions under the Valuer General's assessment was $18 563 per hectare. When that is multiplied by 20 ha, we get $371 260 gross. They are rough calculations and I would not put my life on them, but I believe they are pretty close to the mark.

That valuation exercise suggests to me, firstly, that a range of valuations were given by the Valuer General's Office, and that the valuation that has been quoted in the offers so far is much closer to the bottom of that range than it is to the top of that range. Secondly - and I believe the Minister for State Development should take up this matter - it smacks to me of political interference with the Valuer General's Office. I believe that the Valuer General's

Office gave a valuation, and that it then apparently received a telephone call and smartly turned around and produced another valuation along the lines of that requested by the Department of State Development.

Hon Max Evans: The Parliamentary Secretary might confirm that for you.

Hon BARRY HOUSE: I hope he does confirm that in his response.

Obviously the preferred position of the people affected would be for clause 18(3) to be removed from the agreement altogether. I understand from the people to whom I have spoken that it is very difficult to amend an agreement. However, it is possible to amend the Act that goes with an agreement. I have a suggested amendment from the Western Australian Farmers Federation, and I will not move that now because I hope it will not be necessary and that the Parliamentary Secretary can come back to us with sufficient information and assurances about the matters which I have raised. I am not sure that the proposed amendment will achieve the goals that are being sought. My advice suggests that it may also be in conflict with established valuation law.

Hon Tom Stephens: I understand that you had the opportunity today of having some discussions with the company.

Hon BARRY HOUSE: That is right.

Hon Tom Stephens: Would you mind relaying to me and to the House the nature of those discussions?

Hon BARRY HOUSE: I will come to that in a moment. They are important, and they indicate some degree of willingness on the part of the company to enter into meaningful negotiations, which I believe some of the landowners did not think was possible.

The issue of compensation is important to those landowners who have suddenly found themselves in a situation where land which they thought as recently as a few months ago had a considerably higher value because of its potential to be subdivided now not only has a lower value, but also may be unsaleable because no-one wants to buy it. Those landowners cannot build on that land and they cannot use it as collateral for their bank, and they are obviously interested in offers of compensation.

Hon Mark Nevill: Does any of the land which has been resumed have on it the family home?

Hon BARRY HOUSE: Quite a lot of it does.

Hon Mark Nevill: Has the family home also been resumed?

Hon BARRY HOUSE: No. There has been no move to resume anything yet, but depending upon where the buffer zone will end, it could well take in several properties which have on them the family home. One of those properties belongs to Mr Busher, whose letter I read out in detail earlier. They are seeking compensation in accordance with established valuation principles for the highest and best use. The valuation should take into account this unique and unfortunate situation in which they find themselves. It should take into account the expectation that they had of the potential of the land. The company's offer should take those principles into account. I spoke to the company today and I am aware that it has approached the landowners on several occasions. The first approach was an offer to pay compensation to the farmers to allow them to continue their present land use; I understand that was rejected by the owners. The second approach was an offer based on the lowest possible valuation. I spoke to the company today and it advised that the third offer was a valuation plus 10 per cent and this is outlined in a letter. The company made it clear to me that this was higher than the most recent sale, which was Mr Goyder's land, which is immediately south of the sawmill site. The original offer was made last Friday, 20 November, by R.A. Brain and Associates representing the company, to Mr Houghton, of Landuse Australia representing the three landowners. The letter states that -

> Further to our previous correspondence in this matter I wish to advise that my Principals wish to make an offer to your clients to purchase their land in the Blue Buffer Zone as shown in Plan "A" attached to the Dardanup Pine Log Sawmill Agreement.
>
> The offer is 10% in excess of the current Valuer Generals valuations calculated as follows.

	V G Per Hectare	Plus 10%
Busher	$3676.00	$4044.00
Maher	$5519.00	$8071.00
Mason	$3750.00	$4125.00

This offer is valid until 5.00 p.m. on Friday 11th December 1992.

I look forward to your response to this offer at your convenience.

The fourth offer is as a result of a discussion I had with my colleague Mr Barnett and the company and as a result of a telephone discussion they had with Mr Montgomery. The company submitted another offer which adds 20 per cent to the base valuation figure. These values are once again submitted through Mr Houghton of Landuse Australia. The offer states -

I refer to my Principals offer to your clients sent to you last Friday and advise that I have been instructed to increase the offer to a final figure of 20% in excess of the Valuer Generals Valuation calculated as follows.

	V.G. (per hectare)	Plus 20%
Busher	$3,676	$4,411
Maher	$5,519	$6,623
Mason	$3,750	$4,500

This offer will remain open until 5.00 p.m. on 9th December 1992.

I am pleased that the company has indicated a willingness to negotiate, but I am not sure if this overcomes the basic difficulties.

Hon Tom Stephens: Is that what you said to the company? Did you say that you were not sure that it overcame the difficulties?

Hon BARRY HOUSE: It overcomes the difficulties for some of the landowners, yes. I have not spoken to all of the landowners.

Hon Tom Stephens: You have raised a number of concerns tonight, but I understand that you said to the company after this response had been conveyed to you that you had no residual concerns with the Bill and it would go through the Legislative Council.

Hon BARRY HOUSE: The concerns still remain, but I want to see this legislation passed. I also want to see that the landowners involved get fair and reasonable compensation so I am putting this on record.

Hon Tom Stephens: Did you tell the company that if it increased its offer, which it has, that the Bill would go through this House?

Hon BARRY HOUSE: I told the company that I could not see anything that would delay our approval of the Bill, subject to certain assurances that the Parliamentary Secretary may be able to give us in the debate.

Hon Tom Stephens: Subject to my assurances? The company is under the impression that the Bill will go through if it increases its offer to the landowners.

Hon BARRY HOUSE: That may be, but there are still a lot of areas of concern.

Hon Tom Stephens: Is that what you said to the company?

Hon BARRY HOUSE: I said the Government needed to come back to the Parliament and let us know what its position is.

Hon Tom Stephens: Did you say that to the company?

The DEPUTY PRESIDENT (Hon B.L. Jones): Order! Hon Tom Stephens will have the opportunity to ask those questions at a later stage.

Hon BARRY HOUSE: The company at least indicates some willingness to negotiate and it may well result in a satisfactory conclusion, but it has been dragged kicking and screaming to the barrier. The Department of State Development has been less than helpful in outlining the responsibilities of the company in this one-off situation to protect the landowners. I say one-off because it is very important that it does not occur again. We do not want to see a precedent established for other developments in the south west and for other residents to

come up against this situation in the future. I know that the latest offer by the company is appreciated, although it may not be the solution for some of the landowners, but as in most things in life rarely is everyone satisfied. Some landowners will still consider it inadequate, and the company no doubt still feels that it has offered too much. I am pleased to see some concessions and I hope that will resolve the situation.

I posed a question yesterday to the Parliamentary Secretary about support mechanisms that the Minister for State Development had alluded to in the other House. The answers were illuminating, but for the landowners involved I am sure they were less than satisfactory in some aspects. As I have said, I have sought explanations from the Parliamentary Secretary as I am very unhappy with many aspects of the Bill. I certainly welcome the development generally, but it appears a very one sided exercise on the part of the Government in giving the company most of the aces and the landowners very few indeed. I indicate my general support of the legislation subject to those provisos; but in future I will carefully monitor the situation to ensure the landowners receive the compensation that is due, or to get the resolution of the matters that they seek. If the situation is not resolved satisfactorily, I am prepared to introduce a private member's Bill to redress the matter.

HON MURRAY MONTGOMERY (South West) [9.19 pm]: The Government has handled its job of negotiating agreements with companies in such a way that it has lost the plot. No-one could object - if people do, I would love to hear from them - to the need for development and the creation of jobs in this State. However, in encouraging development the Government must look after the people and ensure that the people who own private land which is likely to be used by developers are protected. It appears that the Government has been in a rush to sign the agreement and made an undertaking to the companies involved to get it through the Parliament on the basis that it is a legally binding document which the Parliament cannot refuse to pass. The Bill cannot be thrown out of the House because of the problems that would create for not only the Government and the Parliament, but also the companies.

A problem seems to have arisen with clause 18(3) concerning the resumption of land for the purposes of the agreement. The landowners in the area feel that they have been left to hang out to dry, and they have every right to feel that way. Initially the Government should have at least explained its position to the landowners so that they knew exactly where they stood. However, the Government has left that explaining to the company. The landowners were forced to employ consultants, Graham Houghton and the Western Australian Farmers Federation, the only people to whom they could go for information about this development. I agree with Hon Barry House's remarks that some problems have arisen because of this legislation. Some of the land valuation figures for the surrounding area are most interesting. The intertwined company association is also very interesting. The local Wesfarmers Ltd land agent made a valuation on the land surrounding the area in Dardanup to be developed. The agent also happened to have close links with Bunnings Ltd, one of the partners in the venture. His valuation on the land in that general area was $6 175 a hectare. That was fine, but somehow a number of different valuations have been made on that area. The initial valuation by the Valuer General was in excess of $6 000 a hectare. Nonetheless, the company seemed to have a valuation at the lower end of the scale for its purposes on land which it has stated could not be expected to increase in value. However, the land included in the buffer zone to which I have been referring, when it is either bought by the company or resumed by the Government, will apparently be planted with trees. That will enhance its value considerably considering the company is supplying the product over 40 years. The value of the land will increase because it will be carrying a product which the company can use for its own operation. The involvement of both the company and the Government must be considered in that matter.

I refer now to the role of local authorities in this matter. Hon Barry House read out most of the correspondence pertaining to the development. It would be time consuming and not very productive for me to read that out again. However, Hon Barry House and I have received the same correspondence from the various groups. The local authorities were concerned about who would fund the necessary roads to carry the product to the mill. Rather than the Government's explaining the situation to the authorities, it left them to find out about the matter when the Bill was debated in the Legislative Assembly. They felt they were left very much out on a limb by having to fund various roadworks, the cost of which will be an impost

on the ratepayers. It took the Government some time to explain what was happening. As a result of the Government's ineptitude, the agreement has been delayed. It appears also that the Government has failed to protect the landowners, the small people, of that area. Undoubtedly the companies are well looked after with this agreement.

An indication of the Government's ineptitude is in the second reading speech by the Parliamentary Secretary. On page 2 he stated that current employment of local people at the Dardanup pine log sawmill was approximately 80 people and would rise to 150. However, on page 15 of his speech it states that the number of people employed at the mill is 70. Between pages 2 and 15 of the second reading speech as it was distributed in the House, 10 people were lost. I am not sure that the intent of the Bill was to lose a few people on the way. However, no doubt a few people will be lost as a result of this development's utilising farmland on which to build the mill. The Government should ensure that speeches introducing agreement Acts are correct before they are read in Parliament.

I am sure everybody is aware that the last thing the Government will want is to change this legislation. Hon Barry House indicated that we want these agreements to come into this place and to get this State back on the move. We need to generate some capital for the State to start some work and to get people back into employment. The Government has not done that because it has been running around trying to spend money in other areas; unfortunately it seems to be pretty good at losing money. In its haste to get this legislation into the House the Government seems to have lost sight of where it is going. It is unfortunate that these hiccups have arisen because of somebody's lack of consideration or oversight. As Hon Barry House said, a number of discussions have taken place between Government officials, various groups, representatives of the Western Australian Farmers Federation, and Hon Barry House and me.

It would appear that this blue buffer zone has been moved. No indication was given that it would be moved until the EPA's recommendations. No-one seems to know exactly how much land will be required. That still needs to be clarified, as does who will buy the area. The company has made it quite clear that it wants to buy only the land in the blue area. Perhaps the Parliamentary Secretary will be able to advise whether the company will buy the area outside the blue buffer zone and whether the land will just lie in waste with the development of the total area.

Hon Tom Stephens: I understand it is the company.

Hon MURRAY MONTGOMERY: I want to make sure that I know who will purchase the brown area or the land in the blue area that is outside the buffer zone. It is important that the Parliamentary Secretary deal with this matter in his response.

I am sure I could ramble on for some considerable time; however, that is not my intention. Hon Barry House has indicated some concerns and I have raised one or two of my own. The Government must ensure that it does not include another clause 18(3) in any other State agreement forcing commercial negotiations to take place between whatever Government is in power and the landowners. A developing company must be able to run with agreements that are signed with landowners so it is important that the agreement be made in a truly commercial manner. If the Government wants to get involved in buying land, that is fine. However, it should do it in a commercially negotiated way rather than by circumventing an agreement. It is fairly important that those matters be responded to. The inclusion of this clause has caused a great deal of concern within the rural sector around Dardanup. I support the Bill.

HON MURIEL PATTERSON (South West) [9.36 pm]: Nobody disputes the urgent need for sustainable employment in the south west, where the long term harvesting of a plantation is, by definition, a growth industry and one that I expect will expand greatly in the next 20 years. This is a project I applaud. To this extent the Minister's second reading speech is coalition policy. In principle, we endorse the Government's objectives to create an environmentally acceptable industry base for the people of Dardanup, where we expect to see a number of jobs created. That is the name of the game. However, this should not be taken as a blanket endorsement of the means by which the Government aims to build a pine sawmill there.

Two areas on the documents, A and B, green and brown, have been designated as buffer zones. Thus far everyone has been in broad agreement provided the zones are sufficiently

wide to take into consideration acceptable noise levels, weather conditions and the topography of the land, which can considerably affect noise levels.

I am a little surprised that the Bill is going ahead without the final approval of the Environmental Protection Authority. We are less in agreement once we come to the land which is already owned and been productively worked by local families who have established their right of prior occupancy. These men and women, of whom there are a number, have earned the right to be heard and fully consulted before one square inch of their land is threatened by resumption. I, too, received a letter from Mr and Mrs Busher. As a farmer's daughter and a farmer's wife and having a lifelong commitment to farming, I find their letter close to my heart. Their letter is really a call for help. It says -

> We bought our property with the full intention to subdivide at a later date. The subdivision was to be our Superannuation policy. Wespines proposal will deprive us of a satisfactory retirement package.
>
> We had our house site surveyed so that it was built on the building envelope of one of those future small holdings and our driveway was surveyed to follow the contour of Harold Douglas Drive for when we eventually subdivided. We have gone to a lot of cost and effort to plan trees along this future roadway so that they will be well established by that time.
>
> The land has sentimental value. It was originally purchased by the Busher family back in 1873, we have the original hand written titles framed on our wall as a heirloom. It is for this reason that we had full intentions of retaining the ownership of the house and small holding on which it is built and to continue to reside here even after we had subdivided the remainder of the farm.

It was only a few months ago when, to the consternation of many of the farming families, there were heritage listings ad nauseam in the south west. In this case we have a family which wants to hold an area as a family heritage and it has the right to do that. Unfortunately, it is being denied this opportunity. The letter from the Busher family continues -

> Our house is our dream home. We spent several years designing and building it, with the bulk of the construction work being done by ourselves.

Later the letter continues -

> The proposal to expand the sawmill is a commercial decision on the behalf of Wespine. If the generation of noise is a result of that expansion, then it too should be a commercial choice for Wespine to either put effective noise abatement measures in place on site or if these measures prove to be too costly, as part of that commercial decision to expand their operations they may decide it would be cheaper to purchase adequate buffer zone instead. The purchase of land should be through the normal process of commercial negotiation with the individual landowners concerned. It should not be up to the individual landowners to provide Wespines buffer zone at their own personal cost and convenience.

Further on they said -

> . . . Wespine did not feel it was their responsibility to acquire the land that fell within the buffer zone nor to pay compensation for the loss of value on our property if it was rezoned from small holdings to a mixed use buffer zone. We have sank our life savings into building our home which will then have no resale value as it will be in the middle of a non residential area. We do not feel that we should be up for the cost of providing the buffer for Wespines proposed expansion either.

Mr and Mrs Busher, together with the other farmers in the area, are the innocent parties in this commercial venture. The buffer zone will encompass the entire Busher family's property. I do not know whether members are aware that as soon as the buffer zone is declared the land ceases to have any commercial value or collateral. Therefore, it will become useless and farmers will not be able to build on it. In addition, the land cannot be sold and there can be no rural subdivisions, which I understand the Shire of Dardanup considers sympathetically.

The point at issue is clause 18(3) of the agreement which invokes the Public Works Act 1902

to allow the resumption of some or all of the land at Dardanup while at the same time waiving those sections of the Act which provide for landowners to appeal against the decisions or receive current market value compensation. This infringes on the right of freehold landowners and takes away a fundamental principle that owners of private land have property rights. As this agreement is presently drafted it is a thinly disguised land grab by the Government on behalf of a third party. If the Bill as it stands is passed, it will set an entirely unacceptable legal precedent for the rest of Western Australia. Members should consider the implications for investors, who will be very wary about buying land or developing industry if they feel there is no guarantee that they will retain the land once they pay for it. They will always have that threat hanging over them.

The Minister for State Development has misgivings about clause 18(3) as it is presently drafted. Speaking in another place on 5 November he said he felt some degree of discomfort about this clause. Frankly, I am a little disappointed in the Minister because I considered him to be genuinely interested in industry which will benefit both the farmers and Wespine. I thought he was one of the more genuine Ministers of this Government. I am glad that he has some degree of concern about this clause and that it does cause him some discomfort. Perhaps it will stop him from sleeping at night! However, he salved his conscience by saying in the other place that this clause would be invoked only in the most extraordinary circumstances. After WA Inc, I shudder to think what extraordinary circumstances the Minister and his friends might have in store to justify the unilateral resumption of one man's private land by the State for another man's private gain. Clause 18(3) has a distinct similarity to the events pertaining to the Petrochemical Industries Co Ltd, the old Swan Brewery and, dare I suggest, Port Kennedy.

Clause 18(3) overturns the ability of farmers to negotiate the sale of their property. They know that if an unacceptable price is negotiated the bottom line will be the threat of the resumption of their land. This clause has another unfortunate connotation; that is, it leaves the farmers in limbo. The farmers at Dardanup do not know where they stand. If clause 18(3) is not amended everything the farmers have worked for will count as nothing and they will be cast adrift from their one tangible asset, their land, which cannot be bought or sold with any degree of certainty until the year 2032, 40 years hence, when the proposed agreement with Wespine expires. In effect, this clause is telling the landowners that this is the price and they can take it or leave it. However, if they decline the offer their properties can be taken from them at whatever price the Government nominates; the price will be determined by whichever private interest has the Minister's ear at the time.

What is at stake here is a fundamental Anglo-Australian law; that is, the right of a person to dispose of his lawfully acquired property in a fair and equitable manner after due negotiation. Clause 18(3) will never be fair or equitable while it gives the State the power to seize private land. I recognise that the State does acquire private land, but it must be in circumstances which are for the common good of the State; for example, a highway or powerline, but not for corporate profit. Hopefully my objection to this clause can be overcome by deleting a few words and substituting others.

The Government must step aside and allow the company to accept direct responsibility by purchasing the buffer zone. It created a need for the buffer zone by choosing to expand the sawmill at Dardanup. The agreement should be ratified on condition that the parties concerned amend clause 18(3) to ensure an independent arbiter is given the authority to negotiate a provision which is acceptable to both parties. In other words, provision must be made for an independent and professionally qualified arbiter to give an impartial valuation of the land; that is, assuming that neither of the parties can agree on a price. Nothing could be more simple or fairer in the case of the Dardanup farmers or any other farmland likely to be earmarked for industrial development in the south west in the years ahead.

I see this proposal as a test case which will create a precedent for buffer zones in the future. Once the change that I have suggest is in place such progress can proceed for the benefit of everybody concerned. I am convinced that all parties really wish to see this industry proceed. If we allow clause 18(3) to remain unaltered it will lead to increased bitterness and strife where there should be agreement. I support the industry and wish it the greatest success, but strongly oppose resumption of land without the common justice of the land price being fair and reasonable and based on accepted valuation principles.

HON PETER FOSS (East Metropolitan) [9.50 pm]: An important Act related to this matter is the Government Agreements Act, which came about because some doubt existed as to the proper way in which Government agreements of this nature could be implemented. Some of the problems arose out of a matter in which I was involved in 1976, the Fish Farming (Lake Argyle) Development Agreement Act which was recently repealed as being of no use. What was put up at that time used slightly different wording from that used previously, that is, that the agreement was ratified and approved and all acts and things done pursuant thereto were specifically authorised and approved.

There was some concern as to what ratifying and approving an Act did. Particular problems arose where someone wished to affect the law as opposed to merely entering into an agreement and authorising it. Authorising an agreement has, by law, some effect. This was illustrated in a case between Leslie Salt and Mt Newman Mining Company Pty Ltd in Western Australia. Leslie Salt complained that Mt Newman Mining Company was spreading fine ore dust over its piles of salt at Port Hedland. It sought to sue for the damage to that salt in nuisance. Nuisance is an action in which no need exists to prove negligence. Ultimately the case was settled. I think it was notable that on one side of the case was the present Mr Justice Malcolm, the Chief Justice, and on the other side was Mr Justice Kennedy; so it was a case involving considerable legal brain power. The problem was that the authorisation given to Mt Newman by its State agreement Act arguably overcame any possibility of an action in nuisance.

Merely authorising, approving and ratifying an agreement does not normally change the law. The mere fact that the Government enters into an agreement saying it will change the law would not normally have the effect of changing the law. We have the Government Agreements Act, of which I do not approve. It is unfortunate in the effect it has on the ability of this Parliament to make amendments to these types of agreements. It was introduced by the Court Government partly to overcome any problems it had regarding previous agreements. Section 3 states -

> For the removal of doubt, it is hereby expressly declared that -
>
> > (a) each provision of a Government agreement shall operate and take effect, and shall be deemed to have operated and taken effect from its inception, according to its terms notwithstanding any other Act or law. . .

The part that really matters is (b) which states -

> > Any purported modification of any other Act or law contained, or provided for, in such a provision shall operate and take effect so as to modify that other Act or law for the purposes of the Government agreement, and shall be deemed to have so operated and taken effect from its inception, according to its terms notwithstanding any other Act or law.

When we are faced with an agreement such as the Dardanup one we are faced also with substantial modifications to the law; not in the Bill, the bit we can fiddle with and amend, but in the agreement which we are told we cannot amend.

A similar matter which recently came before this House was the Port Kennedy Development Agreement Bill. The effect of the problem that faced the Standing Committee on Legislation in that instance was what one does when ones does not like things that appear in an agreement because one cannot amend an agreement between parties; all that can be done is to say the agreement will be approved provided it is amended, which is a little bit unwieldy. That is particularly bad where one is not just objecting to the terms of the agreement because one does not like them commercially but where one feels one does not like the amendment to the law that is taking place.

It seems to me that there is something inherently wrong in bringing a series of amendments to the law to the Parliament and then saying to it that it can either take the deal as it is or kick it out. The Parliament is not placed in the position of saying it does not like the amendments to the law as they stand because it does not think they are good and it wants to make some changes, or saying that the proponent can amend the agreement if it wants to but the Parliament does not like the way it changes the law. Not everything goes into an agreement. Take, for instance, the Port Kennedy Development Agreement Bill where some changes to the law were made. Other things did not change the law but set up the Port Kennedy board.

However, there were changes to the law with reference to a soil conservation district, for instance, and a few other small things that were changed.

One of the ways one can tackle this problem is to say that section 3 of the Government Agreements Act does not apply either entirely or to a particular extent. One could say that we will ratify the agreement, which is fine, but we will not amend the law in accordance with the section of the agreement. It may cause embarrassment to the Government if that happens. It seems to me that we really need a different approach to State agreements because this is making it extremely hard for the Parliament to have any real input into changes in the law in such circumstances.

For a time, I think in the early years of the Tonkin Government, another method was adopted for State ratified agreements where instead of having the agreement signed and bringing it to the Parliament for ratification a ratifying Bill was introduced with a form of agreement attached, and provided the State entered into an agreement in the form of the schedules of the Bill the agreement was ratified. That meant that the Parliament could fiddle with the schedule in the Bill and change the form of the agreement in the Parliament and when finished it was sent off to become an open offer to the other party to the State agreement for its acceptance. The problem with that was that it allowed the Parliament to fiddle with those things too much and without an opportunity for information to come from the other parties about whether they liked the agreement. That made it too easy for the Parliament to fiddle with the agreement. That is probably why this form of legislation fell out of popularity. It really gave the Parliament too much ability to deal with such matters. I suppose that nowadays that would not be so bad as we could do with Bills what we did with the Port Kennedy Bill and refer the matter to the Legislation Committee where these matters should be considered.

That seems to fit in nicely with the passage that I will not read again, because Mr Berinson now knows it by heart, relating to Legislation Committees and their operation and in which it was suggested that one of the things they should do is enable the public for whom legislation is being passed to have an opportunity to comment on it. If there is one thing I find unsatisfactory about this agreement it is that when it turned up in the Parliament we did not have an opportunity to send it to the Legislation Committee. This seems to me to be a classic example of where we could have ensured that the legitimate concerns of the companies involved were understood and met. The people whose land was affected had their legitimate concerns met. There is a legitimate concern on the part of people living in the definite buffer zone and in the possible buffer zone that a rezoning of the land is specifically being carried for the benefit of one party. It is a principle of planning legislation not only in Western Australia but generally in the English speaking world that if one rezones land one does not give compensation for doing so. The only time one gives compensation is if one prevents the current use of the land. If one says the land is now zoned from industrial to rural and one may no longer use it for industrial purposes then compensation is provided because the person is stopped from using the land for that purpose, but compensation is not given for the removal of future use of the land.

It could be argued that all that is happening in this case is that by agreement between the company and the State it is said that some zoning will take place. Therefore people whose land is affected, providing they are not stopped from carrying out current usages, are no worse off than anyone from the making of a town planning scheme. On the other hand, it is clear in the particular case that it might be argued that it really is not so much a general planning consideration as a commercial consideration on the part of this individual company. I suppose to some extent that has been recognised.

It is rather a peculiar provision in the agreement with clause 18(3) specifically stating that the State may as and for a public work under the Public Works Act resume the whole or any part or parts of land referred to in paragraphs (a) and (b). Usually the power of resumption is only for a public work where something must be done for the public in the name of the public and for the good of people generally. It is a principle recognised even in the United States. They do not call it a resumption; they call it an eminent domain. It recognises that our tenure system works on land being held from the Crown; that one holds it in service to the Crown although the way in which one may have title does not require one to provide any service; and that the eminent domain of the Crown must be recognised and, should the requirements of the Crown be for public works and to carry out the duties of the Crown, that

title can be taken back, just giving compensation to the individual affected by having the title taken back.

Here we are allowing that public right to be exercised for the benefit of an individual company. The land is to be resumed and then it is to be disposed of either by selling it or leasing it to the company or to some other person. It looks like it will be used, in some ways, to prevent a landowner who does not want to move out from the site saying he will not move. Having looked at the commercial reality of the matter I am not sure why the provision is included. It seems to me that if one is sitting on the surrounding land one will be affected by zoning and, if anything, rather than the company wanting to have one's land resumed one may wish to call on the company to resume it. I see it more the other way around. Hon Barry House to some extent indicated that this is what he saw as a result of people not wanting to be left with land in a sterile state. Although it seems a peculiar provision in that it gives power to the State on behalf of the company to resume land, the real risk in all of this is not that people may have land resumed but that they may not have land resumed. So, the difficulty of course then is the circumstances under which this would occur.

The normal rule for the resumption of land for public work is this: Land is valued as if the public work did not exist. That works both ways: It may increase the value of the land or it may reduce it. Canning Vale was a good example because the Canning Vale land prior to being returned to the industrial estate was run down and a lot of it was used for sand quarrying. It was not generally regarded as very valuable. As industrial land, on the other hand, it was considerably more valuable. When the land was resumed for the Canning Vale industrial estate the people whose land was resumed were entitled to compensation. They were entitled on what was the highest and best use basis. They argued that the highest and best use was as an industrial estate. On the other hand, the Government argued that apart from the public work - that is, the resumption by the Government for an industrial estate - there was no way in which the land would have been considered for an industrial estate. If it were not for the public work it would have always been just crummy land and they would not have received much for it at all.

Some of the landowners were able to show that they had in fact put up a proposal for their land to be made part of an industrial development and to be rezoned industrial land, and that the zoning had been refused, but the only reason it had been refused was because the Government intended to use it for an industrial estate at a later stage. The grounds for refusal were not genuine in saying that it was not suitable for an industrial estate but purely that the Government wanted to use it in that way but it was not telling. It was shown through documents obtained on discovery that that was the case; in fact, it was always considered suitable as industrial land and it was not the public work which turned it into suitable land. It always was and possibly always would be industrial land. Many people in the area were able to recover compensation on the basis that it was industrial land; that was treated as the highest and best value, and they recovered that plus 10 per cent.

The name of Busher was mentioned by Hon Barry House. In view of the assurances from the local shires they would be entitled to further subdivide the land. I hope I am correct in saying that they had a legitimate expectation prior to public work that that would be the use they could make of the land. I hope that was fairly good evidence of that. It seems to me that provided the landowners receive the assurance that their land will be resumed, they will be entitled to be compensated on the basis that their land would have been used for that subdivision.

We need to know from the Government, firstly, whether it accepts that if there is a resumption the people whose land will be resumed will be compensated on what was the highest and best use of that land apart from this project. In other words, the proposal will be assessed on the basis that the project does not exist. I understand that assessment process is normal. It should be assumed that the Dardanup pine log sawmill was never going to exist. That should be ignored as part of a valuation of the surrounding land. It should be assessed as though the Bushers quite rightly had a reasonable expectation that they could subdivide their land into small holdings and nothing would prevent that. Secondly, we need to know whether, within the not too distant future, the people whose land is shown to be affected by the rezoning and who wish to have their land resumed will be entitled to have it resumed. I have one small qualification on that: If in the meantime further improvement is made to the land, that could create significant problems. I would think they would not be entitled to

compensation for the improvement because the land will be assessed based on its value prior to the public works. I am not certain whether that will be the legal position; however, it seems that will be the appropriate situation. This matter should be resolved by the Government quickly. I guess it is a matter of the Government's intention. How does it intend to use clause 18(3)? Is it the intention of the Government that if a satisfactory resolution between the parties is not reached, that if the parties so request their land to be resumed and they are within the affected piece of land, it will be resumed? The only qualification I have on that is that if the people are neither using nor wish to use the land in a manner which is inconsistent with the zoning, it would not be reasonable to ask that they have their land resumed.

All these matters seem quite reasonable, and should have been dealt with in the Bill. It is a little difficult in the second last week of the session to deal with them here. We could have dealt with the principles quite well in the Standing Committee on Legislation. I regret that the matter was not brought to that committee in time for that to happen. I see Hon Cheryl Davenport is thrilled with the idea of negotiating these matters; she is always an enthusiastic supporter of this sort of legislation going to the Legislation Committee. Nonetheless, we have an obligation to put the two parties together in such a way that Parliament does the right thing by both of them. I would certainly not support an open ended obligation forever for any land to be resumed from anyone who does not want to be near the sawmill; that would be wrong. On the other hand, I do not believe that the company should be in a position to rezone the land, but not buy it, or if it did buy it, buy it at a price suitable only to the company. At some stage the Government must be able to encourage those parties to work out a regime which sets up a proper system whereby neither party puts an undue burden on the other, but a fair result is worked out for everyone. I am quite convinced it is possible for that to happen.

I am concerned that the Government has allowed the matter to come this far without appropriately putting the balance into the rights of these groups. It is difficult to fix that here. Hon Barry House says this amendment is an indication of what these people want. The Government has said it cannot agree to that because the company will not agree to it. I can understand that. We certainly do not want to put the company in an invidious position, nor do we wish to ignore the rights of the individuals. It is unfortunate that Parliament is left with trying to balance these matters here and now. I understand that unless Hon Barry House receives some assurance along the lines he has indicated and unless the Government can give the answers that I have suggested may resolve some of these problems, he has no alternative other than to move the amendment which deals with the concerns of the individuals. If the Government has a way of proving to them that their concerns will be addressed by the company, he will feel considerably more comfortable than he does at present.

Why is it that, once again, legislation has been brought before this Parliament in circumstances which do not give us the opportunity to deal with it properly and to everyone's satisfaction? That is what we should always strive for. It is what this side of the House has continually asked for with legislation, especially at the end of the session. It is unreasonable for members of this House and on the people who are involved - the company and the surrounding landowners - for us to be dealing with the agreement in this fashion. I hope the Government will deal not only with Hon Barry House's questions, but also my questions. I ask the Government to consider how much use we should make of the Government Agreement Act, which in essence is a special interpretation Act for Government agreements. I wonder whether we should be considering some way that agreement Acts can be presented to allow the Parliament the opportunity to look at legislative changes.

HON W.N. STRETCH (South West) [10.17 pm]: I will not read any more letters. I believe the land resumption debate has been well presented. However, I fully support the remarks made by earlier speakers. The ratification of an agreement Bill is not a satisfactory way to deal with these matters, although I understand the complexity of such proposals. As a south west member I support the project. A quick rundown of the situation as the debate comes to a close is probably useful: The company is to make a $50 million expansion investment and provide the possible increase of employment from about 80 people to about 150 over the next 10 years. Members will be aware that this is very much a pebble in the pond-type project. It will not all happen at Dardanup; it will extend to the forest management, felling and cartage contractors who will cart the logs to the mill. Its effect will be far more widespread than just around the Dardanup mill area.

I will be obliged if the Minister handling the Bill would answer some queries. One major concern in the early stages of negotiations was the likely damage to roads caused by the haulage of logs to the mill. Years ago a study of roads was made called the Southern Western Australia Transport Study - the SWAT study - at great expense and prepared very professionally. It seems to have been shelved and now another southwest regional road strategy is to be undertaken as mentioned in the second reading debate. From discussions about this matter with the south west shires, I believe they are sick and tired of strategies, talks and studies. Trucks do wear out roads; heavy loads in bad weather wear them out more quickly. We do not want another talkfest or another strategy plan; we need a guarantee of income to local authorities in order to build some of these roads to meet the increased traffic demands that the expanded mill will bring. I understand that the Government has conducted considerable discussions with the South West Shire Councils Association. I would be pleased if the Minister could provide the Parliament with some of the details of those road arrangements so that the south west shires which will carry the wider brunt of this project have some assurance that funds will be available to provide that infrastructure.

I return to the second reading speech. I again reiterate that this is a great project for the south west. The Opposition welcomes it because the pine industry in the south west is becoming a major resource. It probably began in Hon David Wordsworth's time as Minister; perhaps even before then. At that time a great increase in pine planting occurred and some people wondered what the future would be for those trees. Looking forward, it was hard to see when Western Australia would be providing mills to cope with the quantities that were to be planted. Fortunately the demand for the chip and log has caught up with the supply to a certain extent. We look forward to a chip mill before too long to cope with the increasing growth of the softwood and hardwood forests in the south west.

I support the project; however, I have some concerns about the way in which it has been negotiated. The virtual guarantee of 40 years' supply of logs to the mill seems excessive; it is a long time. I would have been happier with the 20 years, and then the next 20 years by negotiation rather than more or less being available as of right to the company. It seems to be locking up a resource for, some of us, half a lifetime.

Hon J.M. Berinson: In 38 or 39 years you will be able to go out and see what are the prospects for future extension.

Hon W.N. STRETCH: Possibly; however, I do not think that will be my problem.

Hon N.F. Moore: Perhaps Mr Berinson can accompany you.

Hon W.N. STRETCH: It is amazing what a bit of retirement might do to the Attorney General, having seen a couple of former members at the Commonwealth Parliamentary Association meeting today. They look better for having retired from this place. I recommend that to him; the sooner the better.

One of my concerns is the length of that contract. I understand that that contract is virtually cast in stone. I deplore the fact that those long term contracts are written before they are brought to the Parliament for consideration.

I want to know whether the logs will be carted by outside contractors or subcontractors of CALM? The Parliamentary Secretary will have observed in clause 13(3)(b) of the Bill a big disclaimer where the executive director, in other words CALM, is not regarded as a subcontractor of the company. That takes it somewhat outside the obligations which the company has. Members, in particular the Parliamentary Secretary, will be aware that CALM now controls subcontractors felling within the forest. Will the log haulers also be locked into CALM or will they be totally separate? In other words, where does CALM lose its interest as a contractor in the product?

Clause 13(2) deals with the maintenance of public roads. I understand that these are the roads adjacent to and within the precinct of the mill. I gather that the clauses do not apply to the wider roads to which I refer. It seems that clause 13(2) could apply to those public roads because it states -

> The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads . . .

Do the words "or cause to be" indicate that the State will off-load the responsibility for those

roads totally on to local authorities? If that is the case they simply do not have the resources to manage that increased load and traffic. I would like some assurance that if that is to be the case, some revenue from the royalties obtained from those logs or from some other Consolidated Revenue Fund source will be guaranteed to those shires. Although the project is of great value I do not think it should impinge on the safety or "trafficability" of the roads in the vicinity. Some need exists for reimbursement to shires out of pine royalties or through some other source.

Clause 18 has been dealt with at great length and deals with the zoning of the buffer and the recompense for people disadvantaged by the expansion of this mill. I can add nothing more to the debate other than to deplore the dislocation and great stress that has been placed on the local residents and landowners within those buffer zones. The Government and the company must take steps to ensure that those people are dealt with fairly and generously because a tremendous amount of dislocation, stress, concern and expense has been suffered by those people in trying to safeguard their rights against what they see as an action by a Government which is not really considering their points of view and which is giving this company what I call most favoured nation status.

I applaud the fact that under clause 31 on consultation -

> The Company shall during the currency of this Agreement consult with and keep the State fully informed . . .

However, I query why it states "on a confidential basis". I note the Premier's call for open Government and the release of all details possible. I would prefer that the clause contain "on a commercially confidential basis", not just a blank confidential basis. Members have seen in the past how this Government has been involved in enormous cover ups against the scrutiny of Parliament by claiming commercial confidentiality. Members have often struck this road block when trying to obtain the truth on some of the Government deals which were described as confidential matters. The Government must explain why this is all confidential matter. I understand commercial confidentiality only too well. However, the clause states -

> The Company shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company propose to take with any third party . . .

That is very broad. Why is that not related only to commercial confidentiality? I have another minor concern about clause 19(1) dealing with assignment, which states -

> Subject to the provisions of this Clause the Company WESFI or Bunnings may at any time assign mortgage charge sublet or dispose of to any company or persons with the consent of the Minister the whole or any part of their respective rights . . .

In other words, they can sell out the project. I implore the Parliamentary Secretary to ensure that this resource project is kept in Australian and, if possible, Western Australian hands. I would not like to see the control of our south west forests moved into international hands or the interest sold overseas, because it is very easy for an overseas owner to denude another country's forests. Regrettably, that has occurred in third world countries. I would not like to see Western Australia treated in that way. Therefore, I urge the Minister to exercise great caution in implementing that aspect of clause 19.

I indicate my general support of the Bill with strong reservations against the manner in which the resumption and the creation of the buffer zone has been carried out by the Government on behalf of the company.

Debate adjourned until a later stage of the sitting, on motion by Hon J.M. Berinson (Leader of the House).

[Continued on page 7133.]

EQUAL OPPORTUNITY AMENDMENT BILL

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon Garry Kelly) in the Chair; Hon Tom Stephens (Parliamentary Secretary) in charge of the Bill.

Progress

Progress reported and leave given to sit again, on motion by Hon Tom Stephens (Parliamentary Secretary).

ADJOURNMENT OF THE HOUSE - SPECIAL

HON J.M. BERINSON (North Metropolitan - Leader of the House) [10.32 pm]: I move, without notice -

That the House at its rising adjourn until 10.30 am on Thursday, 26 November 1992.

HON PETER FOSS (East Metropolitan) [10.33 pm]: I am not very keen on seeing the work of the Standing Committee on Legislation interrupted by that which has been proposed by the Leader of the House. I am used to the Leader of the House complaining about the rate at which the Legislation Committee gets so much legislation from Committee. On previous occasions I have had to protest that one of the reasons we have not been able to get things back from the Legislation Committee is that sometimes our time for the meetings has been taken away from us by other things. One of the things that this motion will do is prevent the Legislation Committee from sitting tomorrow and disposing of its business. It is unfortunate that the Government is not able to arrange its business so that the House can deal with things in the ordinary time. I hope that the Leader of the House notes that this will interfere with the proper operations of the Legislation Committee and that the Government will not express concerns if the Legislation Committee does not get some of the legislation back in time.

Question put and passed.

SITTINGS OF THE HOUSE - EXTENDED AFTER 11.00 PM

Wednesday, 25 November

HON J.M. BERINSON (North Metropolitan - Leader of the House) [10.34 pm]: I move -

That the time of this sitting be extended to the extent necessary to complete the consideration of Orders of the Day Nos 4 and 6.

This motion also follows discussion with the Leader of the Opposition and the Leader of the National Party. It has been part of our considerations that while I moved the motion to extend the time in an open way, it is understood between us that the sitting will be kept to acknowledged limits.

Hon Peter Foss: I have some concerns about this. A number of questions were asked by Hon Barry House and me in respect of the Dardanup Pine Log Sawmill Agreement Bill. I do not know whether the Parliamentary Secretary handling the Bill will be able to answer those questions tonight. Will the effect of agreeing to this be that we will then be in a difficult situation if the matter needs to be adjourned to enable him to give those answers?

Hon J.M. BERINSON: No. The fact that we are giving ourselves the capacity to go beyond 11 o'clock to the extent necessary to conclude that Bill and the Acts Amendment (Parents of Juvenile Offenders) Bill does not oblige us to conclude them. That was part of my qualification. It is certainly my hope that it will be possible to complete them. However, that remains to be seen.

Question put and passed.

PORT KENNEDY DEVELOPMENT AGREEMENT BILL

Returned

Message from the Assembly received and read notifying that it had agreed to the amendments made by the Council.

BUSH FIRES AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon J.M. Berinson (Attorney General), read a first time.

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [10.36 pm]: I move -

That the Bill be now read a second time.

The Bill seeks to amend the Bush Fires Act 1954. It addresses three areas of the principal Act which require amendment. These are, firstly, the composition and accountability of the Bush Fires Board; secondly, to provide a fair and equitable level of compensation cover for our volunteer bush firefighters; and, thirdly, to remove a technicality which prevents people from using gas powered cooking appliances such as barbecues during the hotter months of summer. As the Bush Fires Act now stands there are 16 board members drawn from a broad range of nominees. All of the nominating authorities have had important input into fire protection in the past. However, due to advances in technology and work practices, they now have diminished relevance and no longer require representation.

To streamline the board membership, the Bill reduces the size of the board from 16 members to nine members. Consequently, it is proposed to remove representation from the Department of Agriculture, the Bureau of Meteorology, the insurance industry, the timber production industry and the Railways Commission. Representation from the Department of Conservation and Land Management will be reduced from three members to one and local government representation will reduce from six members to four. In addition, the board will be strengthened by the inclusion of the Executive Chairman of the Western Australian Fire Brigades Board and the Chief Executive Officer of the Department of Planning and Urban Development.

Members of the House will appreciate that rural fire protection extends to the fringes of the metropolitan area and major country towns and the need for close liaison between full time WA Fire Brigade firefighters and bush fire brigade volunteer firefighters is of paramount importance. The current level of forward planning in rural development will be enhanced in the interests of community safety by the inclusion of representation from the Department of Planning and Urban Development. In addition to the nine members, the Minister has the discretion to appoint additional members to the board representing particular interests. It is proposed that the volunteer association will be represented on the board through this amendment.

Another aspect of the Bill is that it combines the function of the board's chief executive officer with that of chairperson of the board thus removing the statutory requirement for the Executive Director of the Department of Land Administration to be the chairperson of the board. The present arrangement is a hangover from the days when the Bush Fires Board was a branch of the old Lands Department. Equally important is the proper accountability of the board.

Under present legislation the Financial Administration and Audit Act is dependent on an entity being a department or sub-department, a statutory authority or a related body to a department or statutory body. Currently the board exhibits features of both a department and a statutory authority. Departmentally, it operates against its own Division of the Consolidated Revenue Fund; however, it is also charged with certain statutory responsibilities under the provisions of the Bush Fires Act, like an authority. The Bush Fires Act at present does not charge the board with specific responsibilities in respect of moneys or financial administration. A best fit arrangement is in place whereby the chief executive officer is also the accountable officer for the board. The proposed amendments will make the board accountable by making financial provisions in the Bush Fires Act and by including the board in schedule 1 of the FAAA 1985.

The second and equally important area addressed by the Bill is the provision of proper and adequate insurance cover for volunteer bush firefighters. Over the years basic insurance pool cover has been developed for these volunteers. In some cases a number of extensions for increased protection have been obtained by individual local shires. However, in other shires the option to take up these extensions has not been exercised. This has created a situation where the levels of insurance cover vary from shire to shire and it is conceivable that one firefighter who is injured while helping protect life and property could receive considerably less cover than a volunteer in another shire. This is clearly a most undesirable state of affairs. I need not remind members of the countless hours of duty these volunteers contribute

annually for the protection of State and community assets and people's lives. Firefighting is a tough job and our volunteer bush firefighters deserve proper and equitable cover no matter where they are performing this task throughout Western Australia. This Bill clearly defines the type of activities to be covered, who is to be covered, the extent of cover and whose responsibility it is to provide that cover. Provision has been made to ensure that all shires carry a minimum level of insurance cover for their volunteers. Another important feature of this Bill is the greatly enhanced level of death cover for volunteers. Benefits payable shall generally be in accordance with schedules 1 and 2 of the Workers' Compensation and Rehabilitation Act. A top-up, to a total of $200 000, will be added by the State Government should a death occur. The Act will also be amended to include full payment of the death benefit to a spouse, irrespective of dependency, or to any dependent children. Negotiations have been completed with the State Government Insurance Office to provide this superior level of cover to volunteers at little extra cost to local shires. The maximum increase is $150 per annum and in fact there has been a cost saving for some shires.

The third amendment in the Bill is basically of a technical nature to permit the use of gas powered cooking appliances, such as barbecues, on hot days during the summer months. At present the Bush Fires Act makes no clear definition between a wood fired barbecue and one which uses gas. Clearly, the latter is safe to use in prescribed areas while the former is not safe on hot summer days. This part of the Bill will remedy the present anomalous situation. I commend the Bill to the House.

Debate adjourned, on motion by Hon W.N. Stretch.

DARDANUP PINE LOG SAWMILL AGREEMENT BILL

Second Reading

Debate resumed from an earlier stage of the sitting.

HON TOM STEPHENS (Mining and Pastoral - Parliamentary Secretary) [10.43 pm]: In the second reading debate the Opposition has raised a comprehensive range of questions about the Dardanup sawmill and the agreement Bill that would lead to the expansion of that operation. Quite clearly, a very intensive amount of work has been done by the local people in the Dardanup area in raising their concerns with their local members of Parliament on both the Opposition and Government benches. In the process of this debate we see in the House the benefit of those issues of concern to local residents being aired and expressed very cogently and comprehensively. The Opposition members have indicated during the debate their overall support for the legislation and at the same time they have indicated they have some questions they would like answered. It will be no surprise to the Opposition to learn that members on this side of the House - both local members and others - have taken the opportunity to discuss this Bill with the Minister responsible, Ian Taylor, the Minister for State Development, and have watched the passage of the Bill through its various stages. I am indebted to Hon Barry House for his briefing on the Bill and his concerns about the legislation which have taken me through the various issues of importance.

Hon Murray Montgomery: And for his geography lessons.

Hon TOM STEPHENS: And also for his geography lessons. I am also indebted to Hon Beryl Jones for informing me of the concerns raised by her constituents - some of the same concerns relayed to the House by Hon Barry House. This Bill demonstrates not only to the Government but also to the Opposition, and I hope to the community at large, the essential difficulties that face Governments when they try to proceed with developments in this State, particularly in the more densely populated areas. Frequently, these agreement Acts involve my electorate in the north of the State where the population is not as large and the habitation process has not developed to the extent that so many people have such clear interests associated with land ownership in the vicinity of a project such as this.

Hon Barry House, together with one of his lower House colleagues, has, in response to his constituents' concerns, indicated to the House that he has had discussions with the company. In that process he encouraged the company to make an offer to purchase the land associated with the project at a price which is 20 per cent higher than the Valuer General's valuation. The company has responded to that encouragement, and Hon Barry House read to the House the company's offer. I guess it can be said that that represents a significant win on the part of

the constituents of Hon Barry House. I am sure they will be indebted to the member for the negotiations in which he has participated.

Hon Murray Montgomery: It depends on which valuation you put on as the Valuer General's valuation.

Hon TOM STEPHENS: The process to which Hon Murray Montgomery refers is that in these negotiations the notion was introduced of a valuation based on resumption, as opposed to a simple valuation. It needs to be made clear that from the start of this project in the very early days, the Deputy Premier indicated in the lower House that the State Government did not intend to purchase the land that may be required for this project. It was indicated that the State is not proposing to enter into a purchase arrangement with those landowners, but rather it will be entirely up to the company to make fair and equitable arrangements with those landowners.

Hon Murray Montgomery: Are we talking about the area outside that which is coloured blue?

Hon TOM STEPHENS: I will come to that in the course of my methodic working through of these points. Apart from anything else, this debate demonstrates the sort of inhumane pressure which is sometimes applied to people in this Chamber, not the least of which on a newly elected Minister who has not even been sworn in, and who has to get on top of the various issues which come before him. I know that at times we are all subject to inhumane pressure, and I recognise that exists also on the other side of the Chamber, but an extraordinary range of issues has been raised and I will endeavour to do the best I can to respond to those issues.

One of the assurances which Hon Barry House sought from the Government and from Wespine Industries was that the concerns of the landowners whose properties are located within the blue or brown area shown on the agreement plan would be addressed satisfactorily. Clause 18(2)(a) of the agreement provides that the land currently in the area coloured blue will not be rezoned to a zoning incompatible with and likely to restrict or adversely affect the company's activities under the agreement.

Clause 18(2)(b) provides that the Minister may determine that all or part of the land within the brown area may be incorporated into the blue area. The Minister's determination in respect of the brown area must be based on the level of noise to be emitted from the sawmill site and the impact that noise may have on the land the subject of the brown area. In this regard, the Environmental Protection Authority, through the company's consultative environmental review for the proposed project, will set acceptable noise levels for dwellings around the sawmill, and the company will be asked to advise the line where, through modifications to the sawmill's current operations, those noise levels can be achieved. If the Minister is satisfied with the company's advice, he may confirm the existing boundary of the blue area or redefine the blue area and release the balance of the brown area from the agreement.

It is the Government's intention that the final determination of the boundary of the blue area be resolved as soon as possible. However, the Minister, when making a determination, must be confident that the ability of the company to continue to operate for the duration of its agreement with the State will not be placed at risk and that any future smallholding subdivisions of land which may be released from the brown area will not be adversely affected by noise from the sawmill. The company has recognised the concerns of many people, including the landowners, in respect of the future of the land within the blue area. The company has, through its land agent, sought to purchase from the landowner lot 316 located to the south of the sawmill site. I am advised that the landowner purchased that land last year for $150 000 and is now seeking to sell the land to the company for $400 000. The company has with the landowner a current offer of $180 000.

Hon Barry House: What about the rest of the land in the brown area?

Hon TOM STEPHENS: I will continue to work my way through these notes, and if members are left with any residual questions in regard to issues which I have endeavoured to address but have not successfully answered, they can be addressed in Committee in debate on clause 1 of the Bill. I will then be in a better position to answer members' questions because I will have with me someone who has worked on the drafting of the legislation.

In regard to lots 313, 315 and 318, on 10 November 1992 the company, through its agent, offered to the owners the Valuer General's Office valuation of the land price, plus 10 per cent. The company offered for lot 313, $38 414, for an area of 9.5 ha; for lot 315, $160 879, for an area of 26.5 ha; and for lot 318, $18 975, for an area of 4.6 ha. The company has not yet received a response to those offers, and has undertaken in all instances to adopt a good neighbour approach in respect of issues relating to the proposed expansion of the mill. The company continues to undertake to Government that this approach will be maintained.

Members may have noticed that in the course of the second reading debate I took the opportunity of relaying to some of my colleagues some of the concerns of members opposite, and we took the opportunity of having a second look at the Bill. I am indebted not only to Hon Beryl Jones for the way in which she raised with me some of her constituents' concerns, and I had a quick skim through them, but also to Hon Mark Nevill, who quickly went to the agreement which is referred to in the Bill so that we could understand clause 18(3). Initially, we shared the same concerns of members opposite because, as we looked through the agreement, we thought the processes seemed to be unnecessarily overturned in the agreement Bill, until we quickly examined the relevant Statutes and saw that what is being set aside as a result of this agreement Bill is not the eventual process of appeal to the courts in respect of the question of fair valuations, but rather some of the time frame questions of notification that would often precede the resumption process, and that all of the normal processes for appealing a valuation are being adopted by the company in its purchasing process. It will still be open to a landowner to appeal that process.

Hon Barry House: The resumption will take place under the provisions of the Public Works Act.

Hon George Cash: The company will be constrained by the provisions of the Public Works Act.

Hon TOM STEPHENS: Yes, but nonetheless that is the framework inside which the appeals can be conducted.

Hon Barry House dealt with the issues raised by the Conservation Council of Western Australia. Those concerns were submitted to members of Parliament in a circular dated 2 November 1992, and I will comment upon those matters in the order in which they were raised. The effect of clause 4(3) of the Bill is to provide that the agreement will operate and take effect according to its terms, and if those terms purport to modify an Act or law, then the agreement will so operate; and, if not, then the general laws of the State will apply. Specific provision is made in clauses 5(1), 6(1), 6(7), 7(2) and 8(5) in respect of the application of the Environmental Protection Authority Act. In addition, clause 25 of the agreement provides that nothing in the agreement shall be construed to exempt the company from compliance with any requirement in connection with the protection of the environment that may be made by the State or a State body pursuant to an Act.

The State will obtain between 5.5 million and 6 million cubic metres of timber over the next 20 years from existing State-owned pine plantations. Existing markets have allowed existing pine forests to be thinned out in accordance with recognised standards to promote healthy growth. The health of the trees will provide the best defence against disease or drought. The sirex wasp is a problem in the Eastern States, but vigorous quarantine and monitoring of Western Australian forests has precluded its introduction in Western Australia to date. A biological control is available, and CALM contributes financially to an Australia-wide fund to ensure the control measures are available should an outbreak occur. Clause 21 will cover the State from any liability from potential natural disasters.

The rates, terms and conditions of the proposal are contained in a contract between the executive director and the company. When the Bill was introduced into the Legislative Assembly the Deputy Premier offered to show the contract to any interested member; I make a similar offer to members of the Legislative Council. The commercial confidence of the document is not to keep the contract in any way secret from any person genuinely interested in ensuring the State receives a fair return for its raw material. Regarding concerns raised by Hon Barry House and Hon Bill Stretch, and probably other members, the State will receive a fair return for its raw material. The royalty schedule is a public document which has already been provided to several inquiries. However, the State wishes to ensure that overseas and interstate competitors of Wesfi do not have an unfair advantage in knowing Wesfi's price

structure. That would enable such companies to deal unfairly against products from Western Australia.

Far from underpricing natural resources from native forests, as alleged by the Conservation Council, CALM has supervised massive increases in log royalties as a result of the approval by Government of its timber strategy in 1987. Increases have occurred of almost 200 per cent in hardwood sawlogs and 300 per cent for chip logs. The present Government inherited lower royalties, and the situation has been addressed in the seven years of CALM's existence.

The second paragraph of the Conservation Council's 2 November 1992 circular expresses concern that pine logs will be sold to the company at less than cost price. Item 4 of the circular is critical of clause 10(3) of the agreement whereby any competitor of the company is unable to purchase the type of sawlogs referred to in the clause at a price below what Wesfi pays. The council's logic is confused when it says that Wesfi is not paying a satisfactory price to CALM for its sawlogs, and implies that a competitor should pay less.

Hon Peter Foss: Why should the Conservation Council be worried about pine trees?

Hon TOM STEPHENS: I will continue to address the Conservation Council's concerns and not endeavour to fathom the reason for the concerns.

Clause 10(3) of the agreement is designed to ensure that for the duration of the State agreement CALM will not prejudice the operations of the company by offering more favourable terms to a competitor without offering similar terms to the company. These provisions provide the basis for a level playing field for both the company and a third party.

Clause 18(1) regarding zoning is standard to almost all State agreement Acts enacted since the early 1960s, and ensures that the company's activities under the agreement will not be prejudiced by rezoning during the currency of the agreement. Clause 18(2) provides that the current zoning of the area - coloured blue on agreement plan A - shall not be rezoned to a zoning which is incompatible with and likely to adversely affect the company's project.

Hon Peter Foss: That land is the adjoining land and not the company's own land.

Hon TOM STEPHENS: The agreement does not restrict the landowner from seeking rezoning for any purpose which would be compatible with not only the sawmill, but also the surrounding land use. The resumption provisions of clause 18(3) are similar to the provisions of most State agreement Acts ratified since the early 1960s. I interpose to indicate that such resumption provisions in agreement Acts have never had to be invoked. Neither I nor the adviser from the Department of State Development is aware of such a case. I do not know whether members opposite can think of such circumstances, and that may allay some fears.

Hon Barry House: This is unprecedented; it does not appear in the form of other agreement Acts.

Hon TOM STEPHENS: I am advised that this clause is standard to agreement Acts.

Hon Peter Foss: You do not normally zone buffer zones.

Hon TOM STEPHENS: I will take the opportunity during the Committee stage to consider the residual concerns.

The stamp duty exemption provided for in clause 29 is not a major departure from stamp duty exemptions under State agreement Acts which provide for stamp duty exemptions for 10 years. The benefit to the State of employment and increased revenues flowing from the sawmill expansion will far outweigh the maximum $225 000 stamp duty which will be forgone by the State. The provisions in the agreement regarding the maintenance of public roads is standard to most other State agreement Acts. The funding for the maintenance of such public roads will continue to be sourced from the vehicle registration fees paid by road users. This issue was raised by Hon Bill Stretch, but this formula can be strongly argued as the best user pays system.

Wesfi's proposed expansion of the Dardanup pine log sawmill, when approved, will provide an immediate additional 60 jobs, and will enable the company to compete, as a result of an increased economy of scale, with imported timber building products. This will result in long term security of jobs and increased revenue for our local industry and for the State as a

whole. For these reasons the ratification of this agreement is important to the people of Western Australia.

I indicate to Hon Bill Stretch that as a result of the southwest road strategy approved by Cabinet on 25 May 1992 a plan will be developed to meet the road needs of the region for the next 10 years. During the preparation of the Dardanup Pine Sawlog Agreement, 16 local authorities in the southwest region were consulted about the impact of the doubling of the number of pine log haul trucks on the road in their regions. At a meeting of 19 March 1992 at Dardanup, it was proposed that the Main Roads Department, in conjunction with the Department of State Development, the South West Development Authority and the local authorities, prepare a regional road strategy over the next 10 years. This will take into account not only development in the pine timber industry, but also trends in the hardwood timber, mineral sands and tourism industries and local demand.

Hon W.N. Stretch: It is a question of funding; you know it as well as I do.

Hon TOM STEPHENS: This project and the recent mineral sands development have highlighted the fact that road issues are difficult to deal with from a social perspective. It is believed that the proposed southwest roads strategy will help alleviate the opposition to this and future projects because local government will have its respective areas of concern addressed. The Main Roads Department agrees with this proposal. A departmental working party will be created to advise the MRD on this matter. The Minister for Transport in association with the Minister for State Development is in the process of finalising the terms of reference for a proposed committee.

Hon W.N. Stretch: Is that a committee on road strategy?

Hon TOM STEPHENS: That road strategy development committee will have the opportunity of ensuring that the concerns of people in the south west, including the concerns of Hon Bill Stretch, are adequately addressed so that roads which require additional upgrading will have funding allocated through their identification in that process.

Hon W.N. Stretch: What was the committee you mentioned?

Hon TOM STEPHENS: I thought the member indicated he had read this section.

Hon W.N. Stretch: There was no mention of a committee in that.

Hon TOM STEPHENS: It was the committee which brought together a variety of south west interests. The interdepartmental working party is advising the Main Roads Department on that matter. That will involve the MRD, the State Government and the South West Development Authority and gives the opportunity for south west local authorities to participate also. A number of other concerns were expressed by members, some of which will be addressed in the Committee debate. The answer to Hon Bill Stretch's concern about who will be carting the logs is the Department of Conservation and Land Management; it will not be done by outside contractors and will occur right up to the gate.

Hon W.N. Stretch: Will it be virtually from stump to mill that will be carted by CALM?

Hon TOM STEPHENS: That is what I have been advised. The debate which has ensued about agreement Acts on recent occasions in this place indicates to me as a parliamentarian - leaving aside my role as a Government member on this occasion - the deficiencies in this process which quite frankly lead me to agree with many of the comments of Hon Peter Foss. In that context, despite the frustrations which flow from being a member of a Government that is keen to get on with the process of getting these agreements up and running and create jobs for the community, I nonetheless recognise that.

Hon Barry House: You are starting to lose the plot now.

Hon TOM STEPHENS: No; I will not. I promise.

Competing pressures exist on the issue of placing before the Parliament an opportunity for a full and healthy consideration of all the issues which make up the agreement. As members address many of the issues which are now being referred back to the Parliament and to the Commission on Government that will be established as a result of the Royal Commission, the Parliament must adopt a range of new roles in response to the admonitions of the Royal Commission, and I suppose the wider community as well. Being part of a Government that has now committed itself to the introduction of many of those reforms through, in particular, the Commission on Government, I look forward to -

Hon Barry House: That is far from Dardanup.

Hon TOM STEPHENS: Nonetheless, these are points which were addressed by Hon Peter Foss. I want to be fair to him. As well as addressing the points raised by Hon Barry House I want it recognised that I have heard Hon Peter Foss' contribution. In the future we will need to implement new ways of dealing with agreement Acts so that the process is open to more opportunity for parliamentary scrutiny and supervision of those agreement processes.

Hon W.N. Stretch: That will occur when we are in Government and you are in Opposition.

Hon TOM STEPHENS: When that event occurs in 2001 I look forward to the rest which comes from being on that side of the Chamber.

Hon N.F. Moore: You may go on record as being the shortest serving Minister.

Hon TOM STEPHENS: Even if that were the case, I assure members that one of the very short serving Ministers in the Whitlam Government has had a distinguished career in this House.

The DEPUTY PRESIDENT: Order! We have a long night ahead of us.

Hon Murray Montgomery: What about the land coloured blue and brown?

Hon TOM STEPHENS: I accept that I have missed some points. I take the opportunity of the encouragement of the Deputy President to wind up my remarks and move into the Committee debate.

Hon Barry House: Those few points are vital and require an acknowledgment that it is the company's responsibility to agree to the specific and vital points which the House has raised.

Hon TOM STEPHENS: It is the Government's expectation of, and demand upon, the company to settle these arrangements with the landowners' equitably and fairly and not look to the Government to move in any way that would be by any reasonable standard extinguishing people's property rights without fair compensation for that property. The Government has encouraged the company to strike these arrangements with landowners reasonably and fairly. That will be the continued expectation of the Government of the company's dealings with those landowners.

Hon Barry House: I take it that the Parliamentary Secretary is referring to all landowners in the blue and brown areas?

Hon TOM STEPHENS: That question was first put by Hon Murray Montgomery. I will take the opportunity between now and the Committee debate to confirm my understanding of that before I give an answer. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon J.N. Caldwell) in the Chair; Hon Tom Stephens (Parliamentary Secretary) in charge of the Bill.

Clause 1: Short title -

Hon TOM STEPHENS: I undertook to establish for myself and, in turn, relay to the Chamber what the Government expected of the company in regard to the purchase of the land shown in the blue area which is not as yet definite. That boundary may shift on the basis of the consultative environmental review. When the CER process is finalised that boundary will be determined and the question as to the purchase of land will be constrained to those properties that fall within the blue area.

Hon BARRY HOUSE: I thank the Parliamentary Secretary for his response. It is quite important that that matter has been clarified. For many of the landowners that is a welcome statement. However, it leaves some further confusion about some of the land within the brown area. Nevertheless, the Parliamentary Secretary quite clearly stated that the company had certain obligations. Its responsibility has to be by way of a fair and reasonable price in accordance with the established land valuation procedures based on highest and best use.

Earlier I demonstrated that the values from the Valuer General's Office give some credence

to the landowners' claims regarding their expectations of the potential use of those properties. I referred to the latest sale to Mr Goyder of a property immediately south of the pine mill site. I have subsequently learned that in relation to the most recent sale, a 40 hectare property along Garvey Road, previously owned by Mr Noel Harris, was listed at $250 000 and was sold for between $225 000 and $250 000. That equates to approximately $5 500 per hectare, and is a pretty significant amount. This property did not have zoning. It was still zoned as general farming land with the expectation of future subdivision. In that sense it is the same as many of the properties that have brought concerns, in particular, the property of Mr Busher and Dr Mason. The property of Mr Maher should be valued higher, and that has been acknowledged by the company. It has a higher value in relation to the others because they have the realisation of the rezoning already, not the expectation.

I appreciate the company's willingness to make a higher offer to landowners. If nothing else, that demonstrates good faith. I hope that continues in the future as it will establish an harmonious situation between the company and the residents. That is vital for the future wellbeing of the company's operation. I look forward to Wespines Industries Pty Ltd becoming a good corporate citizen, as are companies such as SCM Chemicals and Westralian Sands, which are located in the south west and which have established a good rapport with the community.

Initially the landowners would have liked the addition of an amendment to this part of the Dardanup Pine Log Sawmill Agreement Bill. One argument is that the amendment would not have addressed the landowners' concerns adequately. Another argument is that it would have conflicted with the established land valuation procedures. That is why, largely, we do not intend to proceed with that amendment. In view of the positive response from the Parliamentary Secretary and the company, we will not proceed. To some extent assurances have been given and we appreciate the importance of this buffer to the area. Therefore, I want to see the legislation pass without any further delay.

Hon MURRAY MONTGOMERY: I will return to the blue and brown areas. The Parliamentary Secretary has said that after the CER has been completed some changes could be made to the area and that the area would be subject to a buffer zone which the company will be responsible for acquiring with the help of the Government.

Hon TOM STEPHENS: The company has accepted that the buffer zone will not shrink. It is accepting that the blue area is as it has been defined in plan A that was tabled earlier. The buffer zone will be at least that size. At the end of the process, when the noise levels and other obligations are fully evaluated, it is possible that the buffer zone could grow and that other properties could fall into the blue area for which the company would consider an offer to purchase, as I understand it. Unless I am corrected by anyone in the Chamber or my adviser, that is the answer.

Hon BARRY HOUSE: Will the Parliamentary Secretary clarify what happens to the landowners who do not want their properties which are situated within the buffer zone purchased by the company?

Hon TOM STEPHENS: The company is proposing a reasonable acquisition program whereby the people wishing to sell their properties for a fair and reasonable price will have the opportunity to sell to the company at an agreed price. The landowner will not be obligated to sell his property to the company and if he wants to remain within the buffer zone he is within his rights to do so.

I have referred on several occasions to a fair and reasonable price. The Leader of the House has kept an eye on me during this debate to make sure that I do not mislead members opposite by using the wrong words.

Hon N.F. Moore: He is an expert at misleading the House.

Hon TOM STEPHENS: That is most unfair.

Hon George Cash: It is true.

Hon TOM STEPHENS: Not at all. However, the Leader of the House has drawn my attention to the difference between the words I have used and the words Hon Barry House has used. I have continually used the words "fair and reasonable price". Perhaps I should refer the Committee to the answer I gave to the question asked by Hon Barry House yesterday during questions without notice.

Hon Barry House: With heavy qualifications.

Hon TOM STEPHENS: Yes, with some qualifications, but nonetheless it is that answer which deals with the matter we are debating. My answer reads -

> The Valuer General's office advises that normal valuation practice is for land to be valued on its highest and best practical use as able to be reasonably approved by the governing bodies. It is arguable, however, whether the land in question has any potential for development in view of the ability of existing industries to object to subdivision proposals. During February 1992 the Shire of Dardanup deferred consideration of two applications to rezone land adjacent to the sawmill in response to objections by industry.

I am aware of the qualifications to which Hon Barry House referred. He has been using the words "highest and best use", but my answer refers to the "highest and best practical use". I do not know how that applies to the valuation process or the appeal processes which are available to landowners.

It is important that we recognise that in the end this issue will not be determined by members in this House, but by professional valuers using the standards set by their profession to settle disputes. In that context, the standards of professional valuers will be adopted by the company in settling these issues.

Hon PETER FOSS: I remind the Parliamentary Secretary about my question of valuation, apart from a public work. What will inspire the company to buy the land if it does not feel like doing so?

Hon TOM STEPHENS: The Minister for State Development has requested the company to proceed with the purchase of land inside the buffer zone and the company has indicated it will comply with his request.

Hon PETER FOSS: What about my question concerning a public work? It is rather interesting because normally what we say in this place cannot have an effect on an agreement. Under the Government Agreements Act, the agreement is also an amendment to the law to the extent it purports to amend the law, and the ordinary rules which apply in the Interpretation Act should also apply. Therefore, what is said in this House about the intended meaning of the Parliament when it enacts the Bill then gives effect to the amendments to the law that will be available in so far as the application of the amendment of the law is concerned. Is it the Parliamentary Secretary's understanding that the ordinary rules will apply and that the industrial development and the proposals in the agreement will be treated as a public work? If that is the case, will the Bushers' position be protected and can they be compensated on their expectation of being able to subdivide their land? There is no assurance that the land will be resumed.

Hon TOM STEPHENS: I am advised that the agreement is written in such a way to indicate that the resumption is as if it were a public work and that is the nature of the agreement.

Hon Peter Foss: So the agreement becomes a public work?

Hon TOM STEPHENS: No, the purpose is a public work.

Hon PETER FOSS: Under the Public Works Act land is normally resumed for a public work. For the purpose of valuing the land one ignores the public work, either for decrease or increase in valuation. Therefore, if there is a resumption pursuant to the amendment to the law carried out by the combination of this legislation and the Government Agreements Act, does it mean that in the case of the Bushers' property the Bushers will be able to say, "Our land will be subdivided because that is what we were told by the council. We will ignore the fact that we are not allowed to subdivide the land because of the agreement?"

Hon TOM STEPHENS: Mr Deputy Chairman, I wish to seek further advice from my adviser and I ask that you leave the Chair until the ringing of the bells.

Sitting suspended from 11.39 to 11.56 pm

Hon PETER FOSS: My concern is to make certain that the valuation to be put on the land immediately after the passing of this Bill will be no different from the valuation put on the land before it, for the purposes of resumption, leaving aside such things as "over a period of time there will be fluctuations in value". The mere passing of the Bill is not intended to

change the value put on the land for the purposes of resumption. My concern is to make certain that people such as the Bushers are not in a worse position after the passing of the Bill than they would be if, say, the land were resumed for a road, a bridge or some other public work prior to the passing of the Bill.

Hon TOM STEPHENS: I intend to obtain a precise response to the member's question. I will consult the counsel who assisted with the drafting of the legislation so that the question can be answered precisely to allow it to be interpreted as the member seeks in order to assist in any legal dispute that may flow from the answer.

Progress

Progress reported and leave given to sit again, on motion by Hon Tom Stephens (Parliamentary Secretary).

RESERVES BILL

Returned

Bill returned from the Assembly with amendments.

ACTS AMENDMENT (PARENTS OF JUVENILE OFFENDERS) BILL

Second Reading

Debate resumed from 27 May.

HON J.M. BERINSON (North Metropolitan - Attorney General) [12.01 am]: This is one of those unusual cases where it is possible to agree with much of what is said in support of a Bill, but not with the Bill itself. I would not disagree with Mr Charlton when he talks about the extent and seriousness of juvenile offending. He also has my agreement in the crucial role of parents in all aspects of their children's lives including of course those aspects which might have some connection with law enforcement issues. I do not recall Mr Charlton's saying so, but I doubt that on his part he would disagree with the proposition that one of the many complicating factors with juvenile offending is that the role of parents cannot be assumed to be always positive, beneficial and constructive. The parental factor is always crucial but can be for either good or ill and it has to be recognised and accommodated either way.

If we move from generalities to the particulars of this Bill, the scope for agreement is very much reduced. There is no real point to a new Act of the Parliament where existing legislation effectively already covers the field. There is also no real point in legislating "for goodness" so to speak. There needs to be the prospect of some useful and practical outcome and in the opinion of the Government that is missing in this case. The position has been put very well by the Law Society of Western Australia in an opinion it has forwarded to me. I understand that the opinion has also been provided to Mr Charlton and I propose to quote the opinion almost in full because it puts in a useful and succinct way the views which I would probably put at considerably greater length otherwise. The society's view is expressed as follows -

> The Society has now had an opportunity to review the legislation and in general terms the Bill appears to restate what is already contained in both the Children's Court Act and the Child Welfare Act.
>
> The provisions of Clauses 3, 4, 5 and 8 reflect existing powers or practices of the Children's Court. The amending Bill is therefore not necessary, but further there are practical problems in some parts of the drafting. For example, in Clause 3 when and of whose motion is the summons to issue? When is consideration to be given to excuses? The court presently can and does summon parents where necessary.
>
> In Clause 4 the problem of principle is that rehabilitation and detoxification can only properly occur with the cooperation and consent of the person to be treated. This is essential as it involves professionals who may be concerned about actually treating the children without this cooperation. Further there are no secure facilities for this type of treatment. The Court regularly adjourns matters for children and their parents to attend various courses and lectures. This practice can be expanded under existing powers as programmes are available. Rehabilitation is often a condition of probation and of conditional release orders.

Clause 5 adds nothing to the position in relation to summonses of all types.

Clause 6 has caused the Society the most concern. It is our view that this Section is wrong in principle and cuts across the duty of a solicitor or counsel to the client, i.e. the child. The Society strongly opposes this provision.

Usually parents are present and welcomed by professionals advising children. There are occasions, however, where there is a conflict of interest. Where that occurs, the lawyers duty remains to the client. The parents can seek independent advice if they so wish and parents present in court are usually asked if they have anything to add to the presiding judicial officer.

Clause 8 again seeks to improve upon powers that the Court already has and exercises. It is badly drafted and it would be impractical to administer and it could lead to the Court expending time in conducting detailed means inquiries and the ludicrous spectacle of parents seeking to prove that they have taught their children not to steal/drive/swear/fight etc.

Under the circumstances, therefore, the Society considers that the Bill has little to recommend it.

I have already said that the views I have quoted represent the views of the Government and indeed almost all the points that have been referred to by the Law Society have been expressed by way of departmental advice. That advice in fact has expressed additional reservations.

No-one, and I believe this includes the Law Society as well as the department, is arguing against the sentiment that is behind Mr Charlton's Bill. What is being said however is that the measures which he seeks to implement by way of this legislation are already either in operation or if not in operation are of questionable value and indeed in some cases undesirable. For that combination of reasons the Government opposes this Bill. It goes without saying that it will be the Government's continued aim to tackle this very serious and difficult problem of child offending by all available, practical measures and many of these include new initiatives only recently in place. As to the Bill however, the Government is unable to provide its support.

HON E.J. CHARLTON (Agricultural) [12.06 am]: I thank the Attorney General for his comments. I am disappointed that the Government has seen fit to reject the proposals contained in this Bill to amend the Children's Court of Western Australia Act. The sad part is that when the Attorney General referred to the input of the Law Society of Western Australia and said that what was contained in these amendments was already in place, he missed the whole point of the Bill. All these things may be in place, but the court is failing to uphold the parameters to which it has access. It simply proceeds to make decisions without, for example, parents being in court when on many occasions it is widely acknowledged and accepted that they should be.

A whole range of action can be taken in restitution and rehabilitation measures to ensure not only that the children play their part in leading a worthwhile and progressively better life, but also that the parents do not walk away from their responsibilities. The basis of the amendments to the Children's Court of Western Australia Act contained in this Bill is to ensure that the court in the final analysis has that jurisdiction. As expressed by the Attorney General, we would not want the court to be forced into a situation where it did not have the flexibility to make a decision about what was in the best interests of a child if its parent or guardian is not in the court. It is also worth noting that the Department for Community Development personnel, with many of whom I have had discussions, acknowledge the shortcomings of the current Act in dealing with children before the court.

Society has broken down and a range of actions must be taken across the board to try to overcome these problems. Until such time as society changes its ways and these children who are coming before the court have a better lifestyle that gives them some focus, a better direction and opportunities, we must resort to these actions to try to overcome the problems. That is why the Attorney General said the Government took action some months ago when it increased the penalty for repeat offenders. A great deal of speculation still remains about whether that was right or wrong. I consider that those actions were absolutely necessary because no alternative exists, and an immediate response had to be made to a situation which

had got totally out of control. The situation now exists where the courts are currently having brought before them repeat juvenile offenders simply because many of them do not have the support and guidance of their families or the opportunity for the rehabilitation which is required. For the Law Society and the Government to wipe over that matter and say that it is not an issue in which the court should be involved is a symptom of what is currently wrong in our society. People must be responsible for their actions. That is one of the ingredients which is missing in today's society in this nation. It is always somebody else's fault and somebody else always has to pick up the tab. That is why it is not right to stand idly by and allow the families who are victims of crime not to be represented in the court when it deals with the people before it.

Members are dealing with this Bill in a short period. All members would acknowledge and agree that the ramifications of the changes, if they were to be implemented, would be substantial. Obviously, as we are approaching the end of the session, members will realise that this legislation will not go any further when it reaches the other place owing to the position taken by the Government. Be that as it may. The fact is that members on this side of the House want to demonstrate in the clearest possible way to the people of this State that they are not content to sit idly by and allow the Children's Court of Western Australia Act and the Child Welfare Act to continue in the way they have. They do not want to see the demise of those families or so many of those offending children continuing to front up in court and not have recognition paid to them.

If these amendments were enacted members could expect to see fewer parents being the sort who, when told by the police or people from The Department for Community Services that their child is going before the court, respond with, "What do you expect us to do about it?" We want to ensure that those people meet their responsibilities to their children and, equally importantly, to the rest of society. The National Party calls on members, regardless of the fact that the Government has not seen fit to support this Bill, to give it the support it deserves.

Division

Question put and a division taken with the following result -

Ayes (15)		
Hon J.N. Caldwell	Hon Barry House	Hon Derrick Tomlinson
Hon George Cash	Hon P.H. Lockyer	Hon D.J. Wordsworth
Hon E.J. Charlton	Hon Murray Montgomery	Hon Margaret McAleer
Hon Reg Davies	Hon N.F. Moore	*(Teller)*
Hon Max Evans	Hon Muriel Patterson	
Hon Peter Foss	Hon R.G. Pike	
Noes (13)		
Hon J.M. Berinson	Hon Kay Hallahan	Hon Tom Stephens
Hon T.G. Butler	Hon Tom Helm	Hon Bob Thomas
Hon Kim Chance	Hon B.L. Jones	Hon Fred McKenzie
Hon Cheryl Davenport	Hon Mark Nevill	*(Teller)*
Hon John Halden	Hon Sam Piantadosi	

Pairs

Hon P.G. Pendal	Hon Graham Edwards
Hon W.N. Stretch	Hon Doug Wenn

Question thus passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon D.J. Wordsworth) in the Chair; Hon E.J. Charlton in charge of the Bill.

Clauses 1 to 7 put and passed.

Clause 8 -

Hon J.M. BERINSON: I do not propose to elaborate on the objections to which I have referred in general in the second reading debate. However, I would not like absence of argument to be understood as any agreement by Government that the detailed provisions of the Act are in a desirable form. I put that as a separate argument from the general reservations.

Hon George Cash: Are you speaking to clause 8?

Hon J.M. BERINSON: No, I am speaking to the group of clauses that have been called, collectively. I put this on the record separately from the more general objections which I have previously registered to the need for a Bill with these provisions. There are very substantial difficulties in practice. However, I believe, given the circumstances to which Mr Charlton has already referred, there will be no practical purpose at this point in engaging in lengthy discussion or argument on them.

Clause 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 E.J. Charlton, and transmitted to the Assembly.

House adjourned at 12.22 am (Thursday)

QUESTIONS ON NOTICE

REDUNDANCY PACKAGES - GOVERNMENT DEPARTMENTS
Minister for Transport Portfolios

740. Hon MAX EVANS to the Minister for Police representing the Minister for Transport:

With respect to the various departments under the control of the Minister's portfolios -

(1) How many staff were made redundant under the voluntary severance scheme in 1991-92?

(2) How much was the department's total payout for -

(a) redundancy pay;

(b) leave payments; and

(c) superannuation?

(3) How many of these vacancies had been filled by 30 June 1992?

(4) How many of these vacancies have been filled since 1 July 1992 to date?

(5) How many of these vacancies is it expected will be filled within the next 12 months?

(6) How many staff, paid under the voluntary severance scheme, are now employed or paid as consultants directly or indirectly as an employee of a professional or business firm?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following reply -

See the Premier's response to question 732.

SWAN BREWERY SITE - BASE MATERIAL DUMPING

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

Where has the base material from the brewery site excavations been dumped?

Hon KAY HALLAHAN replied:

The Minister for Heritage has provided the following reply -

I am unaware of where the base material from the brewery site excavations has been dumped.

ZOO, PERTH - OLD ZOOKEEPER'S COTTAGE
Heritage Council Assessment

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

With reference to my request during the adjournment debate of 15 September 1992 for the Government to consider the heritage value of the old zookeeper's cottage in the south east corner of the zoo grounds -

(1) Has the 1903 cottage been assessed by the Heritage Council?

(2) If not, why has it not been, given it is a State-owned property?

(3) If the building is assessed as having heritage value, will the Minister agree to investigate the possibility of having the building relocated into Mends Street on Government property between the police station and the post office?

(4) Will the Government undertake to discuss such a proposal with the South Perth City Council and the South Perth Historical Society?

Hon KAY HALLAHAN replied:

The Minister for Heritage has provided the following reply -

(1) No, this cottage has not yet been formally assessed.

(2) The Heritage Council is assessing State owned properties. As there is a large number of these properties available, resources have been allocated initially to assessment of properties of established cultural heritage significance. It is not listed on the Register of the National Estate or classified by the National Trust of Australia (WA).

(3)-(4)
Yes.

NULLARBOR PLAIN - WORLD HERITAGE LISTING

802. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

(1) When will the Minister release the report on suitability of the Nullarbor Plain for World Heritage listing?

(2) Is there any evidence suggesting that World Heritage listing in Australia is a failure?

(3) If so, would the Minister provide all relevant details?

(4) What features does the Minister anticipate will be protected by listing?

(5) Why cannot these features be protected under State law?

(6) Is the Government planning to delay a decision until after the Federal and State elections?

(7) Is the Minister aware that there is little or no support for World Heritage listing of the Nullarbor, either Federally or State?

(8) Is the Minister aware of the submission to the New South Wales Government by the landholders in the Willandra Lakes area?

(9) When will the Government seek to relieve those persons on the Nullarbor of the stress and worry concerning their investment?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) The report the member refers to is the property of the Commonwealth Department of Arts, Sport, the Environment and Territories and as such release of the report is a decision that lies with the Commonwealth.

(2) That is a matter of opinion.

(3) Not applicable.

(4) Natural features such as karst - a scientific description which is essentially based on the limestone sheet and its attendant natural features such as the large caves.

(5) The Commonwealth's World Heritage Properties Conservation Act 1983 is applicable to World Heritage features. Management and tenure of lands within, and area subject to, World Heritage listing remain the responsibility of State Governments.

(6)-(7), (9)
The Government has undertaken to take the views of Nullarbor residents into account in deciding its response to the Commonwealth World Heritage listing proposal.

(8) Yes.

WASTE DISPOSAL - HIGH TEMPERATURE INCINERATOR, WELSHPOOL

807. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

With reference to a high temperature incinerator operation located on the corner of Felspar and Welshpool Roads, Welshpool -

(1) Has the Minister been approached about residents' concerns regarding various matters related to this operation, including waste burning at night?

(2) What action was undertaken to investigate these concerns?

(3) Is he aware that during incineration, smoke allegedly blows constantly into the homes of nearby residents, resulting in smoke and odour nuisance for them?

(4) Is night incineration, by this operation allowed?

(5) What can be done to alleviate the smoke nuisance, from this operation, for residents close by?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) Yes, two letters have been received and replies sent.

(2) Site inspections have been undertaken by senior officers from the Environmental Protection Authority and the Health Department of Western Australia. Senior EPA officers have had several telephone discussions with residents.

(3) No, the incinerator does not "blow(s) smoke constantly into the homes of nearby residents".

(4) The EPA is informed that the incinerator does not operate beyond 1900 hours.

(5) The company is at present designing emission scrubbing equipment.

TOTALISATOR AGENCY BOARD - MANJIMUP AGENCY CLOSURE

813. Hon GEORGE CASH to the Minister for Police representing the Minister for Racing and Gaming:

(1) Is it intended to close the full time TAB agency in Manjimup, and if so, for what reasons?

(2) How long has the agency been operating in Manjimup?

(3) Where is it intended to relocate the agency?

(4) When will the closure and relocation occur?

(5) What compensation is available to the current owner/operators of the Manjimup TAB agency?

Hon GRAHAM EDWARDS replied:

The Minister for Racing and Gaming has provided the following response -

(1) Yes. For commercial reasons.

(2) The TAB established an agency in Manjimup in the 1963-64 financial year.

(3) In the Manjimup Hotel.

(4) The existing agency closed at the end of business on Saturday 7 November 1992 and the Pubtab agency commenced operations in the Manjimup Hotel on Monday 9 November 1992.

(5) None. The franchise on this agency expired on 31 July 1991 and the agents were aware from 1989 that it would not be extended.

NATIONAL PARKS - WANDOO WOODLANDS ESTABLISHMENT PROMISE

817. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

(1) Did the State Government promise prior to the 1989 state elections to establish a national park in the wandoo woodlands?

(2) Has this park been established?

(3) If not, when will it be established?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) As far as I am aware, no. The member is probably referring to an area to be known as the Wandoo Conservation Park. This has always been proposed as a conservation park, the new reserve category approved by Parliament in the CALM Act amendments last year, rather than national park.

(2) No.

(3) The area has to be revoked as State forest and reserved as conservation park. I am pleased to report that papers for revocation of a significant part of the State forest in question have been almost completed and should be introduced into Parliament shortly. It normally takes two parliamentary sessions to complete complicated reservations of this kind.

ROADS - BUSSELL HIGHWAY, BYPASSING LUDLOW TUART FOREST CONSTRUCTION

823. Hon BARRY HOUSE to the Minister for Police representing the Minister for Transport:

(1) When will the section of Bussell Highway, bypassing the Ludlow tuart forest, be commenced and completed?

(2) Will it be a two lane highway only?

(3) If so, will there be passing lanes?

(4) When will this section be upgraded to four lanes?

(5) Will BHP-MDL Ltd be making a financial contribution to this section of road?

(6) If so, how much?

(7) Was the option of constructing passing lanes on the existing Bussell Highway through the Ludlow tuart forest considered?

(8) If so, what was the estimated cost of this option?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Construction will start mid-1993 and be completed in mid-1994.

(2)-(3), (7)
Yes.

(4) Not yet determined.

(5)-(6)
No.

(8) The option was not acceptable for environmental reasons and was not costed.

RAILWAYS - NORTHERN SUBURBS TRANSIT SYSTEM
Government Sponsored Poll, Sorrento

827. Hon P.G. PENDAL to the Leader of the House representing the Premier:

(1) Was a Government sponsored poll conducted in the suburb of Sorrento early in September in which all respondents were asked about the northern suburbs railway?

(2) When did the Government commission to conduct the poll?

(3) What was the cost to taxpayers?

Hon J.M. BERINSON replied:

(1) Transperth commissioned a market research survey to be conducted throughout the northern suburbs, including Sorrento. The fieldwork took place during September. The objective of the research was to determine likely usage of the proposed new bus network and rail system in order to assist in planning services to meet demand.

(2) Transperth commissioned the research on 13 August 1992.

(3) $33 410 paid by Transperth.

FITZGERALD RIVER NATIONAL PARK MANAGEMENT PLAN - RESERVE VESTINGS IN NATIONAL PARKS AND NATURE CONSERVATION AUTHORITY RECOMMENDATION

833. Hon P.G. PENDAL to the Minister for Education representing the Minister for the Environment:

(1) Is it correct that the Fitzgerald River National Park management plan (gazetted in June 1991) recommends that a number of reserves be vested in the National Parks and Nature Conservation Authority?

(2) If so, are reserves C 5055 and C 32666 (map reference series R712, sheet 2729-11) among those recommended?

(3) When was this recommendation first made?

(4) What is the progress, to date, of these vesting recommendations?

(5) When will these reserve vestings be finalised?

(6) What are the reasons for the delay in finalising the vestings?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1)-(2) Yes.

(3) The Department of Conservation and Land Management released this proposal for public comment in the draft south coastal regional management plan in April 1989.

(4)-(6) These changes have not yet been implemented. They are among 27 relatively small blocks recommended for incorporation into the national park, at varying degrees of difficulty. Some blocks have already been acted upon. CALM has been developing an order of priority for action over the 10 year life of the plan. CALM has also been made aware through recent correspondence that some people consider C5055 and C32666 should be given higher priority and will attempt to meet this request as soon as possible.

POLICE - AIRCRAFT CONTRACT, NESTER PTY LTD
Hourly Rates

868. Hon GEORGE CASH to the Minister for Education representing the Minister for Services:

(1) What is the hourly rate charged to the Police Force for the use of the aircraft owned and operated by Nester Pty Ltd?

(2) What is the hourly rate required to be paid by the Government for the use of the aircraft owned and operated by Nester Pty Ltd and contracted to the Government?

Hon KAY HALLAHAN replied:

(1) Standard usage - $380 per hour
Emergency usage - $2 150 per hour

(2) $2 098.42, based on 70 hours per month.

TAMMIN LANDCARE EDUCATION CENTRE - FUNDING

870. Hon BARRY HOUSE to the Minister for Education:

In view of the fact that funding for the Landcare Education Officer, who is attached to the Tammin Landcare Education Centre, has been provided from the national soil conservation program but runs out at the end of this year: What steps will the Minister take to ensure that this very important educational position remains funded for next year and into the future?

Hon KAY HALLAHAN replied:

The position will continue during 1993 and 1994.

ENDANGERED SPECIES - COMMONWEALTH ENDANGERED SPECIES PROTECTION BILL

876. Hon GEORGE CASH to the Minister for Education representing the Minister for the Environment:

(1) Is the Minister aware of the provisions of the Commonwealth Endangered Species Protection Bill?

(2) What initiatives is the Minister taking to ensure proper consultation and debate occurs to determine the best means of protecting our endangered species without risking economic growth?

(3) In view of the potential adverse effect on the State is the Minister aware that the Commonwealth legislation provides for third parties to seek injunctions in the Federal Court against Ministers, their departments, projects and any endangered species recovery plans, thus providing the potential to stall much needed resource development and job creation activities in Western Australia?

(4) Does the legislation apply to all Commonwealth lands and marine areas and decisions by all Commonwealth Ministers and departments?

Hon KAY HALLAHAN replied:

The Minister for the Environment has provided the following reply -

(1) Yes.

(2) The previous Minister for the Environment made direct representations to the Commonwealth Minister for the Environment expressing concerns on the effect of this proposed legislation. Concerns raised with him by representatives of the farming sector and resource based industries have also been brought to the attention of the Commonwealth Minister.

(3) On 4 November 1992 the Endangered Species Bill 1992 was introduced into the House of Representatives. It provides that applications can be made to the Federal Court for the grant of an injunction to restrain the Commonwealth Minister or Director of National Parks and Wildlife from engaging in conduct or where they propose to engage in conduct that is in contravention of the proposed Act. Similarly, an injunction can be granted where the Minister or director refuse or fail to do something where the refusal or failure to do something would be in contravention of the proposed Act.

(4) It is the Minister's understanding that obligations in the proposed Act to protect species and comply with recovery and threat abatement plans, conservation agreements, and conservation orders will apply.

RAILWAYS - NORTHERN SUBURBS TRANSIT SYSTEM
Additional Borrowings and Interest Rate

895. Hon GEORGE CASH to the Minister for Police representing the Minister for Transport:

With reference to question on notice 1075 of 1991 -

(1) Has it been necessary to borrow additional funds over that indicated in the answer to this question?

(2) Is the interest rate still at 12.5 per cent or has it been possible to secure a lower rate?

(3) Will the interest payments on the borrowings still approximate $4 million per month; if not, what will the figure be?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following response -

(1) Yes.

(2) The Treasury Corporation marginal lending rate to Westrail for the September 1992 quarter was approximately 9.5 per cent.

(3) The $4 million per month referred to previously related to the estimated overall subsidy required for the rail link and not to interest payments. Interest payments on the infrastructure borrowings are expected to be approximately $1.9 million per month by the completion of the project.

EXMOUTH VISITORS' CENTRE - FUNDS ALLOCATED FROM HOUSE SALES

946. Hon P.H. LOCKYER to Hon Tom Stephens representing the Minister for State Development:

(1) Have funds been allocated to the Exmouth visitors' centre from the sale of houses in Exmouth?

(2) If so, what funds have been allocated?

(3) What will these funds be used for?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1) There is no Exmouth visitors' centre. However, there is the Milyering Visitors' Centre located in the Cape Range National Park.

(2) To date no funds have been allocated to the Milyering Visitors' Centre.

(3) Not applicable.

PILBARA DEVELOPMENT AUTHORITY - NEWMAN, OFFICER PLACEMENT

947. Hon P.H. LOCKYER to the Parliamentary Secretary, Hon Tom Stephens, representing the Minister for State Development:

(1) Is it the intention of the Pilbara Development Authority to place an officer in Newman?

(2) If not, why not?

Hon TOM STEPHENS replied:

The Minister for State Development has provided the following reply -

(1) Yes.

(2) Not applicable.

RETIREMENT COMPLEX - UNITS LEASED BY RESIDENTS
Residents' Committee, Incorporation Benefits

961. Hon P.G. PENDAL to the Minister for Education representing the Minister for Consumer Affairs:

I refer to a retirement complex where residents lease their units and ask -

(1) Are there benefits in a residents' committee from such a complex becoming an incorporated body?

(2) If so, what are those benefits?

Hon KAY HALLAHAN replied:

(1)-(2)

I assume that the question is not referring to residents' committees which are required to be established under the Retirement Villages Act 1992, or the Code of Fair Practice which relates to this legislation. Such bodies would have statutory protection and would thus not require incorporation. Therefore it is not clear from the question what the purpose and function of such a residents' committee might be. This would need to be explained before a categorical answer to the question could be given.

In general, the incorporation of a group or association brings some benefits. For example, incorporation can limit the liability of members for the debts and obligations of the organisation. However, the precise benefits or otherwise of incorporation for any particular group or its members could only be determined after detailed examination of the whole circumstances. This is a matter on which specialist legal or accounting advice appropriate to the circumstances would be required.

QUESTIONS WITHOUT NOTICE

CORRECTIVE SERVICES, DEPARTMENT OF - BUILDING SERVICES DIVISION
Report, Current Status

648. Hon GEORGE CASH to the Minister for Corrective Services:

What is the current status of the report into the building services division of the Department of Corrective Services, and when may we expect the report to be tabled?

Hon J.M. BERINSON replied:

My last inquiry on this matter was either Monday or Tuesday of this week and that was through my office to the Public Service Commission. The advice which I have is that the Public Service Commission is working at what I think they called "full bore". If that was not their precise term it was words to that effect. I understand from the advice of the Public Service Commission that it will be in a position to provide me with a report some time next week, although the commission is reserving the position as to whether that will constitute a final report from its point of view.

UNIVERSITY OF WESTERN AUSTRALIA - GUILD COUNCIL ELECTIONS

649. Hon PETER FOSS to the Minister for Education:

Is the Minister aware that the electoral tribunal of the Guild of Undergraduates of the University of Western Australia has declared the election conducted by the Electoral Commissioner for the Guild Council to be void and in doing so has -

(1) left the guild without a council until such time as another election has been held; and

(2) disagreed with advice given to the Electoral Commissioner by the Crown Law Department?

Hon KAY HALLAHAN replied:

I suggest that Hon Peter Foss put his question on notice and I will have it followed up.

SCHOOLS - GOVERNMENT
Fees Authorisation

650. Hon MURIEL PATTERSON to the Minister for Education:

Some notice of this question was given to the Minister.

(1) Who authorises State school student fees?

(2) Do school councils have the authority to raise student fees, or is it a recommendation?

(3) Is it compulsory for parents to pay the fee; and

(4) What action will be taken if the fee is not paid?

Hon KAY HALLAHAN replied:

(1) The Minister authorises school fees in Government secondary schools.

(2) Neither school councils, school decision making groups nor parents and citizens' associations have the authority to raise fees.

(3) Yes.

(4) If fees are not paid, the Minister or a person authorised by the Minister may recover the fees by plaint and summons in the Local Court or before a court of summary jurisdiction.

PROBATE OFFICE - GUARDIANSHIP BOARD
Business Hours

651. Hon MAX EVANS to the Attorney General:

Earlier this month I asked a question regarding the business hours of the Probate Office and the Guardianship Board and the Attorney General said he would make inquiries. Has he received an answer?

Hon J.M. BERINSON replied:

I did in fact make some inquiries; although I am bound to say that the outcome of that is hardly to go further than confirming information that Mr Evans provided in the first place. Nonetheless, I am advised that the position is as follows:

Guardianship Board: The hours of the board are 9.00 am to 4.00 pm with staff on duty during the lunch period. These hours are displayed on a sign outside the office of the 14th floor of the National Mutual building. These hours are fixed by the board and are presently seen as being appropriate. The 4.00 pm closing is necessary to enable finalisation of inquiries within a reasonable time. For example, it is often the case that an inquirer/applicant can take up to an hour to process. If the counter were open to 5.00 pm, it is likely the officer attending the inquiry would still be in attendance at 6.00 pm. Prior to 9.00 am counter inquiry staff are performing tasks associated with applications lodged late the afternoon before and processing correspondence.

Probate Office: Order 68 rule 6 of the rules of the Supreme Court provide -

> The office hours of the several offices of the Court shall be from 10 am to 4 pm; provided that the Chief Justice may direct that the offices or any office of the court shall not be open between 1 and 2 pm.

A direction has been given in the past by a former Chief Justice and such direction has not been changed or countermanded. The Probate Office forms one of the "several offices of the Court". The court has requested a review of the Administration Act and it is understood that the Crown Law Department will endeavour to have the matter included in the legislative agenda for the

New Year. This will be followed by a complete review of the non-contentious probate rules. In addition a program to computerise the Probate Office has commenced. All of these matters will require a review of the operations of the Probate Office including such matters as staff resources, office hours, and practice and procedure.

Although I acknowledge that the hours of these two offices would not be regarded as regular office hours in terms of general public service, I have not to my recollection had any complaints brought to my attention about any inadequacy of service. The situation so far as I can judge it is that the clients of these offices are well aware of the hours.

Hon Max Evans: I was not.

Hon J.M. BERINSON: I will rephrase that. The clients of the Probate Office, other than Mr Evans, are reasonably well aware of the hours and that no doubt accommodates them. In respect of the Guardianship Board I suggest that the hours of 9.00 am to 4.00 pm would be regarded on any account as reasonable, but as I have indicated the Probate Office hours will be subject to review.

SMITH, SERGEANT DESMOND - DETHRIDGE CASE
Minister Influenced by Relationship Claims

652. Hon GARRY KELLY to the Minister for Police:

Is the Minister aware of claims that he has taken a strong stance on former police officer Des Smith because the Minister's wife and Mr Dethridge are related?

Hon GRAHAM EDWARDS replied:

I am aware of those claims, and I thank Hon Garry Kelly for asking the question. The claim is untrue in that my wife is not related to Mr Dethridge at all; but I understand that I have some distant relationship to Mr Dethridge. It is a relationship I have been aware of although I have never met the man; he is a stranger to me. My mother advises me that Mr Dethridge is indeed a third cousin. Any suggestion that I would be influenced in this matter because of that relationship is quite ludicrous. I put that on the public record for all to see.

DETHRIDGE CASE - COMMISSIONER OF POLICE'S FIRST AWARENESS

653. Hon D.J. WORDSWORTH to the Minister for Police:

Some notice has been given of this question.

(1) When did the Commissioner of Police become aware of -

(a) the Dethridge incident; and

(b) the release of the video showing that incident?

(2) When did the commissioner, if at all, first discuss -

(a) the Dethridge case; or

(b) the release of the video with the Minister for Police?

Hon GRAHAM EDWARDS replied:

(1)-(2)

This matter requires some detail to be checked and I ask that that question be placed on notice.

POLICE - MERIT INCENTIVE DRIVER TRAINING AND REWARD SCHEME PROPOSAL

654. Hon BARRY HOUSE to the Minister for Police:

(1) Can the Minister recall being handed a document titled "Proposed merit incentive driver training and reward scheme" by Mr Murray Buchan in Bunbury during the road safety strategy meeting on 10 September this year?

(2) Does he agree with the points raised in the proposal?

(3) What action has the Minister taken since that date to introduce a merit incentive and driver training and reward scheme?

Hon GRAHAM EDWARDS replied:

(1)-(3)

I think I can recall the document to which the member refers; I will confirm later whether it is the same document. I had a discussion with Mr Buchan on the matter and I believe I indicated to him that I would refer the matter to the Traffic Board for its consideration. I may even have done that on the day. If the member provides me with the details I will pursue this matter.

Hon Barry House: I am sure the Minister recalls correctly. What response, if any, has he received from the Traffic Board and what else does he intend to do with the proposal?

Hon GRAHAM EDWARDS: That will depend on what advice the Government receives from the Traffic Board. I would prefer to rely on my memory rather than the member's certainty of it. I think that on the day subsequent to that a number of submissions were presented. Submissions were due to close at the end of October, although I would need to check that date. The Traffic Board is currently pursuing those matters quite actively. For instance, last week I had an opportunity to meet with Daryl Hocking who presented a paper at the forum. He was joined by various members of Apex from Mt Barker, Kojonup and Katanning who provided a balanced verbal presentation to the Traffic Board in addition to the written submission they had made. Those matters are all being actively considered. The purpose of the day was to highlight the discussion paper that was released and to encourage people to respond to it. The Government indicated on the day the timetable for the closure of submissions and when they would be finalised. Every person who has made a submission will be contacted. If the particular person to whom the member is referring has some concerns and the member can ascertain what they are, I will respond.

SCHOOLS - MT TARCOOLA PRIMARY
Overcrowding; Inadequate Sewerage Facilities

655. Hon KIM CHANCE to the Minister for Education:

Some notice has been given of this question.

(1) Is the Minister aware that overcrowded conditions at the Mt Tarcoola Primary School have resulted in the overloading of the designed capacity of essential services at the school?

(2) Is the Minister aware that sewerage facilities have failed at the school in the current year and caused sewerage flows in the school grounds?

(3) Can the Minister inform the House what action will be taken to correct the problems?

Hon KAY HALLAHAN replied:

I thank the member for some notice of this question.

(1)-(3)

Since June 1991 the Building Management Authority has received fault calls from the school about leaking taps to its cold water drinking unit on eight occasions. Accordingly, they were attended to as and when required. In June 1992 the BMA cleared tree roots from the sewerage system as a consequence of blocked taps in the toilet block. More recently, soakwells were installed adjacent to the canteen to control storm water drainage.

Discussions with the principal have indicated that the school's parents and citizens' association is agitated that the school was not included in the 1992-93 capital works program. It also considers that the school's toilet

facilities are inadequate and do not meet current standards. The school's current enrolment is 408 primary students. Based on the public buildings regulation to which the ministry adheres, the school requires 19 fixtures. Although the facilities for boys are adequate, the requirement for girls currently falls one short, and will possibly be two short in 1993 if enrolments increase.

The ministry will continue to monitor the situation and, if required, a temporary toilet facility will be provided early in the 1993 school year. It should also be noted that the concern has not previously been raised with the ministry. I suggest to the member that he convey that information to the people who have raised it with him. If further attention is required I will arrange for that to occur.

WITTENOOM - REPORT OF THE INQUIRY INTO ASBESTOS ISSUES AT WITTENOOM

Professor Ferguson's Views

656. Hon MARK NEVILL to the Minister for Police representing the Minister for North-West:

Some prior notice has been given of this question.

(1) Is the Minister aware of a visit to Perth on 25 and 26 November 1992 of Emeritus Professor David Ferguson at the invitation of the Ministry of Education?

(2) Given that Professor Ferguson is a world authority on asbestos related health and safety issues, and has been sent a copy of the Report of the Inquiry into Asbestos Issues at Wittenoom, will the Minister seek his views on that report?

(3) If not, why not?

Hon GRAHAM EDWARDS replied:

I thank the member for some prior notice of this question.

(1) Yes.

(2) No.

(3) The Government decision on Wittenoom has already been made, taking into account the Report of the Inquiry into Asbestos Issues at Wittenoom.

POLICE - COUNTRY STATIONS

Manpower Maintenance and Replacements; Clerical Assistants Consideration

657. Hon MARGARET McALEER to the Minister for Police:

(1) Will the Minister ensure that the number of police in country stations is kept up to strength at all times, particularly over the holiday period?

(2) Can the Minister ensure that all police taking annual or sick leave are replaced for that period?

(3) Will the Minister consider placing clerical assistants in country police stations to assist the police in their duties?

Hon GRAHAM EDWARDS replied:

(1)-(2) I will refer these matters to the Commissioner of Police.

(3) It is already the practice in a couple of stations to have clerical assistants appointed in the manner the member has suggested.

EDUCATION - VICTORIAN SYSTEM CHANGES

658. Hon T.G. BUTLER to the Minister for Education:

Some notice has been given of this question. Can the Minister provide any information on recent changes to the Victorian education system?

Hon KAY HALLAHAN replied:

I thank the honourable member for providing some notice of this question.

Opposition members interjected.

Hon KAY HALLAHAN: Are we hearing some sensitive noises from members opposite?

Hon N.F. Moore: What has the matter of Victorian education to do with the Minister's portfolio?

Hon KAY HALLAHAN: I understand that this matter has received some media coverage. Certainly, the Victorian education budget has suffered a cut of $86 million.

Hon Max Evans: What is the percentage of the total?

Hon KAY HALLAHAN: Fifty-five schools - 30 primary and 25 secondary - will be closed, and up to 7 000 students will be affected. That is one aspect of an appalling attack on the public education system and the conditions of teachers in that State. I understand that the teaching force will be reduced by at least 2 500 and that the figure for all cleaners to be replaced by contractors is about 3 800.

Point of Order

Hon N.F. MOORE: Mr President, would you rule that the Minister is not answering a legitimate question because the Victorian education system has nothing to do with her portfolio?

The PRESIDENT: Order! I was about to advise the Minister that she knows better because I have pointed this out on previous occasions. She cannot have it both ways and she cannot be choosy about what comes within her portfolio. I let her go because I felt she might be going to tell us something interesting.

Hon Kay Hallahan: I thought I was. I have more.

Hon N.F. Moore: Tell us how much debt Labor left.

The PRESIDENT: Order! Do not let us get onto that. I was about to stop the Minister without the member having to raise a point of order. However, because he has raised it I must rule that the question does not come within the confines of the Minister's portfolio. If the member who asked it sees me later, I can perhaps help him so that it will.

Questions without Notice Resumed

DETHRIDGE CASE - PREMIER'S FIRST AWARENESS

659. Hon D.J. WORDSWORTH to the Leader of the House:

I have given some notice of this question to the Leader of the House.

(1) When did the Premier first become aware of -

(a) the Dethridge incident; and,

(b) the release of the video showing the Dethridge incident?

(2) When did she, if at all, first discuss either the Dethridge incident or the release of the video with the Minister for Police?

Hon J.M. BERINSON replied:

(1)-(2) I thank the member for some advance notice of the question. The Premier has provided the following response -

I ask that the question be put on notice to allow for the examination of any relevant records.

TIPPERARY PTY LTD - ACTION AGAINST STATE

660. Hon PETER FOSS to the Attorney General:

Is the Attorney General aware of the commencement or threatened

commencement of any action against the State or any instrumentality of the State by Tipperary Pty Ltd?

Hon J.M. BERINSON replied:

Will Mr Foss elaborate and give me some sort of timetable? Is he asking about any past initiation of action or something current?

Hon Peter Foss: Recent.

Hon J.M. BERINSON: Nothing has been brought to my attention recently. However, I would prefer to leave the question on the basis that I would like to check it further. One of the problems that I have is that my office, in a number of areas, receives writs in a formal way and these are forwarded to the Crown Law Department without reference to me. I have no memory of recent action. Perhaps I should vary my former comment and say that, if the member would like me to take the inquiry further, it would be helpful if he put his question on notice.

CORRECTIVE SERVICES, DEPARTMENT OF - BUILDING SERVICES DIVISION

Director of Public Prosecutions, Criminal Proceedings Initiation

661. Hon GEORGE CASH to the Attorney General:

Further to question without notice 627 of 12 November 1992, the Auditor General in his annual report to the Parliament of 12 November 1992 reported in part serious breaches of the State Supply Commission Act and the Financial Administration and Audit Act relative to the Department of Corrective Services. The Minister should be aware that a breach of Statute law is an offence under section 177 of the Criminal Code and in this case sections 178, 136 and 135 are relevant. Has the Minister instructed the Director of Public Prosecutions to initiate criminal proceedings against the relevant Public Service officers; if not, why not?

Hon J.M. BERINSON replied:

I thank the Leader of the Opposition for advance notice of the question. No, I have not instructed the Director of Public Prosecutions to initiate criminal proceedings. Among other reasons, that is because I am specifically precluded by the Act from doing so. I have not referred the matter for the Director of Public Prosecutions' consideration either. I do not read the Auditor General's comments as requiring more at this stage than the further examination of the issues which is already under way.

BLOOD ALCOHOL LEVELS - 0.05 LEGISLATION

Regulations Introduction Date and Consultations

662. Hon GEORGE CASH to the Minister for Police:

I refer to the questions that I asked on Tuesday, 1 September 1992 and in particular questions 354 and 355 which deal with the blood alcohol level 0.05 legislation. In those questions I asked the Minister if he would advise the House when the necessary regulations concerning 0.05 legislation would be introduced into the House. The Minister indicated he would consult with the Leader of the National Party and me prior to the introduction of those regulations. When will those regulations be introduced and when will we be consulted on the matter?

Hon GRAHAM EDWARDS replied:

I do not have a firm date for their introduction, but expect them to be introduced this year. I ask the member to leave the question with me and I will pursue the matter and endeavour to speak to him and Hon Eric Charlton about it before we get up this week or early next week.

TIPPERARY PTY LTD - ACTION AGAINST STATE

663. Hon PETER FOSS to the Attorney General:

Is the Attorney General aware of any longer standing threat of action against the State or any of its instrumentalities by Tipperary Pty Ltd?

Hon J.M. BERINSON replied:

I ask that this question be placed on notice also.

EDUCATION, MINISTRY OF - LEARNING NETWORK CENTRES, KIMBERLEY AND NARROGIN
Government Funding

664. Hon MARGARET McALEER to the Minister for Education:

Does the Government intend funding the three learning network centres in the Kimberley after 10 June 1993 and the Narrogin centre after 12 April 1993?

Hon KAY HALLAHAN replied:

I think the member should put her question on notice.

PRISONS - SECURITY PRISON, NORTHERN SUBURBS PROPOSAL

665. Hon GEORGE CASH to the Minister for Corrective Services:

Some notice of the question has been given to the Minister.

(1) When does the Government plan to build a security prison in the northern suburbs?

(2) Have the plans been drawn and agreed to for this facility?

(3) If so, how many persons will be accommodated and what category of prisoners will the prison cater for?

(4) What is the estimated cost of the facility?

(5) When does the Minister anticipate that construction of that facility will be commenced and completed?

Hon J.M. BERINSON replied:

I have no record of receiving those questions. However, I think I could probably respond to them if I were given a copy of them. Is the Leader of the Opposition referring to the northern suburbs?

Hon N.F. Moore: Yes, your electorate.

Hon J.M. BERINSON: The answer is as follows -

(1) The Government has no such proposal under consideration.

(2)-(5)
Not applicable.

Hon George Cash: Perhaps you could indicate the northern metropolitan area if the northern suburbs is causing problems.

POLICE - PERSONS TAKEN TO POLICE LOCKUPS AND STATIONS, RIGHTS TO MAKE TELEPHONE CALLS

666. Hon GEORGE CASH to the Minister for Police:

What rights do persons taken to police stations and lockups and charged with offences have to make telephone calls?

Hon GRAHAM EDWARDS replied:

I am happy to provide the member with a copy of the lockup manual which was released earlier this year, or even late last year. In that manual is the commissioner's direction that a telephone call is permitted provided it is not in circumstances in which it is considered it may hinder the current inquiry.

CRIME STATISTICS - PUBLIC RELEASE, POLICY CHANGE

667. Hon GEORGE CASH to the Minister for Police:

(1) Are crime statistics made available to journalists and/or other interested members of the public?

(2) Has there been any change in police policy in the release of those statistics?

(3) If so, when was the policy changed and for what reason?

Hon GRAHAM EDWARDS replied:

(1) Yes. If the member reads some of the community newspapers he will find that community policing officers often refer to crime statistics.

(2)-(3)

I am not aware of any change of policy, but if the member will put that part of the question on notice I will respond to him.

ATTORNEY GENERAL - MINISTERIAL OFFICE
Contracted Officers, Employment Statistics

668. Hon J.M. BERINSON:

Yesterday in question 635 Hon Peter Foss asked me how many people were employed in my ministerial office pursuant to section 74 of the Constitution Act. I replied -

> I think I am right in saying that there is one at the most. If there is any doubt about that I will check the position and correct it if necessary.

I have checked, as I undertook to do, and I am advised by my office that I was out by one; there are no such contracted officers in my ministerial office.