Legislative Council

Thursday, 19 October 1989

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

PETITION - VIDEOS

X Rated - Banning Request

HON N.F. MOORE (Mining and Pastoral) [2.33 pm]: I present a petition from 220 citizens of Western Australia expressing concern that X rated videos may be legalised in Western Australia and requesting that Parliament maintain the ban on X rated videos as it has a strong obligation to protect women and children.

[See paper No 454.]

A similar petition was presented by Hon Mark Nevill (20 persons).

[See paper No 456.]

PETITION - SELECT COMMITTEE ON BURSWOOD MANAGEMENT LTD

Smith, Dempster and Coulson - Misleading Evidence

HON N.F. MOORE (Mining and Pastoral) [2.34 pm]: I present a petition from Mr John Andrew Samuel alleging that there is strong evidence to suggest that Mr A.D. Smith, Mr D.R. Dempster, Mr C.R. Coulson and Mr R.M. Smith, all persons who appeared before the Select Committee on Burswood Management Ltd or a Select Committee of Privilege, deliberately gave false or misleading evidence. Mr Samuel therefore prays that a parliamentary committee of the Legislative Council be appointed to examine and report on the matter raised in his petition as a matter of urgency.

[See paper No 457.]

PETITION - NULLAKI PENINSULA FORESHORE, DENMARK AREA

Environmental Destruction - Rehabilitation, Punitive Action

HON BOB THOMAS (South West) [2.35 pm]: I seek leave to present a petition that is not in conformity with the Standing Orders. The petition, as originally drafted, contained statements that could be in breach of the Standing Orders. It has now been redrafted to conform to the Standing Orders in that regard. However, it has not been possible or practical to have all the signatories to the original petition resign the redrafted petition and, as a consequence, those signatories have been attached to the new petition. I assure the House that the sentiments of the original signatories are adequately expressed in the redrafted petition.

Leave granted.

Hon BOB THOMAS: I present a petition from 468 citizens of Western Australia expressing abhorrence at the environmental destruction which recently took place when a road-width swathe was cut along seven kilometres of the Nullaki peninsula foreshore near Denmark and praying that the House take whatever steps necessary to ensure that the successful rehabilitation of the damaged land takes place and that the Government take punitive action against the person or persons responsible for the destruction.

[See paper No 455.]

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Twenty-third Report

HON N.F. MOORE (Mining and Pastoral) [2.39 pm]: I am directed to present the twenty third report of the Standing Committee on Government Agencies entitled "A Review of Previous Committee Reports - Implementation of Recommendations".

The Standing Committee has been functioning for over seven years, in which time it has tabled 12 major reports containing recommendations for the improved functioning of specific Government agencies, such as the Lotteries Commission and the State Government Insurance Commission. The committee has also reported on issues which affect all Government agencies, such as accountability, annual reporting and use of plain English in publications.

Many of the committee's recommendations for change have been adopted by the relative Government agencies. However, the committee has expressed some frustration, firstly with the time taken by the parties responsible for the agencies responding to the committee's recommendations, and secondly with the seeming lack of consideration being given by the Government to some of its reports. On one occasion, the Government conducted its own inquiry into an agency that had only just been investigated by the Standing Committee. While the committee has no powers of direction and can only make recommendations to the House, it is of the view that its work is significant and its reports and their recommendations should be considered by the Government and its agencies. In an attempt to gain a swift and considered response to the committee's recommendations it has recommended that a clause be added to the Standing Orders of the House, as follows -

> That the following clause be inserted into the Standing Orders of the Legislative Council -
>
> > After tabling, the Clerk shall send to the responsible Minister, a copy of any report recommending action by, or seeking a response from, the Government. The Leader of the Government or the responsible Minister (if a Member of the Council) shall, within 4 months, report the Government's response to the House. Where the House is adjourned at the time the response is provided, it shall be given forthwith to the Committee and reported to the House at the earliest opportunity.

Should the House adopt this proposed new Standing Order it would become a requirement for Government agencies which are subject to the recommendations of committee reports to respond directly to the Parliament. Such a requirement can only improve the accountability of Government agencies. I move -

> That the report do lie upon the Table and be printed.

Question put and passed.

On motion by Hon N.F. Moore, resolved -

> That consideration of the committee's report be made an order of the day for the next sitting of the House.

SUPREME AND FAMILY COURTS (MISCELLANEOUS AMENDMENTS) BILL

Second Reading

HON J.M. BERINSON (North Metropolitan - Attorney General) [2.41 pm]: I move -

> That the Bill be now read a second time.

The purpose of this Bill is to clarify and rectify a number of administrative matters relating to the Supreme Court and to provide for the appointment of additional judges. At present the Supreme Court Act permits the appointment of a chief justice and 12 other justices and it is likely that the twelfth judge will be appointed in the current financial year. Greater flexibility is required to respond to increasing pressure on the court by additional appointments and it is time to move from the position where every increase in the total number of Supreme Court judges requires a separate Act of Parliament.

On the last occasion this issue arose the Opposition argued that the Supreme Court should continue to have restricted numbers so that the Government of the day could not "stack" the court to secure a favourable decision for its legislation. While that argument might have some validity with ultimate courts of appeal, the clearly established jurisdiction of the High Court of Australia to deal with any appeal from our Supreme Court - guaranteed by section 73(11) of the Commonwealth Constitution - ensures that any decision of our Supreme Court in an important case could go on appeal to the High Court. There is, therefore, no possibility

of the Supreme Court being "stacked" to the advantage of any Government. Moreover, there is the practical consideration that any attempt to do so would be blatantly obvious and would undoubtedly attract insuperable antagonism from existing judges and the profession and public alike.

The PRESIDENT: Order! There are about eight conversations going on while the Attorney is introducing this piece of legislation. I want members to cease their unauthorised meetings.

Hon J.M. BERINSON: The Bill also provides that an acting judge or a commissioner, or an acting judge of the Supreme Court and Family Court, shall complete an oath of allegiance and an oath of office prior to commencing to act in a judicial capacity. It has recently come to attention that the present Acts do not authorise these oaths to be taken by these acting judges or commissioners. As it is an offence to administer an unauthorised oath early attention to these provision is necessary.

These problems have only recently come to light and are an unintended consequence of the passing of the Australia Acts 1986. Until then the old letters patent of the Governor authorised him to administer oaths. The new letters patent do not continue that authority and it is therefore necessary for each Act to specifically authorise oaths whenever Parliament intends that they should be administered. Masters of the Supreme Court generally enjoy the same conditions of service as judges, but a disparity exists in that masters must now retire at 65 years of age whereas judges can continue until 70 years of age.

Finally, the deletion of the references to the "Great Seal in Her Majesty's name" and substitution of the reference of "Public Seal of the State" reflects the terminology in the new letters patent relating to the office of the Governor which were granted by Her Majesty consequent on the Australia Acts 1986.

I commend the Bill to the House.

Debate adjourned, on motion by Hon Margaret McAleer.

EVIDENCE AMENDMENT BILL

Third Reading

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

ACTS AMENDMENT (DETENTION OF DRUNKEN PERSONS) BILL

Second Reading

Debate resumed from 18 October.

HON J.M. BERINSON (North Metropolitan - Leader of the House) [2.48 pm]: I thank members for the interest shown in this Bill and their positive response to it. Due to unanticipated developments I do not have all the notes of my comments with me. However, I can address the main issues raised during the debate and will be happy to elaborate further, if necessary, during the Committee stage of the Bill.

I believe there was general approval for the measures proposed in this Bill. However, a consistent line of thought emerged, led by the Leader of the Opposition in his opening comments, indicating that while the decriminalisation of drunkenness is accepted in principle, members have reservations about the effectiveness of the measures and about just how much would be achieved by them in the end. The consistency of that line of argument by members, especially those on the other side, was indicated by the fact that the last speaker, Mr Tomlinson, while also supportive of the moves, went to some lengths to express his concern about their effects in the short term, and perhaps even some of the longer term difficulties which might be involved.

I will start by referring to a small interchange by way of interjection which I had with the Leader of the Opposition. He referred to this Bill as moving the manner of dealing with drunken persons from a judicial to a welfare model. I suggested to him that it might be more appropriate to speak of the change as a move from a judicial to a non-judicial model. Later he was prepared to vary his terminology to reflect the sort of difference which is involved in

the two concepts. It is important to stress that, while important, this measure is very limited in its scope. The move does not go very far beyond its basic description; that is, a measure to decriminalise drunkenness. The title of the Bill, with its reference to detention of drunken persons, is itself an indication that we are not really seeking to move away from the need to detain drunken persons, either in their own interests or in the interests of the community, but we are looking firstly for a different form of detention, so far as that can be achieved, and secondly for the avoidance of the procedures currently involved in the criminal treatment of this offence. By that I refer to the elimination of the need to charge persons, to require them to appear in court, and to raise the possibility of penalties, which are almost exclusively very small fines; but frequently the follow-up involves imprisonment in default of payment of fine.

None of that takes us very far down the welfare route. For the same reason, the description by one or more speakers of the sobering-up centres which we hope will be an integral part of the replacement system as detoxification centres is not well placed. When we talk about detoxification centres, we are talking about much more than the opportunity to provide a safe environment from the point of view of both detained persons and the community while the detained person becomes sober again. There is a connotation to detoxification centres which looks to a much more long term treatment of the basic problem of alcoholism. It must be acknowledged from the outset that desirable as it is to have more extensive facilities for the treatment of alcoholism, they are not to be provided, and they are not meant to be provided, by this Bill. The Government has consistently made it clear that this measure therefore has a limited aim. I think members generally have agreed that even within those limitations the amendment to the present arrangement is worth pursuing.

Whenever we have a change from a long established procedure, especially one which affects very many people in the course of a year, it is not unreasonable to expect some reservations based on the worst possible scenarios of what might follow. During the debate, questions were directed to what we would do about people escaping: How would we ensure that persons regarded as acceptable to take over the care of detained persons from the police were properly trained, equipped or sufficiently skilled to know when a person was sober and could therefore properly be released? Might there not be difficulties in the powers given to the police to detain persons beyond the specified period? Concern was also expressed at a different level about relieving the pressure on the police and the courts on the one hand, but raising the potential for a very significant increase of pressure on justices of the peace. It is true that the Bill provides a number of situations where the services of a justice of the peace may be called upon. Looking at that, and making a calculation as to what proportion of detainees might seek to use one or other of the systems provided, could well lead to problems of that kind and many others.

In response to those sorts of reservations, there are certainly no guarantees that the new system will be free of problems any more than the current system is free of problems. On the other hand, experience in jurisdictions which have adopted the decriminalisation of drunkenness before us indicates there is room to be confident that the system will work smoothly. I have said before that we have largely taken as our model the Northern Territory experience, and from everything I have been able to gather from that jurisdiction, and in spite of earlier reservations when it was introduced, there is now a high level of acceptance of the alternative route, which we are now proposing to take, not simply by detainees, but also by the police and the general community. The reason for that is that on the whole the system works. On the whole a person who is drunk and brought into a sobering up centre where he is given the opportunity to clean up and go into a clean bed - and under quite non-oppressive circumstances - is simply happier to go to bed and sleep it off. There are occasions when detainees in those centres walk out, and it is not an offence to do that, although it places that person in the position where he may be detained again and brought back. However on the whole the system works because it provides a reasonable level of comfort and care, which leaves the alternatives for dead - the alternatives of the park bench, the street or somewhere much worse.

The interesting thing about the Northern Territory experience is that after some time the procedures there had to be adapted to limit the use of the sobering up centres because people were volunteering to stay longer than the period they were required to stay. Not only that, but people who were not detained by the police at all were turning up and volunteering just

to stay the night anyway. These are interesting developments and I mention them only as an indication of the level of acceptance and usefulness of the system the Government is aiming to move to, although I am not for a moment trying to establish a claim that it is a cure for drunkenness; certainly I am not attempting to claim that it will be of significant help in respect of the more difficult area of alcoholism.

I would like to now move from those general comments to attempt to respond to some of the particular issues raised by various speakers. For reasons I have already indicated, I do not necessarily have these responses in turn, but I hope they will address some of the more detailed questions which arose. The first I believe was raised by Hon George Cash who questioned the success of the Northern Territory approach. The criticism of the decriminalisation of drunkenness that Hon George Cash adopted during one part of his comments - namely, that it does not have any practical effect - appears to have its origins in Research Paper No 3 of the Royal Commission into Aboriginal Deaths in Custody. On page 1 of that paper, we are told that statistics show that in the jurisdictions where drunkenness has been decriminalised the number of people being detained after decriminalisation has risen rather than fallen. However, this sweeping statement is almost immediately qualified on page 2 of the same paper where the author accepts that the paper does not present a totally accurate picture because many intoxicated persons now benefit from a disposition other than incarceration in a lockup. In the case of the Northern Territory, upon which our proposal is very closely based, the paper does not attempt to support its claim about the rate of apprehension. Drunkenness was decriminalised in the Northern Territory in 1974, but figures are cited only from 1981 to 1987. I make the point that while decriminalisation occurred in 1974, sobering up centres were established in the Northern Territory only from about 1983. However, the figures demonstrate that in areas where sobering up centres are now available, about 42 per cent of detainees are placed in centres rather than in lockups. The three sobering up centres in the Northern Territory account for at least 25 per cent of persons apprehended in the whole territory in any one year.

Hon George Cash asked whether a detained person could be released to a person under the age of 18. The answer to that question is "yes" but it has to be considered in the context of the provisions of proposed new section 53G of the Police Act. That section deals generally with the release of the detained person into the care of another person and requires the police officer agreeing to the release, to reasonably believe that the applicant is capable of taking adequate care of the person who has been detained. The question of the youth or age of the person volunteering to take care would obviously be a consideration in any judgment which a police officer made in that respect. Although it is almost an inevitable part of the scheme which is presented by this Bill that at least a proportion of detained persons will always be detained in lockups, the aim of the Government is to prevent that as far as possible by the establishment - and hopefully with the support and assistance of non-Government agencies - of a sufficient network of sobering up centres. I agree with members who referred to provisions permitting the admittance of detained persons to hospitals, and suggested that this course would rarely be followed.

The result is that, apart from the opportunity for the release for individuals, we envisage that the main alternative to detention in a lockup would be by way of a sobering up centre. Reference was made in the course of debate that only four such centres are proposed to be established at the early stage - in Fitzroy Crossing, Halls Creek, Port Hedland and Perth. I raise two points about the criticism of the limited nature of that initial program: Firstly, it is deliberately established, and has always been described, as a pilot program. It is something quite new for our State and we are looking to gain experience before phasing in this sort of facility over a much wider area. Secondly - and I must confess that it came as quite a surprise to me - despite the fact that the initial pilot program is to be established in only four centres, this provides for an astonishing proportion of cases of persons being taken into custody for drunkenness. The number of detentions per year in the period from 1985-87 to 1988-89 was approximately as follows: At Fitzroy Crossing, 2 000; at Halls Creek, 2 000; at Port Hedland, 1 500; and at Perth, 2 000.

Hon D.J. Wordsworth: Was that for the whole of Perth?

Hon J.M. BERINSON: Yes, and that was precisely the same question I asked when I was given the figures in the first place, because it seems surprising that the number of persons detained in the metropolitan area should be no greater than the number detained at Fitzroy

Crossing or Halls Creek. The total average number of detentions for drunkenness in Western Australia for the period referred to was 17 000. Therefore, going on the available statistics it would appear that the first four centres would have at least the potential for catering for somewhere between 40 per cent and 50 per cent of the whole of the detainees, but that is not to say that they will.

As I said before, it is inevitable that there will be a need for some lockup detentions. Looking at the metropolitan area, it is always hard to visualise a situation, wherever the centre is established, which will always be convenient for the police and not waste their time in terms of utilising areas where drunken persons are detained. The drunken person may well end up in other forms of detention in any event.

I was asked a question by Mr Montgomery about the results that would flow from people escaping from custody. Sobering up centres are open institutions in that people do have the capacity to leave before they are sober, but the general experience is that they do not. If they left the only result is that they would be liable to be detained again. I confess that I have not followed this through, but perhaps this may cause a person who needs to be detained more than once not to be accepted by the sobering up centre for a second or third occasion, and therefore have to be detained in the lockup. An important part of the system we are discussing is the agreement which must be obtained from the person accepting the care of the detained person from the police. I am unable to provide any response from experience regarding the escape of drunken persons from a lockup, but a member of my staff contacted the Northern Territory to ask for their procedure in such an event and was told that no-one was able to recall a person who had been detained for drunkenness escaping from the lockup. However, it has to be said that if such an event did occur for any reason, the detained person would not be subject to a penalty because he was not in custody in a sense that would provide a penalty for escape from custody. That is more the case of the lockup than in the sobering up centre.

Hon Peter Foss: Are you saying that if a person escapes from custody he will not be escaping?

Hon J.M. BERINSON: He would be escaping from detention under this Act, but my understanding is that it would no more attract a penalty in the nature of a person escaping from legal custody than would a person's departure from a sobering up centre. I am not sure whether Mr Foss caught my earlier comment that we were unable to find any experience of a person escaping from a lockup, but we are looking at the principle in terms of that understanding.

Those are the main issues that were raised in the course of the debate and I hope my comments will serve to encourage some members who expressed reservations, not to accept this measure with some reluctance, but to do so with some confidence that it will achieve its aims, and to accept what has been said about the limitations - by other members and by me - of those aims, and the fact that they are worth pursuing.

I commend the Bill to the House.

Question put and passed.

Bill read a second time.

STATUTORY CORPORATIONS (DIRECTORS' LIABILITY) BILL

Second Reading

Debate resumed from 21 September.

HON J.M. BERINSON (North Metropolitan - Leader of the House) [3.23 pm]: In principle, the Government supports the aim of this Bill which is to enhance the accountability of directors or their equivalent in Government instrumentalities. The Government is committed already to the implementation of the recommendations of the Burt Commission on Accountability and, as Hon Peter Foss has pointed out, these very issues were fundamental to the brief of that commission. However, it is not enough to agree on broad principles. It is essential as well to address the way in which these principles can best be implemented in practice. In particular, it would be most unwise to promote change on the basis that we can simply adopt in the public sector a set of standards which apply in the

private sector. Very careful adaptation is required and it is not at all clear that the present Bill is adequate to the task.

Mr Foss proposes to take the standards which apply to companies under the Companies Code and to graft them, more or less holus-bolus, onto the provisions which already regulate statutory corporations. This approach is immediately questionable in view of the fact that, while companies are all formed in accordance with the provisions of uniform national companies legislation, statutory corporations constitute a heterogeneous collection of bodies which have been established by a range of dissimilar enabling legislation. They range from the State Energy Commission to the various port authorities and many other such bodies in between. The result of this approach, as Mr Foss' second reading speech makes clear, is that the Bill leaves many questions open. For example, firstly, whether the duties declared by the Bill to be owed by the directors of statutory corporations to that corporation, although expressed to be equivalent to those in the private sector, in fact, go beyond the duties owed by directors of companies incorporated under the Companies Code. That is, in addition to fiduciary duties which Mr Foss says directors of statutory corporations already owe, there is also a question as to whether the ambit of directors' duties imposed by the Companies Code and imposed by this Bill on directors of statutory corporations will be more extensive in respect of statutory corporation directors than other directors. Mr Foss admits that the Bill does not provide an answer and will be "left to the court to determine".

Secondly, Mr Foss envisages that, because of this Bill, even greater though unspecified duties may be imposed on directors of statutory corporations because of what he calls "the special relationship which exists between involuntary shareholders and statutory corporations". Thirdly, the Bill does not specify any criteria upon which the court, under clause 5(1)(b), is to grant or withhold leave for any person to bring an action for damages. Courts may, as Mr Foss indicated, have developed criteria for the granting of leave to commence damage actions in other areas of the law. However, as the preceding questions indicate, this Bill entails new areas of law and it may very well be appropriate to specify in the legislation criteria for the granting of leave.

Fourthly, similar questions arise in respect of the power of the court to grant leave under clause 5(3). Those questions which relate to the granting of leave and the making and serving of court orders are, as Mr Foss admits, not resolved by this Bill. Fifthly, the member concedes also that the list of provisions in the schedule to the Bill is not perfect. That, of course, does not only raise, as Mr Foss has done, questions about what other provisions might be included in the schedule; more importantly, it raises questions as to the appropriateness, even the correctness, of including in the Bill the provisions already there.

Other questions not alluded to in Mr Foss' second reading speech must also be addressed. Firstly, who is a "person" for the purpose of clause 5(1)(b)? Such a person under this Bill will be able, with the leave of the court, to commence a damages action against a director of a statutory corporation. Mr Foss refers to such a person as a "shareholder" and later on in his speech as a "public minded person". The Bill, however, simply uses the term "person". The clear implication is that any person may bring such an action. It is not limited to Western Australian residents or taxpayers and it is not limited to Australian citizens or companies. For example, could a foreign person or corporation doing business in the Eastern States seek to commence an action under clause 5(1)(b)? Secondly, what, if any, application does this Bill have in relation to Commonwealth statutory corporations? Neither the Bill nor the second reading speech alludes to this problem. Thirdly, what effect will this Bill have on the basic constitutional principle of ministerial responsibility? There are two aspects which bear directly upon this important question - the general approach of the Bill and, more particularly, clause 6.

Ministerial responsibility ensures that Ministers who are elected by the people of Western Australia are responsible to this Parliament for statutory corporations within their portfolios. However, the Bill makes directors of those corporations responsible to the persons and corporations specified in clause 5(1). This will clearly be seen as leaving no-one - neither Ministers, directors nor statutory corporations - responsible to this Parliament. Ultimately, that means that Parliament, if it passes this Bill in its present form, will have abdicated its responsibility in these respects.

There are at least three matters requiring consideration in relation to clause 6. Firstly, it is

contradictory to the recommendation of the Burt commission which, to quote Mr Foss, recommended that all statutory corporations should have included in their charter an obligation to act upon the direction of a Minister if given. Secondly, it is totally inappropriate to invoke an analogy to the "Nuremberg defence". In Western Australia, Ministers remain responsible to the Parliament for statutory corporations within their authority. Thirdly, there may be instances where, for policy reasons unrelated to the statutory corporation, it is appropriate for a Minister to issue an instruction which is in the wider public interest but which may not necessarily be in the best interests of the corporation. Issues concerning funding, staffing, industrial relations, industrial development and/or protection of the environment may well fall into this category. In these circumstances, it would hardly be appropriate to place personal liability on directors or to force directors' resignations.

All in all, the issues that this Bill attempts to address are far from simple. On the contrary, they have wide and important ramifications. Even assuming that there is no need to take into account the diversity of statutory corporations that have been created over a period of 100 years or so, experience in the development of the current package of companies and securities law indicates that workable legislation is not readily created in isolation from the people working in the field. Development of our current companies and securities legislation has been a lengthy process. That is largely because in some considerable part it was recognised at an early stage that there was a need to consult very widely with persons actually involved with companies at a professional and administrative level. Their advice based on the distribution of exposure drafts has led very frequently to quite significant modifications to Government proposals.

Despite the number of reservations I have expressed, I am not suggesting that the aims of this Bill should not be pursued; they should be. It must be recognised, however, that even now directors of statutory corporations must look to their enabling legislation, to the Financial Administration and Audit Act, to the common law, and to the criminal law for guidance in respect of their obligations and proper conduct. This Bill as it stands could well lead to serious confusion as to the extent and limits of the liabilities of directors of statutory corporations. At best, it seems to be based on an incorrect assumption that the class of person from whom the boards of statutory agencies are drawn is coextensive with the class of persons familiar with trading corporations.

The Government will support the second reading of this Bill, but on the basis that it should then be referred to the Standing Committee on Government Agencies for consideration and report, if possible, within one month. This is to provide an opportunity for consultation with such groups as the existing management of these authorities, Corporate Affairs Department, the Institute of Directors, the Auditor General and other relevant professionals. Given the number and diverse nature of the corporations it is proposed to regulate, not to mention the complexity of the issues, I frankly doubt that one month will be enough for the purpose. In that case the committee can always request an extension. This is an area which is sufficiently important and complex to support the view that it is better to be right than to be quick. I support the second reading.

HON PETER FOSS (East Metropolitan) [3.33 pm]: I would like to respond to some of the matters raised by the Attorney General. I am pleased to learn that the Government supports the broad principle of the Bill. The point missed by the Attorney General with regard to the duties that may go beyond the duties of directors of private corporations is that they are not duties imposed by the Bill, they are duties which already exist. I was particularly careful to leave open the question of whether those duties existed. The Bill itself, however, does not extend the duties in any way; it picks up the same duties imposed on private corporations.

The second point made by the Attorney General is that no statement is made concerning the grounds for leave. That was done deliberately, as I said in my second reading speech. One of the problems in drafting legislation is the difficulty of predicting in advance all the possibilities that may occur, especially in the question of a discretion given to a court. It is difficult to lay down the appropriate tests to be applied, but the courts have a tremendous amount of experience in this area of the law. There are whole areas of the law outside the Statute law in which they are the sole determiners. Having stated the principle that people should be entitled to bring such an action, it is far better in terms of the administration of the law that it be left to the determination of the judges to work out a better and more workable

method of granting that leave. It is a minor thing to bring an application for leave before the court and I believe that we would get a more just way of working it out. I do not consider that to be a problem.

With regard to the Attorney General's remarks as to what should or should not be included in the schedule, I seek his further suggestions. I indicated when I made the second reading speech that I did not regard the schedule as perfect and I certainly would be very pleased to hear positive and constructive suggestions on this matter, both as to inclusion and deletion. Suggestions are very welcome in this area. It is probably one of the less important parts of the Bill because it deals with the finer detail, and it is easy to improve such matters following further discussion. I welcome positive suggestions from any source.

The Attorney General raised the question of what is a person. A person is as defined in the Interpretation Act; as it stands, it could include any person, taxpayer or not, corporation or not, from Western Australia or somewhere else. It is not intended to limit it, and there may perhaps be constitutional problems in trying to do so. Keeping in mind the motivation behind the person who would want to do this and the fact that he would need to obtain leave from the court, I believe that to try to finally divide the definition of persons so that it is restricted to less than that contained in the Interpretation Act would not be a useful exercise for this Parliament.

On the question of whether Commonwealth statutory corporations would be included, I believe the Interpretation Act would limit it to State statutory corporations, but if there is any doubt on that point, I would happily accept an amendment to make it clear. However, I do not believe it is necessary.

I find that the Attorney General has missed the point with regard to his comments on clause 6 dealing with ministerial responsibilities. Clause 6 was included because I wished to make it quite clear that the Act already provides that the person must obey the directions of the Minister. Whatever happens, the obligation to obey the Minister's directions remain; the Minister has full capacity to ask the directors to do what he wants, and the directors of the corporation must obey. The problem may very well be - and this is where clause 6 would have its effect - that the directors may be put into a position of complete conflict. I believe they are in this position already. One of the duties of a director of any corporation is to serve the interests of that corporation. That is his obligation. If a director receives a direction from the Minister which he believes not to be in the interests of the corporation, or is even prejudicial to the interests of the corporation, he is obliged in law to obey that direction, but there will be a conflict as to how to carry it out. He still has the obligation to observe the best interests of the corporation but he may be following a course of action which is totally contrary to the best interests of the corporation.

Of course, there is nothing to prevent a Minister from giving such a direction. Clause 6 goes no further than to indicate to a director a proper course of action which he probably should, even under the present law, observe although to date it has not observed all that well. Another important point which might not otherwise be clear is that a director may not be absolved from his duty by virtue of the direction. There is a tendency for a director of a statutory corporation to think that if the Minister wants such a direction he should not worry about the decision, but simply carry it out. This is the conflict in which these people must carry out their duties. I completely disagree with the Attorney General's view. This Bill intends to carry out the recommendations of the Burt commission completely. The only distinction to be made between statutory corporations and private sector corporations is that the provisions for accountability and the director's duty should be increased rather than decreased. The fact that there are a multitude of statutory corporations is not important, because there are a multitude of private corporations. Most of them in Australia are under uniform company codes, but they are duties which apply to directors no matter where they come from in the world. These duties are much the same throughout the English speaking world even if they exist under different codes, charters and Acts.

The laws relating to directors' duties before 1961 operated in a multitude of jurisdictions, with a multitude of Acts and applied to a multitude of companies throughout the English speaking world, and were created without many problems. The fact that they had different constituting Acts means nothing because most of those corporations had different memoranda and articles and set out to achieve different objectives. I do not believe that

there is any real distinction in that area. Those corporations are subject to the Financial Administration and Audit Act; the companies are subject to the Companies (Western Australia) Code and their own Statutes and that does not lead to confusion, because ordinary directors are subject to the law, as developed by judges, the Criminal Code and various provisions in the securities legislation.

Hon J.M. Berinson: The FAA Act.

Hon PETER FOSS: No, not that one, but they do have their own code. The only thing which is different and which is extended by this Bill - and companies go through it all the time - is that it gives them a good, clear charter as to where they should be heading. The problem is that they see difficulties where there is none. I should clarify one point. This Bill, stripped of everything else, is saying that directors of statutory corporations must act honestly and diligently when carrying out their duties. That is a fairly simple message for most people to understand and it is not a difficult message for the directors of statutory corporations to have as their guiding light.

Hon J.M. Berinson: However, it is very important how that message is conveyed.

Hon PETER FOSS: One needs only to tell them to act honestly and diligently in carrying out their duties. That is what the second section in the schedule says, and that is what all of the sections say, but they cite specific examples. As I have said, stripped of everything else, all the Bill says is that directors must act honestly and diligently in carrying out their duties. They should already be doing that but this Act makes it quite clear, in the same way as the 1961 Companies Act made quite clear, that that was their duty. This Bill also imposes penalties and makes provision to recover damages. It really is a very simple Bill to understand. The three things to remember are to act honestly and diligently, and if one does not one can be prosecuted or sued. That is the message of the entire Bill.

Reference was made by the Attorney General to this matter being considered by the Standing Committee on Government Agencies. I agree with the idea that this Bill should be considered by a committee. I have regularly urged this House to recognise the need to refer every Bill to a Standing Committee. This gives an opportunity for the public to make comments.

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon PETER FOSS: I am pleased that the Government adopted the idea of referring this matter to the committee. That is something I would like to see in respect of every Bill. However, there is one problem - a matter of resources. I understand that the Standing Committee on Government Agencies has recently lost its assistant. That person was a qualified lawyer with some experience. The committee now has a much younger person who is not a qualified lawyer to assist it. I think, for that reference at least, it will be necessary for the committee to have some qualified legal assistance with experience.

I would be very concerned if this matter went to the Standing Committee on Government Agencies without the assurance from the Government that appropriate resources would be provided. I believe it will be difficult for those resources to be provided from the budget available to the Legislative Council. Members are aware that all of the current Standing Committees are extremely busy and that, in addition, a large number of substantial Select Committees have been appointed. I believe it will be almost impossible for the appropriate resources to be provided to this committee out of the budget for the Legislative Council.

I support the suggestion, provided greater resources are given. I hope the Attorney General will give such an assurance. I hope also that the same Minister wearing his hat as Minister for Budget Management will consider providing to the House a more generous allowance than at present to provide resources to this Standing Committee. The Government has had a lot to do with the number of Standing Committees that have been set up. Nevertheless, the work of the House through its committees should be encouraged rather than discouraged.

Question put and passed.

Bill read a second time.

Reference to Standing Committee

HON J.M. BERINSON (North Metropolitan - Leader of the House) [4.29 pm]: I move -

> That the Bill be referred to the Standing Committee on Government Agencies and that the committee report its findings and recommendations, if any, on the Bill not later than four weeks from the day on which this motion is passed.

Given my early comments, and Hon Peter Foss' indication of support for this motion, I need speak only briefly at this stage. The procedure I am suggesting is based in a rather expedited way on the procedure which has consistently been adopted with great benefit by the Ministerial Council on Companies and Securities. Today is not the first occasion on which I have referred to the practice by that Ministerial Council of releasing drafts for public comment well in advance of final decisions. I have often acknowledged the benefit which that process has brought to the development of the current package of companies and securities law. However, that is rather far from saying that it is necessary to send every Bill to a committee, because very few areas of the law are as complex and in such need of input and consultation as is company law. That is especially the case when legislation is not initiated by the Government itself, where in the ordinary course of events the resources of Government would themselves be applied in advance to ensure that the input by practitioners was received before the legislation was finalised. I do not believe any case is made by this Bill for the general proposition that similar treatment should be provided on all Bills. This is a particular case in which we have experience of benefits flowing from exposure drafts, and that more or less is proposed here.

I am not in a position to comment on the staffing arrangements; that is the responsibility of the officers of the House, and I am sure they will give due attention to them. It need not be necessary to go beyond the resources of Government, depending on the nature of the submissions made to the committee. The Corporate Affairs Department has now accumulated great experience in the development of companies and securities law.

Hon Peter Foss: Are you saying they will assist?

Hon J.M. BERINSON: I believe it would be reasonable to approach that department, and I believe it would be prepared to help if its own resources allowed it to do so. It has always played a role in the evaluation of submissions made on the exposure drafts to the NCSC to which I have referred, and the skills are certainly in that office. The problem is that the office also has significant pressures on it, which are not lessened in any way by the current state of relative uncertainty as to the future of the State department in the light of the Commonwealth legislation to take over the field of companies and securities law. I thank Mr Foss for his prior indication of support for this motion, and I commend it to the House.

HON N.F. MOORE (Mining and Pastoral) [4.36 pm]: I support the motion. I find it interesting that the Attorney General has suggested that legislation introduced in this House by the Government is superior to that introduced by the Opposition. He suggested that there was no need for Government sponsored legislation to be referred to committees as a general rule because such legislation has the support of the Government in its compilation in the first instance.

Hon J.M. Berinson: That was one of a number of reasons. My main reason was that most legislation does not cover such a highly complex, technical area as company law.

Hon N.F. MOORE: This is very good legislation which has been introduced by a member who has done an enormous amount of work in bringing the Bill to this stage, and it contains the combined knowledge of a great number of people. It no more needs to be referred to a committee than Government legislation, if we are to use the Attorney General's argument.

This type of legislation with respect to Government agencies should be referred to the Standing Committee on Government Agencies as a matter of course. I have argued for some time on the committee that any legislation to set up a new statutory authority should automatically be referred to that committee. This Bill raises many very important issues concerning the whole question of Government agencies. Matters of accountability, the relationship between Ministers and these agencies, and the relationship between agencies and the Parliament are issues of great consequence and have been more so in recent times when we learn of Government agencies that may not have been accountable.

The Standing Committee on Government Agencies has recently been considering this question, and one of its tasks down the track is to investigate the gamut of Government agencies and their relationships with the Government and Parliament. Statutory authorities are set up by the Parliament to perform a task; they are not set up by the Minister in the sense that he is able to set up a committee or use his department to carry out the task. By setting up a statutory authority a certain independence is achieved for that authority, and so the relationship between the authority and the Minister is very important. The Bill before the House deals with the subject in a very important way. The committee is very much aware of the difficulties raised by these issues and has set itself the task of reviewing this legislation. It is probably pertinent that this Bill be referred to the committee for consideration.

As Hon Peter Foss pointed out, the problem is that the committee may not have the resources or capacity to undertake this inquiry in four weeks. I hope the Attorney General will make himself more aware of the current resources of the committee. I argued in this place on one occasion that the Standing Committee on Delegated Legislation did not have sufficient resources when it was resourced by the Legislative Council. As a result of the formation of the Standing Committee on Delegated Legislation, the resources of the Legislative Council, which have not been increased, are expected to cover two Standing Committees instead of one. Hon Peter Foss made the point, and I agree with him, that the loss of the previous officer of the Standing Committee who was a qualified lawyer has created a problem. The current research officer is very enthusiastic, but she does not have the qualifications or experience of the previous officer. The committee will be very much in need of additional support and assistance in order to carry out the task required in respect of this legislation. I note the Attorney General's comment that assistance may be available from the Corporate Affairs Department. I hope that will occur. I expect that the committee will have to request that assistance because of the current staffing arrangements. We acknowledge that this legislation is very complicated, and to give the committee only four weeks to do the thorough job that it traditionally does provides it with a task which may be beyond its capacity at present. We will try to complete our task in that time so that the matter can be resolved during this session of Parliament, and I ask the Attorney General to make the resources available if the committee so requests.

HON PETER FOSS (East Metropolitan) [4.41 pm]: I cannot see how the current uncertainty of the future of the Corporate Affairs Department should make its officers less able to assist the committee; they may find a whole new area of practice and expertise if this Bill were to pass through the Parliament. I suggest that, if they have a problem with allocating their resources appropriately to cover the various tasks they have, it would assist considerably if they were to receive a message from the Attorney General stressing the importance of this task and asking them to give it appropriate priority. There is no doubt that a Government department has the ability to see the work before it with the same sort of priority as the Minister in charge. I hope that the Attorney General, rather than washing his hands of the matter, and saying he does not know what the attitude of his department will be, and what will be its ability to devote resources, will be able to give us an undertaking that he will speak to his officers and urge upon them the appropriate priority for dealing with this matter in assisting the Standing Committee on Government Agencies.

Question put and passed.

COAL INDUSTRY SUPERANNUATION 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) [4.47 pm]: I move -

That the Bill be now read a second time.

The Coal Industry Superannuation Bill 1989 will provide for a modern day superannuation fund for persons employed in the coal mining industry in Western Australia and will repeal the Coal Mine Workers (Pensions) Act 1943-1988. When the Coal Mine Workers (Pensions) Act 1943 was first proclaimed the normal community retirement age was 65

years. However, the Coal Mine Workers (Pensions) Act provided for a compulsory retirement age of 60 years to be instituted in the coal mining industry. It was therefore necessary to establish a fund from which pensions could be paid to retired mine workers between 60 and 65 years of age, at which point it was intended that the Commonwealth age pension would take over for the purpose of providing retired miners with a minimum standard of living after retirement. However, conditions have changed, and a retirement age of 60 is now accepted as the community norm. Moreover, the existence of the Act for the past 40 years has meant that retirement at age 60 is now seen as a condition of employment for coal miners.

Additionally, since 1980 the fund has provided benefits on a lump sum basis, in lieu of fortnightly pensions. It is clear, therefore, that the fund has moved away from being a security net for retiring miners towards becoming part of a genuine attempt to provide for retirement. Following consultation between all parties, unions, collieries and the Government actuary, agreement has been reached that the Coal Mine Workers (Pensions) Act 1943 should be repealed and replaced with the Coal Industry Superannuation Act, which will provide for a modern day superannuation fund for persons employed in the coal mining industry.

I commend this Bill to the House.

Debate adjourned, on motion by Hon Barry House.

DIRECTOR OF PUBLIC PROSECUTIONS BILL

Second Reading

Debate resumed from 26 September.

HON PETER FOSS (East Metropolitan) [4.49 pm]: We were treated the other day to the pleasant spectacle of the Attorney General's declaring that he was a "born again States' righter". We have now the pleasure of seeing an Attorney General who is a "born again Director of Public Prosecutions supporter", because when the idea of an independent Director of Public Prosecutions was presented to this Parliament in a Bill introduced in another place, I think in 1987, the Government showed so little enthusiasm for it that the Bill languished at the bottom of the Notice Paper until it eventually disappeared at the end of the parliamentary session.

It is interesting to note in an article in *The West Australian* of 11 July that this Bill came close to not getting off the ground either. The article states that -

> The Premier, Mr Dowding, did a somersault yesterday on a proposal to establish an independent Office of Director of Public Prosecutions in WA.
>
> At his post-Cabinet news briefing he poured cold water on the move, saying it had been strongly opposed by the Crown Law Department and was not considered urgent.
>
> But within 30 minutes of the conference ending he advised that the problems had been sorted out and that the office would, in fact, be established.
>
> He later issued a statement saying that legislation setting up the new authority would be ready for introduction at the start of the new session of Parliament late next month.

Hon P.G. Pendal: That is a more dramatic conversion than that of Saul in Damascus!

Hon PETER FOSS: It is gratifying to see that this Government has appreciated the arguments put forward by the Opposition on the establishment of an Office of Director of Public Prosecutions.

Hon Mark Nevill: Our reward for that is that it has been marked.

Hon PETER FOSS: The Opposition supports the introduction of such an office and believes it is an excellent idea. It will, however, be suggesting some changes to it. In his second reading speech, the Attorney General suggested that the Government had taken a novel approach to the institution and had proposed a number of novel measures not followed in other parts of the English speaking world. I have some sympathy with that approach. It is appropriate to look at the needs of this State and examine the reasons for having such an office. Some of the reasons are set out in this newspaper article and one of them is the need

to safeguard against corruption in public office. We all remember the particular concern, during the early encumbency of the present Attorney General, which put this matter on the agenda for discussion in Western Australia. Quite early in his term of office the Attorney General entered a nolle prosequi in the case of an indictment against Mr J.J. O'Connor.

Hon N.F. Moore: That is not "nolle" Berinson is it?

Hon PETER FOSS: Did he enter a nolle?

Hon P.G. Pendal: Sorry, "Hon nolle" Berinson.

The PRESIDENT: Order!

Hon PETER FOSS: Looking briefly at the situation in England, which is where our system of law has come from, a rather unusual legal situation exists there in that the most senior judge is the Lord High Chancellor, normally know as the Lord Chancellor. This is a political appointment and he goes in and out of office with a change of Government. It might seem a little strange to us to have a person who is politically appointed as the senior judicial officer. He is also the Presiding Officer of the House of Lords and the most senior judicial officer responsible for the appointment of judges. All the other judicial officers are appointed on a similar basis as in Australia where they are appointed for a particular term until they become a certain age. There are two other important officers of state, the Attorney General and the Solicitor General. In Western Australia our Solicitor General is not a politician and is appointed under his own Act. In the United Kingdom the Attorney General, as the Leader of the Bar, although he is a Minister, is also the senior law officer. As with the Lord High Chancellor, he has the ability to act independently in that position. It has always been understood that entering a nolle is a matter for the Attorney General himself rather than a matter for the Government.

Hon J.M. Berinson: There is no difference in the position between the United Kingdom and Western Australia.

Hon PETER FOSS: That is correct and what one would hope it to be the case.

Hon J.M. Berinson: That has always been the case.

Hon PETER FOSS: I am very pleased to hear that, but the fact that the Attorney General holds a slightly different view from what I certainly have, and what most of the legal profession in Perth have, with regard to entering nolles may be the cause for concern. There was considerable concern among members of the profession that a decision to enter a nolle in the J.J. O'Connor case was more a political decision than a strictly legal one. I do not wish to enter into the detail of that decision but merely wish to say that it was because of that decision that there was concern among members of this Parliament, members of the public and particularly members of the legal profession that there was the possibility of there being entry of a nolle for reasons which were not considered appropriate.

Members may recall a very famous case - this time members opposite will be very pleased to hear it involved a Liberal Government.

The DEPUTY PRESIDENT: Order! I would appreciate it if conversation behind the Chair would cease.

Hon PETER FOSS: Mr Ellicott, the then Federal Attorney General, resigned his position rather than enter a nolle in the Sankey v Whitlam case. I hope that any Attorney General would exercise his powers totally independently of any political consideration. I understand that the Attorney General has defended the basis for his entering a nolle on many occasions. However, rightly or not, concern has arisen. Therefore, the idea of placing the principal responsibility for bringing prosecutions, and in the case of a nolle, the ending of a prosecution, to an independent authority has much to commend it.

I ask members to consider what the right legislation would be to ensure this independence is secured, because it is not an easy decision to make. There are two independences to be preserved; the first one is the independence of the person, that is the person who holds the office of Director of Public Prosecutions; he should be independent. The second independence is that of the process. There is no point in having an independent Director of Public Prosecutions if the process which he administers is not independent. It is very important when considering the provisions of this Bill that members keep in mind those two

independences because it is very easy for the two to be confused. If the DPP is not independent himself, the process cannot be independent. If he has to take direction or can be overborne in making his decisions then the process cannot be seen as independent. However, it is possible to have an independent DPP and still have a process which, by some other means, can be overborne.

The most important issue is the independence of the person. The means by which the independence of the person can be overborne can be in a number of ways. The first one relates to the manner in which he is appointed The first part of that is the manner in which he is selected. It is important that the person who is selected for the job is seen to be independent without preconceived allegiances or method of operating.

Hon J.M. Berinson: More independent, say, than the Chief Justice?

Hon PETER FOSS: No, but I will be dealing with that later. Secondly, his conditions of appointment must be such that he is independent. If the conditions are open to amendment, can be easily terminated, the position renewed or if the person in the position can be easily removed, his independence can be affected by these issues. There are other ways in which there can be holds upon the person arising out of the term of his appointment. The tenure that a person has can also have an effect on it.

Experience has shown that if people are appointed for life or until age 65, this gives them a feeling of independence. Quite often that independence has come as a shock to people who have appointed persons to judicial office. It certainly is a good method of securing independence. Another way is to appoint a person for a period of time shorter than life and to make his appointment non-renewable. If a person knows that no matter what happens his appointment will not be renewed, he can hardly start to act in a manner which he believes is calculated to cause the renewal of appointment. Those are some ways in which it can be done. There is another way and that is to have a system of appointment where renewal or extension is outside and independent of Government. I think the Attorney General is perhaps now catching the drift of some of my proposed amendments. I will go into more detail about why those amendments have been suggested. There are three alternatives with tenure - appointment for life or appointment to age 65, non-renewable tenure or, if there is to be renewable tenure, appointment where the appointment process itself is completely free of influence. The conditions of appointment, if the conditions of appointment are subject to revision, must be subject to control. If they are not subject to revision, there may be a practical problem, and that is what I am raising here. The person to be the DPP should be an eminent person, and that is particularly the case with the first appointee.

Hon J.M. Berinson: Mr Fraser is an eminent person. Are you suggesting him? I understand he could be available, or at least not occupied elsewhere.

Hon P.G. Pendal: I think you have troubles enough.

Hon PETER FOSS: Mr Hawke may want to appoint him DPP, but I would not. The eminent person must also be an eminent lawyer of standing and respect in the community.

Hon Mark Nevill: I did not know there was such a thing.

Hon J.M. Berinson: Are you getting around to the point that one form of appointment may be by volunteer?

Hon PETER FOSS: I will come to that point because I think that may be the case.

Hon J.M. Berinson: Why do I always anticipate you?

Hon PETER FOSS: The Attorney General is not anticipating me; he is getting there slightly after me, but I have already anticipated him.

The reason I suggest conditions might need to be capable of being altered is that I think it is essential, especially for the first appointee, that this person be an eminent lawyer. I believe also he should be a person of reforming zeal with the ability to set up a department, because it is essential that the Office of DPP not merely be the Crown Law Prosecutor's Department transferred into a new building under another name with all the same people, and, may I say it, with all the same problems. I hope that this office has the ability to attract an eminent person - not necessarily a Western Australian but obviously it would be preferable to have someone from Western Australia - who would be highly regarded by the profession and

would have the ability and drive to establish a really well run and radically more efficient department than the current department.

Hon J.M. Berinson: What are your complaints about the current department?

Hon PETER FOSS: My complaint is that I believe it has sunk into the lethargy which all too often can affect Government departments that do not have a clearly defined role. I think the problem -

Hon J.M. Berinson: I think that is a grossly wrong and unfair statement.

Hon PETER FOSS: The Attorney General may disagree with me on that, but I think he may agree with me that an opportunity to give a department a new lease of life and a new sense of purpose is a good one. It should not be lightly cast aside. I fully understand that the Attorney General wishes to defend his department but I think -

Hon J.M. Berinson: It is not a matter of defending them; it is a matter of showing the proper respect which unfortunately all too many of your colleagues are not prepared to do. I hope you are not joining with them.

Hon PETER FOSS: I believe the Attorney General's department could very well do with some new blood, particularly at the top. I believe many organisations need that and I believe this would be an excellent opportunity to inject into that department a new sense of purpose and a new ability to function efficiently. I believe the Attorney General should not miss that opportunity. If the Attorney General was thinking in terms of transferring the old department into the new DPP Department, he would miss the opportunity to inject a sense of purpose and ability to function more efficiently, which is what he should be seeking. I would be surprised if the Attorney General were to say that his department was incapable of being improved. I would be surprised if the Attorney General were to say that the establishment of a new office of DPP would not be a good time to make such an improvement. I believe that the department could do well to have a new and vigorous head, and to have the opportunity to reorganise itself, to rethink its vision and to become a more successful driving force in this State in the area of prosecutions.

One area which I previously mentioned I am concerned about is the lack of success in prosecutions in the corporate area. White collar crime is another area where there have been some notable failures. I do not think that we should necessarily blame the people who had these failures but I think it is important to acknowledge that this is the opportunity to set up an organisation with a head who could make a substantial difference to that organisation. I hope the Attorney General will not discard the possibility of seizing the opportunity merely because he feels that any attack made on the department is an unfair one.

Hon J.M. Berinson: My position is that I do not think the new office should automatically be based on existing staff, but I fear very much that you are saying that it should definitely not be based on existing staff. I think to exclude our senior professionals in that way is entirely unjustified.

Hon PETER FOSS: I was not proposing an amendment to the Bill which would exclude the existing senior staff.

Hon J.M. Berinson: I am talking about your comments, not your amendments.

Hon PETER FOSS: My amendments also do not propose that I be the person who chooses the new people. It may very well be that the people who do choose the DPP take a different attitude from mine, but I hope that the people who take the opportunity to look at the possibility of appointing the head of the DPP will take the opportunity also to revitalise the department and to set it with a clear objective in order that it hopefully takes the advantage that must always come from making a change. The Attorney General was saying that he agreed that there was an opportunity to make an improvement, and I hope he agrees that the opportunity should be seized. Perhaps on the matter of whether the current person should be selected is a matter for the selection body. It is important that the conditions of appointment be such that the people attempting to attract a suitable person should be able to do so. They may wish to attract people who are currently within the department, but they should not be appointed by default. They may get the position - and they may pursue the new opportunity - but the position should not be selected from only the current senior officers.

Hon J.M. Berinson: That would not be the case with either the selection panel or the normal processes that are followed.

Hon PETER FOSS: If a significant leader is to be attracted or an eminent lawyer holding a significant position in the profession is to be attracted, that person would have to be offered a contract which would be short term and subject to renewal but which would enable that person to take a preliminary number of years to see how the job goes. Also, he should receive a good salary and at the end of that period have the option of extending and reviewing the terms and conditions of employment. That is the kind of atmosphere needed to attract the right sort of person. If the appointing body was the Executive Council I believe that that person would be subject to political influence, it would come back to the council because it negotiated the deal. That is the reason for suggesting the process of employment should be put outside the hands of the Government and by doing that it gives a much greater flexibility in the way that person can be appointed.

Hon J.M. Berinson: Life tenure does not restrict anybody from leaving office earlier if he or she wishes.

Hon PETER FOSS: It does restrict the conditions. If a person is 40 and is appointed to a position to the age of 65, he might be earning half a million dollars out in the wide world, so it would be necessary for some revision of payment not based on a decision by the Salaries and Allowances Tribunal to attract the right sort of person. If the person were paid half a million dollars and some sort of automatic increase was worked out, then, some 10 or 15 years down the track it would be wildly above the market rate, or below it, and the person of the right calibre could not be attracted. It would be necessary to tell the person he will be appointed on certain terms and conditions which may vary from time to time from decisions by the Salaries and Allowances Tribunal.

Hon J.M. Berinson: What if that were linked to the judicial salaries as I suggested in my second reading contribution?

Hon PETER FOSS: It would not work.

Hon J.M. Berinson: Why has it worked in all the other jurisdictions?

Hon PETER FOSS: It has caused problems in other jurisdictions. We had a live wire DPP who unfortunately prosecuted some significant people from the Labor Party and his position was not renewed.

Hon J.M. Berinson: What has that to do with the method of salary setting?

Hon PETER FOSS: It relates to the method of appointing him.

Hon J.M. Berinson: Are you complaining about the present DPP?

Hon PETER FOSS: I am complaining about the principle.

Hon J.M. Berinson: The principle you seem to be attacking is that it is not adequate to have the salary of the DPP linked to judicial salaries.

Hon PETER FOSS: It is difficult to get people to the Supreme Court bench because salaries are linked to judicial salaries.

Hon J.M. Berinson: A judicial salary can hardly be linked to anything else.

Hon PETER FOSS: The Attorney has made my point - the salaries are not linked anywhere else. If a person is to be hired from the market it is necessary to offer the market salary and not the judicial salary.

Hon J.M. Berinson: Are you aware of complaints about the performance of the DPP in other States?

Hon PETER FOSS: I am aware of the fact that Ian Temby was attracted to the Federal position of Director of Public Prosecutions by the terms of employment. Unfortunately the position was not renewed after five years.

Hon J.M. Berinson: That has nothing to do with the salary. Are you aware of the salary paid at that time of appointment? Are you saying that it was more than the judicial salary?

Hon PETER FOSS: I am saying that if we want to attract people like that, suitable terms and conditions of employment are necessary. The terms of employment cannot be linked to judicial salaries for long term employment, and if renewal is made by the Government, it is subject to political influence.

Hon Mark Nevill: Was it the salary that attracted you here?

Hon PETER FOSS: No.

Hon J.M. Berinson: Am I correct in saying that you have nothing to say against the standard of performance of any DPP in Australia?

Hon PETER FOSS: I am sorry that the Attorney is dwelling on this point rather than the principle.

Hon J.M. Berinson: You seem to agree with my point.

Hon PETER FOSS: I am not putting my mind to that question.

Hon J.M. Berinson: I wish you would.

Hon PETER FOSS: I am putting my mind to the point of principle which is that if people of high calibre are to be attracted, the terms of contract need to be tailored to ensure that happens. The position needs to be advertised and the requirements of a number of applicants need to be considered because they will vary enormously. Some applicants will say that they require a large amount of money for short term employment with possible renewal, and other people will say they are happy to have a salary consistent with the judiciary. There will be people in between, and I want to be certain that the best person for the job will be hired irrespective of the way in which conditions and terms of employment are negotiated. That means that people may be hired on the short term as well as the long term. People may be hired on the short term at a high cost, some people will want large superannuation payments and others will take the money offered to them. The important point is that there should be a versatility to get the best person for the job. If that is the case a lot of the problems of whether the person will be retained, or political influence will be exerted, will be removed if the appointment is put outside the hands of the Executive. I do not know why the Government would object to putting it outside the hands of the Executive; it seems an unusual concern. I am surprised the Government does not want that done, having heard the reasons in support of doing so. I understand that there are other ways of obtaining independence, but my concern is that they do not, unfortunately, guarantee the best person.

The next point in terms of independence of a person is the ability to remove that person from office and the appropriate method of doing that is with address of both Houses of this Parliament. That would give the same independence as the judiciary. I submit that the best way to obtain the appropriate independence is that the person be subject to removal only with address of both Houses of Parliament.

I am concerned also about acting appointments. This Government has, of late, indulged in the making of acting appointments. It has applied this not only in areas relating to the administration of law, but also in other areas. I will not go into detail on this subject because my colleagues have a better knowledge of the list than I. However, I will mention one in particular and I refer to the Commissioner for Corporate Affairs, whose appointment as acting commissioner was extended. Once he had his appointment he was still subject to a certain amount of influence by the Government. A person in an acting appointment is far more susceptible to keeping his mind on pleasing the Government than is a person who has already been appointed to the job. We would be most concerned if it were possible for an acting appointment to be strung out for any length of time.

One measure I considered we should propose to the Parliament was that a person appointed to an acting position should not be entitled for a certain period of time to take up a permanent appointment. While in that acting position there would be no incentive for him to act in a manner to please the Government because he would know that whatever else happened he would not be eligible for the permanent appointment. Should the suggestion that the appointment of the Director of Public Prosecutions be considered by a panel be not accepted by the Parliament, I will propose an alternative amendment to the provisions relating to acting appointments which would bring into effect the concept of making a person who had held an acting appointment ineligible for a period of time from holding the permanent appointment.

I deal now with ensuring the independence of the person. There are all sorts of ways in which this can be done. In the view of the Opposition the safest and easiest of those means is to put the process of appointment beyond the Government and put it in the hands of a panel

of people who do not have upon the panel a natural majority. Perhaps I should explain that to the House. There would not be a combination of people on that panel who, by reason of their background - being ex officio members they will have a particular background - will agree. Hopefully the members of the panel will disagree from time to time.

Hon R.G. Pike: That is an excellent point.

Hon PETER FOSS: We would end up with a truly independent appointment. We suggest that the solution to these problems is that the appointment of the DPP and any acting appointment be made by the panel.

If members refer to supplementary Notice Paper No 18 they will read that the panel I have suggested would constitute the following -

> The Chief Justice of Western Australia;
> the Chief Judge of the District Court of Western Australia;
> the Attorney General;
> the Commissioner of Police;
> the President of the Law Society of Western Australia (Inc) or his nominee; and
> the President of the Western Australian Bar Association (Inc) or his nominee.

The reason for the two presidents having the opportunity to appoint a nominee is for the reason outlined by the Attorney General; that is, they may be volunteers. It may well be that the person who applied for the position of DPP could be the President of the Bar Association or the President of the Law Society. We would hope that the person appointed to the position would be a person of eminence and seniority in the profession.

Hon P.G. Pendal interjected.

Hon PETER FOSS: They could not sit in on their own hearings and would have to appoint -

Hon T.G. Butler: Fancy interjecting on your own member.

Hon PETER FOSS: I welcome Hon Phil Pendal's interjection. It is important that sensible and helpful interjections are made.

It would be accepted that each of these people proposed to form the panel would have the necessary qualifications for choosing the applicant and would each have a different point of view. The Attorney General would represent the view of the Government and the Chief Judge and the Chief Justice would represent the view of the judiciary. Obviously they would have an important view as to the ability of people to practise before them. They would probably have the best independent view about the way in which the applicants are able to practise before the courts. The Commissioner of Police has an interest in ensuring that the people his officers charge are prosecuted properly. The President of the Western Australian Law Society and the President of the Western Australian Bar Association represent the combined knowledge of the legal profession. I believe there is no natural majority on a panel such as this and that there would be an excellent combination of views, ideas and personalities in that group of people.

I refer now to the independence of the process and I draw the attention of members to two provisions in the Bill. Firstly, I refer to clause 20(3), which states that the provisions of this Bill will not derogate from any functions of the Attorney General. This means that the Attorney General is able to exercise every single function the DPP can exercise. Clause 28 states that where in a particular case the Attorney General has performed a function that is vested in both the Attorney General and the director, the director shall not, without the consent of the Attorney General, perform that function inconsistently with the action of the Attorney General. These clauses provide that if the DPP were to decide to prosecute a trade union official for extortion and the Attorney General were to enter a nolle prosequi -

Hon P.G. Pendal: I could not imagine that happening.

Hon PETER FOSS: It is a hypothetical case. In the unusual circumstance that that should happen by reason of the manner in which the Bill has been constructed, the action of the Attorney General would take priority over that of the DPP, and because he is not able to act inconsistently with that he would not be able to commence prosecution again. I should clarify the fact that a nolle prosequi does not have the effect of finally disposing of a matter. It is unlike, for instance, a finding of not guilty. Once a nolle prosequi has been filed it is

always open for a further committal proceeding to be commenced or an official information to be filed by the Attorney General so that the process can commence again. The effect of clause 28(1) is that if the Attorney General were to enter a nolle prosequi that would be the end of the matter because then only the Attorney General would be able to commence that prosecution again. That is an important point.

In his second reading contribution the Attorney General gave an example of the circumstances under which this may occur; if, for instance, the Director of Public Prosecutions was, because of some form of conflict of interest, unable to act. Obviously, in such circumstances it would be important there be somebody able to act. It is important that the process be seen to be independent on those occasions when the Director of Public Prosecutions is unable to act properly. It is important that there be somebody outside the Director of Public Prosecution's organisation who is capable of exercising the authority of the Attorney General.

We would agree in relation to clause 20(3) that the provisions of the legislation should not derogate from any function of the Attorney General. The question then is, what about clause 28? I confess that it is a matter which has caused me considerable concern as to whether it is the appropriate thing to do. Should we reverse it, for instance? Should we say that, where in a particular case the Director of Public Prosecutions has performed a function that is vested in both the Attorney General and the Director, the Attorney General shall not, without the consent of the Director of Public Prosecutions, perform that function inconsistent with the actions of the Director? That would be one way to do it, or we could take up the example given by the Attorney General that if the Director of Public Prosecutions is willing and able to act then the Attorney General should not act; in other words, it is only in those instances where the Director of Public Prosecutions decides that it would be inappropriate for him to act that the Attorney General would act.

The other alternative is to look at the office of Attorney General. It is an office with a long history, one which has over the years been exercised widely, sometimes exercised well and sometimes exercised badly and corruptly. However, it has reached a state of tradition and a stage where, strictly speaking, there is no excuse for any Attorney General who does not act properly and in accordance with appropriate behaviour for an Attorney General.

Hon Mark Nevill: It is occupied by an eminent person.

Hon PETER FOSS: I am about to deal with that. The fact is that members of the House on this side have held considerable concern in the past that in a particular case that power was not exercised properly. We have come to the conclusion that we should not allow our view of the appropriateness of the office to be clouded. It is all too easy when drafting legislation to be affected by a particular case and to allow that to interfere with what one sees as the appropriate principle. Leaving aside our concern about that particular instance, and taking into account the fact that we believe that that instance was probably such as to persuade the present incumbent to stay as far away as he can from such decisions in future - particularly if there is a Director of Public Prosecutions - and having in mind the future of the office itself, Opposition members came to the conclusion that the wording as presently shown in clause 28 - where there is no fetter on the ability of the Attorney General to step in and take over the functions from the Director of Public Prosecutions where his decision is such that he prevents the Director from exercising his power - is the correct wording.

We believe it is more important to ensure the independence of the person than it is necessary to ensure the ultimate independence of the process, because ultimately the fact that there is a Director of Public Prosecutions able to act, and the fact that this Parliament will be aware that the Attorney General has stepped in, will be sufficient to guarantee the independence of the process. That is why we have proposed an amendment to clause 28, so that in those circumstances where the Attorney General does step in and exercise those powers which would otherwise be exercised by the Director of Public Prosecutions this Parliament must be notified. Independence of the process must ultimately be guaranteed by the political power and the reality of this Parliament rather than by seeking to write into the legislation a derogation from the ancient powers of the Attorney General. As a matter of principle, the guarantee of independence of the process as opposed to the independence of the person must be with this Parliament. On that basis we are prepared to support the Bill.

HON P.G. PENDAL (South Metropolitan) [5.36 pm]: I recall that six or seven years ago a

debate took place in this House following a decision, I think of the then Fraser Federal Government, to establish the office of National Crime Authority. The only justification for the establishment of the NCA at that time was, in effect, to become another or final avenue of a series of cross checks and balances against the work of State Police Forces and the Federal Police Force. There was much discussion at that time that, because there were perceived inadequacies within the Police Forces of the States and the Commonwealth, we really needed it to cure all of those ills. The crime ills within Australia were so overriding that the task of this body was to make it more difficult for Police Forces to subvert the course of justice. I was never convinced by that argument because it simply led to a new argument which might best be expressed by asking: Who ultimately judges the judge? Who ultimately takes over from the National Crime Authority if it is found to be less than reputable in its conduct?

The argument I used at that time has been borne out by subsequent events because people in the National Crime Authority have been charged with wrongdoing, although I do not know the outcome of that. My reason for raising this matter during this debate is that in the last few years we have tended in the Parliament to create whole new structures in order to supervise existing structures and then, when the new structure is found to be inadequate, we have cast around for another new structure to come in and check the last one, the one before that, and so on. I have no real objection to that being done, and to that extent I support the Bill, but it raises the question of why we have been put in the position where we have to think about bringing in new structures to meet the problems at hand. It is a sad reflection on society, both in this State and in Australia, that we have reached the point where we have to decide that the existing checks and balances are not good enough and that the prosecutorial role of the Attorney General is not sufficient, and in order to introduce wider checks we need to establish an Office of Director of Public Prosecutions.

To pick up on a point touched on briefly by the previous speaker, there has been some public discussion - certainly some in which I was involved - as to whether we should leave the Attorney General of the day with the right to be responsible for prosecutions. I argued strenuously there, as I do now, for the view that we should never demean the office of Attorney General in such a way as to make it just another political office. The office of Attorney General is unique. It has an historical element to it where the person who holds that office not only exercises political and in some ways administrative functions but also very special functions as the first law officer. I for one have no difficulty at all in accepting the creation of an Office of Director of Public Prosecutions. In some respects it can be said that the DPP will sit alongside the Attorney General without in any way displacing him, and that is something referred to in one of the clauses.

That brings me to the real point of the Bill. Indeed I am not sure that we can ever succeed in achieving the real point of the Bill in this Parliament. The whole emphasis of the Bill, the whole emphasis of the clauses and the whole emphasis of the second reading speech is to create an office and invest that office with as much independence as it is possible to confer. Under our system of Government I am not sure that we can do much more than is done at the moment. I enthusiastically support such an appointment, but in reality we can never reach the point of doing what everyone is saying we should do unless we sacrifice the historical and traditional role of the Attorney General. I for one would not go down that track, therefore the way in which the Bill seems to balance the Attorney General's role against that of the Director of Public Prosecutions is about as far as we can go. In the main I believe that the office of Attorney General has been well and wisely conducted in Western Australia under a succession of Governments. There are exceptions, and those have been raised in this House on many previous occasions.

That leads me to a part of the Attorney's remarks which seems at odds with what we are trying to achieve. In the course of his second reading comments he had this to say -

> Members will appreciate, of course, that a corollary of the independence of the DPP is that the Attorney General will not be able to be held accountable to Parliament and the community to the extent to which many suggest is still appropriate in respect of prosecution decisions today.

I challenge that in the strongest way I can. The Bill does not envisage the Attorney General's giving up any of his powers. It is more a case of creating a public office to share

the powers of the Attorney General, and even share them to a lesser extent than the Attorney General exercises them. I am not saying that I have any quarrel; I have already stated that I would not like to see the historic role of the Attorney General altered. I know we will go into this Bill in some detail later, but the Attorney General is not, in the ultimate, entirely responsible for everything that goes on. I am not saying that in order to tie down this Attorney General, but we cannot have it both ways. If we are to have a situation where the Attorney General's intention is superior to that of the Director of Public Prosecutions -

The DEPUTY PRESIDENT (Hon Garry Kelly): Order! There is too much audible conversation.

Hon P.G. PENDAL: - one cannot say, as the Attorney General said, that the Attorney General will not be able to be held accountable to Parliament and the community to the extent which many suggest is still appropriate. The Attorney General will not be able to escape anything under this Bill, because it clearly sets out that the Attorney General has the upper hand. I intend to speak on clause 28 when we reach the Committee stage. That in itself is an example of a second reading contribution not being consistent with the plain meaning of the words of the Bill.

[Leave granted for speech to be continued.]

Debate thus adjourned.

SITTINGS OF THE HOUSE - EXTENDED AFTER 6.00 PM

Thursday, 19 October 1989

HON J.M. BERINSON (North Metropolitan - Leader of the House) [5.50 pm]: I move -

That the House continue to sit beyond 6.00 pm.

With your indulgence, Mr Acting President (Hon Garry Kelly), I indicate that I do not expect the House to sit long beyond 6.00 pm. However, we have an arrangement, to which agreement was previously made, to introduce the Stamp Amendment Bill (No 3) and the Stamp Amendment Bill (No 4). Apparently the Assembly has a few procedural problems of its own, and the transmittal of those Bills to this Chamber has been delayed.

Question put and passed.

STAMP AMENDMENT BILL (No 3)

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Kay Hallahan (Minister for Local Government), read a first time.

Second Reading

HON KAY HALLAHAN (East Metropolitan - Minister for Local Government) [5.53 pm]: I move -

That the Bill be now read a second time.

This Bill proposes to amend the Stamp Act to implement measures announced in the Budget speech and in order to close off certain avoidance schemes, arrest the loss of revenue from evasion practices, clarify the application of certain exemptions and provide some concessions from duty. The Budget measures include both revenue raising initiatives, which will all be achieved by bringing Western Australian practices into line with those of other States, and concessions which will benefit both home buyers and businesses.

It is proposed to increase conveyance duty receipts by applying duty to sales of business property effected by means other than a dutiable instrument, and by removing the exemption currently available for the chattels component of any property transfer. The sale of a business already attracts conveyance duty where the transfer is effected by a formal instrument. However, where less formal means are used, business property other than land escapes duty.

The Act provides for specific non-instrumented transactions to be dutiable and it is intended that these provisions be extended to include transfers of certain business property. Duty on

the non-instrumented business property has applied for many years in Queensland and more recently in New South Wales. Where dutiable transactions of this type occur, a statement will have to be lodged with the Commissioner of State Taxation and will be deemed to be an instrument for the purposes of the Act. Business property will include the value of business names, copyrights, licences, franchises and the like. This will overcome any doubt as to whether these items fit the description of dutiable property under the current legislation. The inclusion of these items will ensure that all property, whether tangible or intangible, is similarly treated for stamp duty purposes.

Changes in business partnerships are specifically included in the Bill. Any change in a partnership share will be deemed to be a change in the ownership of the partnership property. For this purpose partners will be regarded as owners of the partnership's property as tenants-in-common to the extent of their share in the partnership capital.

Western Australia has for some time now been the only State to provide an exemption on chattels. It is proposed to remove this exemption in cases where chattels are transferred along with other dutiable property. However, exemption will be provided for certain chattels, comprising trading stock, materials, goods under manufacture and livestock. Exemption will also be provided in respect of trade debts when transferred with a business and farm implements and the like when transferred with a farming business. This measure will also remove a common evasion practice where property purchasers overstate the value of the presently exempt chattels.

The impact on the average residential property transaction is estimated to be an increase in conveyance duty payable of around six per cent. However the overall conveyance duty impost in Western Australia will continue to be below the average of the other States. These two conveyance duty measures are estimated to raise $2 million and $9 million respectively in 1989-90 and $5 million and $16 million in a full year. It is proposed that both measures will apply from 1 November.

As announced in the Budget speech, concessions are proposed in two areas to alleviate the impact on purchases of small businesses and home buyers. Firstly, the value limit for the concessional 1.5 per cent rate of duty for both small businesses and home buyers is to be increased from $50 000 to $85 000. This will allow for increases in property values since the $50 000 limit was set, as well as for the removal of the chattels' exemption. Secondly, the value limits which apply to the first home buyers' $500 stamp duty rebate scheme will be increased from $120 000 to $127 500, and from $80 000 to $85 000 for homes north and south of the 26th parallel respectively. Both concessions will be introduced from 1 November 1989.

Western Australia currently has by far the lowest rate of mortgage duty of any State for mortgages and other securities of more than $35 000. An increase in the rate from 25¢ per $100 to 40¢ per $100 for that component of loans above $35 000 will bring Western Australia's rate broadly into line with those of other States. However the increase will not apply to persons purchasing, constructing or improving owner occupied residences, who will continue to pay at the old rate on the whole amount of their mortgage. The increase will apply from 1 November 1989 and will raise an estimated $8 million in 1989-90 and $15 million in a full year.

There are two further stamp duty concessions designed to correct anomalies and assist businesses which were announced in the Budget. Firstly, it is proposed to ensure that amounts built into insurance premiums and rental business charges as a recoup of stamp duty are not themselves taken into account when assessing duty. Stamp duty is payable on insurance premiums and rental business income. It is proposed to allow a deduction for that component of premiums and rental business receipts which is equal to the stamp duty from 1 November 1989. The cost is estimated to be $800 000 in 1989-90 and $1.3 million in a full year. Secondly, it is proposed to amend the Act to extend the crediting provisions to jurisdictions where security duty is either not payable or an exemption is allowed for certain types of securities; for example, debentures in New South Wales.

Where an instrument of security secures property in Western Australia and in another jurisdiction, the Act already provides for a credit to be given to the extent of the duty paid in respect of the security over the property in that other jurisdiction. However, there are some States and Territories which do not impose duty on certain instruments of security and no

credit is presently allowable against the Western Australian assessment in respect of the property secured in those jurisdictions. A credit will now be given in such circumstances provided the instrument of security is of a type prescribed by regulation. The cost is estimated to be $600 000 in 1989-90 and $1 million in a full year.

The Bill proposes to clarify and extend the power of the commissioner to investigate any matter relevant to the administration of the Act. At present the Act restricts the commissioner's power of investigation to matters relating to the production of records only where a dutiable instrument is involved. There are now a number of provisions in the Act which impose duty on transactions that do not require the drawing up of a dutiable instrument. This amendment will authorise the commissioner to investigate and obtain records relating to such transactions.

The Premier made an announcement in September last year about the need to block a tax avoidance loophole which allows companies incorporated in this State to move their shares onto a branch register in the ACT, where stamp duty is not payable on security instruments. Shareholders can then execute outside the State a security over the shares free of the duty which would have been payable in this State had the shares remained on the principal register in Western Australia. Instances detected at that time by State Taxation Department officers indicate that a considerable amount of stamp duty may have been avoided. In keeping with its commitment to ensure that no particular class of taxpayer is allowed to defeat the intention of the law and gain an unfair advantage relative to other taxpayers, the Government proposes to block this avoidance device. Duty will in future be payable in this State where any shares of a Western Australian incorporated company are used for security and are situated in a place where no security duty is payable. The provisions will not apply where duty is payable in another jurisdiction.

The Bill also contains provisions to stem substantial duty losses presently being caused by the practice of understating the market value of motor vehicles on licensing forms. Investigations by the State Taxation Department indicate that this practice is widespread. The purchaser is liable, under this Act, for the payment of duty on the licence or transfer of a motor vehicle. As the purchaser, or his representative, is the only one who is presently required to make a declaration for the purpose of assessing duty, there is an opportunity to evade duty by declaring a lower value to the licensing authority. The Bill tightens these provisions by requiring both the seller and the purchaser of a vehicle to declare the sale price on the licensing forms. The market value of a vehicle is, in most cases, the same as its sale price, and the declaration by both parties will provide the licensing authority with a useful check on the market value. The seller will be jointly liable with the purchaser for any shortfall of duty, including penalties, arising from an understatement of the selling price. However, a seller will not be liable for the payment of any duty where the correct selling price has been declared.

Other related amendments include authorisation for the State Commissioner of Taxation to communicate to the police information on motor vehicle duty matters, and provision that any court order for the payment of a vehicle licence transfer fee be deemed to also include a liability to pay the duty on the transfer. The Bill will also close a loophole in the present provisions of the Stamp Act whereby vehicle hire firms have been able to obtain the stamp duty exemption which is available to car dealers who acquire vehicles for resale. The Bill makes it clear that this exemption is available only in respect of vehicles acquired as stock in trade. The Bill also contains some concessions in respect of motor vehicle duty. Previously, a dealer was obliged to pay full duty when licensing a second-hand unlicensed vehicle acquired for resale. It is proposed to remove the stamp duty impost on such acquisitions to be consistent with the existing duty exemption on the licensing of a new vehicle when acquired by a dealer for resale. Provision also is being made for nominal duty only where a vehicle is transferred from a deceased estate to the person beneficially entitled.

The measures in respect of motor vehicles are estimated to save the Government $3 million in revenue in 1989-90, and $5 million in a full year, and will take effect from a date to be proclaimed. Section 31B of the Act requires duty to be paid upon a statement lodged in respect of a transaction effecting the change of beneficial ownership of property or lease of property where there is no instrument chargeable with ad valorem duty. However, the section does not specify that the statement applicable to the transaction has to be chargeable at the same rate that would apply if it were the subject of an instrument. The Bill proposes to

amend the Act to specify that the ad valorem rate of duty applied must be appropriate to the transaction.

The State Commissioner of Taxation exercised, until recently, an absolute discretion in determining which instruments involving charitable purposes should be exempt. Generally, exemption was not granted where the transaction was of a commercial nature, such as the acquisition of an investment property not used directly for the charitable purposes of the organisation. However, the Supreme Court recently ruled that the Act did not convey any discretion on the commissioner, and that it was mandatory for an exemption to be allowed. All gifts of property for charitable purposes, or leases for a nominal or nil rental, will be exempt from duty.

The Bill provides a specific exemption for property which is otherwise purchased or leased where it is to be occupied by a charitable body or used directly in carrying out an activity that is charitable. Property acquired by a charitable body for commercial use will not be entitled to an exemption, but provision is made for the commissioner to have a discretionary power to allow an exemption in deserving cases which do not meet the criteria specified. No change is being made to the objection and appeal rights in sections 32 and 33 of the Stamp Act which are available to any person who is dissatisfied with a decision made by the commissioner.

In order to facilitate a more efficient settlement system being introduced nationally by the Australian Stock Exchange for the registration of transfers of marketable securities, the Bill provides for an exemption from transfer duty for brokers using nominee companies to temporarily hold title to securities pending final settlement of dealings. Similar concessions are being provided by all other States and territories. As a pilot project to test the scheme has been in operation since 1 July, the exemption will operate retrospectively from that date.

The Bill will ensure also that those local government authorities and Government departments and agencies, which are exempt from all stamp duties, will not indirectly incur the cost of stamp duty passed on to them by insurance companies when taking out insurance policies. This will be achieved by exempting insurance companies from their liability to duty in respect of policies issued to any such body. This measure will be retrospective to 30 June 1989.

Other minor provisions are inserted to further clarify those areas of the Act which restrict the acceptance of evidence of dutiable transactions by courts and public offices of record, and to make the lodgment of false statements an offence under the Act. Other than as previously indicated, these measure will come into effect upon the date of assent.

I commend the Bill to the House.

Debate adjourned, on motion by Hon P.G. Pendal.

STAMP AMENDMENT BILL (No 4)

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon J.M. Berinson (Minister for Budget Management), read a first time.

Second Reading

HON J.M. BERINSON (North Metropolitan - Minister for Budget Management) [6.04 pm]: I move -

That the Bill be now read a second time.

This Bill amends the second schedule which contains the charging provisions of the Stamp Act. It gives effect to the increase in mortgage duty rates announced in the Budget speech, and is complementary to the Stamp Amendment Bill No 3, which puts those measures into effect. The amendment increases the rate of duty from a flat rate of 25¢ per $100 on the sum secured to a differential rate of 25¢ per $100 up to $35 000, and 40¢ per $100 over $35 000. The Bill also inserts a minor cross reference and makes it clear that duty is payable on the transfer of all types of marketable securities as defined in the Act.

I indicated earlier this afternoon that some procedural problems had arisen in the other House

and the Bill as originally drafted has been forwarded to us. It has become apparent however that some amendments of a typographical nature will be necessary. I will assure members that the proposed amendment will be circulated on our first sitting day next week.

I commend the Bill to the House.

Debate adjourned, on motion by Hon P.G. Pendal.

House adjourned at 6.10 pm

QUESTIONS ON NOTICE

STATE FINANCE - ESTIMATES OF REVENUE AND EXPENDITURE
Treasury; Business Undertakings, Profits and Surpluses - Receipts and Estimate Amounts

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

With respect to the estimated revenue for the year ending 30 June 1990 at page 19 under the heading of Treasury, subheading Business Undertakings, Profits and Surpluses, what are the full details of -

(a) the amount of $153 480 084 listed under receipts for 1988-89; and

(b) the amount of $176 093 000 listed under estimate for 1989-90?

Hon J.M. BERINSON replied:

The Treasurer has provided the following reply -

	1988-89 Receipts $	1989-90 Estimate $
Statutory Level		
- State Energy Commission	32 959 723	36 228 000
- Water Authority	9 784 695	10 300 000
- Fremantle Port Authority	1 222 934	1 385 000
- Country Water Boards	28 237	126 000
Contribution in Lieu of Tax		
- Rural and Industries Bank	28 105 184	40 000 000
- W.A. Development Corporation	15 662 718	17 000 000
- State Government Insurance Office	3 641 588	3 100 000
- W.A. Mint	1 470 335	-
- GoldCorp	750 208	29 000 000
Other		
- Landbank (transfer on winding up)	31 111 892	454 000
- State Government Insurance Commission (transfer of surplus funds)	27 730 000	28 000 000
- W.A. Exim Corporation (divided payment)	1 000 000	10 500 000
- R & I Bank (minor adjusting payment)	12 570	-
	153 480 084	175 093 000

STATE FINANCE - ESTIMATES OF REVENUE AND EXPENDITURE
Treasury; Other - Receipts and Estimate Amounts

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

With respect to the estimated revenue for the year ending 30 June 1990 at page 19 under the heading of Treasury, subheading Other, what are the full details of -

(a) the amount of $25 549 616 listed under receipts for 1988-89; and

(b) the amount of $11 680 500 listed under estimate for 1989-90?

Hon J.M. BERINSON replied:

The Treasurer has provided the following reply -

	1988-89 Receipts $	1989-90 Estimate $
Natural Disasters Trust Fund	11 180 691	1 495 000
Recoup of Superannuation (Suburban Rail Service)	5 600 000	5 640 000
Burswood Casino Agreement	5 000 000	-
Non-Government Schools (Loan Repayments)	21 078	2 056 000
Rothwells Ltd	940 068	-
State Energy Commission (Cinema and Electricity Board)	546 810	525 000
Other (various minor items)	2 260 969	1 964 500
	25 549 616	11 680 500

HEALTH - COOLGARDIE HOSPITAL
Employment - Outpatients Services

595. Hon N.F. MOORE to the Minister for Local Government representing the Minister for Health:

(1) How many staff are currently employed at the Coolgardie Hospital?

(2) How many staff will be employed when the hospital is restructured?

(3) During what hours are out-patient services currently provided at the Coolgardie Hospital?

(4) During what hours will out-patient services be provided following the restructuring of the hospital?

(5) Is it correct that the nurses' quarters are to be demolished and if so, when and why?

(6) How many staff are currently resident at the nurses' quarters?

(7) What medical services will be provided by the Coolgardie Hospital following its restructuring?

Hon KAY HALLAHAN replied:

The Minister for Health has provided the following reply -

(1) Twenty two.

(2) Ten, if all are full time.

(3) No formal accident and emergency or outpatient services are provided.

(4) An accident and emergency service will be provided 24 hours per day, seven days per week. Qualified staff will be rostered between 8.00 am and 5.00 pm and on-call after hours.

(5) The corrugated iron quarters will be demolished as part of the redevelopment because of their age and inappropriate style. Alternative accommodation will be available to house the proposed nursing establishment.

(6) Four.

(7) The current level of service will be maintained, for example -

General practitioner clinics weekly.

Periodic community medical officer visits.

Periodic geriatric assessment team visits.

HOUSING - RENTAL SUBSIDY APPLICATION
Service Pension - Income Consideration

621. Hon GEORGE CASH to the Leader of the House representing the Minister for Housing:

(1) When applying for a rental subsidy, is a service pension paid by the Department of Veterans' Affairs considered to be income for the purpose of assessing a rental subsidy?

(2) If so, when did this come into effect?

(3) When applying for a rental subsidy, is a disability pension (T & PI) paid by the Department of Veterans' Affairs considered to be income for the purpose of assessing a rental subsidy?

(4) If so, when did this come into effect?

Hon J.M. BERINSON replied:

The Minister for Housing has provided the following reply -

(1) Yes.

(2) February 1983.

(3) Yes.

(4) February 1983.

AMMONIA UREA PLANT - AMMONIA ACCIDENTS
Norsk-Veritas Report

622. Hon GEORGE CASH to the Minister for Local Goverment representing the Minister for Environment:

(1) Is the Minister aware of a report by the company Norsk-Veritas, a consultancy hired by CSBP during investigations into a proposed ammonia urea plant, which listed as an appendix extensive information relating to the world wide incidence of injurious and fatal ammonia related accidents?

(2) If not, will the Minister take steps to acquaint himself with this report, and in view of the claims made by industry involved in the unloading of ammonia in Cockburn Sound, make every effort to ensure that worker and public safety in the Kwinana area is not compromised by accidental or unauthorised venting of ammonia to the environment?

Hon KAY HALLAHAN replied:

The Minister for Environment has provided the following reply -

(1) Yes. The report referred to is the preliminary risk assessment report, required for assessment of the project under the Environmental Protection Act 1986.

(2) This report, and others, have been used as the basis to provide protection of worker and public safety.

TOURISM - TOUR OPERATORS
Off-road Safari Type - Licensing and Registration Requirements

624. Hon GEORGE CASH to the Minister for Racing and Gaming representing the Minister for Transport:

(1) What licensing and registration requirements exist for off-road safari type tour operators?

(2) What requirements must be met in respect of equipment adequacy, suitability and backup by such operators?

(3) What penalties can be imposed on operators who fail to meet standards of equipment and who, as a result of failure of equipment, cause inconvenience and risk to tourist groups?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following reply -

(1) Safari tour operators are required to be licensed under the Transport Co-ordination Act 1966. Safari vehicles that are licensed under this Act are also licensed by the police under a special category requiring an annual vehicle inspection.

Operators conducting interstate tours are not subject to this form of licensing.

(2) Operators must use vehicles, for example four-wheel drives, suitable for the terrain being covered. First aid kits and fire extinguishers are mandatory. A comprehensive list of spare parts and tools, and a high frequency radio transceiver with Flying Doctor frequencies is required for tours to remote regions.

(3) All equipment is subject to failure. The direct and indirect cost of equipment failure to the operator is such, however, that preventive maintenance programs are the norm. Any operator with a history of poor performance can have his licence removed or not renewed.

AMMONIA UREA PLANT - REFRIGERATED STORAGE FACILITY, KWINANA
CSBP & Farmers Ltd - Planning Approval

625. Hon GEORGE CASH to the Minister for Local Government representing the Minister for Environment:

(1) Has environmental or other planning approval been granted to CSBP and Farmers Ltd for a 30 000 tonne refrigerated ammonia storage facility at Kwinana?

(2) If so, will the Minister provide details of the approval and any conditions attached thereto?

(3) When is this facility scheduled to be commissioned?

(4) Will the storage of such a quantity of refrigerated ammonia present any potential safety hazards or necessitate the closure to the public of any surrounding areas?

(5) If so, will the Minister provide details?

Hon KAY HALLAHAN replied:

The Minister for Environment has provided the following reply -

(1) Environmental approval was granted on 2 August 1988.

(2) Yes. The environmental conditions are public information and I have arranged for a copy to be sent to the member.

(3) The commissioning of the facility is a company prerogative provided all conditions have been met.

(4)-(5) The risks and hazards associated with the facility have been assessed and are described in Environmental Protection Authority Bulletin No 309 which is a public document. I have arranged for a copy to be sent to the member. The environmental conditions set on the proposal take into account the risks and hazards.

LAND - BUNBURY
Westrail Sale Price - Purchaser

633. Hon GEORGE CASH to the Minister for Racing and Gaming representing the Minister for South-West:

(1) What price was paid for the freehold land formerly owned by Westrail in Bunbury which is currently being redeveloped as a major regional commercial, retail and community facility?

(2) Who was the purchaser?

Hon GRAHAM EDWARDS replied:

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

(1) $3.5 million.

(2) Rampton Holdings Pty Ltd.

ROADS - MUIRS HIGHWAY, NAYAMUP-TONE RIVER
Widening and Upgrading - Election Undertaking

637. Hon M.S. MONTGOMERY to the Minister for Sport and Recreation representing the Minister for Transport:

(1) Is it correct that the State Government gave an undertaking just prior to the recent State election that the narrow portion of the Muirs Highway between Nyamup and Tone River will be widened and/or upgraded in the current financial year?

(2) If yes, will this undertaking be honoured?

(3) If no to (1), when will that section of road be widened and upgraded?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following reply -

(1) No.

(2) Not applicable.

(3) A timetable for widening and upgrading the narrow sections of Muirs Highway has not been determined at this stage.

STREET NUMBERING - BUSINESSES
Residences - Responsibility

646. Hon P.G. PENDAL to the Minister for Local Government:

Who has responsibility for looking after the street numbering of businesses and residences?

Hon KAY HALLAHAN replied:

It is the responsibility of each local government to assign numbers to buildings or lots in streets under the provisions of section 314 of the Local Government Act, but it is the responsibility of the owners themselves to display and maintain that number.

JETTIES - COODE STREET
Deterioration - Maintenance Responsibility

653. Hon P.G. PENDAL to the Minister for Racing and Gaming representing the Minister for Transport:

(1) Is it correct that Transperth ferries no longer service the Coode Street Jetty?

(2) Is this because the jetty has been allowed to deteriorate?

(3) Whose responsibility has it been in the past to maintain this jetty?

(4) Why has maintenance not been kept up to date?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following reply -

(1) Yes.

(2) No. The structure was built in 1940 and all parts of it have now aged to the extent that the jetty is beyond economic repair.

(3) Department of Marine and Harbours.

(4) Not applicable.

PLANNING - METROPOLITAN AND REGIONAL PLANNING AUTHORITY
Development Opponents - Submissions Practice

655. Hon P.G. PENDAL to the Leader of the House representing the Minister for Planning:

I refer to the practice which existed under the old Metropolitan and Regional Planning Authority whereby opponents to a scheme could appear before the authority to argue their submissions and ask -

(1) Is this practice still available to objectors under present law?

(2) If so, will the Minister arrange for the appropriate officials to hear verbally from the people of Kwinana who oppose the Leda development?

(3) If not, why not?

(4) If yes to (2), will the Minister tell me the procedures to be followed by my Kwinana constituents?

Hon J.M. BERINSON replied:

The Minister for Planning has provided the following reply -

(1) Yes, but only in respect of major amendments to the metropolitan region scheme pursued under section 33 of the Metropolitan Region Town Planning Scheme Act 1959 (as amended).

(2) No, because that amendment is being pursued as a non-substantial amendment to the scheme under section 33A.

(3) See (2).

(4) Not applicable.

RAILWAYS - ELECTRIFIED SERVICE
Cannington - Delay

659. Hon P.G. PENDAL to the Minister for Racing and Gaming representing the Minister for Transport:

(1) Has the introduction of an electrified railway line to Cannington been delayed beyond its originally proposed date of commencement?

(2) If so, is the delay related to changing the upholstery colour for the railway carriages?

(3) If not, why has such a delay occurred?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following reply -

(1) Yes.

(2)-(3)

Decisions were made and publicised last year to improve the interior design of the railcars - specifically seat design, ceiling panels and windows - to provide passenger amenities and comfort to modern international standards. The top speed was also improved to 110 kmh. This has meant that the first train on the Armadale line is now scheduled for July next year.

RESERVES - QUO VADIS
Future

662. Hon DERRICK TOMLINSON to the Minister for Lands:

(1) Has a decision been made about the future of the Quo Vadis reserve?

(2) If yes, what is that decision?

Hon KAY HALLAHAN replied:

(1) No.

(2) Not applicable.

PRISONS - BARTON'S MILL
Juvenile Detention Centre Proposal

663. Hon DERRICK TOMLINSON to the Minister for Local Government representing the Minister for Community Services:

(1) Has the Minister considered a proposal to use Barton's Mill Prison as a juvenile detention centre?

(2) If yes -

(a) has the proposal been approved;

(b) what type of offenders will be detained there; and

(c) what changes will be made to the security arrangements at Barton's Mill?

Hon KAY HALLAHAN replied:

The Minister for Community Services has provided the following reply -

(1) Yes.

(2) (a) No; and

(b)-(c) not applicable;

LAND - LOT 122 WALTER ROAD, MORLEY
City of Bayswater - Rezoning Proposal

669. Hon GEORGE CASH to the Leader of the House representing the Minister for Planning:

(1) Is the Minister aware of the intention of the City of Bayswater to initiate the rezoning of Lot 122 Walter Road Morley from residential to showroom/warehouse?

(2) If so, has the State Planning Commission granted consent to advertise a scheme amendment to Town Planning Scheme No 21 and, if so, when was this consent granted and when do submissions close in respect of this matter?

(3) Is the Minister also aware that a number of ratepayers living in the near vicinity of the proposed rezoning have objected to the rezoning and have held a number of public meetings calling on the council not to proceed with the rezoning?

(4) Is there suitable zoned vacant land available within the City of Bayswater which would enable the construction of premises similar to those able to be constructed in the proposed showroom/warehouse zoning on Lot 122 Walter Road?

(5) Was a requisition meeting held by the City of Bayswater to discuss this proposed rezoning and, if so, when was the meeting held and what motion was carried at that meeting?

(6) Did the Director of Planning and Development Services at the City of Bayswater recommend in a submission to the council that the rezoning not be proceeded with?

(7) Will the Minister meet a deputation of local residents and ratepayers to further discuss their objections to the proposed rezoning?

(8) If not, why not?

Hon J.M. BERINSON replied:

The Minister for Planning has provided the following reply -

(1) Yes.

(2) Consent to advertise the amendment was granted on 5 September 1989. Submissions to the City of Bayswater close on 27 October 1989.

(3) Yes.

(4) The City of Bayswater town planning scheme includes land zoned "showroom/warehouse", "light industrial" and "general industrial".

(5) I am not aware of the term "requisition meeting". In any event this question should before properly addressed to the council.

(6) This question should be addressed to the council.

(7)-(8) A meeting would be inappropriate as the matter is one for the City of Bayswater to determine at this stage.

TRANSPORT - ANSETT AIRLINES
Carnarvon Service - Discontinuance

675. Hon P.H. LOCKYER to the Minister for Racing and Gaming representing the Minister for Transport:

(1) Has any discussion with either Ansett or the Transport Commission taken place with regard to Ansett's discontinuing a jet service to Carnarvon even after the settlement of the present dispute?

(2) If so, what was the content and outcome of that meeting?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following reply -

(1)-(2) There have been no meetings with Ansett on the matter. However, in response to this question, Ansett WA advised it has no plans to discontinue the jet service to Carnarvon.

ROADS - CORAL BAY ROAD
Sealing - Commencement and Completion Date

677. Hon P.H. LOCKYER to the Minister for Racing and Gaming representing the Minister for Transport:

When will the sealing of the Coral Bay Road commence and be completed?

Hon GRAHAM EDWARDS replied:

The Minister for Transport has provided the following reply -

Work to seal Coral Bay Road is scheduled to commence in April 1990 and is expected to be completed by September 1990.

TRANSPORT - BROOME AIRPORT
Broome Shire Council - Joint Developers, Sale Stage

679. Hon P.H. LOCKYER to the Minister for Local Government:

What stage has been reached for the sale of the Broome Airport by the Broome Shire Council, to joint developers?

Hon KAY HALLAHAN replied:

Cabinet has approved in principal the proposal to sell Broome Airport.

A response is awaited from the Shire of Broome clarifying certain matters of concern before the proposal is submitted for my approval under section 514A of the Local Government Act.

LAND - MARANGAROO-ALEXANDER DRIVES, KOONDOOLA
Homeswest - Ownership

680. Hon REG DAVIES to the Leader of the House representing the Minister for Planning:

With respect to the land situated at the corner of Marangaroo and Alexander Drives, Koondoola -

(1) Is Homeswest the owner of this land?

(2) If not, who is?

(3) Is it intended to dispose of any of this land to the State Planning Commission or any other party?

(4) If so, will he provide details?

(5) If all or any of this land is to be disposed of, for what purpose will it be used?

(6) What is the current zoning of this land?

Hon J.M. BERINSON replied:

The Minister for Planning has provided the following reply -

(1) Yes.

(2) Not applicable.

(3)-(5)

In conjunction with the Department of Planning and Urban Development, Homeswest is examining the options for residential development of part of its landholding, in the context of a concept for the utilisation of the overall area.

(6) Regional open space.

QUESTIONS WITHOUT NOTICE

ROTHWELLS LTD - McCUSKER, MR MALCOLM
Inquiry, Terms of Reference - Corporate Affairs Commission, Involvement

321. Hon GEORGE CASH to the Attorney General:

What involvement have officers of the Corporate Affairs Commission had in the formulation of the terms of reference of the inquiry being conducted by Mr Malcolm McCusker, QC, Special Investigator?

Hon J.M. BERINSON replied:

I cannot provide an answer to that question without notice; I do not really know. My understanding is that the full initiative was taken by the National Companies and Securities Commission but, as the Corporate Affairs Office in this State acts as a delegate of the NCSC for the implementation of its requirements, there may well have been some consultation between the NCSC and the director. That is speculation on my part at this stage. If the member would like me to make further inquiries I would be happy to do so.

NATIONAL COMPANIES AND SECURITIES COMMISSION - CORPORATIONS
Inquiries - Attorney General's Direction

322. Hon GEORGE CASH to the Attorney General:

(1) Could he, in his capacity as Attorney General, direct the National Companies and Securities Commission to carry out an investigation into a corporate entity?

(2) If so, has he directed the NCSC on any matter?

(3) If so, will he advise the general terms of such direction and when such direction was given?

Hon J.M. BERINSON replied:

(1)-(3)

The only direction with which I have been concerned is the special investigation into Rothwells. As I have previously indicated, the decision to institute that special investigation was actually made by the Ministerial Council, but to meet the requirements of the Act and because the actual burden of the work would be conducted in this State it was decided by the Ministerial Council that the terms of reference should go out over my signature.

Hon George Cash: Do you have the capacity to direct the NCSC?

Hon J.M. BERINSON: No.

ROTHWELLS LTD - McCUSKER, MR MALCOLM
Inquiry - 17 Officers, Work Allocation

323. Hon PETER FOSS to the Attorney General:

Of the 17 full time officers working under the direction of Mr McCusker, QC, how many of them are devoting their full time to the inquiry?

Hon J.M. BERINSON replied:

I have answered questions on this matter in detail before in relation to the staff who are involved. My understanding is that the 17 officers who have previously been allocated to this work were and are working either full time or virtually full time. I cannot say that some of them might not be drawn off on occasions for other matters of an urgent nature. My understanding is that in referring to 17 staff available to Mr McCusker, they are effectively engaged full time on work required by his investigation.

ROTHWELLS LTD - McCUSKER, MR MALCOLM
Inquiry - 17 Officers, Qualifications and Experience

324. Hon PETER FOSS to the Attorney General:

Supplementary to my previous question, what are the qualifications and experience of those 17 full-time officers?

Hon J.M. BERINSON replied:

I am sure that question, in almost identical terms, has been answered previously. If it has not, I am perfectly prepared to obtain a breakdown of the nature and background of the staff if the honourable member wishes to put that question on notice. I do not think even Mr Foss would expect me to carry in my mind the nature of the positions held by and the qualifications of, 17 people in any department. With due respect, this is not the sort of question that can reasonably be asked without notice.

ROTHWELLS LTD - INQUIRY
Information Access. Prevention - Crown Privilege

325. Hon GEORGE CASH to the Attorney General:

(1) Has the Government or any of its departments, agencies or instrumentalities claimed Crown privilege or any other privilege in not providing access to papers or records in the investigation of the collapse of Rothwells by -

(a) the Corporate Affairs Commission;

(b) the National Companies and Securities Commission;

(c) any liquidator;

(d) Mr Malcolm McCusker, QC, Special Investigator?

(2) If so, will he advise of the circumstances involving the claim of privilege?

Hon J.M. BERINSON replied:

(1) To the best of my knowledge, no.

(2) Not applicable.

GOVERNMENT ADVERTISING - GOVERNMENT BUSINESS STIMULATION
Newspaper Pamphlet - Costs

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

Notice of this question was given at 9.30 this morning.

(1) Will he disclose the full or quoted costs for the glossy one-page insert in today's *The West Australian* entitled "Here are 34 ways the WA Government is stimulating business"?

(2) Will he include in the costing the components for -

(a) preparation;

(b) layout;

(c) production;

(d) distribution; and

(e) any other?

(3) Is the advertisement in any way linked to fears that the Government may be forced to an early election?

(4) Is the Premier aware that the report of the Fitzgerald inquiry into corruption in Queensland specifically cites the use of such Government advertising as one of the ways that permits corruption to flourish?

(5) Will the Government undertake to respond to, and debate, the Opposition Bill in the upper House called the Prohibition of Government Advertising Bill?

Hon J.M. BERINSON replied:

The Premier has provided the following response -

(1) *The West Australian* only - $42 385; *The West Australian* and *The Australian Financial Review* - $59 279.

(2)

	The West Australian	*The West Australian* and *The Australian Financial Review*
(a)	$1 820	$1 820
(b)	$3 944	$3 944
(c)	$26 838	$30 435
(d)	nil	$2 900
(e)	$9 783	$20 180

(3) No. This information pamphlet has been planned as part of the Government's responsibilities to inform the public about the services it provides as the elected Government of this State. It shows and helps the public have access to the enormous number of services being provided by this Government to the public of Western Australia.

(4) Fitzgerald does point out that Government advertising in Queensland was misused by that Government. However, a more important point made by Fitzgerald is that "true democracy" can exist only when the public have access to information about the services provided by elected Governments. This is central to all Fitzgerald's concerns and proposed reforms. This is exactly what this Government is doing; that is, informing all people concerned with helping to develop this State where they can get assistance with their endeavours. This Government

believes in working in partnership with small business. This information leaflet was provided for this purpose only.

(5) The Government is happy to debate the Opposition's Bill at the appropriate time.

Hon P.G. Pendal: An hour after the Government has prorogued Parliament.

Hon J.M. BERINSON: That is the end of the answer as provided by the Premier. Perhaps I could save Hon Phillip Pendal the trouble of asking his follow-up question - namely, "When is the appropriate time?" - that being a matter more within my capacity to answer directly. I have previously arranged that two matters that were initiated by Opposition members should be dispensed with this week. I have agreed with the Leader of the Opposition that specific matters be dispensed with next week. I have indicated to Mr Pendal that I would be prepared to bring on his advertising Bill in the following week; that is, in our present round of sittings.

WALLWORK, MR HENRY - SUPREME COURT JUDGE
New Appointment - Official Duties Date

327. Hon P.H. LOCKYER to the Attorney General:

I congratulate the Government on the appointment of Mr Henry Wallwork, QC as a judge of the Supreme Court. When will he take up his official duties?

Hon J.M. BERINSON replied:

On 1 November.

FLOODS - RELIEF APPLICATIONS
Closure Date - Extension Request

328. Hon MARGARET McALEER to the Minister for Budget Management:

(1) I understand applications for flood damage relief closed on 30 September 1989. Was the Minister aware that representations had been made by the Shire of Mt Marshall, through the Minister for Agriculture in another place, for that date to be extended to 31 December?

(2) Was consideration given to the request?

(3) If so, why was it refused?

Hon J.M. BERINSON replied:

(1)-(3)

I cannot recall any detail of this matter but if the member would place the question on notice I will respond as quickly as I can.

NATIONAL COMPANIES AND SECURITIES COMMISSION - CORPORATIONS
Inquiries - Attorney General's Direction

329. Hon GEORGE CASH to the Attorney General:

I refer to an earlier question which I posed to the Attorney General in which I inquired as to his capacity to direct the National Companies and Securities Commission. I did not fully hear the Attorney General's answer owing to an interjection. Could the Attorney confirm whether in his capacity as Attorney General he has the authority to direct the NCSC to carry out investigations into corporate entities?

Hon J.M. BERINSON replied:

I am always sad about confessing to an absence of knowledge of my powers. I can only say that I do not believe that I have the power to direct the National Companies and Securities Commission in that way. I give that answer subject to correction. I have never given such a direction other than in relation to the McCusker inquiry. I would prefer to go back to the Act to check on any powers which I might have in that respect.

HEALTH - MAMMOGRAPHY SCREENING
Government Action

330. Hon B.L. JONES to the Minister for The Family:

Would the Minister please indicate what the Government is doing to address the growing concerns of women regarding mammography screening?

Hon KAY HALLAHAN replied:

This question would be more accurately addressed to the Minister for Health in the other place. However, I have met with women's groups as early as an hour before the House sat today and advised them on two pilot projects running currently. Members will be interested in this information because breast cancer is a very serious killer of women in our community. The Government has established two pilot projects - one at Cannington in consulting rooms, and one in a mobile clinic in the south west. When the evaluation of the two clinics is made the Government will proceed to set up Statewide mammography screening programs. I would be very surprised indeed if members have not been in touch with constituents and have not received inquiries about the program.

SQUATTERS - COASTAL SHACKS
Government Policy - Question 489, Answer Request

331. Hon MARGARET McALEER to the Minister for Local Government:

On 28 September, in reply to question without notice 489 concerning Government policy for dealing with coastal squatters' shacks, the Minister was kind enough to say that she would give me that information. Is the Minister now in a position to do so? Perhaps it would help the Minister to know that on 9 September the Minister for Planning wrote to the Shire of Dandaragan to say that such a policy had recently been endorsed by Cabinet, but that Minister failed to mention what the policy might be.

Hon KAY HALLAHAN replied:

I thank the member for bringing the matter to my attention again. The question was put in the file of things to be followed up after question time. I apologise for not forwarding the information to the member. I give the member an undertaking to follow up the matter once again.

ROTHWELLS LTD - McCUSKER, MR MALCOLM
Inquiry, Terms of Reference - Attorney General, Change Discussions

332. Hon GEORGE CASH to the Attorney General:

(1) Has the Attorney General discussed with the National Companies and Securities Commission, or Mr Malcolm McCusker, QC, the possibility of a change in the terms of reference of the McCusker inquiry?

(2) If so, will the Attorney advise which aspects of the terms of reference he would consider changing and the likely consequence of such changes?

Hon J.M. BERINSON replied:

(1) No.

(2) Not applicable.

BOND CORPORATION - GOVERNMENT SUPPLY THREAT
Attorney General - Dispute Discussions

333. Hon GEORGE CASH to the Attorney General:

(1) Has the Attorney General been involved in any discussion with Bond Corporation in the last three weeks over matters in dispute between the Government and Bond Corporation?

(2) If so, when were those discussions held and what was the outcome?

Hon J.M. BERINSON replied:

(1) No.

(2) Not applicable.

SPORT AND RECREATION - WESTERN AUSTRALIAN FOOTBALL COMMISSION
Oval Rentals, Waive Proposals - Local Authority Approaches

334. Hon BARRY HOUSE to the Minister for Local Government:

(1) Has the Minister received any approaches from local authorities following the proposal by the Western Australian Football Commission to waive the rental on major WAFL ovals for the next season?

(2) Does the Minister support these proposals to waive the rentals?

Hon KAY HALLAHAN replied:

(1)-(2)

I have not had direct approaches on the matter, although yesterday I met with WAMA, which is a new body representing three local government associations. During those discussions those bodies raised their concerns about this matter. I do not support the approach to reduce these rentals. I reiterate that it is a matter between the commission and the councils. It seems that the councils are of a common view about it and will no doubt support one another in any negotiations that might take place on this issue.

GOVERNMENT ADVERTISING - GOVERNMENT BUSINESS STIMULATION
Newspaper Pamphlet - Costs

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

The Leader of the House provided me with an answer to a question on behalf of the Premier which referred to $100 000 advertising program in today's Press.

Hon J.M. Berinson: No, you have misunderstood the figures. An amount of $59 000 is the combined cost.

Hon P.G. PENDAL: Okay, it is a $60 000 program rather than a $100 000 program.

Hon J.M. Berinson: The difference is 40 per cent better.

Hon P.G. PENDAL: Does he realise that the word "yes" has been deleted in biro in the Government's answer to question (4)? Did that alteration occur at the instigation of the Leader of the House or the Premier?

Hon J.M. BERINSON replied:

I read the answer precisely as it was supplied to me.

GOVERNMENT ADVERTISING - GOVERNMENT BUSINESS STIMULATION
Newspaper Pamphlet - Question (4) "Yes" Deletion

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

To clarify that response beyond doubt, is the Leader of the House telling us that it was the Premier who subsequently struck out the printed word "yes" in biro or was it him?

Hon J.M. BERINSON replied:

I believe my answer could not have been clearer. It made clear beyond doubt that I did not cross out the word "yes". It did not make clear the Premier crossed out the word "yes" because I do not know. There may well have been an amendment arising out of some staff consideration of the answer before it reached me. However, the important thing is that with or without the word "yes", there is absolutely no difference in the answer.

Hon P.G. Pendal: Yes, there is.

Hon J.M. BERINSON: No, there is not.

Hon P.G. Pendal: Yes, there is because -

Hon J.M. BERINSON: The member has asked his question; this is my answer. The question was -

> Is the Premier aware that the Fitzgerald inquiry into corruption in Queensland specifically cites the use of such Government advertising as one of the ways of permitting corruption to flourish.

The answer was as I read it -

> Fitzgerald does point out -

Hon P.G. Pendal: The answer was "yes" but someone has struck that out.

The PRESIDENT: Order!

Hon J.M. BERINSON: Grow up! I said that the answer, as I provided it was -

> Fitzgerald does point out that Government advertising in Queensland was misused by that Government.

Hon P.G. Pendal: I am asking whether you struck that word out or did the Premier. If neither, who did? That is pretty simple.

The PRESIDENT: Order! As far as I am concerned, that question is finished.

STRATA TITLES ACT - VILLA TITLES ACT
Legislation Changes - Purple Title Holders

337. Hon BARRY HOUSE to the Minister for Lands:

> I commend the Minister for moving to amend the Strata Titles Act and to introduce the Villa Titles Bill to cater for increased demand in that section of the market. I ask -
>
> > Will she explain how these changes will be an advantage to purple title holders who wish to extricate themselves from their present situation?

Hon KAY HALLAHAN replied:

> My answer may not be accurate. However, my understanding is that purple titles will not be affected by the amendments. People from retirement villages attended the seminar the other evening and indicated that they had experienced a great deal of frustration over their purple titles. I listened very carefully to what the panellists said in response and it seemed to me that purple titles have problems focused around the fact that, in order to get change to a title, all residents have to agree to that change. I understand the amendments to the Strata Titles Act will not focus on that. However, I will certainly follow the matter up to be absolutely certain that that is the case.

ASSET MANAGEMENT TASK FORCE - LAND SALES
Minister for Land's Information - Sale Estimates

338. Hon MAX EVANS to the Minister for Lands:

(1) Is the asset management task force looking into the sale of assets seeking information from the Minister in respect of land to be sold in the near future?

(2) Will the Minister estimate how much land will be put on the market?

Hon KAY HALLAHAN replied:

(1)-(2)

> I ask the member to place his question on notice and direct it to the Treasurer who has charge of that task force.