

Legislative Council

Thursday, 21 June 1990

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

LEGISLATIVE COUNCIL - CHANNEL 7

Television Footage

THE PRESIDENT : I draw the attention of the House to the fact that Channel 7 has asked to obtain some file footage for its newsroom. I normally warn honourable members the day before, but I was not able to do so on this occasion, so I did seek the approval of the leaders of the three parties and they consented. If members want to look their best, now is the time.

MINISTERIAL STATEMENT - SMITH, MR ROBERT

Perjury Charge - Select Committee of Privilege

Debate resumed from 19 June

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [2.35 pm] - by leave: I wish to make a ministerial statement in regard to the matter raised last Tuesday. The following is a response provided by the Commissioner of Police, Brian Bull, dated 26 January 1990 -

To enable you to reply to the resolution passed in the Legislative Council on Tuesday, June 19, 1990, dealing with what action has been taken relating to a laying of a charge against Robert Smith for alleged perjury committed before a Parliamentary Committee of Privilege, I advise.

Inquiries are presently being conducted by an officer of the City CIB. It is anticipated that all witnesses will have been interviewed by Friday, June 22 and should this evidence establish an offence under Section 57 of the Criminal Code, relating to false evidence given before a Parliamentary Committee, then the appropriate action will be taken against Smith.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [2.36 pm]: I move -

That consideration of the ministerial statement be made an Order of the Day for the next sitting of the House.

Point of Order

Hon GRAHAM EDWARDS: Mr President, I seek your guidance. I am opposed to that move. I would be happy to give my reasons in due course.

The PRESIDENT: You can vote against the proposition when the time comes.

Hon GRAHAM EDWARDS: Is it appropriate for me to speak on it now?

The PRESIDENT: Yes, after I state the question.

Debate Resumed

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [2.37 pm]: This matter is the subject of an investigation by the police, and I wonder why the Opposition wants to leave it on the Notice Paper throughout the currency of that investigation. I wonder whether this House is doing justice to the generally accepted principle that people are considered innocent until proved otherwise.

What has been indicated is that an investigation is in process, and my view is that this matter is best left where it is. If a need arises for the House to debate the matter, that can be done, but I suggest the appropriate time for that debate would be at the conclusion of the investigation and at the conclusion of any action which might follow from that investigation.

Question put and a division taken with the following result -

Ayes (16)

Hon J.N. Caldwell
 Hon George Cash
 Hon E.J. Charlton
 Hon Reg Davies
 Hon Max Evans
 Hon Peter Foss

Hon Barry House
 Hon P.H. Lockyer
 Hon Murray Montgomery
 Hon N.F. Moore
 Hon Muriel Patterson
 Hon P.G. Pandal

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

Noes (15)

Hon J.M. Berinson
 Hon J.M. Brown
 Hon T.G. Butler
 Hon Cheryl Davenport
 Hon Graham Edwards
 Hon John Halden

Hon Kay Hallaban
 Hon Tom Helm
 Hon B.L. Jones
 Hon Garry Kelly
 Hon Mark Nevill
 Hon Tom Stephens

Hon Bob Thomas
 Hon Doug Wenn
 Hon Fred McKenzie
(Teller)

Pairs

Hon W.N. Stretch

Hon Sam Piantadosi

Question thus passed.

Adjournment of Debate - Statement

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [2.43 pm] - by leave: For the benefit of the House I should explain why I requested that the statement by the Minister for Police be made an order of the day for the next sitting of the House: Firstly, to establish a principle in this place, and one I have held since I became Leader of the Opposition in this Chamber, that all ministerial statements should be made an order of the day for the next sitting of the House to enable the Opposition to fully consider the content of any such statement.

Secondly, to enable the proper consideration of the comments made by the Minister - inasmuch as he did not furnish the Opposition with a copy of his statement prior to its presentation - as is the usual custom. That is a courtesy which I appreciate, and one which other Ministers have met in the past. I regret that the Minister for Police did not see fit to pass a copy of the statement to either Hon Eric Charlton or me.

It was not my intention to initiate any debate on the subject before all investigations had been carried out by the police and the due process of law proceeded with. My action was not meant to be a slur in any way on the people who are currently under investigation but very much a case of enabling the Opposition to fully consider the content of the statement, and no more.

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [2.46 pm]: I seek leave to make a statement in response to the comments by the Leader of the Opposition. [Leave denied.]

MOTION - WA INC*Royal Commission - Solicitor General's Opinion*

HON PETER FOSS (East Metropolitan) [2.47 pm]: I move -

That this House, having regard to the fact that -

- (a) the Premier has made selective quotes from an opinion obtained from the Solicitor General with regard to the holding of a Royal Commission into the massive losses suffered by this State; and
- (b) the Premier and other members of the Ministry have made disparaging remarks regarding Mr Terence O'Connor, QC and the opinion given by him on the question of the holding of a Royal Commission without offering in either House of Parliament to justify those remarks; and
- (c) there has recently been emphasis laid by the Premier on the standards to be observed in the Parliament; and

- (d) in order to meet these standards this House is of the opinion that -
- (e) it should dissociate itself from the inferences contained in the reference to Mr O'Connor's membership of the Liberal Party; and
- (f) the full text of the Solicitor General's opinion should be published so that the public are able to make an independent judgment in the matter,

this House does so dissociate itself from such inferences, and the Attorney General is ordered to table in this House on the sitting day following the making of this order the opinion of the Solicitor General referred to by the Premier as supporting the contention that a Royal Commission into matters associated with WA Inc would be in contempt of court, and such opinion shall be tabled in full without amendment or deletion.

The two essential parts of the motion are, firstly, that the House should dissociate itself from the inferences which arise from disparaging remarks made regarding Mr Terence O'Connor, and secondly, the requirement that the Attorney General table the opinion of the Solicitor General. The matter started some time ago in the demand by the Opposition, along with 80 per cent of the people of Western Australia, for a Royal Commission into what is commonly known as WA Inc. The demand for a Royal Commission has been resisted by the Government for a number of reasons, each of which has with time been seen to be somewhat transparent. The first reason was that Mr McCusker was involved in the investigation of WA Inc. Of course, Mr McCusker has said he is not investigating WA Inc but merely investigating offences under certain Acts in relation to Rothwells and associated companies.

The next point of relevance to this debate was a statement by the Premier to the effect that the appointment of a Royal Commission to inquire into WA Inc would prejudice the hearings of certain trials and could prejudice the litigation in certain prosecutions.

Hon J.M. Berinson: Is Mr Foss saying "would" or "could"?

Hon PETER FOSS: I will obtain the text at some stage. I cannot refer to the precise words of another place as I am forbidden by the Standing Orders of this House from doing that. However, I will read from newspaper articles, which I assume are correctly reported. My understanding of what was reported is that a Royal Commission could constitute a contempt of court. The Premier quoted at length from two judgments: The first from Hon Mr Justice Latham, which is a fairly old case, and the second, a more recent case, from Hon Mr Justice Mason. The first shot that was fired was the suggestion that to have a Royal Commission into WA Inc would constitute contempt of court. My personal reaction was that it was not a real possibility and that the cases the Premier cited had not been properly explained. It was also the opinion of the Leader of the Opposition in the other place who commissioned from Mr Terence Edward O'Connor, QC, an opinion which was subsequently tabled in this House. Mr O'Connor's opinion dealt with the dictum of Chief Justice Latham in *McGuinness v Attorney General of Victoria*. Mr O'Connor explained that that statement was related to a Royal Commission which was appointed under the inherent powers that a Government has to appoint a Royal Commission and was not established by an Act of Parliament. It also related to a Royal Commission that would inquire into the same matters. For instance, if a person were charged before a court with having stolen a motor vehicle and a Royal Commission were set up to inquire into whether that person had, in fact, stolen a motor car, that would be contempt of court. The inquiry has to do much more than merely wander around in the same ambit or area of fact; it must be an inquiry on the same matter. Mr O'Connor gave a good opinion.

I will give some background to Terence O'Connor, QC. For a period of time he practised as a solicitor, during which time he was a principal adviser on media law to most of the major media outlets in Perth. He is very much experienced in this area of the law and senior members of the media would know this as many of them would at some stage have had some part of their product submitted for his perusal. He is one of the most experienced barristers in Western Australia, and has taken silk at the independent Bar. I say that with some knowledge and I will disclose my own interest in the matter: For most of my time as an articled clerk and some of my time as a solicitor prior to becoming a partner in my current firm, Mr O'Connor was my principal. I know Mr O'Connor very well and I know of his integrity and his ability.

Hon P.G. Pandal: Hear, hear!

Hon J.M. Berinson: Would it help Mr Foss if I indicate that none of that is questioned in any way?

Hon PETER FOSS: I am more than grateful to hear that from the Attorney General and I would never have expected anything else from him in that regard. The reference in the motion before the House is to senior members of the Government and does not include a reference to the Attorney General. I am very pleased that he has chosen to take a different attitude from that of some of the other members of the Ministry.

Hon J.M. Berinson: In a moment I will explain that Mr Foss may have either misunderstood or been misrepresenting the attitude that other Government members have taken.

Hon PETER FOSS: I am sure that would be the Attorney General's excuse for them.

Hon J.M. Berinson: It will not be an excuse, Mr Foss; it will be a reason.

Hon PETER FOSS: Members will judge whether the reason the Attorney General gives is in fact an excuse.

Hon J.M. Berinson: I do not think that Mr O'Connor, as your principal, would be at all pleased with that response.

Hon PETER FOSS: I am very pleased to hear the assurance from the Attorney General.

Hon Tom Helm: We are pleased you are pleased; we are ecstatic.

Hon PETER FOSS: I would have expected nothing else from the Attorney General. It is pleasing to know that some members of the Ministry have refrained from the sorts of remarks that I will draw to the attention of the House. I am pleased to hear the remarks made by the Attorney General, and I am pleased to say that I had not expected anything else from him.

Hon Tom Stephens: Is this an attempt to help Mr O'Connor's preselection?

Hon PETER FOSS: Mr Stephens should wait as there is more to come. Mr O'Connor's opinion was tabled by the Leader of the Opposition in this House. I regret to say that the Minister for Police - he is not present at the moment - interjected by saying, "But he is a member of the Liberal Party", as if that were in some way relevant to the opinion.

Hon Tom Stephens: Bob Pike does that all the time.

The PRESIDENT: Order!

Several members interjected.

The PRESIDENT: Order! I warn honourable members that I will not tolerate their continual outbursts and interjections. I asked members to come to order but they just ignored my reasonable request. Members seem determined to ensure I take some action; I do not want to but I will.

Hon PETER FOSS: The Minister for Police made that interjection as though it were a ground for doubting the opinion. Unfortunately, that master of inference, the Attorney General, was not in the House. I am sure that had he been in the House and had he heard me make such a remark about, for instance, a Crown law officer's opinion, he would have leapt down my throat and accused me of making disparaging remarks and criticising members of the Crown Law Department. The Attorney General has been very quick to draw inference from remarks I have made.

Hon P.G. Pandal: That is right.

Hon J.M. Berinson: None of your inferences, Mr Foss: it was a direct statement.

Hon Kay Hallahan: A blatant statement.

Hon PETER FOSS: No, the Attorney General should read the debate. I do not mind people suggesting that my opinion is wrong and pointing out where it is wrong. This is rather like playing the ball at a football match; however, if one says Mr O'Connor is a member of the Liberal Party one is playing the man. That is what has been done by the Government in this particular instance; it could have challenged the opinion had it wished. The Government could have given a multitude of reasons for doing so, but it did not attempt to do that. The

first thing that Hon Graham Edwards said in this House was, "He is a member of the Liberal Party." Unfortunately Hon Graham Edwards was not alone in that criticism. In the other place, after confessing that she had not even read the opinion, the Premier said that Mr O'Connor had an interest in the matter because he is associated with People for Fair and Open Government. I do not know whether Mr O'Connor is associated with People for Fair and Open Government.

Hon Garry Kelly: PFOG!

Hon PETER FOSS: I am glad that that organisation is so well known that people recognise the acronym - PFOG. In the other House the Premier said, "But he has an interest in that matter." That cannot be read in any other context; it implies that his interest would interfere in the quality of his opinion.

Hon P.G. Pandal: It is a reflection on his professional opinion.

Hon PETER FOSS: The Leader of the Government in the other place said, "You get the opinion you pay for" and the Deputy Premier pointed out that Mr O'Connor was a member of the Liberal Party.

I refer honourable members to *The West Australian* of 9 and 10 May which deals with these matters. On 9 May an article in *The West Australian* said -

The Leader of the Government in the Assembly, Mr Bob Pearce, said the Liberals had got the legal opinion that they had paid for.

On each occasion members opposite said something about this issue they were attacking the man, as opposed to answering his opinion. Whenever I have made criticisms I have always criticised what has been done. It is appropriate to criticise and in legal circles one stands up every day and says, "My learned friend has his opinion wrong", or "My learned friend has his facts wrong" or "My learned friend has not called the witness he should have called." It is something which everyone in those circles is perfectly used to, but whenever I say anything like that in this House Mr Berinson immediately says, "You are attacking Crown Law officers." I will give an example of where an attack on a person has taken place. Each of these remarks was a direct attack on Mr O'Connor's opinion indicating that its content should not be considered. At the time the remarks were made the people making them had not even read it, but they were prepared to attack it and deprecate it. Without reading the opinion they were saying, "That opinion is no good because the man who wrote it is a member of the Liberal Party and is associated with People for Fair and Open Government." It indicates to me there was not the slightest intention to give any possible credence to the rights or wrongs of the opinion because those people were going to destroy it on the basis that that man is a member of the Liberal Party. I am sure Mr O'Connor is a member of the Liberal Party and he is a very illustrious member, but he is also an ethical and correct lawyer whose opinion would not in any way be influenced by the fact he is a member of the Liberal Party. The Attorney General, of all people, should know he looks after his clients properly irrespective of whether it is in his political interests to do so. I draw the Attorney General's attention to Mr O'Connor's conduct during the Teachers Credit Society inquiry when he looked after this Government properly, notwithstanding he was a member of the Liberal Party.

Hon J.M. Berinson: As a matter of fact, I didn't know and I don't see the relevance of it to this discussion.

Hon PETER FOSS: It is not only the behaviour one would expect from Mr O'Connor, knowing the ethical lawyer he is, but also he has shown in the public arena that his behaviour in his advice to his clients is of the utmost correctness. I know the Attorney General will accept that. Mr O'Connor is a lawyer of such quality that he will give his opinion fearlessly and correctly, irrespective of his political beliefs.

Every single lawyer, when asked to present a case, will present it in a way that is in the best interests of his client. I would expect Mr O'Connor to give a correct opinion, certainly in the best interests of his client. When the Solicitor General gives an opinion I would expect him to give a correct opinion, again in the best interests of his client. I concede there are differences in opinion because one lawyer represents one side and another represents the other side and both put forward what they consider is an acceptable correct opinion. Under the circumstances of this opinion, it is quite wrong to attack the man over personal

characteristics. It cannot be relevant to the content of the opinion to point out he is a member of the Liberal Party or he is associated with PFOG. The absolutely irrefutable inference from that is that it would in some way affect the opinion he would give. It is a statement which is unworthy of the people who make it, unworthy of the person about whom it is made and totally incorrect. I wrote to the Premier on 10 May as follows -

Dear Dr Lawrence,

I was very disappointed by your reference to the fact that Terence O'Connor QC is a member of the Liberal Party.

It was obviously intended to signify something to listeners and I believe that you intended and the ordinary person would understand that Mr O'Connor would be affected by bias in the giving of his opinion or worse that he would intentionally slant it.

You appeared to promise a return to higher ethical standard both in Government and Parliament when you took over as Premier. It is disappointing that you have so soon been guilty of departing from these standards by casting such a slur on Mr O'Connor's professional integrity.

I must say that I am confident that Hon. Peter Dowding, who is aware both of the professional responsibilities of a lawyer and Mr O'Connor's reputation for strict adherence to them would never have made such a statement.

I would hope that you would withdraw your remark and apologise for the imputation which is unworthy of you and the Parliament.

Yours sincerely,

Hon T.G. Butler: That is the imputation you put on it.

Hon PETER FOSS: I know the imputation I put on it and I would like to know other imputations members think should be put on it.

Several members interjected.

Hon PETER FOSS: I am quite prepared to hear what members opposite say is the imputation that is to be drawn from that remark. What valid reason was there for raising it in the context of saying the opinion was not to be believed? That was the context in which it was said.

Several members interjected.

Hon PETER FOSS: I hope this will be one of the debates to which Hon Tom Butler will make a worthwhile contribution. I will be interested to hear what he has to say.

Several members interjected.

The PRESIDENT: Order!

Hon PETER FOSS: The answer I received from the Premier was as follows -

Dear Mr Foss,

I have received your letter of 10 May 1990 in which you expressed disappointment that I identified Mr Terry O'Connor, QC as a member of the Liberal Party.

You have drawn certain conclusions from it which I reject because they are unjustified.

I am not sure whether the Premier was saying that the conclusions were unjustified or that the making of the conclusions was unjustified. I would certainly agree that the conclusions were unjustified for he is a person about whom it would not be justifiable to say those things. I believe the making of those conclusions which I drew is justified. I would be very grateful to hear not only from the Attorney General, but also from Hon Tom Butler what other credible imputations could be drawn from the raising of that point other than the ones I have outlined.

The Premier, not content with that, was quoted in *The West Australian* on 9 May as follows -

Outside the House, Dr Lawrence said she had been told by the Solicitor-General, Mr Kevin Parker QC, that although it had been established that a Royal Commission

could validly inquire into matters relating to pending litigation, the actions of such a commission could constitute a contempt of court.

Mr Parker had told her that because the media could commit contempt by publishing reports of the commission's hearings, it would seem that the inquiry would have to be held entirely in-camera and its report delayed until all criminal trials had been completed.

A further article in *The West Australian* on 10 May said -

Dr Lawrence repeated that she had been told by the Solicitor-General, Mr Kevin Parker QC, that the actions of a royal commission could constitute a contempt of court.

She said the Liberal Party had taken advice from one of its own members to advance its case, but clearly the issue was a matter of dispute within the legal profession.

Hon T.G. Butler: Surely there is no imputation there.

Hon PETER FOSS: Of course not.

Hon P.G. Pandal: It is a pathetic bit of biased nonsense from her.

Hon B.L. Jones: Would you have taken advice from a Labor QC?

The PRESIDENT: Order!

Hon PETER FOSS: I would have been quite happy to take advice from a Labor QC if there was one who was competent in the area. Members opposite do not understand what professional duty is. I am very pleased to say I am often helped in my work -

Hon T.G. Butler: Put on your wig.

Hon PETER FOSS: I will if the member is not careful. I am often helped in my work by people in my office who have very strong Labor Party sympathies. I never have the slightest hesitation in allowing them to assist me because I know that their professional quality and dedication would not be slightly affected by the fact their sympathies lie with the Labor Party. A lawyer with a professional sense of ethics will behave correctly irrespective of his political beliefs. I never have the slightest hesitation in using Labor lawyers because lawyers, with a sense of ethics, will not allow their political beliefs to interfere with their professional duty. I am sure in that respect the Attorney General would join me in saying that both Labor and Liberal lawyers would not allow personal political beliefs in any way to interfere with the proper carrying out of their duties. The point I make here is that in another place the Premier quoted extensively from certain advice given to her, repeated the nature of that advice in public, condemned Mr O'Connor whose advice is there for everyone to see and left the public with nothing to judge by. The Premier's remarks, which are one-sided, are not tested.

What sort of opinion has she got from Mr Parker? Is it a considered opinion? There are all sorts of opinions: Lawyers can give an opinion in answer to the question, "What do you think of this?" The answer might be, "My gut feeling is this, but I need to consider it in more detail." A lawyer might have considered the law related to a matter in detail but still need to know more about the facts. The quality and reliability of an opinion can be dependent upon things such as the question asked. If a lawyer is only asked, "If the Royal Commission was exactly on the same points as a particular case could it be in contempt of court?" the answer then may be, "Yes, under those circumstances it would be." One cannot imagine whether the criticism of Mr O'Connor is justified because the Premier did not criticise the opinion but criticised Mr O'Connor personally and tossed in a bit of the opinion.

Hon J.M. Berinson: That is not fair. Hon Peter Foss could not sustain that if he had read the Assembly *Hansard* record.

Hon PETER FOSS: I have read it.

Hon J.M. Berinson: Then Hon Peter Foss must know better than that.

Hon PETER FOSS: I do not believe so. The Premier read certain parts of the opinion. Obviously she was given the cases, and Mr O'Connor has dealt with those cases and given answers. We do not know what was the brief given to Mr Parker or what was the rest of the opinion because the Premier has taken a certain part of the quote out of context. I suppose if

one took bits out of Mr O'Connor's opinion one would probably be able to say the same thing because he does, in fact, discuss some of the very same quotes used by the Premier. Anything taken out of context can be given a different meaning from that it would have in context.

The problem here is that on the one hand part of the opinion has been given by one side while on the other hand a total opinion has been given by the other side. A man has put up his reputation and opinion which is displayed in public. On the other side the person attacks him personally and quotes selectively from an opinion. Is that fair? I believe it is unfair. I go further: I think the attack on Mr O'Connor was improper, as was using selective quotes without allowing Mr Parker's opinion to be seen in full. That is unfair, especially in the context of the attack made. On that basis alone I moved this motion.

We have come to this resolution with some reluctance. I asked Hon Graham Edwards in this House to withdraw the inference. I wrote to the Premier asking her to withdraw the inference. I have asked the Attorney General in this House to table the opinion. I have tried by other means to right the wrong that has been done, but unfortunately the Government is not prepared to do so. We are reluctant to take this move requiring the Attorney General to table the opinion because, generally speaking, we would prefer not to do so. However, we are pushed into this situation because the Government is unwilling to redress the balance.

We are usually unwilling to require opinions such as this to be tabled because although Parliament is not bound by the rules of professional privilege we would generally, on this side of the House, respect them. I would not seek to gain advantage by saying that we would like all the opinions obtained by the Government to be tabled. I assure the Attorney General that I do not wish to create a general precedent, if that is a matter he has some concern about. I assure him that I do not wish to create a precedent. A particular set of parliamentary precedents require it in this case. I believe there is also legal justification for doing so.

I will refer the House to a case. I qualify that remark by saying I will not refer to it in depth as I would if quoting it in court. By doing so I will illustrate the point that there are opinions and opinions. I am not seeking to give the House a legal opinion on this case; I am trying to draw its attention to a case which I believe is illustrative. It is the case of *Great Atlantic Insurance Co. v Home Insurance Co.*, 1981 *Weekly Law Reports*, page 529. In that instance counsel in a case quoted from the first two paragraphs of a privileged memorandum. He did not realise that the document he had was merely the first two paragraphs of that memorandum. Nor did he realise that the memorandum as a whole was privileged. After quoting from it in the case it was later discovered that the memorandum was incomplete and a request was made for the remainder of it to be tabled because there had been a waiver of the privilege of communication between client and lawyer.

The presiding judge heard the argument and held that the defendants were entitled to see the whole of the document whether or not that document had originally been privileged. The matter was then taken on interlocutory appeal to the Court of Appeal in the United Kingdom. The matter was heard by Lord Justice Templeman as he then was - now Lord Templeman - and Lord Justice Dunn. They dismissed the appeal and indicated why they did so. The important part of the judgment is to be found at page 536 where Lord Justice Templeman said the following -

The second question is whether "the whole of the memorandum being a privileged communication between legal adviser and client" the plaintiffs may waive the privilege with regard to the first two paragraphs of the memorandum but assert privilege over the additional matter. In my judgment, severance would be possible if the memorandum dealt with entirely different subject matters or different incidents and could in effect be divided into two separate memoranda each dealing with a separate subject matter.

Later he stated -

But once it is decided that the memorandum deals with only one subject matter, it seems to me that it might be or appear dangerous or misleading to allow the plaintiffs to disclose part of the memorandum and to assert privilege over the remainder. In the present case the suspicions of Heath which have not unnaturally been aroused by the disclosure of only part of the memorandum can only be justified or allayed by

disclosing the whole. It would be undesirable for severance to be allowed in these circumstances. In my judgment, the simplest, safest and most straightforward rule is that if a document is privilege, then privilege must be asserted, if at all, to the whole document unless the document deals with separate subject matters so that the document can in effect be divided into two separate and distinct documents each of which is complete.

At page 537 the judge indicated that the disclosure was unwitting, that counsel did not realise what he was doing and again said he had done it and the fact that he did not realise he had done it was not relevant unless the mistake was induced by any of the defendants. He mentioned a number of exceptions which I will not bother the House with because they do not apply here. He continued, later -

The deliberate introduction by the plaintiffs of part of the memorandum into the trial record as a result of a mistake made by the plaintiffs waives privilege with regard to the whole document. I can see no principle whereby the court could claim to exercise or could fairly and effectively exercise any discretion designed to put the clock back and to undo what has been done.

Finally, of course, the Court of Appeal said the following -

The court has no jurisdiction to relieve the plaintiffs from the consequences of their own mistakes particularly as those consequences cannot be wholly eradicated; -

I think we have that situation here -

part of the memorandum has in fact been read to the trial judge.

For these reasons I would dismiss the appeal.

The first principle is that the reason for respecting the advice of the Solicitor General to the Crown is analogous to the right of professional privilege. However, there is no right of professional privilege before Parliament, and Parliament in appropriate circumstances has the right, in terms of fairness or for other public purposes, to demand that the document be tabled. However, in this instance it is not only a matter of fairness and public interest that the document should be tabled, but also, in a strict legal context, this document has ceased to be privileged; therefore, even allowing for the recognition that Parliament is prepared to give from time to time to that concept, it is not required in this case, because the actions of the Premier's reading part of the opinion and quoting parts of it in public constitutes a waiver of that privilege for the opinion, and therefore the Government is no longer entitled to that privilege.

Hon Mark Nevill: Absolute rot!

Hon PETER FOSS: That is why we believe that the opinion should be tabled. I hope that members opposite will have the grace to dissociate themselves from the unfortunate implications of the remarks made by the Premier, the Deputy Premier, the Leader of the House in the other place, and the Minister for Police in this House, and reassert the principle that we should behave fairly in Parliament. I hope they will also take the opportunity to right the wrong which has been done, and also to table this opinion in the House.

It may very well be that the opinion which Mr Parker gave was a hasty one. I do not mean that in any sense of criticism; he may have been asked to give an opinion on the basis of an immediate opinion, and that was the opinion relied on. Many a lawyer is asked to give a short, quick opinion, and they say, "I hope you will respect the fact that this is the basis on which my opinion has been given. If you wish to have a more reliable opinion I shall have to consider it in greater detail and I shall advise you in writing." That may have been the case here. It may be that the opinion to which the Premier referred was such a quick and informal opinion.

Hon P.G. Pental: A tentative opinion.

Hon PETER FOSS: It might have been; I do not know. It might be one of those opinions a lawyer gives because he is asked to give it at short notice, but if he had been formally briefed and given a reasonable amount of time he might have given a different opinion. I myself have been asked to give quick opinions, but I have always qualified them by saying, "This is a quick opinion; if you want this opinion researched I shall do so, but it will take time. I will

give it to you in writing later." If that is the position in this case, I hope that the Attorney General will allow the Solicitor General an opportunity to deal with Mr O'Connor's opinion in detail, and deal with the matter referred to him. He may wish to advise the House on the brief which was the source of his opinion. We do not wish to be unfair to the Solicitor General in any way. If he wishes to qualify his opinion or expand it or make further comments, we would be very receptive to the fact that he should have time, if this is what the Attorney General wishes.

I have asked for the opinion to be tabled in full on the day following the passing of the motion. If the Attorney General indicates to me that the Solicitor General wishes not to have his opinion tabled without further amplification so that his full opinion is before the House as opposed to his partial opinion, I would be happy to accede to that. If the Solicitor General believes that the tabling of his opinion would be unfair to himself because of the circumstances in which that opinion was given, or the brief, I could understand that. Sometimes one can have a brief which requires one to deal with only one point. If the Solicitor General believes that the immediate tabling of his opinion would be unfair to him without his having an opportunity to give a full opinion and reply to some of the matters raised by Mr O'Connor, I would not insist upon this motion remaining in this form. If the Government asks for the motion to be amended so that the opinion is tabled within seven days so that the Solicitor General may table an amplification to his opinion, I would be receptive to that idea. I do not believe the Solicitor General has any culpability in this matter at all. Like many lawyers he has given an opinion and found himself in the middle of a turmoil.

Hon Mark Nevill: It is irrelevant.

Hon P.G. Pendal: It is relevant.

Hon Mark Nevill: You only want it because the Premier quoted from it.

Hon PETER FOSS: I would not wish to embarrass the Solicitor General in any way by requiring the immediate tabling of the opinion if he would like an opportunity to set it out a little more fully. I would still like to see the original opinion without any amendment, but if the Solicitor General wishes to amplify it, I would be happy to accept that.

Several members interjected.

Hon PETER FOSS: Failing the Attorney General's giving an indication that the Solicitor General would like an opportunity to amplify his opinion, I would not be amenable to any amendment to the motion. I commend the motion to the House.

HON REG DAVIES (North Metropolitan) [3.27 pm]: I request that Hon Peter Foss table the documents he quoted during his speech.

The PRESIDENT: Would the honourable member table his documents?

The papers were tabled.

[See paper No 323.]

[Continued on p 2449.]

STANDING ORDERS - SUSPENSION

HON J.M. BERINSON (North Metropolitan - Leader of the House) [3.28 pm]: I note that we are getting close to that witching hour beyond our starting time. I am anxious to respond, naturally enough, but I am also anxious to get on with some of the Orders of the Day. Taking into account the break coming up and question time, I move without notice -

That so much of Standing Orders be suspended so as to allow time for the debate of the motion to be extended to 4.50 pm or until the conclusion of the debate, whichever occurs first.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [3.30 pm]: I am opposed to the motion moved by the Leader of the House, particularly to that part of the motion which deals with a specific time limit on the debate. Members will be aware that yesterday I moved a motion and at approximately 3.30 pm the Leader of the House moved that the debate be allowed to continue for a specific time. That caused a problem inasmuch as speakers on this side of the House were unable to put their views on that motion and the

motion moved by the Leader of the House cut short the debate. I am aware that the Leader of the House wants to dispose of the matter as soon as possible. However, all members must be given an opportunity to make comment if that is their desire.

Hon J.M. Berinson: I am prepared to adjourn debate to allow it to be brought forward on another day.

Hon GEORGE CASH: That is not the point.

Hon J.M. Berinson: It is, otherwise the debate stops at 3.30 pm.

Hon GEORGE CASH: No, the Leader of the House moved that the debate continue until 4.50 pm.

Hon J.M. Berinson: Nearly the whole afternoon has gone without discussing a Bill.

Hon GEORGE CASH: I am making a point on general principle. By imposing a time limit, the opportunity for members to speak is restricted. If we were to allow the debate to continue past 3.30 pm it should at least be until the debate concluded and not until a specific time.

Hon J.M. Berinson: You have to give us a reasonable chance to deal with regular business.

Amendment to Motion

Hon GEORGE CASH: I will do that if the Leader of the House were to remove the time limit of 4.50 pm. The debate will be concluded well before that time. He is imposing a restriction on members while not knowing who wants to speak and what they want to say. He is not giving some members an opportunity to respond to the comments he intends to make and that is unreasonable. I therefore move an amendment -

That the time "4.50 pm" be deleted.

The PRESIDENT: I hope members understand what this is about, bearing in mind that lately a sort of competition has been taking place on who can remember precisely what everybody is saying. I am supposed to receive all these matters in writing, but the minute some laxity is allowed people start moving all sorts of complicated motions and amendments. Providing the House understands Hon George Cash's amendment I will put the question.

HON J.M. BERINSON (North Metropolitan - Leader of the House) [3.33 pm]: I make it clear at the outset that, without accepting the amendment as a precedent of any kind, on this occasion I will agree with the proposition put forward by the Leader of the Opposition. I am anxious to ensure that debate on this matter proceeds and that some response can be provided to the comments by the mover of the motion. I am also anxious to ensure that we get down to the regular business of the House and provide a reasonable opportunity for it to be dealt with. We have very short sitting hours on Thursdays and we are making no impression on the business of the House which is steadily accumulating and with which it is our responsibility to deal in proper order.

Hon Mark Nevill: They are trying to make the House unworkable.

Hon J.M. BERINSON: On other occasions, in a spirit of not only compromise but to positively assist the wishes of the Opposition speakers to participate in a debate, I have moved for the extension of time without limit. On one such occasion we carried that debate to about 8.30 pm or 9.00 pm. That is not the intention of this part of our proceedings and the fact that, in the absence of agreement either by leave or by suspension of Standing Orders, debates of this kind automatically conclude at one hour past the commencement is the best possible indication of the intention of the Standing Orders. That intention is to provide an early opportunity for other matters to be introduced, but not to allow those to dominate regular business.

I mention in passing the occasion on which a motion of personal condemnation was directed at me and, at one hour past the commencement time, leave was not given by the other side to allow me to respond on the same day to a motion as serious as that. Here, on a matter which, important though it is, can hardly be equated with a motion equivalent to no confidence in a Minister, we are being called on to be fair and reasonable and not to curtail debate. Some inconsistency is shown in that. I do no more than draw attention to it in passing.

For the reasons applying to this debate, and with the indication from the Leader of the

Opposition that he will not expect an extended debate which will preclude other matters coming forward, I will accept the amendment on this occasion. I stress that I do not accept it as a precedent and that, should we have further occasions where propositions of this kind are advanced, there will be no alternative but to look to the Standing Orders and to allow the one-hour rule to apply on each occasion. I would not want that to be the case. We have had a desirable degree of flexibility on that issue and it is a degree of flexibility which I am anxious to maintain. However, it requires some acceptance by both sides of the necessity to deal with regular business.

HON P.G. PENDAL (South Metropolitan) [3.38 pm]: I will briefly say two things in support of the amendment of the Leader of the Opposition. This is a case of once bitten, twice shy. The events of today are taking place only because of what occurred yesterday.

Hon J.M. Berinson: What happened yesterday is that one of your own members got the jump on you.

Hon P.G. PENDAL: At 3.30 pm yesterday, the Leader of the House sought to cease the debate but was then prepared to move that the debate continue until 4.30 pm. He promised when he received that concurrence that he was on the point of winding up.

Hon J.M. Berinson: I said four or five minutes.

Hon P.G. PENDAL: The Leader of the House said that, but he continued until 3.45 pm resulting in his not only eating into the time I had intended to use but also into the time of Hon John Caldwell, who rose to speak at 4.25 pm as a result of the Leader of the House speaking for about ten minutes longer than he had undertaken to speak.

Hon J.M. Berinson: I did not cut into Mr Caldwell's time; you did.

Hon P.G. PENDAL: It is never the fault of the Leader of the House. He got himself into a bind yesterday -

Hon Mark Nevill: It must be the first of April.

Hon J.M. Berinson: Let us get on with the debate!

Hon P.G. PENDAL: The 4.50 pm limit suggested by the Leader of the House - which he is prepared to concede was wrong -

Hon J.M. Berinson: I am not conceding that it was wrong; why don't you get on with it!

Hon P.G. PENDAL: - sounds generous on the surface, but it would not have meant another hour and 20 minutes for the debate, as the 15 minute suspension for afternoon tea and the 30 minutes taken for question time would have to be deducted.

Hon J.M. Berinson: Read *Hansard*; I said exactly that!

Hon P.G. PENDAL: In other words, it would be a contracted debate on a very important matter.

Hon Fred McKenzie: The debate would be automatically adjourned for questions.

The PRESIDENT: Order! Come to order, honourable members! We seem to be using an awful lot of time in an attempt to save time.

Hon P.G. PENDAL: Therefore, it is a case of once bitten, twice shy. The Leader of the House was too smart by half yesterday, and for that reason the Opposition was prepared to move the motion. I am pleased that Hon George Cash did so because the principle he was espousing a few minutes ago has been acknowledged by the Leader of the House.

Hon J.M. Berinson: I am not acknowledging it. I wish the member would listen to what I say.

Amendment put and passed.

Question (motion, as amended) put and passed with an absolute majority.

MOTION - WA INC

Royal Commission - Solicitor General's Opinion

Debate resumed from an earlier stage of the sitting.

HON J.M. BERINSON (North Metropolitan - Leader of the House) [3.43 pm]: Listening to the motion moved by Hon Peter Foss makes it easy to understand what was in the mind of the person who first coined the phrase about making a mountain out of a molehill. Picking up on a single phrase by the Premier - the origins of which I have been unable to locate - Mr Foss comes to the eloquent defence of his professional colleague, Mr Terry O'Connor, QC.

Hon P.G. Pental: Do your minders not seize on the occasional one liner made by the Opposition?

Hon Kay Hallahan: You have given us plenty.

Hon P.G. Pental: You will receive more.

The PRESIDENT: Order!

Hon J.M. BERINSON: I did not want to intervene in the debate between Mr Pental and others.

There is nothing wrong in coming to the defence of a professional colleague, but the only problem is that Mr O'Connor did not need Mr Foss' defence if only for the good reason that Mr O'Connor had not been under the kind of dastardly attack which Mr Foss read into the Premier's passing comment. I would be the first to attest to Mr O'Connor's high professional standing. Mr Foss referred to his specialty in certain fields, and I can well remember some years ago that Mr O'Connor must have been the first legal practitioner I went to when I felt offended by some comment made about me. Mr O'Connor gave me excellent advice on that occasion - he told me to forget it. I have never had any occasion since that time to have any reservations whatsoever about his professional capacity. Indeed, I have not hesitated, by way of interjection on other occasions, to acknowledge the high professional standing which Mr O'Connor enjoys. Having said that, a remarkable feature of this motion is that Mr Foss is so indignant, while Mr O'Connor himself - this is certainly indicated in his public comments - has no such degree of hurt feelings.

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon J.M. BERINSON: It seems a long time ago when we were last engaged in this debate. I was making the point that Mr Foss seemed to be more indignant on Mr O'Connor's behalf than Mr O'Connor had indicated his own position to be. Indeed, Mr O'Connor has acknowledged the reality of certain problems raised by the Premier. I shall provide some detail of that shortly.

I will take the clauses of the motion in turn and deal, in the first case, with clause (a) which reads -

the Premier has made selective quotes from an opinion obtained from the Solicitor General with regard to the holding of a Royal Commission into the massive losses suffered by this State;

The reference in this part of the motion to "selective quotes" can only be intended to convey an impression of misleading quotes. The first question to be asked is, where is the evidence of that?

Hon Peter Foss: It is selective.

Hon J.M. BERINSON: If selective quotes are accurate and truly representative of the opinion as a whole, what is the point of the criticism? I know that Mr Foss constantly accuses me of jumping to inferences.

Hon P.G. Pental: With justification, in this case.

Hon J.M. BERINSON: Not at all. I invite all honourable members to consider why there should be a reference to selective quotes in a proposition of this kind. Say it was being acknowledged that the quotes were accurate - what would be the point of a critical motion which read "the Premier has made accurate quotes from an opinion obtained from the Solicitor General"? Everyone would say, "That doesn't make sense. Why shouldn't she?" The truth of the matter is that when one uses a phrase like "selective quotes" it is clearly a pejorative phrase. It would generally be regarded, as I have suggested, as an intention to

convey an impression that the quotes were in some respect unfair or misleading. I have indicated that we have had no evidence of that, and I am quite happy to have Mr Foss' interjection that he did not mean it. If that is the case, what was the purpose of clause (a) of the motion?

To put the matter beyond doubt, however, and in fairness to the Premier, it is appropriate to refer precisely to her main reference on this issue and that appears in her answer to a question without notice on Tuesday, 1 May 1990. In response to a question by Mr MacKinnon, on this general question of a Royal Commission and potential clashes with prosecutions and other matters, the Premier said -

It is worth the Opposition's thinking seriously upon the following point. The essential requirement of due administration of justice was set out by Lord Diplock in *Attorney-General v Times Newspapers Ltd* (1974). The third principle he enunciates, which is meant to relate to all cases, both civil and criminal, is that once a dispute has been submitted to a court of law they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. I ask the Opposition to think about that principle as the Government has done. Further, in the *McGuinness v the A-G (Victoria)* (1940) case Latham expressed the view - and those members involved with the law will be aware of who Latham is - that if, for example, a prosecution for an offence were taking place the establishment of a Royal Commission to inquire into the same matter would also be held to be interference with the course of justice and subsequently to constitute a contempt of court. Members will know that matters exist relating to the wide range of issues it and a certain member of my family want addressed in the Royal Commission that cut across prosecutions already in process.

Hon P.G. Pental: Where is the Premier quoting from at that point?

Hon J.M. BERINSON: The Premier is making a statement, and I will come back to Mr Pental's question shortly.

Hon P.G. Pental: I will come back to that point when I speak.

Hon J.M. BERINSON: I will be happy to deal with it then, and we will be both talking about the same subject although, I would not be surprised, from a different point of view.

Hon P.G. Pental: We do not want the Attorney to move away from the central point of Mr Foss' motion by doing that; it is not a diversion.

Hon J.M. BERINSON: I do not want to get away from anything; I want to get to the heart of the matter. Continuing with the quote by the Premier -

Prosecutions are also likely to follow from the McCusker inquiry. Civil cases are likely to come before the courts, particularly the \$0.5 billion claim from Bond Corporation. It raises serious matters which turn upon that point for justice being seen to be done.

Interference with the courts, both civil and criminal, can be of a number of kinds, such as prejudice of the public mind, and this includes judges, resulting from the publication of proceedings. Publication of evidence by the commission is likely to result in people not coming forward, discouraging them from giving evidence that they might otherwise have given. It is important that members realise that if someone appears before a Royal Commission and gives evidence upon their own behaviour, and that is the only source of evidence about that behaviour constituting a misdemeanour, it may not be used in a court case against that person. In other words, both the civil and criminal charges being undertaken would be prejudiced.

Mr President, I believe that there was an onus on the mover of this motion - and what I have just read was not a quote but a statement by the Premier - in that any suggestion that constituted a selective and, therefore, misleading quote requires support that was not given. As I shall again go on to demonstrate shortly, that statement, which is the main reference by the Premier on this matter, in no way misrepresents any advice available to her.

Before leaving this part of the motion I should clarify one matter, in fairness to the Solicitor General; it will also meet the point of Mr Foss' query which I am happy to concede was a very fair query as to the nature of any material provided by the Solicitor General.

Hon Peter Foss asked whether that was a considered opinion or one which had been taken on the run - I think that was the expression he used. It is only fair to the Solicitor General to point out that his comments on the potential clash between a Royal Commission and court proceedings were not a formal opinion. The Solicitor General's comments, which were described by him as notes, were provided to questions requiring almost immediate response. Having said that I will immediately add that that does not question the validity of the views expressed by him. Mr Foss has fairly enough pointed out that a distinction exists, which I agree should be acknowledged. Clause (b) of the motion by Mr Foss reads as follows -

the Premier and other members of the Ministry have made disparaging remarks regarding Mr Terence O'Connor QC and the opinion given by him on the question of the holding of a Royal Commission without offering in either House of Parliament to justify those remarks;

As I have indicated, Mr Foss is very indignant on this score. I refer to his reference in clause (a) to "selective quotes". His indignation in respect of clause (b) is a prime example of selective indignation. The worst that could possibly be said about any comment by the Premier on related matters is that she disagreed with Mr O'Connor and/or she referred to his membership of the Liberal Party. Mr Foss was very indignant about that. Where was his indignation when Hon Robert Pike made gratuitous, outrageous and totally insupportable personal attacks on the Public Service Commissioner which shocked not only members on this side of the House but members opposite. As best I can recall, Mr Foss sat through the episode as quiet as a mouse. Indignation on reflections of any kind should be consistent and not selective. In particular, it should not be so selective as to put enormous weight on a single passing phrase, while ignoring completely an entire speech denigrating a most senior member of the State Public Service.

In relation to the question of disagreement by the Premier with the content of Mr O'Connor's opinion, I endorse the views of Mr Foss that it is always open to responsibly present an opposing position on any point. In this episode an example was given of events going at cross purposes and I refer to the fact that the Solicitor General in his notes was referring mainly to a Royal Commission under the Royal Commissions Act although he did refer to the possibility of a Royal Commission being set up under specific legislation. On the other hand, as I understand the position, Mr O'Connor's comment was directed mainly at the approach taken by the Bill presented in the Legislative Assembly by the Opposition. That the Solicitor General's comments in relation to that second matter of specific legislation setting up a Royal Commission were appropriate was indicated most persuasively - after the Premier's reference to this matter - by the fact that the Opposition in the other House proceeded to amend the original version of this Bill. It was also acknowledged that there was room for disagreement. I will take this further and say that an agreement by Mr O'Connor with the difficulties of the situation outlined by the Premier were acknowledged by him in the course of an interview on the "Sattler File" on 10 May 1990. Mr O'Connor said a number of things and I will quote some that are not directly related to my case so as not to open the way to further suggestions of selective quotations. I will quote from a transcript of that interview -

SATTLER: Terry, what about the other court cases that are underway, some with criminal charges and I mean they're too numerous to even list at the moment?

O'CONNOR: Well there are two points here. It would seem from listening to the Premier on your programme just a moment ago that she's changed ground slightly. Initially, as I understood the position, she criticised me for expressing the view that the appointment of a royal commission by the Parliament, could not be in contempt of court. I think now she, from what I read between lines, she agrees that that is the case.

I will draw particular attention to Mr O'Connor's following comment -

There's a second question then as to whether or not in fact a trial might be prejudiced by something that happens before such a commission, and I would have to say that that is a possibility, that in a particular case there could be prejudice to a particular trial if certain material were brought into the public arena.

That was the main effect of the concern which the Premier had expressed. I draw attention

not only to Mr O'Connor's acknowledgement of the real possibility of that difficulty emerging, but also to the moderate way in which he addressed that question throughout the interview. The same difficulties to which the Premier drew attention were also acknowledged in a news item on 9 May by Geoffrey Miller, QC. I take it that Mr Foss will not attempt to argue that I am being disparaging of Mr Miller. I am simply pointing out that - as was consistently seen in the papers throughout the last few weeks - he is a possible candidate for the Liberal Party.

Hon Peter Foss: It is important that you are illustrating the context. You are saying in this case that I am supporting it because he is a Liberal Party member, but last time you said that we should not believe it because he is a Liberal Party member; that is why the context is so important.

Hon George Cash: Exactly!

Hon J.M. BERINSON: I am sure Mr Foss did not deliberately speak too softly for me to miss his point; usually he reaches the point where one has to retreat from the volume. However, I could not hear his interjection so I cannot respond.

In any event Mr Foss and I certainly agree about the professional standing that Geoffrey Miller, QC, enjoys. I refer to the news item on "6KY News" on 9 May 1990 and I quote -

NEWSREADER

A leading Perth barrister believes there's room for conflicting views concerning the legalities of holding royal commission into WA Inc. while the related matters are before the court.

Liberal Leader, Barry MacKinnon, has quoted Terry O'Connor QC, as saying Dr Carmen Lawrence, the Premier, has misunderstood contempt of court laws when she says a royal commission would prejudice pending legal proceedings.

However, the Premier has countered the attack. She says, the Solicitor-General, Kevin Parker QC, believes the actions of such a commission could constitute a breach of the law.

But another Perth QC, Geoffrey Miller, says the debate is not as clear cut as it might first appear.

MILLER

I think it's always possible for Queens Counsel to give opinion which conflict, legal opinions aren't necessarily definitive, and they are, as they say, only opinions.

I think that probably the matter would need more research before you could give an indepth opinion yourself on it -

Hon Peter Foss: Aha! Aha!

Hon J.M. BERINSON: To continue -

- but there's room, I think, for suggesting that if you do have a royal commission, which enquiries into case which are pending, well then you could prejudice those people. And you might recall that when the Fitzgerald enquiry was under way prosecutions weren't launched until after that inquiry.

It goes without saying that Geoffrey Miller, QC, has not used the Premier as an authority. The fact remains that he was saying precisely what the Premier had said.

Hon Peter Foss: Qualified by the fact that more research had to be done.

Hon J.M. BERINSON: Finally, if there was some remote question of offence, it is clear that none was intended. Mr Foss quoted the correspondence between himself and the Premier on this matter. It is worth while quoting the Premier's reply to Mr Foss again. The letter of 11 May 1990 reads as follows -

Dear Mr Foss

I have received your letter of 10 May 1990 in which you express disappointment that I identified Mr Terry O'Connor, QC as a member of the Liberal Party.

You have drawn certain conclusions from this which I reject because they are unjustified.

Hon P.G. Pental: They cut across the pious nonsense of your Premier!

Hon J.M. BERINSON: Mr Foss used this letter as grounds for inferring further malice from the Premier. The letter stands on its own merits as a fair representation from the Premier. It says in effect that the member has taken the matter in a way which is unjustified - it says that he is wrong. I believe that that view follows from an ordinary straightforward reading of the Premier's letter in the simple terms in which the response was conveyed.

There is no need to dwell on clause (c), but for completeness it states -

There has recently been emphasis laid by the Premier on the standards to be observed in the Parliament . . .

Hon P.G. Pental: It is a pity she does not observe them.

Hon J.M. BERINSON: The Premier sets the best standards. It will not help members opposite to keep claiming their own virtuousness in respect of these matters.

Hon P.G. Pental: We don't.

Hon J.M. BERINSON: A single passing phrase interpreted as a terrible attack is not an appropriate standard. I referred earlier to the case of the attack on the Public Service Commissioner, but that was not an isolated example. It is widely recognised that the Premier is not simply suggesting that people should do as she says, but that they should do as she does.

Hon P.G. Pental: That is pious nonsense, and you know it.

Hon J.M. BERINSON: She has observed the standards for which she has argued.

Part (d) of the motion has two clauses. The first clause suggests that the House should disassociate itself from any inference contained in the reference to Mr O'Connor's membership of the Liberal Party. I have said before that this is an example of making a mountain out of a molehill - that is a fair description. If the House believes that it should pass resolutions of this kind on the basis of limited and passing comments in reference to Mr O'Connor, I suspect that this House would spend all of its time doing nothing else. If that was the case, and if it was to be consistent, it would pass similar motions about a huge number of people, including members of Parliament themselves. Part (d) of the motion is grossly excessive in the circumstances and it is not justified. In saying that, and I do not believe that I am expressing any disrespect whatsoever to Mr O'Connor - there should be no question or doubt about that - to bring a matter of this kind before the House and to ask it to deal with it in this way is grossly excessive. Even accepting the worst possible interpretation - which Mr Foss invites us to accept, but which we should not - the second clause of part (d) states -

the full text of the Solicitor-General's opinion should be published so that the public are able to make an independent judgment in the matter,

In the debates in which Mr Foss and I have engaged we seem to alternate between matters on which we agree and matters on which we disagree.

Hon Peter Foss interjected.

Hon J.M. BERINSON: I suppose that any improvement is welcome. However, Mr Foss has a long way to go.

I welcomed the recognition which I believe Mr Foss expressed in support of the virtually invariable course taken by all Governments; that is, to insist on the confidentiality of legal advice which is tendered to them. Mr Foss is obviously well aware of the importance of legal, professional privilege in general. I think he agreed earlier today that that principle is certainly no less important - I would say if anything, it is more so - in respect of legal advice tendered to Governments.

Because of the totally unwarranted accusations against the Premier personally, I am prepared to provide the Solicitor General's notes on this occasion. I stress that this is not to be taken as a precedent or as detracting in any way from the important and long-standing principle attached to this matter. I welcome Mr Foss' specific recognition of that. I welcome also his specific acknowledgment that he will not see this motion as intended to create a precedent, and that represents my position as well. There is no question of any meeting of the Council's

interest in the matters in question being accepted by the Government as a basis for the cutting across by this House of the general principle of legal professional privilege in relation to advice to the Government.

Having said that I am quite happy to meet the request for the tabling of the document, I have to say further that that is inadequate for present purposes. I believe that I should detail the content of the notes to this House so as to ensure that not only those who have access to tabled documents but also those who have access to the *Hansard* will have this material available to them. It will also provide an open and public means of comparing the Premier's use of the Solicitor General's notes with the contents of the notes themselves. Hon Phillip Pental will no doubt be disappointed to find that the Premier's use of these notes, while only constituting part of his advice, can in no way be considered as misleading in respect of the comments she was making.

Hon P.G. Pental: I am starting to think the victim in this case was the Solicitor General at the hands of the Premier!

Hon J.M. BERINSON: The member should not be ridiculous. Mr Pental will also find that the use by the Premier of the notes provided to her by the Solicitor General accurately reflected what he was saying, so there is no question either of her having used the notes improperly or of her use of the notes constituting any reflection of any kind against the respect in which the Solicitor General is held. Reading the notes into *Hansard* will also serve one other useful purpose; that is, to provide some material against which some of Mr Foss' latest comments can be considered at greater leisure than I am able to do during this debate.

As I understood Mr Foss' comment on the Great Atlantic case, he indicated that the effect of the decision was to deal with the partial quotation of legal advice as constituting a waiver of legal professional privilege in respect of other parts of the same opinion.

Hon Peter Foss: It constitutes a waiver of the privilege relating to the total document, even if the particular piece was capable, under normal circumstances, of being found somewhere else.

Hon J.M. BERINSON: The point I am arriving at is that it will be apparent from the Solicitor General's notes that they have not been quoted by the Premier. What happened was that the comments made available in those notes were used by the Premier to present a case of her own in the Legislative Assembly. I believe that there is a very significant -

Hon Peter Foss: That reverts to the fact that she was relying on the opinion.

Hon J.M. BERINSON: As Mr Foss did, I am not proposing to give any final opinion on that score. I also want to be cautious on it. However, I believe that there are significant grounds for distinguishing between the position in the Great Atlantic case where a formal legal opinion was actually quoted verbatim in part and the position that we are now dealing with where, relying on the Solicitor General's notes and adopting their tenor, if one likes, the Premier made a statement of her own to the Legislative Assembly.

Hon Peter Foss: That may be so.

Hon J.M. BERINSON: Having incorporated the Premier's actual statement and now proceeding to provide this further information in the *Hansard*, people with an interest to pursue the distinction that I have suggested will be able to do so. Reflecting the informality of the notes to which I have referred, the document is not on a letterhead; it is on a plain sheet and it is not signed.

Hon P.G. Pental: Another result of WA Inc.

Hon J.M. BERINSON: The member should not descend to that level; that is contemptible.

The document is headed "Royal Commission" and reads -

Notes on the legality of, and practical difficulties associated with, the conduct of an inquiry by a Royal Commission into matters which are or are related to:

- (a) the subject of pending prosecution in the criminal courts;
- (b) the subject of pending civil litigation; or
- (c) the subject of investigation by a special investigator appointed pursuant to Part VII Companies (Western Australia) Code.

I am reading this precisely as it is written for *Hansard* purposes and without the more usual means of reference to, for example, particular cases. To continue -

It is established that a Royal Commission may validly be appointed to inquire into matters which relate to litigation pending before the courts: Clough -v- Leahy (1904) 2 CLR 139, Victoria -v- Australian Building Construction Employees and Builders Labourers' Federation (1982) 152 CLR 25 ("the BLF Case"). It is also clear that a Commission may inquire into the question of whether a criminal offence has been committed (McGuinness -v- Attorney General (Vic) (1940) 63 CLR 73).

However the actions of a Royal Commission may constitute a contempt of court. Where the actions of a person purporting to act under the authority of a Royal Commission amount to an interference with the due administration of justice (or the "course of justice"), the existence of the Commission is no answer to a charge of contempt: Clough -v- Leahy (1904) 2 CLR 139 at 161 (per Griffiths C.J.). Where the mere establishment of an inquiry would be likely to interfere with the course of justice the appointment itself may be invalid: McGuinness -v- Attorney General (Vic) (1940) 63 CLR 73 at 85 (Latham C.J.), Johns and Waygood Ltd. -v- Utah Ltd. [1963] VR 70 at 75-6 (Sholl J.) although this cannot be the case where an Act specifically authorises the particular Royal Commission.

The essential requirements of the due administration of justice were set out by Lord Diplock in Attorney General -v- Times Newspapers [1974] A.C. 273 at 309:

"The due administration of justice requires first that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of court."

It occurs to me, especially with the way the time is escaping from us, it may be agreeable to members of the House if I seek leave of the House for the remainder of these notes to be taken as read and incorporated in *Hansard*.

[The material in appendix A was incorporated by leave of the House.]

[See p 2464.]

Hon J.M. BERINSON: I thank the House as it will enable me to draw my comments to a conclusion. The position is we are dealing with an issue which has been exaggerated out of all proportion in respect of any comments about Mr O'Connor personally. It is a motion which seeks to suggest that comments by the Premier were selectively drawn from notes provided to her by the Solicitor General. No conclusion from that sort of allegation can be drawn other than that was with an intention to mislead. None of that case stands up and I suggest to the House that this motion should, therefore, not be supported.

In respect of the first part of the motion I believe I have put beyond doubt the question that there is no intention on this side, and never has been, to reflect on Mr O'Connor and, in any event, even if some such inference could be drawn from the very limited comments made in that respect, a motion by this House for that purpose alone would be excessive.

The second part of this motion seeks the tabling of a document on the sitting day following the adoption of this motion. Obviously there is no point to that since I have tabled it now and, indeed, incorporated it in *Hansard*. The long and short of it is whether this was a matter worth raising for substantial discussion at all, and in my opinion it was not. There really is no useful purpose to be served in pursuing it and I seriously urge the House not to take this matter further.

HON P.G. PENDAL (South Metropolitan) [5.16 pm]: I support the motion and I will make a couple of brief remarks, one of which will I hope will not be lost on the Attorney General. Had we agreed to the motion that he moved we would have sat him down -

Hon J.M. Berinson: You would have cut yourself short.

Hon P.G. PENDAL: - 25 minutes ago. Therefore, I hope the point is made because it is the second time in two days -

Hon J.M. Berinson: I fell into the same trap as everyone does and the result is we will not deal with one single Bill.

Hon George Cash: Yes, we will.

Hon P.G. PENDAL: The Minister has been graceful enough to acknowledge the very point we were arguing at 3.30 this afternoon and yesterday also.

Several members interjected.

Hon P.G. PENDAL: If members opposite want to keep interjecting they will extend my time.

My understanding of the motion moved by Hon Peter Foss is that we are not quibbling with the Solicitor General: We are quibbling, if one likes, with the use the Premier made of the advice given to her by the Solicitor General. Not only are we not quibbling with the Solicitor General, but Hon Peter Foss went to some pains to point out that he, as a barrister, had been put in a similar position to that which the Solicitor General may have been put in and now, as it turns out, had been put in; that is, they are often asked for an opinion with little time at their disposal and they reserve the right in other circumstances to thrash out that advice given more time and resources. What happened on this occasion, as was pointed out by the mover of the motion, notwithstanding the circumstances of the advice given to the Solicitor General, is the Premier went to the public and trumpeted that advice in a way I suggest the Solicitor General never intended for its use. Not only that, the Premier had the temerity to hold up that advice alongside the advice of Terry O'Connor, QC which was in written form and which was given under circumstances that I am sure Mr Parker would have liked; that is, an extended amount of time so a considered opinion could be given.

The second point is that if the taunts that Mr O'Connor is a Liberal were not made to discredit him, why were they made?

Hon Graham Edwards: They were made as an observation and your mob is good at that.

Hon P.G. PENDAL: The Minister for Police is confirming our fears about his behaviour because if I remember correctly he was one of the people who was very quick to interject in an attempt to discredit Terry O'Connor with the phrase, "He is a Liberal".

Hon Peter Foss: There is no shame.

Hon P.G. PENDAL: Mr Foss is right - there is no shame.

Hon Graham Edwards: I have appointed Liberals to boards. Don't talk nonsense.

Hon P.G. PENDAL: The Minister can squirm all he likes now. He was the one who made the taunt that Mr O'Connor was a Liberal, which therefore, in some way or other, downgraded the quality of advice he offered.

Several members interjected.

The DEPUTY PRESIDENT (Hon Garry Kelly): Order! Hon P.G. Pendal is drawing his remarks to a close and I am very interested in hearing his final comments.

Hon P.G. PENDAL: Thank you, Mr Deputy President. You construed correctly that I am drawing my remarks to a close. I leave members with the question that if the taunts were not meant to discredit Mr O'Connor, why were they made in the first place? Of course they were made in an attempt to downgrade the advice of Mr Terry O'Connor in the eyes of the public. Finally, I hope members will take my remarks on board. The Attorney General ought to because he was here during the incident to which I will refer. At the time when Hon Howard Olney was a member of this House, and the previous Liberal Government announced that he was to be appointed to the Supreme Court of Western Australia, the Government did not suggest that because he was connected with the Labor Party it could not have anything to do with elevating him to the Supreme Court bench.

Hon J.M. Berinson: No such question has ever been raised while I have been in this office.

Hon P.G. PENDAL: I do not suggest that it has. I am using that issue as a parallel to the present position. Members of the Labor Party, in particular the Premier, have no right to denigrate Mr O'Connor's opinion as a barrister on the ground that he is connected with the Liberal Party. It has nothing to do with the fact that he is a member of the Liberal Party. The worst element of this matter is the Premier's involvement after she has raved about how clean she is in politics, how she does not stoop to these sorts of things, and how she supports the Parliamentary Standards Committee's findings. It is pious nonsense. When the first opportunity arose to demonstrate her belief in those standards, she failed abysmally. For those reasons, I support the motion.

HON PETER FOSS (East Metropolitan) [5.23 pm]: I am pleased to say that the Attorney General is not the sort of person to make the same sorts of remarks made by the Premier, the Deputy Premier, the Leader of the House in the Assembly, and the Minister for Police. I hope other members of Cabinet will follow his example.

The Attorney General has said that the word "selective" is pejorative. It is not pejorative to call a committee a Select Committee.

Hon J.M. Berinson: I know why people want your services, Mr Foss. You can make a case out of anything.

The PRESIDENT: Order!

Hon PETER FOSS: The point that has emerged quite clearly is that whether one selects pieces genuinely or representatively it is still selective. It is only when one finds out the total context of the information that one knows what it is all about and how it should be treated. That point has been amply illustrated by the Attorney General, because if we had seen the full detail of the quotes we would have known that the opinion was not a considered opinion.

Hon J.M. Berinson: I made the point that there is no suggestion by the Solicitor General himself that he will retreat from the position he then took.

Hon PETER FOSS: I am not saying he should retreat from it, because now that we know what is in the document we can see that it is not an opinion at all.

Hon J.M. Berinson: You know that the comments are very good.

Hon PETER FOSS: It is not an opinion at all. It is a document containing a number of quotes from cases. That is common practice in an opinion. The opinion of Mr O'Connor, QC quotes from the courts and finally gives his opinion on how those quotes apply to the situation. That is what an opinion is all about.

Hon J.M. Berinson: Be fair, Mr Foss. That is what the Solicitor General did as well, but he was referring it to a Royal Commission under the Act whereas Mr O'Connor's main interest was in a Royal Commission under a special Act.

Hon PETER FOSS: The Attorney General should listen carefully to the argument I am developing. It is important that he hear it.

Hon J.M. Berinson: I shall not have the right of reply.

Hon PETER FOSS: I heard what the Attorney General read. It is a very useful document which was provided by the Solicitor General to the Premier. In some ways it is similar to the information I provided to the Attorney General about the Great Atlantic case. I read what I thought were illustrative quotes from it, but I did not develop the argument to any great depth. I was not giving a legal opinion and did not develop the argument to the extent I would have in court. I was providing some quotes to the House which I thought would be illustrative and useful.

Hon J.M. Berinson: You know that this paper goes far beyond that.

Hon PETER FOSS: There are ways of developing an argument and ways of providing illustrative quotes. When a lawyer is asked for an opinion, he is quite prepared to give one. When people telephone me and ask for advice on what action to take at that time, I offer to give them advice as to what they can do which they can rely on, but tell them they must understand the character of the advice I am giving; that is, it is off the top of my head. On the basis of my experience, I believe -

Hon J.M. Berinson: You are not suggesting that's top of the head stuff?

Hon PETER FOSS: No, let me develop my argument.

Hon J.M. Berinson: You are getting off the track, I just want to try to bring you back.

The PRESIDENT: Order! I remind honourable members again that I will not tolerate these constant interjections every day on every occasion that every member speaks. We are arriving at a situation where, in the view of people who visit the Public Gallery, the House is in total disrepute. I am concerned for the decorum of this place. Members elected me to this position to maintain order, and I am sick and tired of threatening members. They do not believe I will take the punitive action that I am able to. I do not want to take that action, but members are forcing me into it. At least let the member speak; if other members do not like what he says, they should vote against the motion.

Hon PETER FOSS: I was indicating that clients are often prepared to take advice on that basis because they need an immediate decision and they need to take some action. However, there are degrees between that and a finally considered opinion. Each type of opinion has its importance and its relevance. Each one should have the attention and degree of respect given to it according to the amount of time a lawyer puts into it. One of the problems about the way in which the Premier quoted is that if it were not for this debate today, members could have continued believing that she had received a fully thought-out, written-out, considered and signed opinion which looked at the matters that had been dealt with, particularly the matters relating to the proposed special Royal Commission. I believed that she was quoting the Solicitor General.

It now appears that the Premier had taken his concepts and was putting them forward with her own argument, so the Western Australian public could have gone on believing that was the Solicitor General's opinion when in fact it was the Premier's interpretation of it. There is a world of difference between the Premier's opinion on a matter of law and the Solicitor General's opinion on a matter of law. I would give considerable respect to an off-the-cuff opinion of the Solicitor General's and I am prepared to concede here and now that even if it were an off-the-cuff opinion of the Solicitor General's I would be prepared to put it, in the balance, against Mr O'Connor's signed and considered opinion. I would be prepared to put the two together and say, "Yes, one must give respect to the Solicitor General's opinion even off-the-cuff." I would be prepared to give more weight to the opinion of the Solicitor General if it turned out to be the result of more research and the beginning of the formulation of a formal opinion. I would give it even more weight if it were a formal opinion. The amount of weight I would give to the Premier's opinion, no matter who informed her, is absolutely and completely zilch!

Hon J.M. Berinson: Hon Peter Foss will find from the *Hansard* record that there is no difference between the two.

Hon PETER FOSS: I do not give it any weight because it is her opinion. The only degree to which the Premier is entitled to respect is to the extent she managed to parrot what he said correctly. What is important about an opinion is who gives it.

Hon J.M. Berinson: Hon Peter Foss is making a distinction without a difference.

Hon PETER FOSS: It is not, at all. If the Attorney General says, "This is the Solicitor General's opinion," then I will look at it with respect. If he gets the Premier's opinion - which might be saying the same thing - and says, "This is the Premier's opinion," then I will give it no respect because there is no authority and no basis for accepting the Premier's opinion. The opinion must be given by somebody whose opinion has some basis. The Premier's opinion has no basis. To the extent she gets the Solicitor General's opinion correct, she is correct, but her opinion has no authority. This is an important point that people should realise.

Hon J.M. Berinson: The *Hansard* reference of what the Premier said that I read into our own *Hansard* record makes clear the basis on which she was speaking.

Hon PETER FOSS: That may be so.

Hon J.M. Berinson: That is so.

Hon PETER FOSS: I also read to the House the extracts from *The West Australian* which

showed quite clearly that the Premier sought to justify her position by reference to the Solicitor General's opinion. It was quite reasonable to believe that she had that opinion. The idea of the Solicitor General's advising the Government formally is a traditional and important role, and on a matter as important as this - whether there should be a Royal Commission - one could reasonably assume she had obtained such a formal opinion. I believed that that was what had happened.

Hon J.M. Berinson: Is Hon Peter Foss saying that he still would not have accepted her account whatever the nature of her advice?

Hon PETER FOSS: The Attorney General misses my point. I do not mind if the Premier quotes the opinion of the Solicitor General. I will accord respect to the Solicitor General's opinion, not because the Premier said it - I do not care who said it - but because it is, in fact, the opinion of the Solicitor General. If the Premier gives her own opinion I will give it no respect at all because it has no strength or authority because it emerges from her. To the extent she makes up her own opinions I am not the slightest bit interested. To the extent the Solicitor General is quoted I give his opinion respect.

The people of Australia and members of this Parliament understood she had a formal opinion. I am saying a selective quote was important because we did not realise until we saw the full text the nature of the opinion given; that is why it is important.

Hon J.M. Berinson: But Hon Peter foss is not questioning the accuracy.

Hon PETER FOSS: No, I am not questioning that, and I never suggested that what the Premier said was a misquote.

Hon J.M. Berinson: I am referring to the Solicitor General's notes. Hon Peter Foss is not questioning the accuracy of the views he expresses there either, is he?

Hon PETER FOSS: No. They are mainly quotes from cases.

Hon J.M. Berinson: But they contain explicit views.

Hon PETER FOSS: Some of those same quotes are to be found in Mr O'Connor's opinion. He quotes the same part of the case of McGuinness v The Attorney General, but one still has to look at the bottom line. The bottom line in an opinion is what he says is the effect in a particular case. Perhaps I am having trouble giving over what is an essentially legal difficulty, but one goes through a process, quotes the cases and eventually reaches a bottom line. It is like the total on a balance sheet; one has pluses and minuses and at the end a balance. The balance is what matters. There is no point in reading one half of a balance sheet and saying that it is not inaccurate. Someone could say, "I have assets of \$100 million," without mentioning that they have debts of \$110 million. One could say that was a perfectly accurate quote, but it does not give the whole picture, which is that the person was minus \$10 million.

That is the situation with a legal opinion when one quotes bits of it. That is what I am saying. It is quite clear that the people of Western Australia were deceived. We thought we had on one side a considered opinion by the Solicitor General and on the other side a considered opinion by Mr O'Connor and that equal weight was to be given to both because they both had the same amount of consideration. We have found out that, unfortunately, the Solicitor General's opinion is in the nature of notes and unsigned. If one wanted to balance those two exactly then I am afraid one would not be doing the correct thing.

Hon Mark Nevill: That is another legal opinion.

The PRESIDENT: Order!

Hon PETER FOSS: The second thing is that no attempt has been made to justify the statement by the Premier that Mr O'Connor had an interest in the matter, or by the Leader of the House in the Legislative Assembly that they got the opinion they paid for, or the reference by the Premier, the Deputy Premier or the Minister for Police that Mr O'Connor was a Liberal. No alternative meaning has been suggested to this House other than the one I put forward. I do not believe that any alternative meaning could be put forward, because there is not one; it had to be meant in a pejorative sense. I gave the Premier an opportunity to acknowledge that it was pejorative so that she could withdraw it but she took the attitude, "You are wrong, there is no such pejorative meaning." It is there, one cannot escape it. The Premier should have the guts to admit that she was wrong and withdraw from her position.

The amendment made to this special Royal Commission Bill that the Attorney General referred to was not admitting the remarks made by the Solicitor General. It is an attempt by the Opposition to say, "All right, have your way; we do not believe you are correct, but if you really must have your way we will put an amendment in so that your point is addressed. The people of Western Australia need a Royal Commission and the Opposition will do anything to help get around the Government's objections. It will try to overcome the objections that are stopping the Government from having a Royal Commission." We are prepared to do that. That is one of the important things about the Opposition; it is prepared to go to extraordinary lengths to help the Government get a Royal Commission, but no matter what it does the Government seems not to want one. One must ask, why? We will take large measures in order to help the Government be satisfied there should be a Royal Commission.

I think the extraordinary thing about all this is that here is a vitally important point for the people of Western Australia: This is the last thread upon which the Government is hanging its decision to refuse a Royal Commission. This is the reason why the Premier is, to this day, refusing a Royal Commission. The Government has not even bothered to take a formal opinion from the Solicitor General on the essential question of whether a Royal Commission could proceed without prejudicing prosecutions. The Premier used notes prepared at short notice by the Solicitor General as a basis for rejecting that call.

The Premier and her Ministers have even criticised a formal written opinion given by Mr O'Connor, without their having read it. To add insult to injury, they took the opportunity of making a personal attack on him. It indicates how little respect the Premier has for the opinion of 80 per cent of the people of Western Australia that apparently, even to date, she has not sought formal advice. Surely it is time for the Premier to take seriously a Royal Commission and agree to the Special Commission Bill.

This motion has indicated quite clearly how the people of Western Australia have been deceived about the strength of the Premier's case. There is in fact no case. I challenge the Government to ask the Solicitor General to comment on Mr O'Connor's opinion because I would very much like to see his comment. I would like the argument to be brought properly out into the open so that we can see his comments on Mr O'Connor's opinion and see to what extent he concedes the facts as drawn by Mr O'Connor. I commend this motion to the House.

Question put and passed.

COAL MINES REGULATION AMENDMENT BILL

Receipt and First Reading

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

Second Reading

HON J.M. BERINSON (North Metropolitan - Leader of the House) [5.43 pm]: I move -

That the Bill be now read a second time.

This Bill proposes an amendment to the Coal Mines Regulation Act, with the main proposals being -

to introduce an open-cut oriented coalmining qualification at a comparable level to the underground second class mine manager's certificate of competency;

to provide for the rationalisation of practical experience requirements for candidates for open-cut mine manager's certificates of competency, enabling experience gained in metalliferous open-cut mines or quarries to be recognised as part of the candidates' acceptable total practical experience; and

to remove a restriction on coalminers from working underground for more than seven consecutive hours at any time, or more than 42 hours in any week, except in case of emergencies.

Currently the Act does not recognise any open-cut undermanager's qualification which will parallel the second class certificate of competency, which is an underground qualification.

The amendment will enable persons whose experience has been gained in open-cut mines to qualify as open-cut mine undermanagers by achieving a specialised certificate of competency. This amendment will permit persons holding certificates of competency of an equivalent level to obtain a Western Australian certificate of competency by sitting for and passing an examination in Western Australian mining law. It will also meet the needs of the companies and of the Department of Mines in ensuring that the requirements of the Coal Mines Regulation Act are met, by satisfactory supervision at open-cut workings, on various sites where numbers of deputies are employed and where it is imperative for undermanagers to be appointed.

Removal of the seven-consecutive-hour work restriction for underground coalminers will enable the introduction of eight-hour shifts in underground mining operations, a situation which exists already in open-cut coalmining operations. Increased production and the introduction of new mining methods in underground operations are being limited by the seven-hour restriction. The productivity gains made will result in cheaper coal prices and a reduction in energy costs.

I commend the Bill to the House.

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

JOINT SELECT COMMITTEE ON PAROLE

Hassell, Mr, Discharge - Edwardes, Mrs, Appointment

Message from the Assembly received and read notifying that it had agreed to the motion that Mr Hassell be discharged from the Joint Select Committee on Parole and Mrs Edwardes be appointed in his place.

ACTS AMENDMENT (PERTH MARKET AUTHORITY) BILL

Report

Report of Committee adopted.

OFFENDERS PROBATION AND PAROLE AMENDMENT BILL

Second Reading

Debate resumed from 5 June.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [5.47 pm]: This Bill seeks in general terms to authorise the Executive Director of the Department of Corrective Services to approve work for the purpose of a community service order. Members are probably aware that some years ago - I think it was in 1976 - when some amendments were made to the Offenders Probation and Parole Act, the notion of community service orders was introduced. From that time until today, the provisions of section 20 of the Offenders Probation and Parole Act have set out the manner in which community service orders should operate and the conditions which should be attached to them. Section 20R of the Act provides in part that an advisory committee shall be appointed to advise the Minister on community service orders that are issued. The section says -

- (2) An advisory committee shall consist of 3, 4 or 5 persons one of whom shall have been nominated for membership of the committee by the body known as the Trades and Labor Council of Western Australia.

The committee was required to consider the type of work that was available, the sentence that had been imposed, and the type of offender who was to carry out the community service order, and to make recommendations in respect of that order. That has clearly worked well in the past. However, for the purpose of streamlining the issuing of such orders, it is now believed that the Executive Director of the Department of Corrective Services should be the person who approves work for the purpose of a community service order. The Opposition supports this amendment. The executive director will be able to seek advice from a local community corrections manager on the community service order that is to be agreed to and on the situation which exists at any particular time. The executive director will also be able

to satisfy himself about the supervisory arrangements and the general work environment that will attach to the community service order.

I would like the Minister to explain in his response just who will provide the local community corrections manager; with whom will the local community corrections manager consult; what will be the relationship between the executive director and the local community corrections manager; and whether that person will be represented in remote parts of Western Australia where community service orders will be handed down from time to time. I also ask the Minister, as I did in this House last night when we were debating the Justices Amendment Bill, to comment generally about the success or otherwise of community service orders to date. Although it is intended to repeal the advisory committee which previously made certain recommendations in respect of community service orders, some continuing orders are still in place, so some savings and transitional provisions are contained within this Bill to allow current orders and projects to be seen through to their completion.

With those comments, and in view of the fact that the Bill deals very much with an administrative matter, the Opposition supports the Bill.

HON J.M. BERINSON (North Metropolitan - Minister for Corrective Services) [5.50 pm]: I thank the Leader of the Opposition for his support of this measure. I believe his only questions related to the position of local community connections manager. That person is an officer of the Department of Corrective Services, and it follows that his relationship with the executive director of that department is one of responsibility through the appropriate senior levels of that department.

The Leader of the Opposition raised the question of the duties of this officer. My understanding is that they come down to two main issues: On the one hand, the allocation of work to persons who are subject to community service orders, and on the other hand the negotiation of arrangements with those persons involved with the projects which go to make up community service work. There is, in fact, quite a wide range of work, as I am sure the Leader of the Opposition is aware. In some cases it will involve consultation with local government bodies, charitable organisations and non-profit organisations, and occasionally assistance rendered to individual persons unable because of age or incapacity to undertake certain work. That category, of course, involves a very careful and strict selection of persons appropriate for that sort of work. This area occasionally throws up quite surprising results. These include a willingness on the part of those who have been subject to community service orders to continue assisting the individuals to whom they were allocated after their obligation had been met.

I do not want to suggest that the community service order system in the past has not been without some difficulties. It has been necessary to tighten up the procedure, and this has accompanied the development of what are called work and development orders under the community corrections centre program; but essentially it comes down to the same categories of work. There is now a very satisfactory level of performance, as the Leader of the Opposition correctly summarised it, and what we are dealing with now goes no further than managerial arrangements. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee and Report

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon J.M. Berinson (Minister for Corrective Services), and transmitted to the Assembly.

House adjourned at 5.55 pm

In McGuinness' Case Latham C.J. expressed the view that :

"If, for example, a prosecution for an offence were taking place, the establishment of a Royal Commission to inquire into the same matter would almost certainly be held to be an interference with the course of justice and consequently to constitute a contempt of court" ((1940) 63 CLR 73 at 85)

This view found the support of the former Chief Justice (Gibbs C.J.) at 53-4) and the present Chief Justice (Mason J. at 95) of the High Court of Australia in the BLF Case.

A Royal Commission inquiry into matters which are the subject of a criminal prosecution may interfere with the administration of justice in the following manner :

- (a) By virtue of possible prejudice of the public mind, and the minds of potential jurors, resulting from the publication of the proceedings before the Commission by the media, and publication by the executive of the findings of the Commission in its report to the Governor. Publication of evidence given before the Commission which would not be admissible in a court of law, and publication of admissions made before the Commission by an accused (especially where the privilege against self incrimination is excluded by the legislation establishing the inquiry), would have a particularly adverse effect.
- (b) In some cases by discouraging witnesses from coming forward to give evidence at the trial, or influencing them in the evidence which they are prepared to give. Witnesses may be discouraged from coming forward to give full and frank evidence at a trial by published findings of a Commission contrary to their evidence, or by the Commission's criticism of them or witnesses holding the same views. If publication of reports of, or proceedings before, the Commission creates prejudice in the public mind, witnesses at a trial may feel pressured to adjust their evidence to suit that prejudice.
- (c) By requiring a defendant in a criminal trial to disclose the nature of his defence, and evidence supporting his defence, prior to the trial, thus forearming the prosecution. Similarly in civil proceedings by requiring parties to civil proceedings to disclose their case or their evidence so losing tactical advantage and forewarning the other party
- (d) By prejudging an issue before a court, and interfering with the third requirement specified by Lord Diplock.

Grounds (a) and (b) depend not so much on the conduct of the inquiry, but upon publication by the media and/or government. It may be said that, as the media may commit contempt by publishing reports of proceedings before the Commission which tend to interfere with the due administration of justice, sufficient protection is given to any accused. However the reality that proceedings before the Commission will ordinarily be widely reported would appear at least to require that the entire enquiry be held in camera, and that the publication of its report be delayed until all criminal trials are completed.

The same issues apply where civil litigation is pending. There are however two distinctive considerations: The first is that, as civil trials in W.A. are ordinarily conducted by Judge sitting alone, prejudice to the outcome of such proceedings is less likely. However, several courts have acknowledged that, though more resilient to extraneous influence and prejudice, Judges are not entirely immune: see the cases cited by Mason J. in the BLF Case at p.101. In addition this first qualification does not apply to defamation actions, which may be tried by jury. The second qualification is that the litigation must have been bona fide commenced. A sham civil action cannot be used merely to prevent an otherwise lawful enquiry (Lockwood -v- Commonwealth (1953) 90 CLR 177 at 186 (Fullager J.)).

Any of the above factors may lead to the conduct of an inquiry by a Royal Commission ordinarily appointed under the Royal Commissions Act 1968 into matters which are the subject of litigation before the Courts being a contempt of court. The Courts have inherent power to make orders about the conduct of Royal Commissions to prevent contempts occurring or to minimise the harmful effect of a contempt which have occurred. The more

usual course, however, is for Royal Commissions to adjourn their investigation or to delay those parts of it which relate to court proceedings until the court proceedings have concluded. In addition, in an extreme case, the possibility arises that the report or the published evidence of the Commission may be so prejudicial to an accused person that a fair trial is impossible, so requiring the trial to be delayed for a considerable time or even indefinitely.

Under ordinary principles express statutory authority will override the common law rules as to contempt. It would be necessary, however, for the statute to be specific and exhaustive as to the conduct it directly required and authorised as any matter not specifically authorised would be subject to the ordinary common law rules as to contempt. It can be expected that the courts will be very slow to find that a contempt has been authorised by statute.

In this regard Lockwood -v- Commonwealth (1954) 90 CLR 177 is misleading as Fullager J. (at 185) appears to suggest that where the Royal Commission was authorised by statute, the conduct of its investigations could not constitute a contempt. This view was severely confined however, by the High Court in the BLF Case to situations where the statute in question directly and specifically authorised inquiry into a specific matter (in Lockwood's Case espionage). Even though a statute may expressly authorise conduct by a Commission which would otherwise constitute a contempt it remains an extremely serious matter for Parliament to specifically allow or require such conduct as by doing so it is necessarily adversely affecting the due administration of justice in the Courts, a step which is an affront to the separation and independence of the Courts. Further, by doing so Parliament is likely to prejudice one or both of the parties to civil litigation or the accused or the prosecution in criminal proceedings. Injustice may result or, in the case of criminal proceedings, it may become impossible to try a person charged with an offence because of the prejudice.

If the terms of reference of a Commission encompass matters the subject of enquiry by a special investigator appointed pursuant to Part VII Companies (Western Australia) Code. There is no legal reason why the two enquiries should not run together.

However the considerations relevant to an interference with the course of justice may be relevant to the harmonious conduct of two or more parallel inquiries. As a matter of practicality a Royal Commission would normally need to take care in the treatment of witnesses and the extent to which its proceedings were publicised, to ensure that it did not obstruct other properly instituted investigations. Delay by the Royal Commission or the investigator might become a practical necessity to avoid prejudicing the effective conduct of the other inquiry.

QUESTIONS ON NOTICE

AUSTRALIA POST - GENERAL POST OFFICE, FORREST PLACE
Redevelopment

122. Hon P.G. PENDAL to the Minister for Planning:

I refer to the announced redevelopment proposals for the GPO building in Forrest Place and ask -

- (1) Has a final decision been made that the building will be subject to redevelopment?
- (2) If so, is there any way that such a decision can be reversed?
- (3) What precisely is proposed for the building's redevelopment?
- (4) How will the Perth City Council administer the redevelopment?
- (5) What controls will be placed and by whom, on the city council for its administration of the development?
- (6) Are there any plans to redevelop the old Commonwealth Bank or any other building/s in Forrest Place and adjacent streets?
- (7) What controls are placed on the sale of public assets and facilities to private developers, by Commonwealth, State or local Government bodies?
- (8) Do the Commonwealth, State or local Governments take any responsibility for the end use of public assets sold?
- (9) Does the Commonwealth Government consult with State and local Government authorities before actions such as this sale are put into practice?

Hon KAY HALLAHAN replied:

- (1) I understand that the recent sale proposals have fallen through, and that Australia Post is reconsidering its position.
- (2)-(3) See (1).
- (4) Should any development proposal proceed, it would be administered by the council through its planning and development approval and building licence procedures. The Australian Heritage Commission can require legally binding conditions on the sale in the form of a covenant.
- (5) I understand that the National Trust (WA) and the Australian Heritage Commission would be involved.
- (6) I am not aware of firm proposals. I understand redevelopment of the old Myer buildings is a possibility.
- (7) All tiers of government have powers that enable them to control development and thereby to influence negotiations on a sale. Clearly the Government body which is disposing of the asset has the greatest capacity to set conditions on the sale and subsequent use.
- (8) This will depend on the asset being sold.
- (9) See (8).

EMPLOYMENT - 36 HOUR WEEK
Developers, Builders or Union Agreements

317. Hon GEORGE CASH to the Leader of the House representing the Minister for Productivity and Labour Relations:

I refer to the Minister's comments published in *The West Australian* and the *Daily News* on May 12 1989 and ask:

- (1) Has the Minister taken any action against either developers, builders or unions who have entered into agreements involving a 36 hour week?
- (2) If not, why not?
- (3) If no action has been taken, contrary to his earlier threatened action, is that an indication that there has been no breach or threat to the centralised wage system?

Hon J.M. BERINSON replied:

The Minister for Productivity and Labour Relations has provided the following reply -

- (1) No.
- (2) Action in this regard would be inappropriate in the absence of a determination of an award breach.
- (3) Yes.

LAND - GASCOYNE LOCATION 250 RELEASE

Bilicich, Mr T., Corria, Mr Arnold

327. Hon P.H. LOCKYER to the Minister for Lands:

I refer to a request by Mr Arnold Corria of McGlade Road Camarvon to obtain all or part of Gascoyne location 250 in McGlade Road, and advice from the Minister, by letter, dated February 27 1990 which advised that release of this location would not take place because of objection by WAWA and I ask:

- (1) Has all or part of Gascoyne location 250 been released to Mr T. Bilicich of McGlade Road?
- (2) If so, why was Mr Corria not considered
- (3) If not, has land close to this location been released?

Hon KAY HALLAHAN replied:

(1)-(3)

A strip of vacant Crown land and a portion of reserve No 36602 is being released to Mr Bilicich. No part of Gascoyne location 250 is being released.

COLLEGES - KARRATHA COLLEGE

Funding

340. Hon N.F. MOORE to the Minister for Planning representing the Minister Assisting the Minister for Education with Technical and Further Education:

- (1) Has funding for recurrent expenditure at Karratha College been reduced?
- (2) If so, what is the extent of the reduction?
- (3) Have any staff (full time or part time) been put off at the Karratha College this year?
- (4) If so, what are the details?

Hon KAY HALLAHAN replied:

The Minister assisting the Minister for Education with TAFE has provided the following reply -

- (1) No.
- (2) Not applicable.
- (3) No.
- (4) Not applicable.

COLLEGES - HEDLAND COLLEGE
Karratha College Amalgamation

341. Hon N.F. MOORE to the Minister for Planning representing the Minister assisting the Minister for Education with TAFE:

- (1) Is it correct that consideration is being given to amalgamating the Hedland and Karratha Colleges?
- (2) If so, why is the merger being considered?
- (3) If not, will the Minister give an assurance that the colleges will not be amalgamated?

Hon KAY HALLAHAN replied:

The Minister assisting the Minister for Education with TAFE has provided the following reply -

- (1) No.
- (2) Not applicable.
- (3) Yes. It is not proposed that Hedland and Karratha Colleges be amalgamated.

WIDOW - FEDERAL TERM OF REFERENCE
State Compliance

363. Hon MURIEL PATTERSON to the Minister for Planning representing the Minister for Community Services:

The Federal Government, through the Department of Social Security refers correctly to the term in official application forms "widow" when there are no children and refers to a widow with children as a "sole parent" thereby placing the women in the same category as unmarried and de facto mothers.

- (1) Does the State Government follow this term of reference to widows?
- (2) If so, is not the usage of the term incorrect and discriminating?

Hon KAY HALLAHAN replied:

The Minister for Community Services has provided the following reply -

- (1) No.
- (2) Not applicable.

COMMUNITY SERVICES DEPARTMENT - DISTRAUGHT MOTHER,
PARLIAMENT HOUSE
"Kidnapped" Daughter Protest

364. Hon MURIEL PATTERSON to the Minister for Planning representing the Minister for Community Services:

- (1) Is the Minister aware that a distraught mother protested at the front of Parliament House on Thursday, 7 June and claimed that the "Welfare" had "kidnapped" her daughter without giving a reason?
- (2) Will the Minister inform this House whether a minor can be placed under the care of Department of Community Services without a reason being given to the parent or parents?

Hon KAY HALLAHAN replied:

The Minister for Community Services has provided the following reply -

- (1) Yes, but I am satisfied the allegation was untrue. If the member has any doubts on this I would be happy to discuss the matter.
- (2) No. When the Department for Community Services apprehends a child it lodges a care and protection application in the Children's Court. Following this, the parents are served with a summons. The matter is then dealt with in the Children's Court. It is the Children's

Court that makes the order to place the child under the care of the Department for Community Services. The only time the parents would not be informed is if their whereabouts could not be ascertained.

TRAFFIC LIGHTS - INTERSECTION AMBER SIGNALS
Motorists' Ruling

368. Hon P.G. PENDAL to the Minister for Police:

- (1) Can the Minister provide a clarification of the ruling for motorists, regarding driving through amber lights at intersections?
- (2) Is it correct that motorists are permitted to proceed through an amber light if it is impossible for them to stop their vehicles due to insufficient time, at the change of the light signals?
- (3) Are motorists cautioned or penalised for driving through amber signals?
- (4) If so, what is the substance of the caution/penalty?

Hon GRAHAM EDWARDS replied:

- (1) Regulation 401(2)(b) states -

A traffic control signal facing a driver and displaying a steady circular amber signal or an amber arrow, is a direction that he may not proceed beyond the stop line associated with the signal or the stop line of the lane associated with the signal or in the absence of a stop line, at a point adjacent to the nearest appropriate traffic signal, unless his vehicle is so close to the stop line, or traffic signal, when the circular amber signal or amber arrow first appears that he cannot safely stop his vehicle before passing over the stop line.

- (2) Yes. As outlined in (1).
- (3) All police officers have a discretion to issue a caution or infringement when and where circumstances so warrant.
- (4) Under the first schedule of the Road Traffic (Infringements) Amendment Regulation, Regulation 401, "Failure to comply with the direction of traffic control signal displaying amber signal" attracts a penalty of \$50.
- (2)

TREASURY DEPARTMENT - AUDITOR GENERAL'S REPORT
"Permanent Appropriation Disclosure Accountability for the Public Purse" - Public Accounts and Expenditure Review Committee Referral

373. Hon MAX EVANS to the Leader of the House representing the Treasurer:

The Report of the Auditor General 1990 (page 39-40) refers to "Permanent Appropriation Disclosure Accountability for the Public Purse" and recommends that the matters raised by the Auditor General and the comments of the Under Treasurer be referred by Parliament to the Public Accounts and Expenditure Review Committee.

- (1) Has this matter been referred to that committee?
- (2) If not, why has it not been referred to the committee?

Hon J.M. BERINSON replied:

The Treasurer has provided the following reply -

This is a matter for the Parliament.

MOTOR VEHICLES - LICENCE STATISTICS

376. Hon MAX EVANS to the Minister for Police:

Would the Minister advise with respect to motor vehicles licences the approximate number of vehicles licensed as -

- (a) Government cars;
- (b) statutory authorities cars;
- (c) finance companies (lease cars);
- (d) company cars;
- (e) private owners and all others; and
- (f) the total number of vehicles licensed under (a) to (e)?

Hon GRAHAM EDWARDS replied:

(a)-(b)

19 140 (as at 31.3.90).

(c)-(e)

Information of this nature can be derived from the police data base only from a given number place. Therefore the aggregates requested are not available.

(f) 1 280 717 (as at 31.3.90).

MULTANOVA - DRIVER IDENTITY

377. Hon MAX EVANS to the Minister for Police:

I refer to the Minister's answer, given on 5 June, to question 311 and ask -

- (1) With respect to the Multanova Camera, what procedure will be invoked in regard to obtaining the identity of the driver?
- (2) Has the Minister considered the problems of the finance companies relating to cars on lease to obtain the driver's identity to advise the police?

Hon GRAHAM EDWARDS replied:

- (1) When a photograph is taken and the vehicle is not registered to a company, the infringement notice will be sent to the registered owner. Also enclosed will be a form to be completed by the owner if he was not the driver, and information advising him of the required procedure. If the owner was not the driver, the form and infringement notice should be returned to the police and inquiries will then be commenced to identify the driver. When identified, that driver will receive the infringement notice.
- (2) As previously advised, infringement notices will not be sent out to a company whether a finance company or otherwise. If the member is advertising in his question to the use by police of powers to require a registered owner to identify the person, not being the owner, who was driving or in charge of a vehicle, I remind the member that these powers were provided to police in 1982 by a Liberal Party Government. The powers have been exercised since then without apparent problems to finance, lease or hire companies.

LAND - WOODMAN POINT CARAVAN PARK

Leasehold Property

382. Hon E.J. CHARLTON to the Minister for Police representing the Minister for Sport and Recreation:

- (1) Is the area of land on which the Woodman Point Caravan Park on leasehold property?
- (2) If it is leasehold property, to whom is it leased and for what length of time?
- (3) If the property is leased what procedure was used in the granting of the lease?

Hon GRAHAM EDWARDS replied:

The Minister for Sport and Recreation has provided the following reply -

- (1) Yes.
- (2) The property is leased to Fleetwood Corporation for 25 years.
- (3) Expressions of interest were invited from the caravan park industry.

PLATT, GRAEME AND GLORIA - COMPUTER SYSTEM BULLETIN BOARD
Police Charges

383. Hon GEORGE CASH to the Minister for Police:

I refer to the article which appeared on page 75 of *The West Australian* on 5 June 1990 and ask -

- (1) Have there been any charges laid by the State police in connection with the computer system bulletin board operated by Graeme and Gloria Platt?
- (2) If yes, what are the charges?
- (3) Have the computers and other associated equipment seized by the State police been returned to Graeme and Gloria Platt?

Hon GRAHAM EDWARDS replied:

- (1) No.
- (2) Not applicable.
- (3) No equipment was seized by State police.

SHARK BAY - FISHING INDUSTRY CLOSURE
Australian Conservation Foundation Claim

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

- (1) Is the Minister aware of the claims by the Australian Conservation Foundation and the Greenpeace movement that there is a need to shut down the fishing industry in Shark Bay on the basis that commercial fishing is inconsistent with conservation needs and values?
- (2) Does the Minister support such a contention?

Hon GRAHAM EDWARDS replied:

The Minister for Fisheries has provided the following reply -

- (1) I am aware that there have been statements by the Australian Conservation Foundation and the Greenpeace movement, but not aware that they have stated that the fishing industry in Shark Bay should be shut down.
- (2) No.

JUVENILE CRIME - CARNARVON PUBLIC MEETING

398. Hon P.H. LOCKYER to the Minister for Planning representing the Minister for Community Services:

- (1) Has the Minister received an invitation to attend a public meeting in Carnarvon to discuss juvenile crime and penalties being given to offenders?
- (2) If so, will the Minister accept the invitation and indicate a date convenient to herself so that appropriate arrangements can be made?

Hon KAY HALLAHAN replied:

The Minister for Community Services has provided the following reply -

- (1) Yes, on 15 June 1990.
- (2) Yes, I will accept that but would ask the member to contact my appointments secretary to arrange the date.

BUILDING MANAGEMENT AUTHORITY - ACCOUNT PAYMENTS DELAY
Contractors

399. Hon N.F. MOORE to the Minister for Planning representing the Minister for Works:

- (1) Is it correct that the Building Management Authority is refusing, or is unable, to pay or process claims for payments for work completed or in progress for Government contracts?

- (2) If so, what is the reason for this and when can contractors expect to receive payments?

Hon KAY HALLAHAN replied:

The Minister for Works has provided the following reply -

- (1) No.
(2) Not applicable.

PRAWNS - WEST KIMBERLEY COAST PRAWN FISHERY

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

- (1) Is the Minister aware that the Australian Fisheries Service proposed a trial period for a West Kimberley Coast Prawn Fishery off Western Australia in June 1988?
(2) Is the Minister aware of the criteria that has been set down for the management of this fishery?
(3) If so, will the Minister provide details?
(4) Does the Government support prawn trawling access to the area?
(5) If not, why not?

Hon GRAHAM EDWARDS replied:

The Minister for Fisheries has provided the following reply -

- (1) Yes.

(2)-(3)

A number of different proposals have been discussed, none of which resulted in the Commonwealth Minister for Primary Industries and Energy providing for the trawling of prawns in the West Kimberley prawn fishery during that year. This fishery under the offshore constitutional settlement arrangements is the responsibility of the Federal Minister for Primary Industries and Energy, Mr John Kerin. The honourable member should refer the question to the Hon J. Kerin.

- (4) The need to protect the valuable pearl industry is of higher priority; however, provided that the management arrangements ensure that adjacent pearl beds are not substantially impacted by the trawling permitted, it would be supported.

(5) Not applicable.

PRAWNS - WEST KIMBERLEY COAST PRAWN FISHERY

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

- (1) What is the current status of the West Kimberley Coast Prawn Fishery?
(2) When was this fishery discovered and what is the estimated size of the commercial western king prawn resource?
(3) How many applicants have indicated an interest in obtaining a licence to fish this area?
(4) How many licences are to be issued and what method will be used to allocate licences?
(5) What negotiations have been held to date with the Australian Fishery Services in respect of this fishery?
(6) Will the original pioneer groups who have fished this area be given priority?

Hon GRAHAM EDWARDS replied:

The Minister for Fisheries has provided the following reply -

- (1) The area is closed to trawling.
- (2) 1987, although some people claim to have taken prawns in the area prior to this time. A Fisheries Department report indicates a potential catch of 200 tonnes of prawns annually.
- (3)-(6) These questions of details should be referred to the Federal Minister for Primary Industries and Energy. Under the offshore constitutional settlement arrangements, neither I, as Minister for Fisheries, nor the Fisheries Department have an active role in the management of the fishery.

POLICE STATIONS - SHOP FRONT POLICE STATIONS

405. Hon GEORGE CASH to the Minister for Police:

- (1) How many shop front police stations operate in Western Australia and where are they located?
- (2) Has the success of these shop front police stations been evaluated?
- (3) If so, will the Minister provide details on their success?

Hon GRAHAM EDWARDS replied:

- (1) Four - Dunsborough, Forrestfield, Two Rocks and Mirrabooka.
- (2) Shop front policing is a recent initiative. This initiative is being evaluated over a 12 month period.
- (3) Refer to (2).

POLICE - HEAVY HAULAGE SECTION

Vehicle Weighing Equipment

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

Would the Minister advise if heavy haulage police are using, or intend to use, equipment to weigh vehicles by placing an instrument under roadways to record weight and registration of vehicles?

Hon GRAHAM EDWARDS replied:

No.

ROAD TRAFFIC ACT - 0.08 SECOND DRINK DRIVING CONVICTION

Extraordinary Licence Application

423. Hon GEORGE CASH to the Minister for Police:

Will the Minister clarify which section of the Road Traffic Act applies to the time which must elapse before an application for an extraordinary licence may be made by a person convicted for the second time of driving with an excess of 0.08 blood alcohol level?

Hon GRAHAM EDWARDS replied:

Section 76.

QUESTIONS WITHOUT NOTICE

SWAN BREWERY SITE - HIGH COURT DECISION

285. Hon GEORGE CASH to the Attorney General:

I refer to the comments made yesterday by the Attorney General in relation to the important High Court decision made recently. Can the Attorney General further advise the House on the likely ramifications or the likely actions the Government will take in respect of that decision?

Hon J.M. BERINSON replied:

I indicated yesterday that I had received no more than brief preliminary advice from the Crown Solicitor. I have since received a further memo from him which elaborates on his original comments, but only a little. Given the pressures of the Parliament I have had no opportunity to consider the decision itself. I indicated yesterday that, as would normally be expected in complex constitutional questions, this decision leaves a number of grey areas. Some of those have now been brought to my attention. They have the effect that, although in general it remains the case as I indicated yesterday, we face in this decision a very fundamental change to the law as understood in respect of whether Statutes bind the Crown. One probably cannot go so far as to suggest that the position has been entirely reversed so that the only circumstance in which the Crown would not be bound by a Statute is where the Statute itself is very specific in establishing Crown privilege in that area. I am advised also that the effect of the decision is to establish some level of distinction between the approach to be taken to Acts passed before the decision was brought down and those which are subsequently brought down with the knowledge of those events.

It will be obvious from what I have said that I am still unable, on the advice I have, to be precise and I would expect that it will be some time before anybody can be precise. That also is not unusual in constitutional cases. I suggested to one of the media interviewers earlier this morning that the one hope I trust we will all share is that this decision will not end up as another picnic for academics and lawyers. In respect of the Government's response I am unable to add usefully to what I said yesterday. Work is proceeding on consideration of amendments to the Interpretation Act which may return the general position to the understanding which applied before the recent decision so as to allow the very difficult and comprehensive work to proceed in respect of any detailed analysis of particular Statutes. When I can add to that I will be happy to do so but I expect that it would probably not be before the stage at which legislation is actually available.

SWAN BREWERY SITE - HIGH COURT DECISION

286. Hon GEORGE CASH to the Attorney General:

Further to that question and to the answer given by the Attorney General, will the Attorney give an assurance to the House that he will, on a regular basis, keep the House informed as to the wide ramifications in respect of this High Court decision and of any action that the State Government proposes? Also, by way of an aside, given the breadth of the ramifications this would seem to be an issue which may be considered by the constitutional review committee in due course. I say that in all seriousness.

Hon J.M. BERINSON replied:

I would be happy for anyone to consider it, but the Government will not have time to wait on the constitutional review committee. In qualifying that, I point out that the urgency of the situation and the extent of uncertainty in some areas which has been created by this decision requires an extremely urgent response. Thereafter, it will of course be open to the constitutional review committee to consider, at the same time as the Government, what further action may be taken or what further ramifications emerge. It would certainly be appropriate for a reference of that kind to be forwarded to the committee. As the member would know, the committee is not due to start operations until next month and it would not be appropriate to hold up matters waiting on that development.

SWAN BREWERY SITE - REDEVELOPMENT REVIEW

287. Hon P.G. PENDAL to the Minister for Planning:

I ask the Minister this question also in her capacity as the Minister for Heritage. Does the Minister categorically reject the possibility that the Swan Brewery redevelopment will be reviewed or even abandoned?

Hon KAY HALLAHAN replied:

The situation with the old Swan Brewery is that the Aboriginal Cultural Material Committee is doing its work as a result of the Government's second application to it. In addition to that there is an outstanding case before the court. When the decisions by the two bodies are known the Government will be in a position to consider the matter further.

SWAN BREWERY SITE - REDEVELOPMENT REVIEW

288. Hon P.G. PENDAL to the Minister for Planning:

I thank the Minister for her answer to the previous question and direct a further question to her. In the event that the Government is prepared to consider that review or abandonment of the project, would the Minister be prepared to receive from the Opposition suggestions which are currently in hand and which may find a way of solving the problems on that site and accommodate the wishes of the Aboriginal people?

Hon KAY HALLAHAN replied:

I have never had such a wonderful question put to me before. I have no idea what I am being asked.

Hon P.G. Pendal: Then you should not be answering.

Hon George Cash: The answer will probably fit either way.

Hon KAY HALLAHAN: It probably will. If Hon Phillip Pendal has some proposal he would pursue if in Government - but he is not - I am certainly prepared to talk to him about it, as he well knows.

PRISONS - FREMANTLE PRISON
Unusual Activity Levels

289. Hon T.G. BUTLER to the Minister for Corrective Services:

- (1) Is it a fact that an unusual level of activity has occurred in the Fremantle Prison in the past few days?
- (2) If so, can the Minister provide any detail?

Hon J.M. BERINSON replied:

(1)-(2)

A report was received yesterday that a package of prescription drugs on consignment within Fremantle Prison to the infirmary had, to use a neutral phrase, "gone missing".

Hon E.J. Charlton: It might be the \$850 million.

Hon J.M. BERINSON: I am pleased that Hon Eric Charlton can be so light-hearted about this matter. I would have thought it was self-evident that this constitutes a serious incident indeed and that should be acknowledged because of the unusual and even threatening results which could emerge from an incident of this kind. Needless to say, the report to which I have referred led to an immediate and intensive search of the prison by the Metropolitan Security Unit. To the extent there has been any public comment on "unusual activity" at Fremantle Prison, that no doubt refers to the MSU search. I am pleased to be able to advise the House that almost all the missing items have been recovered. The one exception is a batch of 160 valium tablets out of strips originally totalling 200. That is the position conveyed to me immediately before the House sat at 2.30 pm. A full scale investigation of all aspects of this matter has been initiated and I am advised by the Executive Director of the Department of Corrective Services that he expects to be in a position to provide a full report by tomorrow evening at the latest.

I do not want to pre-empt further action or developments that might emerge pending receipt of that report, but as some comment on this issue had filtered out one way or another I felt it was desirable to inform the House of the details at present to hand.

COAL MINES REGULATION AMENDMENT BILL - INFORMATION

290. Hon MURRAY MONTGOMERY to the Leader of the House:

When we were debating the Coal Mines Regulation Amendment Bill I asked for some information which the Leader of the House indicated he would seek to supply. Is he now able to do so?

Hon J.M. BERINSON replied:

I thank the honourable member for agreeing during the course of the debate on that Bill to allow this detail to be provided later. I am advised by the department as follows -

Clause 33 only related to the land which was to be incorporated into the mining lease under the Collie Coal (Western Collieries) Agreement Act. Clause 33 enabled the land to be included in that mining lease subject to the existing mortgages without the need to discharge these and enter into new mortgages on the grant of the mining lease. This mining lease was granted into 1986. Subsequently, clause 33 ceased to have any effect from that date.

In addition however, it was not intended that the terms of clause 33 should apply to the land from the Collie Coal (Western Collieries and Dampier) Agreement Act to be included in the mining lease under the Collie Coal (Western Collieries) Agreement Act by way of the Variation currently proceeding in the Parliament. Accordingly, Clause 33 was deleted to reflect this intention.

CLAREMONT RAILWAY COMPLEX - COVENANT

291. Hon P.G. PENDAL to the Minister for Heritage:

- (1) Has the Minister made any decision on placing a covenant on the title of the Claremont railway complex?
- (2) If so, have any arrangements been made to discuss financial assistance with the Town of Claremont to restore and retain those buildings?

Hon KAY HALLAHAN replied:

- (1) No.
- (2) Not applicable.

CLAREMONT RAILWAY COMPLEX - CLAREMONT TOWN LETTER

292. Hon P.G. PENDAL to the Minister for Heritage:

- (1) Has the Minister yet received a letter from the Town of Claremont on the matter of retention of the railway complex?
- (2) If so, has she responded?
- (3) If yes to (2), when will she table the response?

Hon KAY HALLAHAN replied:

(1)-(3)

I am pleased that the honourable member raised this matter because last time he raised it a clear and lovely photograph of the Mayor of the Town of Claremont appeared in the paper.

Hon P.G. Pendal: Is the Minister saying I am responsible for that?

Hon KAY HALLAHAN: I do not know. I had not then received the letter referred to, so perhaps using the media was better than going through proper channels to get something done, if something needed to be done. The letter has since been received but I have not yet forwarded a response, so I cannot table it.

ARTS DEPARTMENT - CONSULTATIVE ART PANEL APPOINTMENTS
Expressions of Interest

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

- (1) Has the Minister yet seen expressions of interest for appointments to the consultative art panels within the Department for the Arts advertised to recently in the media?
- (2) If so, when is it proposed that she will announce the membership of those panels?

Hon KAY HALLAHAN replied:

- (1) No.
- (2) Not applicable.

ROAD TRAFFIC REGULATIONS - PLASTIC NUMBER PLATE OFFENCE

294. Hon MURRAY MONTGOMERY to the Minister for Police:

When were the Road Traffic Regulations altered to make it an offence for a number plate on a motor vehicle to be covered with plastic?

Hon GRAHAM EDWARDS replied:

That refers not just to motor cycles but to motor vehicles generally. I will check that out and advise the member accordingly.

PRISONS - OLD FREMANTLE PRISON
Future

295. Hon W.N. STRETCH to the Minister for Corrective Services:

Has the Minister initiated or taken part in discussions on the sale or development of the old Fremantle Prison?

Hon J.M. BERINSON replied:

I am not involved with that issue. I am responsible for Fremantle Prison while it is used for its present purpose, but that responsibility will cease when the prison is decommissioned. I believe it must have been at least two years ago that an announcement was made about procedures the Government had adopted in order to have the future of the Fremantle Prison site considered.

It is of very significant heritage interest. A committee comprising Ministers, departmental representatives and also representatives of local government, if I remember correctly, was established. I cannot be precise on that, but the information is readily available. What I can be precise about is that I am not a member of that committee.

PRISONS - OLD FREMANTLE PRISON
Future

296. Hon W.N. STRETCH to the Minister for Lands:

Has the Minister initiated or taken part in discussions on the sale or development of the old Fremantle Prison?

Hon KAY HALLAHAN replied:

I do not want to be evasive, but the chair of the ministerial committee to which the Leader of the House referred is occupied by the Minister for Works. However, I can say, both as Minister for Heritage and Minister for Lands, that I have taken an interest in the development. There is a working party of people with technical expertise as well as the ministerial working party, and the people with the technical expertise are currently drawing up plans for the future use of the prison. It is integral to the soul of Fremantle and its early history. There is a lot of wonderful heritage in the building style of the prison where material was brought from Rottnest Island. A huge fabric of early colonial history is bound up in that prison. We are extraordinarily lucky, because it has remained in service as a public building. As one learns more

about heritage buildings, one finds that it is those building which withstand the rigours of time best. The group which looked at prisons in other States came back very impressed with what we have here.

There is a lot of interest from arts groups. I am sure there will be coffee outlets and pleasant activities like that to complement the other activities. The building will become a wonderful centre for Fremantle after its decommissioning. As the Minister for Corrective Services indicated, much sound planning work has gone on in the lead up to this decommissioning.

OPERA, MUSIC THEATRE - GOVERNMENT FUNDING

297. Hon TOM STEPHENS to the Minister for The Arts:

Will the Minister outline the State Government's funding arrangements for opera and music theatre in Western Australia in the 1990-91 season?

Hon KAY HALLAHAN replied:

I appreciate this question because it has been a matter of some controversy. I have been concerned about the WA Opera Company and I know that some members have taken a very close interest in it. We have made a major financial commitment to the quality of opera and music theatre productions for next year. Subsidies of \$595 000 will be made available. The WA Opera Company has the first option to submit a program of activities and events for \$500 000 of that funding, and individual artists and organisations will be invited to apply for grants from the remaining \$95 000 for one-off projects. Members will be interested to hear that the Australian Opera Company will also be invited to stage "Turn of the Screw" and a possible performance of "Tristan and Isolde" in Perth next year at a cost to the State Government of \$175 000.

Those funding arrangements are aimed at supporting our local performers and producers, and at the same time providing the public with a wide range of good quality opera and music theatre. Last week I met with the board of the WA Opera Company and discussed this funding opportunity for the company. That meeting was a very amiable one and it set the relationship between the State Government and the WA Opera Company on a very constructive course. I am very pleased to see that occurring. Board members were very keen to submit a program in the spirit in which that option had been made.

ROTHWELLS LTD - McCUSKER INQUIRY

Report Date

298. Hon N.F. MOORE to the Attorney General:

Can the Attorney General give the House some indication of when the report by Malcolm McCusker into Rothwells is likely to be presented to the Government and made public?

Hon J.M. BERINSON replied:

My most recent advice is that Mr McCusker expects to meet his previously announced timetable for the completion of the report, and that is looking to about mid-August. The question of the timing of the release of the report is not a matter which has yet been considered. It will require, as did the interim Rothwells report by the NCSC, the prior consideration of the Ministerial Council. I would not expect that to involve a long delay but, given the extensive nature of the report and the need for the Attorneys and their advisers in all States and the Commonwealth to consider it, it could reasonably be anticipated that allowance would have to be made for some time to complete this work.

ASSET MANAGEMENT TASKFORCE - ROLE

299. Hon E.J. CHARLTON to the Minister for Lands:

- (1) Will the Minister inform the House what role is played by the Asset Management Taskforce?

- (2) Is it an ongoing organisation?
- (3) What is the primary reason for its review?

Hon KAY HALLAHAN replied:

(1)-(3)

I am a member of that taskforce. I spoke about this earlier. The Deputy Premier is actually in the chair. If the member puts this question on notice we will supply an answer next week.

Hon E.J. Charlton: Can you not give us an overall view of what the committee looks at?

Hon KAY HALLAHAN: It is looking at Government assets, and departments indicate whether they have a use for a particular property or facility. Other departments have an opportunity to indicate their interest, and at the end of the day the Asset Management Taskforce will look at disposal, once it has become clear that that is the most appropriate course to take.

LAND ADMINISTRATION DEPARTMENT - LAND SUBDIVISIONS
Asset Management Taskforce

300. Hon E.J. CHARLTON to the Minister for Lands:

- (1) It has been drawn to my attention that land held under the control of the Department of Land Administration for possible subdivision could be put in the hands of the Asset Management Taskforce, which would determine that it will go to a private developer for subdivision. Is that correct?
- (2) Does she consider that would be in the best interests of potential land buyers, in view of the obvious increase in costs?

Hon KAY HALLAHAN replied:

I am happy to put that question to Mr Taylor. Another question arose the other day about land held by the Department of Land Administration. When we talk about land held by the department we are usually referring to country areas. If the member has heard something different about the arrangements - that is, something that has not come to my attention - I suspect it is probably a case of misunderstanding the way something is being represented. I hope that the honourable member will discuss that with me outside question time.

Hon E.J. Charlton: The Minister wishes me to stop talking in riddles?

Hon KAY HALLAHAN: It seems that the member has heard about a situation which has raised a question in his mind. I am not clear about the matter, but were I to know what the instance was perhaps I could quickly resolve it.
