Legislative Council

Wednesday, 22 August 1990

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

BILLS (2) - INTRODUCTION AND FIRST READING

1. Land Amendment Bill.

   Bill introduced, on motion by Hon Barry House, and read a first time.

2. Iron Ore (Mount Newman) Agreement Amendment Bill

   Bill introduced, on motion by Hon J.M. Berinson (Minister for Resources), and read a first time.

MOTION - SELECT COMMITTEE ON STATE INVESTMENTS

Further Interim Report

HON J.M. BROWN (Agricultural) [2.38 pm]: I move -

> That the Legislative Council Select Committee on State Investments relating to PICL, WAGH and Rothwells Ltd provide a further interim report to the Legislative Council by Tuesday, 4 September 1990 on its activities since its last report dated April 1990.

The motion really says it all: The committee was formed some eleven and a half months ago and it is some four months since it submitted an interim report. Therefore, it is appropriate for this House to be further informed of the activities of the committee. I commend the motion to the House.

HON R.G. PIKE (North Metropolitan) [2.41 pm]: The Opposition opposes this motion and I will be brief. It is with some reluctance that I make the following points: First, there has been a quite serious absence of staff in regard to the proper servicing of this committee and, I understand, of all the other committees of this House. I certainly do not level any criticism or attack against the Clerk of the House on this matter, but rather I commend him. The fact of the matter is that he has been under incredible pressure given the establishment of the three new Standing Committees and the multiple Select Committees to even begin to service them at the same time that the House was sitting. Therefore the House, if anything, owes a debt of gratitude to the Clerk of this House and his staff for being able to withstand the incredible duress that has been placed upon them given the fact that we determined to establish the three Standing Committees and the many Select Committees.

My understanding is that approval for funds for staffing is yet to be given. This has a serious reflection in regard to the fact that Messrs Pringle, QC and Steggall, the accountant, have been retained by the committee. The Clerk formally advised me yesterday in my capacity as chairman of the committee that he was not and is still not in a position to authorise, under the Financial Administration and Audit Act, that those advisers be made available for services to the committee in accordance with the resolution of this House simply because no funds are available. I have taken the view that, having regard to the importance of the matter being investigated by the committee, it is quite unfair to this House and to the State of Western Australia that the same professionalism should not be available to subsequent witnesses as was available to previous witnesses. This motion could be regarded as a wrong use of the rules and traditions of the House. The House has determined that this committee shall report by 5 August 1991 and it is within the power of the Select Committee, by virtue of the authority given to it by this House within its orders of reference - I say orders because I am referring to the totality of the orders of reference which, of course, include the terms of reference - to submit an interim report. The honourable member should, therefore, quite properly make this submission at the next meeting of the committee, which I am in the process of organising to be called as soon as is possible, and not to this House.

I speak on the following matter as a member of the House and not as the chairman of the committee: It is my strongly held view that until the McCusker report which deals with Rothwells finally becomes available, the committee is not in the position to properly determine the matter. It has, because of the subject of a previous report upon which I can

comment, generally made great efforts to liaise with Mr McCusker. I make the very important point that the McCusker report deals only with Rothwells and nothing else. I am on record elsewhere as saying, and I will say it in this House, that Mr Connell, irrespective of the outcome of the McCusker report, has been used and has been created as a Judas goat by the Government and the Premier of this State in order to obfuscate, detour and camouflage the real issue, which is WA Inc. Admittedly Rothwells is a significant part of the jigsaw, but I would imagine that if the jigsaw had a couple of hundred pieces Rothwells would cover four or five pieces of it only.

I point out to the House that it should not lose sight of the fact that the McCusker report deals only with Rothwells and the people of Western Australia should be mindful of that as, indeed, were the lawyers who took out a full page advertisement in the Press the other day. I commend them for wanting a comprehensive Royal Commission.

I again take the opportunity to state that as chairman of the committee I would be more than prepared to recommend to the House that the committee be put on hold when and if the Premier and Cabinet of this State institute a proper and comprehensive Royal Commission into the totality of WA Inc and all the other matters which have been properly enunciated by my leader and others in the past because there is no point in having two inquiries. Our reserve is - it is a significantly important reserve - that if it is a Clayton's inquiry then I will recommend to this House that we proceed relentlessly down the path of sorting out this incredible debacle once and for all.

I conclude with those comments bearing in mind that the committee has not reported on a number of matters to this House - a number of determinations have been made by resolution of the committee in regard to what it should have been doing prospectively - and I am not at liberty to discuss those resolutions because I am precluded from doing so by the Standing Orders. It is with a genuine intent that Hon Jim Brown has put this motion forward. He has moved it with goodwill and he is not trying to be smart. I must admit that the two Labor members on the committee have in recent times undergone what I consider a damascene conversion in regard to the constructive attitude they have displayed on the committee which hitherto had not been the case and I am pleased about that. It is unfortunate that at this time -

Hon J.M. Brown: Expunge that.

Several members interjected.

Hon R.G. PIKE: Does Hon Jim Brown think that is the kiss of death?

Hon George Cash: I am pleased it is working well.

Hon R.G. PIKE: I have covered the point, but I emphasise again and I direct my comments specifically to the Leader of the House and the Premier, that it is very much the business of the Legislative Council to make its determination in regard to its staffing and its resources. It is the proper use of the finances of this State that the Legislative Council should be properly funded to carry out the duties of the four Standing Committees, which have been a breakthrough in terms of the procedures of this House and it is lamentable and unfortunate that that funding has not been available. It is my understanding that the original application for this funding was made some time in March and it has been on the plate for some time. There are probably good reasons for it, but the Clerk told me yesterday that he was sorry he had no staff and in terms of the resolution of the Legislative Council the committee could not avail itself of the services of Mr Pringle, QC or Mr Steggall, senior audit partner of Coopers and Lybrand and the former President of the Institute of Chartered Accountants in Australia because funds are not available. I hope that with the influence the Leader of the House has over his comrades in Cabinet that matter will soon be put to rest.

HON E.J. CHARLTON (Agricultural) [2.49 pm]: I am a little surprised that Hon Jim Brown moved this motion. Parliament resumed only yesterday and while some members of the committee remained in this State to carry out their responsibilities others have been seeking wider input for their representation and, therefore, the committee has not had an opportunity to meet to discuss Hon Jim Brown's request or what direction the committee should take. That should be taken into account when members consider this motion.

I came into the House after the previous speaker had commenced his comments and I do not know whether he elaborated on the point on which he concluded his remarks; that is, staffing.

I have commented directly to the Leader of the House and others that it is one thing for this House to set up committees of inquiry and another to carry out the responsibilities involved in ensuring that we attempt to seek out the facts related to the issues involved, some of which are critical. However, it is impossible for members to do that if, having been appointed to a committee, insufficient time is allowed to sit and take evidence. That is where we are at. Everybody might as well know that we are reducing the effectiveness of this Parliament to represent the people of this State when we set up committees which cannot meet their allocated responsibilities.

I am not criticising individuals, but it is a fact of life that people can either not do the job or insufficient people are available to carry out the responsibilities. It is either or both - probably both. An extra workload is being placed on a system which it simply cannot cope with. We have reached the stage where it is difficult to keep abreast of activities from one meeting to another simply because staff are not available while the Parliament is sitting. The demand by members is so heavy on the operating staff of this Chamber during sitting times that the staff simply cannot do the job properly.

We now have Standing Committees which will meet on Thursdays. We will have other committees meeting on Wednesday mornings. We must take account of this fact. One cannot run a business efficiently if there are insufficient staff to carry out its operations properly. This motion relates to a matter that is for the committee to decide upon. If it is not decided upon in a manner acceptable to any one member or group of members the opportunity exists for them to come back to the House and sort things out. That is what this is about. I know one walks a fine line between what we discuss here relative to what is a committee responsibility, but everyone knows that initially there was to be great cooperation with Mr McCusker and between one committee and another. That has probably not happened to the extent it should have.

Point of Order

Hon J.M. BROWN: I believe the matter being canvassed appears on the Notice Paper for further discussion. I believe also that the relationship with Mr McCusker is one the committee is considering.

The PRESIDENT: I think the honourable member is deviating slightly, so I suggest he conclude his comments quickly.

Debate Resumed

Hon E.J. CHARLTON: I will not elaborate further on the matter except to say that in the context of this motion the committee must recognise that a report has been completed which contains reference to a number of relative actions and reactions through the legal system, and so on. That is another reason why, as Hon Jim Brown pointed out in his point of order, this is something for the committee. I agree. Against that background, and in view of the point I have made about staffing, this is a matter for the committee to sort out.

HON FRED McKENZIE (East Metropolitan) [2.56 pm]: I gather from what Opposition members have said that they do not want to report to the House because there is little or nothing to report. So be it. I think the Legislative Council is entitled to know what we have been doing since the interim report was issued. One of the reasons given for this problem is a shortage of staff. I do not know when the Clerk was approached about holding the meeting referred to, but I believe it was within the past couple of days. One cannot arrange meetings of committees so quickly when one takes into account the requirements of *Hansard*, the Clerk and others who service the committee.

I am unaware of any proposition about a program the committee might have which would enable provision to be made for staff to be available. We must acknowledge that in recent times, and during the session, a huge number of committees have been appointed, far more than I have ever known to be appointed by this House previously. This is obviously a new trend that the Legislative Council wishes to follow. However, that must necessarily meet with Government approval because additional staff require additional funds.

Members will well recall, as we have debated this matter previously, the fact that two consultants cost in excess of $110 000, the equivalent of two full time staff members. We did not have a lot of use of their services. Where does this start and finish? I noted it was reported in the *Daily News* yesterday that the chairman of the committee, speaking as an

individual, mentioned retired judges - heaven knows what they would cost - or a judge of the Supreme Court. The position has not changed in all the years I have been here. There are no fewer staff, there are more than ever. However, a shortage of staff is now being used as a lame duck excuse for no report coming forward from the committee because it is apparently unable to meet because of a shortage of staff. I do not accept that. I do not think that reason ought to be accepted.

These are stringent economic times and we must work to a budget. We must all acknowledge that fact, yet we have members expecting the Legislative Council budget to be increased by a huge amount, from what I can gather, although I have not seen the figures. This is to enable additional staff to be employed to service the additional committees that we now have for the first time in our history.

Hon George Cash: To which you agreed, and which you supported.

Hon FRED McKENZIE: We did. However, in setting up those committees there must be constraints on expenditure, but there does not appear to have been any constraints placed on this committee.

Hon George Cash: I vote that Mr Dowding pays his own fees.

Hon FRED McKENZIE: I am not talking about Mr Dowding; I am talking about servicing committees.

Several members interjected.

The PRESIDENT: Order! Honourable members will stop interjecting and those members carrying out audible conversations will cease those, also.

Hon FRED McKENZIE: It is abundantly clear that there is little to report, but so be it. Legislative Council members ought to be informed of that fact by the committee. I point out one final thing: The interim report presented to this House included many passages from the evidence of witnesses. I am aware that a number of the people named by witnesses appearing before the commission wish to come before the committee to give evidence.

Hon E.J. Charlton: Tell members also about those people who were invited to come and would not come, but who now suddenly want to come.

Hon FRED McKENZIE: I do not know about them. However, there are people who wish to give evidence, and at least we can report on what we have done about that. There is some basis for a report to be made to members if they are interested. If they are not interested they will vote against this motion, but if they are interested to know what the committee is doing they will vote for it. It is up to Opposition members. If they do not want to hear anything, that is fine; we can fold up the committee and go home. That would suit me and would give me more time to do work in my electorate.

HON PETER FOSS (East Metropolitan) [3.01 pm]: I would hate to be the only member of this committee not to address this Chamber, so I will make a couple of points. First, I disagree with Hon Bob Pike in respect of the damascene conversion by which the other members seem to have been overcome. They still seem to take exactly the same attitude as far as I am concerned. Although I agree with Hon Bob Pike that this is the sort of debate that should take place in our committee, one advantage of its taking place in this House is that it would probably take about a quarter of the time that it would take in our committee. The point has been well made by Hon Bob Pike that this is properly a matter for determination by the committee.

He pointed out also that we are very keen to receive the appropriate support so that these witnesses can be dealt with in the same way as the ones with whom we have already dealt. It is a shame that there appears to be a lot of obstacles to our proceeding with this as quickly as we would like. I am pleased to hear the expressions from members opposite that they would like to see this matter pushed along, and I will take them at their word. I am sure that, given the appropriate assistance, we will push on with the matter and hear as many witnesses as we are able to.

It was unfortunate that we took an awfully long time at the beginning of the last session to constitute the committee and to appoint our chairman. Various things came in the way and we took some time on what could perhaps be described as procedural matters. However, I

am hopeful that, with this expression of interest from members opposite to hear some witnesses, we will do so. I hope also that included in those witnesses will be those persons whose right to turn up was not granted in the last session. For example, we had hoped to see Mr Parker, Mr Dowding and Mr Grill but we were unable to do so because the appropriate motion was not passed by the other House. We would probably have seen them by now if the other House had been more cooperative.

Hon E.J. Charlton interjected.

Hon PETER FOSS: It is unfortunate that sarcasm cannot be put in *Hansard* in some appropriate way, perhaps in italics, to indicate that I did not really mean it. I do not think we would have seen them by now.

Hon J.M. Berinson: What do you have against an interim report? This is very interesting but it does not seem to explain your reluctance to report.

Hon PETER FOSS: I am very keen to report but I am also very keen to hear some witnesses, and, as Hon Bob Pike has indicated, we have had some difficulty in receiving appropriate assistance. It is probably more in the hands of members opposite than in the hands of anybody else that we receive appropriate assistance.

Hon J.M. Berinson: Why is it that many other committees are able to function without this strength of complaint about lack of staff?

Hon PETER FOSS: One of the big differences between our committee and some of those other committees is the attitude that is taken to those committees by members opposite. I must say that I found them extremely cooperative and very keen -

Hon J.M. Berinson: What does that have to do with the availability of staff?

Hon PETER FOSS: That is one of the reasons why we need staff. The Leader of the House should come on our committee; he would then understand, better than any report could indicate to him, why we need some assistance. He would be extremely welcome.

Hon Bob Pike is correct. It is a pity that the time of this House is being taken up by debating a matter which strictly speaking should be within the province of the committee. The committee has been given an ultimate reporting date, and has the power to make interim reports. I would have thought that would be more appropriately a matter to be raised in the committee. I cannot see why the member has raised this matter in this House. If he believes there is a good reason to make an interim report I am sure his argument would carry the same conviction with the other four members of the committee as it would with the other 33 members in this House. Hon Bob Pike has made it clear why this is properly a motion to be placed before the committee.

HON D.J. WORDSWORTH (Agricultural) [3.05 pm]: I am not a member of the committee and I am somewhat surprised to find one member of the committee moving a motion recommending that an interim report be submitted. As a member of this House, I am interested to note that we have not yet considered the last report, yet I have heard the Leader of the House complain that the committee does not want to make another report.

Hon J.M. Berinson: We could then have a debate on the up to date position.

Hon D.J. WORDSWORTH: The Leader of the House could bring on the debate at any time he likes. The Notice Paper lists six committee reports for consideration. I suppose he will say to the public, "I cannot bring that on because the Opposition has the numbers in the Council." The Leader of the House should not look so distressed. Yesterday a letter that he had written along those lines was read out. The Leader of the House was not here, but it was one of the most dishonest letters I have ever heard, so that is why I presume he is saying the same thing -

Withdrawal of Remark

Hon J.M. BERINSON: I ask for that comment to be withdrawn. I am aware generally of the letter that was referred to, and it was absolutely accurate.

Hon D.J. WORDSWORTH: I withdraw.

Debate Resumed

HON J.M. BROWN (Agricultural) [3.06 pm]: I did not have much to say when I moved

the motion and I do not intend to say a great deal now, but I remind members opposite that it is the members of this House who must make the determination. I am not asking individual committee members but members of the House to make a determination. That is quite within the province of any member of this Chamber. It is ridiculous and misleading for Hon Bob Pike to suggest that the committee should make that determination, because it is the House which should make the determination and it is the House which is the master of the destiny of us all. Were I to put that motion to the committee, what would happen? Would members want me to pre-empt what the committee did? It would be a waste of time to put it before the committee because in most instances it would be voted for on party lines.

Let us return to the main thrust of the motion. The committee has been in operation for 11 months. Four months have passed since its last interim report. I believe, and the public believe, that there should be a report to the House about the activities of the committee, particularly because the findings in the interim report left so much to be considered.

Hon Mark Nevill: Desired.

Hon J.M. BROWN: Both - considered and desired.

Hon E.J. Charlton: You have the headmaster sitting there.

Hon J.M. BROWN: I do not disagree that we can always do with a bit of help and I am always appreciative of Hon Mark Nevill's comments to support me, as is any other member. He is doing quite well. However, this is really not a laughing matter. The Select Committee on Rothwells, PICL and WAGH is a serious matter.

It has been on everybody's lips, it has been in every newspaper and, as quite rightly pointed out by Hon Bob Pike, some 70 solicitors signed and demanded a Royal Commission. I bet I could find 70 who would oppose it - that is how the legal profession does so well.

Hon Barry House: Give us their names.

Hon J.M. BROWN: I can give the member one name - Mr Berinson.

Several members interjected.

The PRESIDENT: Order!

Hon R.G. Pike: And the Labor lawyers.

Hon George Cash: And Mr Dowding would not want one.

The PRESIDENT: Order! I ask honourable members to come to order and I ask Hon Jim Brown not to incite members to interject.

Hon J.M. BROWN: I am mindful of the seriousness of the matter, and of the predicament that the Government has been in, and of the amount of information that we have received in regard to WA Government Holdings Ltd and those other organisations associated with it. It is very important that the committee report to the House, and this is my way of suggesting that we ought to be doing something. To blame inadequate staffing is ludicrous. The determination and result depend upon the contribution of members, nobody else. It does not depend upon Mr Marquet or the staff under him but on the contribution of the committee's members, and what is recorded by Hansard reporters, either by writing notes or by tapes. It is quite unfair, unjust and impractical to suggest that the reason we have not been able to progress is inadequate staffing. I believe every member has a responsibility to make a contribution to the committee - to make his own contribution and not expect someone else to do it for him, which has been evidenced in this Select Committee; but I do not intend to go into that matter.

I am genuinely concerned about the waves that have been created by our committee. In fairness, I believe the House is entitled to ask the committee to make an interim report. I do not believe it should be left to the committee to make the determination because, while it can do so, the ultimate judges of this are all of the members in this Chamber.

Hon D.J. Wordsworth: You can debate it now. It has been on the Notice Paper for some time.

Hon J.M. BROWN: That has nothing to do with the motion I have moved. I moved that the consideration of the committee's interim report be made an Order of the Day for the next sitting of the House, but it has nothing at all to do with the fact that, after over four months of deliberations, the committee has not made an additional report. I believe that the actions of

the committee and the determinations it has made should be made available to the House. I believe the newspapers would like to know, as would the electronic media.

Hon P.G. Pendal: They would like to know when we are going to have a Royal Commission.

Hon J.M. BROWN: This has nothing to do with a Royal Commission.

Hon P.G. Pendal: It has everything to do with it.

Hon J.M. BROWN: Hon Phillip Pendal, together with his colleagues and members on this side of the House, appointed this Select Committee to inquire into Rothwells, Petrochemical Industries Co Ltd and WA Government Holdings Ltd. We did not appoint it to do anything else, nor to be a Royal Commission, but we did have the ability within this Chamber to ensure that if the Parliament were prorogued the committee would be appointed an honorary Royal Commission so that it could continue to act. That was the request of this Chamber, and if it was all right for it to do that, surely there is nothing wrong with the Chamber's making a determination that we should have another interim report after four months of deliberation by the committee. That is what we are debating, nothing else - certainly not the hogwash which was introduced by Hon Peter Foss in his remarks. He said it should be the determination of the committee, but he knows as much about this as he does about family law.

Hon P.G. Pendal: I would match him against you on any day on anything, Mr Brown.

Hon J.M. BROWN: That would be lovely to see.

The PRESIDENT: Order! I ask Hon Jim Brown to ignore all of the interjections, forget about what anybody else has said, and endeavour to sum up the debate on the motion he has moved.

Hon J.M. BROWN: Thank you, Mr President. You are quite right. I will sum up. I did not mean to take so much time on this matter. The truth is that if we want a determination I think it is the right of every member to put it before the Chamber, and if the Chamber does not agree to it we will all accept the result. We know what our Standing Orders say. I obey the Standing Orders; I take a great deal of pride in supporting them. I present to the House a motion that is quite simple, without any frivolity. With the seriousness it has for the community I think it deserves much more consideration than members' merely saying, "We will not support it." I commend my motion to the House.

Question put and a division taken with the following result -

	Ayes (12)	
Hon J.M. Berinson	Hon Tom Helm	Hon Doug Wenn
Hon J.M. Brown	Hon Garry Kelly	Hon Fred McKenzie
Hon T.G. Butler	Hon Mark Nevill	*(Teller)*
Hon Cheryl Davenport	Hon Sam Piantadosi	
Hon Graham Edwards	Hon Bob Thomas	
	Noes (13)	
Hon George Cash	Hon P.H. Lockyer	Hon R.G. Pike
Hon E.J. Charlton	Hon Murray Montgomery	Hon Derrick Tomlinson
Hon Reg Davies	Hon N.F. Moore	Hon Barry House
Hon Max Evans	Hon Muriel Patterson	*(Teller)*
Hon Peter Foss	Hon P.G. Pendal	

Pairs	
Hon Tom Stephens	Hon Margaret McAleer
Hon John Halden	Hon W.N. Stretch
Hon B.L. Jones	Hon J.N. Caldwell
Hon Kay Hallahan	Hon D.J. Wordsworth

Question thus negatived.

STANDING COMMITTEE ON LEGISLATION - CRIMINAL CODE AMENDMENT (INCITEMENT TO RACIAL HATRED) BILL

Report Tabling

HON GARRY KELLY (South Metropolitan) [3.19 pm]: I present the report of the Standing Committee on Legislation in relation to the Criminal Code Amendment (Incitement to Racial Hatred) Bill. I move -

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

Question put and passed.

[See paper No 498.]

STANDING ORDERS COMMITTEE - BILLS INTRODUCTION AND PASSAGE

Standing Orders Nos 222-267 Replacement

The President (Hon Clive Griffiths) in the Chair.

The PRESIDENT: I inform members that on a motion by the Leader of the House, the House referred proposed new Standing Orders to the committee intended to replace those now in force relating to the introduction and passage of Bills. The proposed new orders would replace existing Standing Orders Nos 222 to 267.

Proposed Standing Order No 222 -

Hon J.M. BROWN: The report of the committee has been available to members for some months and I do not intend to go into any detail unless a request is forthcoming from the Chamber. Proposed new Standing Order No 222 relates to private Bills, and states that -

The joint standing rules and orders relating to private bills are suspended.

The report contains a comment about the worthy nature of this change, but nevertheless the committee was not persuaded that private Bills were totally outmoded. Therefore, I move that the proposal be rejected.

Hon D.J. WORDSWORTH: During my term as a member of Parliament occasions have arisen on which private Bills have been introduced. For example, one occurred when the trustees of a hall died without providing any other trustees, and it became necessary for its control to be settled by a private Bill. I admit that private Bills seldom come before the Parliament and it was argued, presumably by the Attorney General, that there was no longer any need for the provision in the Standing Orders. However, the provision should remain because it provides the ability for any member of the public to bring a Bill before the Parliament.

Hon PETER FOSS: I support Hon D.J. Wordsworth's comments, and I indicate one further reason that the use of private Bills may be more common in the future. Following the establishment of the Standing Committee on the Constitution, an automatic provision for the reference of petitions to that committee was installed. That may increase the frequency of individual petitions, as opposed to bulk petitions, where a member of the public has suffered some sort of wrong probably as a result of an inadvertent consequence of legislation. In that case the person would ask the Parliament through petition to correct the wrong. The private Bills provision is a more appropriate way to handle such a situation.

Proposed Standing Order put and negatived.

Proposed Standing Order No 223 -

Subclause (1) -

Hon J.M. BROWN: Subclause (1) of proposed Standing Order No 223 states -

> Bills originating in the Council may be introduced at any time, but not so as to interrupt any proceeding, by the Minister or member having charge of it moving *That a bill for an Act [long title] be introduced and read a first time.*

The committee did not support the abolition of the notice requirement in the proposal but saw no reason to oppose the introduction of Bills at some time during the next day's sitting. Therefore, I move -

That the proposed subclause (1) be adopted in the following form -

Introduction and first reading

223. (1) Bills originating in the Council may be introduced at any time by motion after notice, but not so as to interrupt any proceeding, by the Minister or member having charge of it moving *That a bill for an Act [long title] be introduced and read a first time.*

Subclause (2) -

Hon J.M. BROWN: The committee considered and agreed to subclause (2), which reads as follows -

(2) Bills originating in the Assembly are introduced by message.

Consequently, I move -

That subclause (2) be adopted.

Hon D.J. WORDSWORTH: I was one of the standing committee members who supported this recommendation. Members will notice that under the amendment the long title is still a requirement in order that members will be aware of matters before the Chamber. However, although I agree with this, I sometimes wonder why it is necessary, because at present everything is taken in order and members can see the agenda on the Notice Paper. A member can now wait for the first hour and follow proceedings and then he could safely return to his office knowing what would follow. Of course under the amendment matters can be introduced at any time. This means that members will have to be more alert. The advantage is that this can speed up the process. Permission is usually given for a Bill to be read a second time, but that is where the complication arises. If this Chamber did not want a Bill on a specific subject, it could rule that it was not in order in the first place. However, one would have to be very alert to do so under the new proposal.

Hon GARRY KELLY: The original proposal was to allow Bills to be introduced without notice being given at any time during a session but not so as to interrupt proceedings. However, that could cause a problem where a Bill could be introduced at any time during a sitting of the House without a member being aware that the Bill had been introduced. The proposal by the committee is to allow for flexibility to introduce a Bill at any time in a succeeding sitting as long as notice has been given.

Subclauses put and passed.

Subclause (3) -

Hon J.M. BROWN: I move -

That the subclause be adopted in the following form -

(3) After introduction, the question for the first reading of a bill shall be put and decided without amendment or debate except where the bill is one which the Council may not amend in which case the question may be debated.

Subclause put and passed.

Subclause (4)-

Hon J.M. BROWN: I move -

That subclause (4) be adopted as follows -

(4) Copies of the bill may be distributed to members and otherwise published after the first reading.

Subclause put and passed.

Subclause (5)-

Hon J.M. BROWN: I move -

That subclause (5) be adopted as follows -

(5) Each clause in a bill must relate to the title as it was given on introduction.

Hon PETER FOSS: I query the words "relate to the title as it was given on introduction". I

take it that that refers to each clause in the Bill at the time of introduction. I have known instances where we have amended the long title of a Bill, usually by direction of the House, and then we have been able to change the clauses within it. However, if the committee is clear that it is referring to "at the time it is introduced", I do not think there is any problem.

The PRESIDENT: This subclause refers to clauses in the Bill when it is introduced relating to the title.

Subclause put and passed.

Proposed Standing Order No 224 -

Hon J.M. BROWN: I move -

That proposed Standing Order No 224 be adopted as follows -

Temporary Laws

224. A bill providing for a temporary law shall state clearly, in a separate clause, the date on which the law is to expire.

Hon D.J. WORDSWORTH: I support this proposed Standing Order. I begin to wonder when some of the Bills that we have passed in this Chamber will become law because the number of Bills which we passed in this place that have never been proclaimed is amazing.

Proposed Standing Order put and passed.

Proposed Standing Order No 225 -

Hon J.M. BROWN: I move -

That the proposed Standing Order No 225 be adopted as follows -

Readings required

225. (1) Unless otherwise ordered, a bill shall be given a first, second and third reading and in each case the short title only shall be read.

(2) A motion for any reading of a bill does not require seconding.

Hon PETER FOSS: I oppose the reading of the short title only. Historically, parliamentary proceedings have always been verbal proceedings. It is noticeable to anyone coming into the Parliament that everything is virtually spoken aloud to members and to anybody who is witnessing the proceedings of Parliament. I think that is an important part of the proceedings. Historically, a Bill was different because it was written down; that is why it is called a Bill. It was the historical way of referring to a piece of paper in which a proposition in writing is put as opposed to any other way that a proposition might be put. A Bill was unique in that it was one of the few proceedings of Parliament that was in writing. Bills originally did not have things called "short titles". In fact, short titles are probably a misnomer. It is a catch phrase to enable someone to get his hands on the thing to quote it. In the same way one refers to a person by his name rather than by describing what he is all about. A short title is a name for a Bill; it is not really the proper title of the Bill.

The long title is an important part of a Bill which we should continually keep in mind. We may not read the Bill but we should at least read the long title because that is what tells us what the Parliament is actually debating. To the extent that we depart from conducting our proceedings verbally and instead conduct them in writing, the Bill should be the limit of that. The long title is the only way we have of telling the people in the galleries what we are debating and it is an important reminder to members of what we are dealing with.

Hon GARRY KELLY: I support the motion. We can all read. In days of yore when Parliaments were first created, many members could not read and many things had to be said at length. I do not think anybody in this Chamber is not capable of reading. The Bill will be in front of them when it is being debated. We all know that when the short title is read it refers to a particular piece of legislation. It is reasonable that when readings are taken, the short title is used.

The PRESIDENT: This recommendation refers only to the stage when the question has already been decided. The long title is used at the introductory stage. This proposed Standing Order refers to the stage after the question has been agreed that the Bill be read a

first, second or third time; in other words, the House has already considered the matter and agreed that the readings take place. It is required that the long title is used when the Bill is initially introduced. Identification of the Bill is ensured at that stage.

For the benefit of new members, one of the reasons we deal with these matters in this way is that it gives the President an opportunity to say something. While it may seem a strange deviation from the norm, the purpose of this exercise is to ensure that we do not alter our Standing Orders unless everybody clearly understands what we are doing and, more importantly, everybody has an opportunity to put forward a point of view.

In relation to the seconding of a motion for any of the readings, I have always adopted the practice that when the motion is introduced for leave to introduce a Bill to do something or other, I call for a seconder at that stage. I do not call for a seconder for the first, second or third readings subsequently but I call for a seconder for the initial seeking of leave to introduce a Bill. The only time there would be some change to what we do currently is when a Bill comes from another place. Then I usually call for a seconder to the first reading of the Bill. This will obviate that. I am not entirely sure whether it causes a problem one way or the other.

Hon PETER FOSS: I appreciated when I made my remarks that this applied only in the case of a second or third reading and that, at the first reading, the old practice would prevail. However, on many occasions there can be considerable time between the readings of the Bill. For the amount of efficiency obtained by using the short title rather than the long title there is a risk of losing an important part of the true nature of legislation. The point has just been made that all clauses have to comply with the long title. It is important that the object of the Bill be kept in mind when it is being discussed. It is all too easy to fail to listen to what is happening and not appreciate what is the intent of the legislation. The way legislation is dealt with is governed by the procedures and the form that has been built up over the years; it is good procedure and form. The more one comes across them the more one sees them work. There is a risk of losing this if all that is to be gained is a little efficiency by reading it out. In the past the long title was not read out for the benefit of the members who could not read, but for the people sitting in the gallery. There may not be many people in the gallery now but we should assume that there will be people in the gallery from time to time and if they are present they should have the opportunity to find out what the procedures are. So if a small efficiency is to be gained, a lot will be lost in the real nature of the legislative process. I oppose this proposal.

Hon D.J. WORDSWORTH: I can understand Hon Peter Foss' concerns. However, the President has answered them by explaining that the vote would have been taken by the time the long title had been read. It would be over and done with. It may be interesting to know what has been lost but the member should have known before it happened. The place for the long title to be read out is when a division is called for and people are rushing into the Chamber. The Presiding Officer can then read out the long title. It is not the usual practice but I endeavour to read it out on those occasions. That then gives the Press, the gallery and those members who have rushed in an idea of what the vote is. On a number of occasions members may ask what side they are on and what they are voting for; in some cases they do not have a clue. It would be a great help for the President to read the long title. I am not suggesting that the National Party might want to change its mind, but a few seconds may be helpful.

Hon MARK NEVILL: Neither the short nor long title explains what is in many Bills, in fact I do not think it matters. The system mentioned in the Victorian Law Reform Commission report in which the purposes of the Bill are stated should be examined instead of the long title. The purposes of a Bill are laid out very clearly. The long title is anachronistic and I would prefer a better alternative.

Proposed Standing Order put and passed.

Proposed Standing Order No 226 -

Hon J.M. BROWN: The proposed Standing Order is -

Cognate debates

226. By leave, interrelated bills may be debated cognately at 1 or more stages.

Current rules - Standing Order No 231 - provide for a cognate debate at the second reading stage only. The proposal seeks to extend cognate debates to any or all stages including Committee of the Whole. The committee sees merit in the proposal provided leave is obtained either when the Bills are introduced or at a later stage of passage.

I move, in accordance with the recommendation -

That the proposed Standing Order be adopted.

Proposed Standing Order put and passed.

Proposed Standing Order No 227 -

Hon J.M. BROWN: The proposed Standing Order is -

Second reading

227. (1) After the first reading motion may be made -

(a) *"That the bill be now read a second time"* and the speech of the minister or member in charge given. At the conclusion of that speech the debate is thereupon adjourned without question put. Resumption of the debate is an order of the day for the next sitting; or

(b) that the second reading be made an order of the day for the next sitting.

(2) Where, in the case of a Bill received from the Assembly, the minister or member having charge of the Bill moves *"That the Bill be now read a second time"* it is in order to table a copy of the speech if it is the same in all substantive respects as that delivered in the Assembly. A speech so tabled is deemed to have been delivered orally.

Without pre-empting the decision I recommend that this recommendation receive the support of the Chamber. I move, in accordance with the recommendation -

That subclause (1) be adopted and subclause (2) be rejected.

Hon N.F. MOORE: I assume that subclause (1) means that once the Minister has delivered his second reading speech no member moves that the debate be adjourned. Does that mean that the debate is adjourned automatically and listed as an order of the day for the next sitting? If that is the case, does that mean there is no person in charge of the debate on the second day? Should we seek to do that?

The PRESIDENT: The member may be right but it was proposed that it is currently out of order to proceed with the debate after the Minister or the person in charge of the Bill has made his second reading speech. The current Standing Order precludes the debate from proceeding on the same day. The debate must be adjourned. This alteration puts in place the facility for that to automatically occur without the need for somebody to stand up and move that the debate be adjourned until the next sitting of the House. In other words, the debate is automatically adjourned. That is the only motion that can be properly moved. That means a member cannot choose to debate the Bill straight after the second reading speech. The alteration obviates that. The amendment is saying that it does not give a member preeminence on the next day of debate.

Hon N.F. MOORE: For the reasons that you, Mr President, have pointed out I suggest that the Chamber not agree to this amendment. It is important that a determination be made after the second reading speech as to who is in charge of the Bill for the following day and who may have preeminence in respect of the next speech.

Sitting suspended from 3.46 to 4.00 pm

Hon N.F. MOORE: I have already explained I do not believe that we should agree to the recommendation of the committee in regard to subclause (1). It means, in effect, that no member will take the adjournment at the end of the Minister's second reading speech, therefore a member does not have the sense of belonging to a Bill which he has when he takes the adjournment and has the ultimate responsibility to look after the debate on behalf of the Opposition. I do not think anything is to be achieved by doing this. There is nothing

wrong with the current system. If it is not broken, it does not need fixing. We should remain with the system we have now.

Hon GEORGE CASH: Unless a member of the Standing Orders Committee can advance some other argument why we should change, I shall join Hon Norman Moore in suggesting that the current situation should remain. It seems to me that unless a member's name is ascribed to a Bill, the next time that Bill comes before the Chamber for consideration, the person in the Chair may be presented with four or five persons wishing to speak first on the Bill. It would seem to me that could cause some confusion.

I am aware that the Standing Orders give the Leader of the House or any Minister, or the Leader of the Opposition or the Leader of the National Party at times, a different period of time in which to speak as the lead speaker, but if there were no clear understanding between the Chair and the first person speaking as to whether he was speaking as the lead speaker, some confusion may be caused. I take Hon Norman Moore's advice that if it is not broken we do not need to fix it. I oppose the recommendation in respect of subclause (1)(a) unless some other argument is advanced which shows a real need for a change.

Hon J.M. BROWN: I am not really disturbed whether we adopt the recommendation, but a discretion is given to the President or the person in the Chair in the first instance. The committee would have considered that the adjournment is usually only a formal procedure usually taken by the Whip or, in his absence, as the Leader of the Opposition has said, by the lead speaker who may be the first speaker when the debate is resumed. But it is not necessary that the person who adjourns the debate should be the next speaker. It has been proved time and time again that that is not necessarily so. The member who adjourns the debate may not be here, or he may be doing it for another member; there are many reasons.

I would not be disturbed if members want to change this recommendation. This is probably an appropriate time to say that the committee did not agree with many of the recommendations. We refined them, altered them and improved them. Our aim was to improve the workings of the House. If members think this will not improve the workings of the House and suggest that something should be deleted, we would be receptive to that. However, the committee agreed generally with the thrust of the proposals put forward. There was disagreement on occasions, but finally unanimous agreement with each and every clause we have put; there was unanimity among the members of the Standing Committee.

As Chairman of Committees, it is appropriate at this stage to say how well the Standing Orders Committee gave consideration to this matter. That detracts in no way from the right of members to put forward any recommendations they want to. The Presiding Officer has a discretion to come to a conclusion, but the adjournment was considered to be only a formal proceeding.

Hon N.F. MOORE: On most occasions the person handling the Bill, who is usually an Opposition member, takes the adjournment. That is traditional on our side of politics, and I recall in the good old days when we were on the other side, the member handling the Bill took the adjournment. It is a mechanism which concentrates one's attention. It means that a member has a job to do with that legislation. Because the member takes an interest in the second reading speech and he takes the adjournment, he is aware of the Bill. He knows what stage the Bill has reached, and he realises, when he sees his name on the Notice Paper, that he has a Bill which is his responsibility. It is a mechanism which keeps members on their toes. It is not a problem at the present time, so I cannot see a reason to change the system.

Hon J.N. CALDWELL: I am a member of the Standing Orders Committee. I have always assumed that any person in this Chamber has the right to adjourn a motion or any other matter. Is that assumption correct?

The PRESIDENT: Yes, that is correct. If we leave this as it is we would require somebody to take the adjournment. If we adopt the recommendation, it is not necessary for someone to take the adjournment and a matter becomes automatically adjourned.

As Chairman of the Standing Orders Committee, no way in the world will I slash my wrists over this matter. Hon Norman Moore has raised a point to which I had given no thought. As Hon Jim Brown has stated, it is up to members if they wish to deal with a matter.

Proposed Standing Order put and negatived.

Proposed Standing Order No 228 -

Hon J.M. BROWN: The proposed Standing Order is -

> Amendments
>
> 228. (1) An amendment to the question for the second reading which, if passed, delays resolution of that question by deleting "*now*" and adding "*this day 6 months*" disposes of the bill.
>
> (2) An amendment is in order that -
>
> (a) does not have the effect of delaying the second reading by making it depend on the happening of a certain event; and
>
> (b) confines itself to an expression of opinion on a matter related to the content of the bill, or its intended administration or application, or is otherwise relevant to the bill.

I move, in accordance with the recommendation -

> That subclause (1) be rejected and subclause (2) be adopted.

Hon PETER FOSS: The final paragraph of the comment states -

> The proposal also does away with the ability to move the *previous question* on the second reading (*cf Chapter XVIII*). This form of closure has fallen into disuse mainly because its effects are difficult to appreciate. The primary advantage of the previous question is that it enables the House to dispose of business without having to express an opinion on it by a resolution. The committee has no strong views on whether or not the previous question should be abolished either in this case or generally.

I have had no experience regarding the previous question in this place. I have had experience of moving the previous question generally in meetings. It is a good method occasionally when one does not want to have a matter either defeated or accepted. One states that it is something we should not be dealing with now. Personally, I believe we should keep the previous question provision. The fact that it has not been used for a while does not mean it is not a useful thing to have. I am not sure whether I should propose that. I seek guidance from you, Sir.

The PRESIDENT: The previous question provision has been used twice during the 26 years I have been in this place; I cannot remember why or for what purpose. The previous question provision does exactly what Hon Peter Foss says; that is, the question is that the question be not now put. In other words, we do not do anything and the matter lapses. I have to admit my recollection of why the recommendation was made is hazy; I had implicit faith in Hon Jim Brown remembering and I knew he would be able to elucidate.

Hon J.M. BROWN: Perhaps I should transpose that implicit faith back to the President. I assume Hon Peter Foss is referring to the usage of the words "'this day 6 months' disposes of the Bill". The committee's recommendation is to reject subclause (1), and that subclause (2)(a)(b) would suffice.

I gather that Hon Peter Foss places some value on the retention of subclause (1). The committee agreed unanimously. No debate took place that the subclause should be retained as it was considered superfluous within the Standing Orders. Mr President has indicated that during his time in this place on only two occasions has it been used. I remember only one occasion when Hon H.W. Gayfer - on a motion in relation to daylight saving - moved consideration of an amendment six months forward.

Hon N.F. Moore: I do not recall that occasion.

Hon J.M. BROWN: That is the occasion I remember. If members consider retention of the subclause has merit, I will make no objection. However, the committee considered that the provision to move a matter forward six months was odd; that would represent the disposal of a Bill. I see Hon John Caldwell and Hon Doug Wenn nodding to signify that they recall the committee did not think that the provision should be utilised. Perhaps Hon David Wordsworth with his experience as a former Chairman of Committees could add a few words of wisdom on this matter.

The PRESIDENT: Order! One of the problems when a report is presented in December one

year and we deal with it during the following August is that members' memories are not clear. Members should remember that the committee recommends the rejection of subclause (1), which proposes to abolish the previous question. In other words, if we accept the committee's recommendation, the previous question provision is retained in the Standing Orders.

Hon PETER FOSS: Hon Jim Brown has misunderstood what I said. I am not in favour of retaining the form adding "this day 6 months" as that is strange and very hard to understand. The question raised in the last paragraph concerns the ability to move the previous question. The form of the previous question is presently stated by Standing Order No 19, "That this question be not now put." I rose to support that question. If you are saying that the recommendation is that we keep that, that is fine. I am not speaking in favour of, "this day 6 months", which is a crazy situation and does not clarify what is happening in the Chamber. The previous question seems to have been accepted by the Chamber as being worth while.

Proposed Standing Order No 228(2) put and passed.

Proposed Standing Order No 229 -

Hon J.M. BROWN: The proposed Standing Order is -

Effect of defeating second reading

229. Notwithstanding any custom, usage or rule to the contrary, where the question for the second reading is negatived, the bill is disposed of.

I move, in accordance with the recommendation -

That the proposed Standing Order be adopted in the following form -

Effect of defeating second reading

229. Notwithstanding any custom, usage or rule to the contrary, the bill is disposed of where the question for the second reading is negatived.

The PRESIDENT: An opinion has been expressed in the past that when we defeat the motion that the Bill be now read a second time it may well be proper to put that question back on the Notice Paper tomorrow, because all we have done is say that it will not be read a second time now. That does not mean we will not read it a second time tomorrow. I have never subscribed to that point of view and the Clerk and I over the years have had some very vigorous discussions about it.

This recommendation makes it very clear that if the motion that the Bill be now read a second time is defeated, the Bill is defeated. There is no question of its coming back on the Notice Paper tomorrow or the next day. This establishes what I believe was always meant to be the position.

Hon D.J. WORDSWORTH: One never knows where these amendments come from. Did they fall off the back of the truck? Did they come from the Clerk's office or from the office of the leader of the Government in this Chamber?

Hon N.F. MOORE: Once the Bill has been disposed of, when can it be reactivated?

The PRESIDENT: In the same way in which everybody has always understood it would be.

Proposed Standing Order put and passed.

Proposed Standing Orders Nos 230 and 231 -

Hon J.M. BROWN: The proposed Standing Order is -

Dispensing with committee of whole

230. By leave, the House may immediately proceed to the third reading after the second reading.

Committal

231. Except as provided in order 230, a bill stands referred to a committee of the whole after its second reading.

I move, in accordance with the recommendation -

That the proposal in Standing Order No 230 be rejected and that proposed Standing Order No 231 be amended to read -

Committal

231. A bill stands referred to a committee of the whole after its second reading.

Proposed Standing Order No 230 put and negatived.

Proposed Standing Order No 231 put and passed.

Proposed Standing Order No 232 -

Hon J.M. BROWN: The proposed Standing Order is -

Procedure in committee

232. (1) Unless the committee otherwise determines, or grants leave to consider the bill as a whole, a bill is considered as follows -

(a) clauses as printed;

(b) postponed clauses;

(c) new clauses*; [but see subclause (4)]

(d) schedules as printed and new schedules;

(e) preamble (if any);

(f) title.

(2) Where a clause is amended, and subject to order 233(2), consequential amendments may be made to a clause already agreed to.

(3) Intervening clauses on which no discussion is sought may be disposed of by putting a question "*That clauses . . . stand as printed*".

(4) Where it is proposed to delete a clause in order to insert a new clause, the question for the adoption of the new clause may be put immediately following that deletion.

(5) If a clause is amended, a further question shall be put "*That the clause stand as amended*" but a clause may be postponed at any time prior to that question being put.

This clarifies the addition of subparagraph (4) which reverts to what this Chamber always used to do. We used to insert the new clause in a Bill immediately after we had deleted a clause. When the current Clerk came he reckoned that we were doing it incorrectly and he advised us to adopt the practice of not introducing the new clause until the end of the Committee stage of the Bill.

The PRESIDENT: This recommendation authorises the House to deal with the third reading immediately, which is the way it was handled some years ago.

Hon N.F. MOORE: Having experienced problems with the SESDA legislation, this is an eminently sensible proposition.

Proposed Standing Order put and passed.

Proposed Standing Orders Nos 233 to 239 -

Hon J.M. BROWN: The proposal is -

Amendments

233. (1) Subject to standing orders, an amendment, otherwise relevant to the subject matter of the bill, may be made to any part of the bill.

(2) In the same committee, no new clause or other amendment shall be proposed that is substantially the same as one already negatived or that is inconsistent with a previous decision of the same committee.

(3) Where an amendment is made that falls outside the title, the title shall be amended accordingly and reported specially to the House.

House not to note committee proceedings until reported

234. The proceedings of any select or standing committee or of a committee of the whole on a bill shall not be noticed by the Council until they are reported.

Recommittal

235. (1) A motion to recommit may be moved at any time after presentation of the committee's report and prior to the question being put for the third reading and that motion shall supersede any question then before the House in relation to the bill.

(2) A motion for recommittal shall state the reasons.

(3) On a recommittal of a bill the procedure shall be the same as that applied in the original committee.

Progress

236. At any time before consideration of a bill is completed and when so directed by resolution of a committee or by operation of any order or rule, the Chairman shall report to the House that progress has been made and seek leave to sit again.

Final report

237. When a committee's consideration of a bill is completed, the Chairman shall report to the House and state whether or not the bill has been amended.

Adoption of report

238. (1) The report on an unamended bill may be adopted on presentation.

(2) Except by leave, consideration and adoption of the report on an amended bill shall be made an order of the day for a future sitting and the bill, incorporating the amendments, shall be printed meantime.

(3) Subclauses (1) and (2) apply to the adoption of a report following a recommittal.

Third reading

239. (1) Subject to subclause (2), when the report on a bill is finally adopted, the question shall be put *"That the bill be now read a third time"* either then or at a future sitting.

(2) Except to recommit the bill, no amendment to the motion for the third reading may be made.

(3) After the third reading a bill has passed and no further question may be put in relation to it.

I move, in accordance with the recommendation -

That the proposed Standing Orders be adopted.

The PRESIDENT: Because of the situation which prevails at the end of a session when a large number of amendments have been made to a Bill, the President says when putting the third reading that "he has received from the Chairman of Committees a certificate in writing that this is a fair print is in accordance with the Bill as agreed to by the Committee". He will not have to say that in future. All he will say is that the Bill be now read a third time.

Hon D.J. WORDSWORTH: It is my understanding that the Presiding Officer will not say that it is a clear print. If the Bill is amended it cannot go to the third reading on the same day that the Committee stage had been completed.

The PRESIDENT: It can if the Standing Orders have been suspended.

Hon D.J. WORDSWORTH: Normally it cannot, and the next day there should be available a clear print of the Bill. It seems to me that we have gone along in this manner for 100 years without a computer and now that we have reached a stage where a clear print of the Bill is

quite possible on the same day as the completion of the Committee stage we are panicking and going in the other direction.

The PRESIDENT: The advice I have been given and with which I do not necessarily agree is that Bills are being amended more frequently than they were in the past and, therefore, it is more difficult to provide a Bill in its amended form. The question only arises when the third reading of the Bill is being taken on the same day as the Committee stage. I am not sure what part is played by the President holding up the Bill and saying it is a fair print, but Hon David Wordsworth may be able to enlighten the Committee.

Hon D.J. WORDSWORTH: In that case we are trying to denote that the Bill has been checked and is ready to proceed through the House. The Legislative Council once received a tongue lashing from former Premier Burke when at 3.00 am it passed a Bill which was sent to the other place. He said an amendment had not been framed correctly because this place had tried to speed up the proceedings of the Chamber. A Presiding Officer could be embarrassed if he were asked to read a particular clause which was amended. Members should have the ability to check their work.

The PRESIDENT: The question we are considering is whether the President is required to state that the document he is holding up is indeed a fair print of what the Committee has done. With regard to the SESDA legislation, it was physically impossible for that to have been achieved, but the House had given approval for the Standing Orders to be suspended to allow it to be read a third time. I know the words are not difficult to read and it is up to this Committee to determine whether we adopt the recommendation.

Hon D.J. WORDSWORTH: The Chairman of Committees signs the document stating that it is a fair and accurate record and the President states that he has received a copy of the record.

Hon Garry Kelly: The House has made a decision to read it.

Hon D.J. WORDSWORTH: However, someone has signed the document as a true and accurate record of what occurred.

The PRESIDENT: The President would not be embarrassed; the Chairman of Committees would be.

Hon D.J. WORDSWORTH: That is the point I was endeavouring to make. We often have long Committee stages and the Clerk is kept busy cutting and pasting and with a stroke of the pen the Chairman of Committees signs the document as a true and accurate record.

The PRESIDENT: Under this proposal the Chairman would not be required to sign the document.

Hon D.J. WORDSWORTH: If he has not signed it it would show that no-one has looked at it to see whether the Clerk has amended it correctly. In fact we have one person who is responsible, that is the Chairman of Committees, and he should make sure the alterations are done properly. This recommendation states that it is not necessary for anyone to check what has been done.

Hon MARGARET McALEER: Mr President, although I have always admired your ability to say that a Bill is a fair print, without having to read a word of it, I do not think that is the important point. I support Hon David Wordsworth. Regrettably, at times we are stressed to push through legislation at the end of a session of Parliament, but there is no reason why that should be the standard practice of this place. I thought we were trying to handle the business of the House in a manner that would not put members under stress. I do not agree that the process should be shortened in this way.

Hon N.F. MOORE: I am persuaded by the view of Hon David Wordsworth and Hon Margaret McAleer that perhaps we should reconsider this matter. As I said earlier, "If it ain't broke, don't fix it." The amendment obviously contains some merit or it would not be before the Committee. Is there a mechanism for the committee to reconsider it?

The PRESIDENT: We do not need to do that. The Committee may reject the recommendation. Most of the members of the Standing Orders Committee are in the Chamber and at the next meeting of the committee it can be debated further.

The PRESIDENT: If we reject the recommendation we would revert to the present situation and the Standing Orders as currently constituted would apply. If we agree to the

recommendation we would agree to all previous recommendations which tidy up the existing Standing Orders. If they are rejected we revert to the untidy ones.

If members are not happy with the recommendation they should reject it and the Standing Orders Committee can reconsider the whole matter. That is my suggestion, but I do not want to pre-empt members' decision because it is still possible to carry out the procedure in its entirety even if this recommendation were to be adopted. It does not prevent the Chamber from doing that but it takes away the compulsion that exists currently.

Hon N.F. MOORE: The problem with rejecting the recommendation is that it indicates opposition to it. I am not opposed to the recommendation but I am not totally aware of the consequences and I would like the matter to be reconsidered.

The PRESIDENT: All members who are present have heard Hon N.F. Moore indicate that he is not opposed to the recommendation; therefore, no-one would be in doubt about his feelings on this matter.

Hon MARGARET McALEER: In the light of that comment, Mr President, if anybody followed the debate and cared to read it, there would be no suggestion of Hon Norman Moore's opposing the recommendation. However, we would like the matter to be reconsidered.

Hon GARRY KELLY: We are dealing with Bills which have been amended in the Committee stage and for some reason the House has been given leave to proceed to the third reading forthwith. Leave could be denied by one person. It should happen infrequently and if permission were given to proceed to the third reading forthwith the House would take on board the difficulties which may arise in that situation. I think we are making a mountain out of a molehill. In 99 cases out of 100 Bills amended in Committee will be dealt with at the next sitting of the House to allow amendments to be made to the Bill. On odd occasions it is important for the sake of urgency for the third reading to be done immediately rather than wait for the Bill to be reprinted. I do not think it is sufficiently important to worry about to sacrifice the other points made. I take the other point made by Hon Norman Moore that rejection implies that the Committee does not agree with any of the recommendations. Clearly the interpretation will be made that that is not the case. Most of the Standing Orders Committee's proposals are agreed to.

If the Committee agreed to the recommendations and if for some reason it appeared not to work in practice, that section could be referred to the Standing Orders Committee at some later stage. The Standing Orders Committee is as permanent as this House wants it to be.

Hon N.F. Moore: You do not change Standing Orders by trial.

Hon MARGARET McALEER: One does not make rules for the odd occasion, as Hon Garry Kelly suggests. We have waited so long to discuss this draft of the Standing Orders that it would not appear to matter much if the Standing Orders Committee reconsidered it. It is a very small matter and it would not take long for us to consider it after another report was produced.

Hon GEORGE CASH: It seems that members do not want to make a decision because some feel they may offend members of the Standing Orders Committee who are in the Chamber at present. However, members are not happy with the recommendation in its present form. I am sure members of the Standing Orders Committee understand that and it would not be a great imposition for them to have regard for the comments made, to reconsider the recommendations and, if necessary, to put them in an amended form which would be approved by all members. The whole matter could then be settled. The time has come to make a decision and move on.

The PRESIDENT: I am inclined to agree with Hon George Cash.

Hon J.M. BROWN: Having learnt the passage just quoted by you, Mr President, it may seem that that section should be included. However we could adopt the recommendation in its present form with a further recommendation to the Standing Orders Committee that it could include that passage and refer it back to the House. Surely a recommendation could be made to the Standing Orders Committee to include the certification by the Chairman of Committees as pronounced by the President of the House and accordingly adopted. I suggest that it is possible to adopt this recommendation with a view to inserting the mandatory clause.

Hon GARRY KELLY: Mr President, would it be possible to approve proposed Standing Orders No 233 to 237 inclusive and 239, and refer 238 to the Standing Orders Committee? I do not think any objections have been made to those other proposed Standing Orders; the concern relates to 238.

The PRESIDENT: I think that the proposed Standing Order which needs reconsideration is 239 and not 238. That draws attention to the existing Standing Order No 260.

Hon GARRY KELLY: In that case, I move -

> That proposed Standing Orders Nos 233 to 238 be adopted and proposed Standing Order No 239 be referred to the committee.

Hon D.J. WORDSWORTH: I am not sure whether you, Mr President, were right in correcting Hon Garry Kelly. It gets back to, what is the problem? Is the problem the Presiding Officer's saying, "This is a certified copy", or the Chairman of Committees' signing it as a certified copy, knowing full well that it is not? We really should never have a third reading before the Bill is cleaned up. We have been rather foolish in doing that.

The PRESIDENT: Proposed new Standing Order No 238 refers to the adoption of the report, and the report must be adopted before the third reading is moved. Existing Standing Order No 260 says that the question that the Bill be read a third time cannot be put until there is a certificate in writing from the Chairman of Committees that this fair print is in accordance with the Bill as agreed to by the Committee of the Whole, and Standing Order No 239 deals with that. That is why I suggest that Standing Order No 238 refers only to the adoption of the report. If everyone is happy with that, the question is that we adopt the proposed Standing Orders Nos 230 to 238 and that proposed Standing Order No 239 be referred to the Standing Orders Committee.

Proposed Standing Orders Nos 230 to 238 put and passed.

Proposed Standing Order No 239 referred to the Standing Orders Committee.

Proposed Standing Order No 240 -

Hon J.M. BROWN: The proposal is -

> Certificate, etc after third reading
>
> 240. (1) The Clerk shall endorse bills originating in and passed by the House to that effect and arrange for their transmission by message to the Assembly.
>
> (2) A bill originating in the Assembly that fails to pass the Council shall be returned with a message to that effect.
>
> (3) Amendments of a formal nature and typographical or clerical errors in a bill may be made by the Clerk.

This proposal is no different from the rules now in force except that the authority conferred on the Clerk to make the amendments described in subclause (3) is formalised. The committee agrees that the rules should recognise longstanding usage, and it recommends that the proposal be adopted.

Hon D.J. WORDSWORTH: I am not speaking against the adoption of this proposal but I recall that during the last session when we were sitting and the other place was not, we were still receiving messages from a Chamber that was not there. I know that is another matter but that highlights the problem that can occur.

Proposed Standing Order put and passed.

Hon J.M. BROWN: The Standing Orders Committee has completed its consideration of chapter 21. It was pleasing for committee members to be able to get together and as individuals and to reach a conclusion, and also to see the interest displayed by members during this Committee stage in respect of adopting the recommendations, which are certainly valuable. The Standing Orders Committee has taken another progressive step to facilitate the work of this Chamber, and I thank you, Mr President, for your time and help in this matter.

Report

Resolutions reported, and the report adopted.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES AMENDMENT BILL

Second Reading

Debate resumed from 10 July.

HON J.M. BERINSON (North Metropolitan - Leader of the House) [4.58 pm]: Mr President, I seek your indulgence to indicate some problems that have arisen with trying to accommodate the timing requirements of various members. I had given the Opposition an indication that we would proceed next to Order of the Day No 5, but that was in the mistaken belief that our previous debate would finish earlier than it did. I have been asked to accommodate the lead speaker for the Opposition in respect of this Order of the Day, and that is why we are now proceeding with this rather than with Order of the Day No 5.

HON DERRICK TOMLINSON (East Metropolitan) [4.59 pm]: I thank the Leader of the House for accommodating me. I only wish that other members were equally accommodating.

Hon Kay Hallahan: Which members?

Hon DERRICK TOMLINSON: I will refrain from answering that because I may embarrass the Minister.

The Bill contains two principal initiatives. First, it provides for the appointment of a second Deputy Registrar General, and attendant upon that it also makes some provisions for other changes in the administration of that department. Second, it enables the registration of previously unregistered births for a period of two years. The Opposition has no argument with either of those intentions. The Bill was supported by the Opposition in another place and it is our intention to support its passage here.

I will attempt to be even briefer in this debate than I was in the debate on the Legal Practitioners Amendment Bill. However, while the temporary provision for previously unregistered births to be registered appears, on the face of the Attorney General's explanation, to offer no problems, it does raise in my mind a series of questions to which I am sure the Attorney General will readily respond.

I note that the principal Act, at section 20, makes notification of the relevant information on a birth compulsory within 60 days of that birth, and if no registration is made before the first birthday of that child - that is, within 12 months - such registration is permitted by section 24 only with the written authority of the Registrar General or on the order of a judge. I can understand that in the Leader of the House's second reading speech he drew attention to the fact that some persons are, in various ways, embarrassed when they discover that their births have not been registered.

[Questions without notice taken.]

Hon DERRICK TOMLINSON: Persons over the age of 30 might recognisably be those who could be embarrassed by not having their births registered because the current Act for the registration of births, deaths and marriages came into effect in 1961. Since the passage of that legislation, there would be circumstances in which the births of some individuals were not registered, notwithstanding the provision of penalties for such non-registration. The temporary provisions for their registration are not restricted in the terms of the Bill to persons over the age of 30; it is what might be described as a general amnesty for the registration of previously unregistered births.

My questions arise from that circumstance. If situations have enabled some births not to be registered in the past, one might reasonably assume similar circumstances will operate in the future whereby births will not be registered. If that is the case, will further temporary enabling legislation be necessary so that persons whose births are not registered in the future may have their births registered? I note that the provision in the Bill has a limitation of two years. If it is likely that, at some future date, there will be a need for a temporary provision to enable the registration of previously unregistered births, why not build into the legislation a provision for those circumstances other than that which apparently is now deemed to be not appropriate? The present procedure is that an application is made to the Registrar General, who makes a decision on the evidence to either register or not register. Any person aggrieved by that decision may apply to a judge for an order, either to have the registration struck out or to have the registration which has been denied processed.

Although these are hypothetical questions and although we are talking about what might happen in the future, if we are going to amend the legislation, rather than put in a temporary provision for peculiar circumstances, should we not amend the legislation so that there is a permanent proviso to cover such peculiar circumstances?

The second matter to which I wish to refer relates to the method of changing public administration. It arises from the observation in the Leader of the House's second reading speech that the appointment of a second Deputy Registrar General was occasioned by the recommendations of a Functional Review Committee report. The procedure of changing the organisational structure, the administrative arrangements of the Public Service, whereby a Functional Review Committee is appointed, considers the organisation and management of a particular Government department or statutory authority, and makes some recommendations on the basis of its assessment and evaluation of efficiency or otherwise of that administrative structure. Decisions are made for changes according to those recommendations and the application of a new management philosophy is fulfilled if that is required.

Since 1984 we have seen quite substantial changes, not all of them bad and many of which were quite admirable, in the structure of the various Government departments following functional reviews. There has been a significant shift from what is described as the conventional Westminster system of public administration to a corporate style of public sector management. While there are some critics of corporate management in public administration, there are an equal number of people who say that corporate management is essential to bring public administration into line with management procedures in the real world.

It is the prerogative of Government to decide which philosophy of public administration it will pursue; it is the prerogative of Government to decide whether it should reorganise Government departments; it is the prerogative of Government to decide how its resources for the management of the State shall be allocated. Where it is necessary, as in this case, to change Statutes because certain appointments are enabled by Statutes, it is the prerogative of Government to come to the Parliament and request a change of those Statutes to enable the appointments that are desired. It would be inappropriate for an Opposition to reject such a request unless it had very strong evidence that the Government was in some way not acting wisely in its request. It is not our intention to challenge or oppose this request for the change in the legislation to enable the appointment of a second Deputy Registrar General.

However, I want to draw attention to a flaw in the process of the functional review leading to change in the organisational structure of Government departments. That flaw is simply that the reports of functional reviews which have been carried out since 1984 have been confidential. Substantial changes have been made to the organisational structure of Government departments as a consequence of the recommendations of such functional reviews, even though the reports of those reviews have remained confidential. Whenever a Government acts it engenders suspicion. People are wont to impute political motives and sometimes quite sinister political motives to the actions of Governments. That suspicion is engendered especially by a Government which is seen to be acting secretly because it insists on matters such as the report of a functional review remaining confidential. I put it to the House that there is widespread disquiet, among personnel in the Public Service in particular, about the process of reform which has been going on during the lives of successive Labor Governments. Whether that disquiet is justified is a matter of opinion. Even so, the opinion is widely held that there has been a politicisation of the Public Service, and that the recommendations of Functional Review Committees have been used to reorganise Government departments in such a way that existing tenured positions become redundant and new positions are created.

Hon J.M. Berinson: That is not the position in this Bill.

Hon DERRICK TOMLINSON: I am not suggesting that at all. I intended to raise that and I am glad that the Leader of the House raised it at this point. However, I want to draw his attention to the general suspicion abroad that the functional review process has been used for what some people construe as untoward political intention.

Hon Mark Nevill: What has this to do with the registration of births, deaths and marriages?

Hon DERRICK TOMLINSON: It relates to the statement of the Leader of the House that

the justification for the change was simply that it is a recommendation of the Functional Review Committee. If the Government wants us to take it on trust - as we should take it on trust - that this is a desirable change, and if it wants people other than those in this Parliament to take it on trust that the changes are desirable for the efficient functioning of Government departments, I suggest that the trust will be advanced if it makes the report public rather than keep the advice and report of the functional review confidential. In other words, I am suggesting that the Government should open up this process to public scrutiny. There are two advantages in this: The first advantage is quite clearly that the Government puts to bed any suspicion about the motives of its actions. If the public were fully informed, any suspicion it might have could be demonstrated to be quite groundless. That is particularly important, as has been demonstrated in the past six years. The second advantage is that, while it is valuable to undertake change only after proper assessment and evaluation of the existing situation, those people who are given the task of review are chosen because of their expertise, and one has confidence in that expertise, but they are not the only experts. Neither is the opinion they present the only opinion which can be held. Therefore, if the report of such a committee were open to public scrutiny, people with similar expertise could offer judgment and advice which might very well lead to improvements on the recommendations themselves.

I return to the observation that I hold no suspicion in this case that the amendment of the Bill to enable the appointment of a second Deputy Registrar General is motivated by unwholesome political intentions. I take it on trust, as the Leader of the House has instructed us in his speech, that the need for a second position was demonstrated in the functional review. However, I put it to the Government that in order to dispel the suspicion about the way it has brought about change in the organisational structure of the Public Service in this State, it should open up those processes. I make that observation only in passing. The Opposition accepts the need referred to by the Leader of the House in his second reading speech, agrees to the amendments as requested and supports the Bill.

HON J.N. CALDWELL (Agricultural) [5.48 pm]: The National Party signifies its acceptance of this Bill, but raises one or two queries in doing so. I understand the necessity for the appointment of a second Deputy Registrar General. I wonder how the original Deputy Registrar General coped with all the problems he had, bearing in mind that it is now necessary to double the number of people registering births, deaths and marriages in this State. If it were necessary also to register divorces I could understand the need for more staff because unfortunately the number of divorces in this State is increasing at an alarming rate. I think most people regret that and would prefer the divorce rate to decrease. As a member of a Select Committee inquiring into these matters I have become aware that the number of marriages taking place is declining. It seems that many people today are happy to live together without being married. Unfortunately, because of our ageing population the number of deaths is increasing, and so perhaps an additional Deputy Registrar General is necessary to record the increasing number of deaths. In general, deaths are reported much more easily than births. Births are sometimes difficult to record because Australia is a large country and women give birth in mysterious places - in country areas and under a prickly bush. The Leader of the House may be able to tell me why we need an additional registrar to record births, deaths and marriages.

The Bill also makes temporary provision to overcome the problem of a person who is not able to obtain a birth certificate. I wonder how this provision will be handled. I have read quickly through the Bill but that has not explained it to me satisfactorily. If this is a temporary provision, will it be a temporary birth certificate until something of a more concrete nature is obtained?

Hon Derrick Tomlinson: Perhaps it is a temporary birth.

Hon J.N. CALDWELL: It could be. The Bill provides that the Deputy Registrar General must be satisfied that a person was born in this State. That will be pretty difficult to work out because a lot of people do not have a clue about where they were born, and were they to say to the registrar that they think they were born in Western Australia I wonder how the registrar would be able to establish that. These days it is necessary to provide a birth certificate in order to obtain a passport. A greater number of people are now travelling. It is so easy to travel to places like Bali that most people in Western Australia have probably gone there by now. I dare say that every member of this Chamber has been overseas. In most

cases it is necessary to produce an original birth certificate to obtain a passport. I saw my mother's original birth certificate the other day and it was hardly recognisable - not that my mother was not recognisable -

Hon Sam Piantadosi: You were obviously the one born under a prickly bush!

Hon J.N. CALDWELL: My mother will kill me if she reads this.

The Bill proposes that the special provisions will operate for a period of only two years after the amendment comes into effect. What will happen after two years? Will the whole thing lapse or will there be only one Deputy Registrar General?

HON J.M. BERINSON (North Metropolitan - Leader of the House) [5.54 pm]: I thank members opposite for their support of this Bill, and Hon John Caldwell in particular for the entertaining way in which he supported it. Mr Tomlinson and Mr Caldwell asked what will happen after the two year period has passed. If I can deal with them in reverse order, I assure Mr Caldwell that the second Deputy Registrar General is not intended to be appointed for only two years, and certainly the new birth certificates are not intended to take effect for only two years. The two year limitation relates to the special provisions which broaden the circumstances under which birth certificates can be provided.

Both members asked what will be different after the next two years as opposed to the current position with the special circumstances that are sought to be met. The answer is that this Bill is really directed to problems with a particular history that does not apply in the same way these days. The overwhelming proportion of the people affected are Aboriginals, and the position now is that the cover provided to Aboriginal communities by various agencies has increased and a greater number of births now occur in hospitals compared with the position in earlier years. That gives rise to new circumstances which should prevent the problem continuing to arise.

It is important, given the nature of a birth certificate and the uses to which it can be put, that we retain a strong emphasis on the need to register births promptly. It would be contrary to that to allow any idea to develop that it does not really matter if that is not done straight after the birth or in 60 days because it can always be done later. That is the last impression we want to create, and on that basis we have included what is effectively a sunset clause relating to that provision.

In respect of the organisational aspects of this Bill, Hon Derrick Tomlinson dealt not so much with the particular organisational proposals as they relate to this office but with the general place of Functional Review Committees and in particular with whether the reports of those committees should be made public and, further, be open to public comment and input. To clarify the position in respect of the office concerned, it must be apparent on the face of it that what is proposed here is a very straightforward organisational question. It is proposed to have two deputy registrars instead than one, and, turning to Mr Caldwell's point, that is not because of an increase in the work of the office. I drew attention in my second reading speech to the fact that the staff of the office would not be increased by one but that the structure would be changed. I also indicated there is to be a straightforward division of functions between the two deputy registrars: One is to deal with what is described as the functional or operational aspects of the office, and the other with the financial and administrative aspects.

Mr Tomlinson got into some discussion about Public Service structures compared with corporate structures. I have a lot of trouble with that. I know Hon Max Evans understands all these things perfectly but I have now been associated with Government in one form or another, in Government or in Opposition, for 10 years, and I must say that the organisational structures have always been a mystery and remain a mystery. People keep talking about a change from a vertical to a horizontal structure, and that is what is involved in this in a minor way. All I can say is that it is an aspect that requires professional views to be expressed and professional advice to be taken, and that is the basis of the Functional Review Committee. As it happens the Functional Review Committee as such, so far as I understand it, has been replaced by straightforward Public Service Commission reviews of organisations, and that is just another pattern and another group of people doing the same sort of work. There is not a question of politicisation of it, nor of anything different about the approach taken over recent Labor Governments as opposed to the approach taken before. Both our Government and

earlier Governments - which did, I would agree, go the Public Service Commission route - treated this as an internal management matter which they did not want to go on at interminable length, which is the risk one takes when one brings in matters as detailed as this by way of public documents, public discussion and lots of talk back and forth,. In the meantime nothing happens to improve the performance of the organisation with which one is concerned.

Again I thank members for their support of the Bill, and I commend it to the House.

Question put and passed.

Bill read a second time.

Sitting suspended from 6.01 to 7.30 pm

Committee and Report

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

Third Reading

Bill read a third time, on motion by Hon J.M. Berinson (Leader of the House), and passed.

CRIMINAL LAW AMENDMENT BILL

Committee

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

The CHAIRMAN: I have before me Bill No 31-2, which is as reported from the Legislation Committee. I propose to use the Legislation Committee's Bill in the proceedings of our Committee if there is no disagreement from members.

Clause 1: Short title -

Hon PETER FOSS: I would like to outline to members in general terms some of the features of the Legislation Committee's work on this Bill.

As has been mentioned, this Bill is really implementing some of the recommendations of the Murray committee. What our Legislation Committee was trying to do was to comprehend those amendments and see whether, more as a matter of drafting than most things, it agreed with them. As it turned out, a couple of matters showed up where we thought important points of principle were involved with regard to the liberty of the subjects, and when we reach that clause I will mention that matter. I think it shows the usefulness of the committee in examining a Bill which is as technical as this one is. It is an extremely technical and a very important Bill because the Criminal Code carries with it very severe penalties and is intended to be a Code which indicates the sorts of criminal offences which will be punished in this State. Therefore it is important that the wording be sufficient to be free of ambiguity but nonetheless not so detailed as to make it unnecessarily finely drawn in its style so it is capable of evasion.

The committee did show its worth in that its ability to discuss the matter with the parliamentary draftsman to find out what he was intending to do resulted in a most useful interchange. It was also extremely useful to be able to discuss with the Attorney General the question of various matters of policy. Obviously this Bill had less in the way of policy than do most Bills because the real policy of the Bill is to implement what one might almost call legalistic changes in the Criminal Code. We were able to look after the interests of the people of Western Australia, in ensuring that it was a Criminal Code which punished things which should be punished but that, on the other hand, the amendments being made were just.

We found two things of concern. One related to a drafting matter. Perhaps I should advise the Chamber what has happened with regard to the Murray report. That report was a very detailed report by Mr Justice Murray, and when he made his report he also made recommendations as to certain amendments. Those amendments have been through various committees and have been referred back again and further changes have been made to them. We were amazed to find that, despite all that referral back to various people and all that examination, one section had been completely lost in the drafting. That is referred to in the

section of the committee's report concerning section 338 of the Criminal Code. The committee expressed the view that it had continuing reservations about the drafting that had been done on section 338 of the Criminal Code. As a result, I placed on the Notice Paper amendments because, after the committee had considered the Bill and having had the opportunity to look at the Bill in its final form, I had concerns that the matters raised in that committee were not finally addressed. It is extremely useful to this place to have this form of Bill reported back from the committee. I hope that other members have similarly found it useful to have the changes either underlined or struck through depending whether something has been inserted or deleted. Certainly that has made it much easier for me rather than dealing with amendments in their usual form because it is clear what has been done.

I commend the procedure of the Standing Committee in that it is able to give members of this place something which has been worked on and brought back in such a useful form. My concern is that the report is not as good as we may have provided. I am sorry to keep harping on the lack of staff but it has made it extremely difficult for a proper report to be prepared. Members will find themselves better served once we have a permanent officer working for the Standing Committee as we will then receive fuller reports which will not only enable members of this place to understand what the committee has been doing but also will form a record for future for use in interpretation by the courts. As members are aware, the Interpretation Act allows reports of a committee to be used as an aid to interpretation.

I apologise for the report but hope that members find the procedure we have adopted useful.

Hon J.M. BERINSON: This Bill provided my first experience of contact as a Minister with the Legislation Committee and, although it is fair to say both the committee and I are in what might be described as a learning curve, the experience was a valuable one and also gave every indication that the work of the committee can be very constructive.

It was of some concern that, even accepting the length and the nature of the Bill, it did take a lot of manpower in terms of almost two full mornings that I attended, either three or four sessions that one or two Parliamentary Counsel attended, and others. There is scope perhaps to have these considerations conducted a little more expeditiously than was the case this time but I share the views, in general, that Mr Foss has expressed. It strikes me particularly that a committee of this nature is very well suited indeed to a Bill of this nature. I can well imagine other Bills, which are much more highly contentious in what one might call an ideological or party political sense, where one would not get very far by pursuing a matter on which positions are firm.

I went into the committee on the basis that I accepted the members were trying to be constructive and I wanted to be constructive as well. I certainly had no interest in digging in my heels on the original Bill just because that was the original Bill and had been originally sponsored by me. The result is a better product than the original. It might help the further consideration of the Committee if I indicate at this stage that I intend to oppose only one amendment suggested by the Legislation Committee - that is, to clause 2 - and that following Mr Foss' explanation of his circulated amendments I will be indicating the Government's support of them.

Clause put and passed.

Clause 2: Commencement -

Hon J.M. BERINSON: I move -

> Page 2, lines 4 and 5 - To delete the words "on the 56th day after the day on which the Act receives the Royal Assent." and reinstate the words "such day as is, or days as are respectively fixed by proclamation."

The object of the amendment is to reinstate the original form of the commencement clause; namely, to provide that this Act shall come into operation on such day as is, or days as are, respectively fixed by proclamation.

Hon Peter Foss and I have exchanged views on what has been effectively a standard clause on a number of occasions. I have indicated previously, as recently as yesterday on another Bill, that I understand that the Legislation Committee will be moving to make general recommendations in relation to commencement clauses and I will be interested to receive those recommendations and to consider them carefully.

The amendment in this Bill is directed at overcoming a problem which is much more theoretical than real. We have been drafting the commencement clause in this way for years; that is, not only the present Government but previous Governments as well. The strength of this form of clause lies in its flexibility. I can understand the argument which says that it would be beneficial for legal practitioners and others using our Acts to be able to look at the Act and see on its face page the date on which it came into effect. However, in reality this is not a problem. I do not recall a single occasion on which I have had a complaint of being inconvenienced by the clause, either from the legal practitioners or from any member of the public. The only potential inconvenience arising is in using the original print of the Act as all subsequent prints have the date of proclamation on them. Regarding the initial print, a well established and understood procedure exists whereby a telephone call will obtain the relevant information from an officer in the Parliamentary Counsel's office. That is well understood and has been acted upon for years and has caused no practical problems.

In theory it could be said that an alternative of fixed dates makes things more certain. However, the need for flexibility regarding dates arises in a number of ways. Probably the main cause of delay in proclaiming Bills relates to those which carry with them the provision for substantial regulations. Sometimes it has been said that the regulations should be drafted in advance of the assent to the Bill, but that is not really practical because one cannot assume the passage of the Bill; in this Chamber one cannot assume that it will pass in the form in which it was drafted!

Hon P.G. Pendal: An awful lot of assumptions take place in the civil service on precisely the same point.

Hon J.M. BERINSON: That is so, but I am sure that Mr Pendal does not want to go to the extent of drawing up legislation, in some cases very extensive legislation, and then discover that the work involved was pointless. The work involved in drafting regulations can often prove to be much more extensive and difficult than originally contemplated, and this can lead to delay. It should not take long for a Bill to be printed but things can go astray. What does one do if an Act is proclaimed but is not printed by the due date? What does one do if the Act has been printed by the due date but it has not been distributed to the courts and the officers do not have the legislation to work with? One must make sure that the Act is always printed and distributed on time. Of course, that is always the aim and most often it is achieved and the proclamation is made earlier than the 56 days suggested in the amendment. However, the question remains; what if anything goes wrong with the printing or distribution, or the regulations prove to be more difficult than originally contemplated?

I will give two examples of problem areas that can arise in trying to be too definite in order to overcome a theoretical problem. I give a very old example of a problem which was demonstrated by the history of the Bail Act. The second example involves a question presented as recently as this week, and I still cannot locate it; however, I can remember it well enough for present purposes. The Bail Act was initiated by Hon Ian Medcalf of the previous conservative Government and it passed through the Parliament about a year before the present Government came into office in 1983. If I remember correctly, I used to rise and say a few words about the delays, but I regretted that as I was faced with a three or four year delay after that. Why was it delayed? It was not because we were being capricious; it was not because we withdrew support for the Bill. We found the practical implications led us to difficulties that simply could not be accepted, which meant that the Act required substantial amendment before proclamation. I have told the Chamber this story before: It took something like a year and we were confident at that stage that the legislation was all right. We distributed it to the courts and conducted training sessions for the clerks of the courts, the justices of the peace and policemen. All of a sudden we had representations from the Police Force stating that 100 extra policemen were needed to accommodate the rules of the Bail Act. The clerks of the courts were saying that it would be all right to handle the Bail Act as long as they were not expected to do any other work in the courts. The justices of the peace made the most positive contributions of all, yet they were the ones who killed the Bill.

We prepared a video presentation to assist in the explanation of the bail process which was distributed to the various branches of the Royal Association of Justices of the Peace. Many members of that association contacted their executive, or contacted me directly, to express their concern about the implication of the Bill. The result was that I had quite an encouraging reaction from the president of the association. He came to me and said in an

encouraging manner, "There are a few problems but it is not as bad as many people are claiming. I must say that after seeing this video on nine or 10 occasions it is becoming reasonably clear as to what should be done." I thought that any process which required nine or 10 sightings of a video presentation was bad enough, but then he added, "In any event there would not be all that many occasions on which the clerk has to fill in 13 forms before bail is granted." I appreciated the positive and encouraging approach that the president of the association took, but that was the killer for me - we went back to the drawing board. It took another year or 18 months, but this time we took the precaution of sending the drafts out to the practitioners to consider the implications of the Bill before we brought in another substantial amendment.

I dread to think what would have happened if we had been in a situation, say, in which we had passed the legislation and that Bail Bill had come into operation 60 days after assent. After spending two or three weeks down in the Legislative Assembly the Bill would have been given assent. Accepting that 60 days would pass, we would have been in the Christmas recess and the Act would have been in effect yet nobody would have had a chance to do the work that the legislation demanded. The process would have ground to a halt. Just as with the printing example, it should not happen. The situation with the Bail Act should not have happened; that is, the first time it should not have happened with Ian Medcalf and the second time it should not have happened with me - but it happened twice. We must learn from that situation and it promotes an important argument for the need for flexibility when there is nothing to be lost with the flexibility other than the theoretical nicety of having a certain date set out. That is the old example.

Hon D.J. Wordsworth: Now tell us about the Contraceptives Act.

Hon J.M. BERINSON: I would be delighted if I knew anything about it.

Hon D.J. Wordsworth: It has been awaiting proclamation for 10 years.

Hon J.M. BERINSON: I would not rate its chances very highly then.

Hon Mark Nevill: Some legislation which has not been proclaimed dates back to 1922.

Hon J.M. BERINSON: A recent example concerned a question which Mr Cash put on notice earlier this week. Another example may be the Contraceptives Act which Mr Wordsworth has now mentioned -

Hon Peter Foss: That has nothing to do with this Bill.

Hon J.M. BERINSON: It has everything to do with the Bill.

The CHAIRMAN: Order!

Hon J.M. BERINSON: It has nothing to do with the content, but it is concerned with the commencement date.

Hon Peter Foss: You should use this argument when we discuss general principles; this Bill has none of those things involved whatsoever.

Hon J.M. BERINSON: I am suggesting to the member that unanticipated problems can arise.

Hon Peter Foss: They can also happen after an Act is proclaimed.

Hon J.M. BERINSON: I will give as an example the Prisoners (Release for Deportation) Act referred to in Mr Cash's question, which might be instructive. The Bill had no complications and I am assuming that the printing was in order. The proposals to be implemented by that Act were straightforward. It was a simple exercise which was agreed to by the Commonwealth and the States and the Bill was passed in this Parliament in an agreed form. Apparently the answer to the question has not hit *Hansard* yet, but I can anticipate the answer: No; it has not been proclaimed. The reason is that it relies for a crucial definition on a cross-reference to a Commonwealth Act. After assent was given to the State Act the Commonwealth amended its Act so that the cross-reference now has nothing to refer to. Had we worked on the assumption that there was nothing complicated in this Bill, we could have put in a proclamation date and been caught. What would we have done? We would have been left with an Act purporting to give people rights they could not exercise. Why should we do that?

I accept, as I have accepted here before, that there can be an argument for attending to particular Bills. If there is a particular reason to provide a certain date for proclamation, it should be provided. However, I think there is more of an onus - than the Legislation Committee put to me in the course of our discussion, and which Mr Foss has put in discussions in the House - to demonstrate the detriment of this more traditional form of commencement clause before we move to nice and neat solutions. They are nice and neat in theory, but do not provide the flexibility which has been demonstrated to be necessary in many cases.

I tried to put that case as fully as I could to the Legislation Committee and I am, if not surprised, at least disappointed that my argument was apparently not as persuasive as I thought. I will put to members again, as I have on a number of occasions recently, that the only contrast we have is between theory and practice. It is between the theoretical convenience of a certain date and the practical advantages of a flexible date. Experience has indicated that flexibility has much to commend it and at very little cost in either inconvenience or in any other way. For that reason I urge the Chamber to agree that we should retain the commencement date as originally proposed.

Hon PETER FOSS: I am disappointed that the Attorney General has spent so much time on this point as I do not think the Bill deserves it. The time will come when the Legislation Committee makes a recommendation generally with regard to proclamation dates. It is important to note that the Attorney, in all that he has said, has not directed his attention to this Bill. Although I may not refer to another Bill to amend this same Act, it is one that has been reported on by this committee. That Bill to amend that Act does not provide for a proclamation date, so one would assume that it is not just a matter of practice; it appears to be a matter of randomness when a proclamation date does or does not go in. I do not see anything about this Bill that justifies a proclamation date. One of the reasons why the committee was not persuaded by what the Attorney had to say was that the reasons he put forward, which we were able to accept as having some justification, did not apply to this Bill. The reasons he did put forward and which to some degree caused some concern were those where complicated regulations had to be prepared. We could see that under some circumstances it would be justified in not writing in a date beforehand. Under some circumstances, such as the example given by the Attorney General of the Bail Act, it may have been that had regulations been written before the Bill was introduced into Parliament the disaster that occurred when it got to Parliament may not have transpired.

Hon J.M. Berinson: What if the Bail Act had been substantially amended or defeated?

Hon PETER FOSS: I am suggesting to the Attorney that there may be occasions when thinking the whole procedure through could avoid the legislative disasters he has referred to. That is my first point.

The second point concerns the Attorney's suggestion that under some circumstances there may be a need to put into place a new administrative body. Again I can accept that argument where time is needed between the passing of the Act before hiring people and putting them into positions. I will concede, at least, that there are two occasions when there may be the need to consider some such procedure. This is not one of those two occasions. It is curious that another Bill to amend the same Act does not contain such a provision.

The next point, which is most important, is the way in which the Attorney has dismissed the reasons for wishing to dispose of proclamation dates. First of all, the problems he sees do not appear to be problems that the United Kingdom sees.

It does not resort to the proclamation of Acts. I understand also that the New Zealand Parliament does not resort to the proclamation of Acts. If it is possible for those Parliaments to manage without proclamation, it should be possible for this Parliament to manage. It is really not the Parliament that has to manage without it, it is the bureaucracy.

The reason we believe it is important not to provide proclamation dates is that the making of Statutes is a serious and important process. The Constitution provides that the parties involved in the making of Acts are the two Houses of Parliament and the Sovereign. It does not provide that a fourth party, the bureaucrats, be involved when they have their act together. I think it is most undesirable that Acts be allowed to be brought into effect when the bureaucrats decide they will be brought into effect. If people believe that this is the

system that will apply, they will do their work knowing that they can always fix something up while the Bill is being held for proclamation. If they know that when a Bill goes through Parliament it comes into effect, I suspect they will be a little more careful about the way they put up their legislation.

My comments are not directed against this Government. I do not believe that Ministers of this Government or of any former Government are at fault. I think it has become a bureaucratic process in which it has become all too easy for one to know that one will be able to use the proclamation. We should get people out of that habit and the sooner the better.

The committee has not removed all proclamation dates willy-nilly. Members may have noticed other Bills coming back from the committee from which the proclamation dates have not been not removed. However, after discussing this Bill, it became clear that there was no need for the proclamation dates. The theoretical objection put up by the Attorney General could apply just as easily if it is proclaimed and then it is found that it is not right. He is not preventing that from occurring. All he is doing is giving himself a slightly better chance of finding out. However, that finding out should have been done before the legislation was brought to this Parliament.

The Attorney General has also played down the disadvantage to the public. He said people can always find out whether the Bill has been proclaimed by ringing the Parliamentary Counsel. First of all, that makes an assumption that the people who refer to Acts of Parliament do so between 9.00 am and 4.30 pm, Mondays to Fridays. Many practitioners in this town read their law in hours well outside those hours. Frequently, they do their research work on the weekends and are not able to ring the Parliamentary Counsel to check whether a Bill has been proclaimed. He also downplayed how inconvenient that is. I have mentioned to a number of people the disadvantages associated with ringing to find out about proclamation dates and they agree that it is a terrible problem. They are often told that it has not been done yet but that it is expected to be done soon. Therefore, one has to ring almost daily until the Bill in which one is interested is eventually proclaimed.

I am sure it is not a problem in the Attorney General's department. I am sure that somebody has the job of attending to the proclaiming and sticking the date on the Attorney's copy. However, in offices around town, no such handy service is provided and one has to make inquiries. In small firms which do not have librarians, the practitioners have to make the inquiries themselves, which is a matter of considerable inconvenience.

The onus is not on us. The onus is set down in the Constitution. The Constitution states clearly which are the participants in the making of an Act. I do not believe we should pass on some part of the Statute making process to the bureaucracy. There is also ample room for people to be advisers on the final form of the law. There is a two week period between the third reading in the second House and the assent copy being prepared. The Interpretation Act provides a 28 day period before a Bill comes into effect. There are six weeks, therefore, between the third reading in whichever House deals with the legislation last and the Bill actually coming into operation.

It is time that this Parliament made sure that the bureaucracy knows the standards it has to meet. We have all been concerned from time to time that Parliament is seen as a useful appendage to the bureaucracy. It is not a useful appendage to the bureaucracy. The bureaucracy is meant to carry out the will of the Parliament. I believe that, if the bureaucracy realises that when a Bill is assented to it becomes law, it will make sure it gets it right the first time.

This Bill is no different from any Bill to amend the Criminal Code. There appears to be no reason for its not coming into effect 28 days after its assent. However, having in mind that perhaps this Bill may be a special case, we doubled it to allow it to go 56 days after the date of assent. That means that there will be two weeks to assent and a further eight weeks. If the bureaucracy cannot tell people in 10 weeks what is the law, something radical needs to happen to it.

We do not intend to do this with every Bill. We have been selective. We will be putting forward our views as to how each Bill should be dealt with, keeping in mind matters which the Attorney General mentioned. This Bill is not distinguishable from the racial harassment legislation and I see no reason why it should not come into effect in the normal way.

Hon GEORGE CASH: I oppose the amendment moved by the Attorney General. In his comments in support of his argument, the Attorney General made much of the fact that there was a need to support his amendment for the convenience of the bureaucracy.

Hon J.M. Berinson: That was not my argument at all.

Hon GEORGE CASH: It was certainly one of the lines the Attorney General used.

Hon J.M. Berinson: No, it was not.

Hon GEORGE CASH: The Attorney General will be able to restate his case in a moment. I heard him say clearly that there is a need at times to consider the position of the bureaucracy. I interpreted that to mean that we are required to work for the convenience of it.

Hon J.M. Berinson: I doubt whether *Hansard* will show that I referred to the bureaucracy once.

Hon GEORGE CASH: I oppose the amendment moved by the Attorney General. While the Attorney General attempted at times to hide behind the veil of the bureaucracy, what he did not say was that, by allowing Bills to come into effect when they are proclaimed and at times part proclaimed, it is often for the convenience of the Government. One has only to cast one's mind back a few years to know that during the era of the Burke Government a number of Bills passed through both Houses of Parliament and received Royal assent, creating an assumption in the community that the legislation was in effect; but after much research it was found that certain sections of a number of those Acts had not been proclaimed. In my view, the will of the Parliament had not been carried in those cases.

Hon Mark Nevill: Some Bills going back to 1922 have not been proclaimed.

Hon GEORGE CASH: Hon Mark Nevill is right. In a question which was asked of one of the Ministers some months ago, sections of a number of Bills that have not been proclaimed were listed. Some of them went back many years. However, the fact is that, if the will of the Parliament is to be carried, I do not see why we should not bring these Bills into effect on the day of Royal assent, notwithstanding the comments made by the Attorney General.

Were the bureaucracy working as a service organisation for the community and the Parliament it would be up to the bureaucracy to get itself into gear. It has been very convenient in recent years for Labor Governments to legislate via Press releases. That is, it has been convenient for the Government to publish various media statements that the Government intends to legislate in a certain way. Indeed, legislation has been introduced into this place but it has not been processed. That issue is relevant to the question before the Chamber.

With respect to the Road Traffic Act in which I have taken some interest over the last five years, having responsibility for police matters, members will recall that in December 1987 a significant amendment was made to section 89 of that Act which dealt with the unauthorised use of motor vehicles. The Government made great play of the fact that from that time on persons whose vehicles were stolen or used in contravention of section 89 of the Road Traffic Act could claim compensation. The wording of the amendment required a member of the Police Force to make application to the court for compensation on behalf of the owner of the vehicle. Since that amendment was passed by this place, it has been convenient for the Government to say, from time to time, that it had addressed that area. It is my understanding that until the other day that amendment still had not been proclaimed.

Hon J.M. Berinson: Are you sure of that?

Hon GEORGE CASH: I am very sure of it. The Minister for Police will no doubt confirm it because he wrote to me the other day confirming that the amendment had not been proclaimed. His letter set out the reasons for the amendment not being proclaimed and stated that it was generally found to be administratively difficult to put into effect. The amendment is only about two years old. Clearly, the Government had not thought through the administrative tasks required once the amendment was proclaimed. Nonetheless, the Government received publicity about the amendment, but to this day it has not been proclaimed.

Proposed section 11 of the Road Traffic Bill (No 2) of 1987 has still not been proclaimed. Proposed sections 4 and 6 of the Fisheries Amendment Bill 1986 have not been proclaimed; I

have a question on notice asking for the reasons for that. The Acts Amendment (Events on Roads) Bill 1988 has not been proclaimed. I understand that the Western Australian Marine Amendment Bill 1987 has not yet been proclaimed. A good case has been built by the Opposition to show that, unless Bills come into effect when they receive the Royal assent, no guarantee can be given that they will be proclaimed, unless the Bill is directly related to members' salaries or superannuation.

It is important that the amendment moved by the Attorney General be rejected and that we revert to the recommendation of the Legislation Committee; that is, that the Bill come into effect 56 days after assent has been given.

Hon J.N. CALDWELL: I have listened intently to what has been said this evening. I am a member of the Legislation Committee and this clause was probably one of the most vigorously debated clauses of the Bill. I understand the problems that could arise if drafting and printing delays occurred. However, certain Bills must be given a commencement date. That is probably why I went along with Mr Foss' amendment and why I am opposing the Attorney General's amendment. This Bill must be implemented as soon as possible because it includes some very important amendments.

I was somewhat disturbed at Hon Peter Foss' suggestion that the Royal assent be within 28 days, but when he suggested doubling the number of days I felt I could agree with his proposal. I still have some reservations that perhaps 56 days might not be long enough. I will concur with Mr Foss' amendment as it is printed in this revised Bill simply because, in one way, it will pull the Government into gear to ensure that this Bill is acted upon. However, if in the long run the Government of the day proved to me that my judgment was incorrect in specifying a day when the Act should be given Royal assent, I would be prepared to change my mind. In the meantime, I oppose the Attorney General's amendment.

Hon W.N. STRETCH: I totally oppose the Attorney General's amendment. I will say this for the Attorney General: He is consistent and conservative. For about two years I have been requesting that the matter of the part proclamation and postponed proclamations of Bills be addressed. The answer given to me by the Attorney General was that if I cared to ring the Clerk he would direct me to a list in the corridor where I could find out the state of the Bills and whether they were proclaimed. However, when a colleague in the Assembly asks the question, even the Premier provides a list of Bills that have not been proclaimed. I have consistently pointed out that the proclamation of a Bill is a critical stage. Obviously, it becomes operative at the Executive stage, but it is also the stage at which the intent of the legislation can be distorted if the Executive arm of Parliament chose to proclaim that piece of legislation in part. Examples have been given and Hon Mark Nevill quoted one that goes back to 1922. Obviously it does not apply only to this Government.

Hon Mark Nevill: I do not agree with what you are saying now.

Hon W.N. STRETCH: I do not expect Hon Mark Nevill to agree with me and he can tell me why later. That is his privilege.

A Government member: That is a nasty thing to say.

The CHAIRMAN: Order! The member will address the Chair.

Hon W.N. STRETCH: It is not a nasty attitude; it is a fact of life and it is a fact that since 1983 the Government has used Parliament to pass legislation which it had very little intention of putting into effect. Those pieces of legislation were introduced to create public perceptions and to pacify certain factions. My only comment about Hon Peter Foss' contribution is that he let his charity overcome his eloquence. Undoubtedly, this Government has used the method of non-proclamation and part proclamation to achieve certain public perceptions. I oppose the Attorney General's amendment and welcome the fact that the Legislation Committee has had a good hard look at the whole question.

To support my view that the Attorney General is consistent, if he stands by his evidence in this report to the committee, it is exactly what he has said to me in this place over the years. I accept that he holds those strong views; I and most of my colleagues think they are wrong. I believe that the method of proclamation has been abused in the past. I do not believe there is such a thing as part proclamation; legislation is either proclaimed as it passed through this Parliament or it is not proclaimed at all. Selected bits should not be left out.

The Attorney General has offered in this place to not proclaim parts of a Bill. This happened near the end of the last session. That is wrong and is a total distortion of the legislative process. Later in this document the Attorney General says - if he stands by his remarks and if this report is a correct interpretation of his evidence to the committee - that the Bill may require a whole new administrative structure to be established. If that is the case, that should be written into the Bill.

Hon J.M. Berinson: What should be written into the Bill?

Hon W.N. STRETCH: Two thirds down page one of the committee's report the Attorney General is reported as saying, among other things, that another consideration is that effective operation of the Bill may require a whole new administrative structure to be established.

Hon J.M. Berinson: That sort of thing would normally be written into a Bill setting up a new tribunal, for example.

Hon W.N. STRETCH: I agree that it should be written into the Bill and not be part of the Attorney's reasons for delaying proclamation. If he is to set up a new administrative structure I hope he will not do that by regulation.

Hon J.M. Berinson: No.

Hon W.N. STRETCH: It is not reasonable to bring that forward as part of the Attorney's excuse for not accepting a proclamation date set out in the committee's recommendations.

Hon J.M. Berinson: Do I understand Hon Bill Stretch correctly, that if the Bill did provide for a new administrative structure he would accept that that date should be left open?

Hon W.N. STRETCH: I certainly do not. It should be written into the Bill if a new board, tribunal or structure of the type the Attorney referred to is to be set up. That should be in the body of the Bill as passed by this Parliament. It should not be at the whim of the Attorney General once it has passed the Parliament.

Hon J.M. Berinson: The member is assuming that the flexibility is always in the direction of lengthening the period or not proclaiming it at all. That is an incorrect assumption, if that is what he is saying.

Hon W.N. STRETCH: My assumption is that what the Attorney said in his evidence to the committee on this matter is what he meant.

Hon J.M. Berinson: Of course.

Hon W.N. STRETCH: If the Attorney means that one of his reasons for not going along with the recommendation is that it might require a whole new administrative structure to be established I hope that would be written into the body of the Bill and not be left to regulation for it to come into force.

Hon J.M. Berinson: One might still not be able to specify a particular time by which that administrative structure could be established.

Hon George Cash: It took 12 months to set up the Children's Court.

Hon J.M. Berinson: It took a considerable time.

Hon W.N. STRETCH: If the Attorney is setting up that sort of body, okay, but if he cannot get the structure he requires foreshadowed and set up within the 56 days now given it calls into question the whole repute and legitimacy of the Bill.

Hon J.M. Berinson: Is the member suggesting we could have established the new Children's Court in 56 days from the date of assent?

Hon W.N. STRETCH: No. New legislation would be set up. I am saying that the Attorney has used as part of his evidence the fact that the drafting is not a great consideration but that the effective operation of the Bill may require a whole new administrative structure to be established. I accept he will have a bureau set up within it. If something like the Children's Court is to be set up and it will not be done within the body of the legislation I suggest -

Hon J.M. Berinson: It is done within the body of the legislation.

Hon W.N. STRETCH: I suggest that, if it is within the body of the legislation and it will not be done within the 56 days allowed, the Attorney should be looking at the date of assent and the need for the legislation.

Hon J.M. Berinson: But one cannot delay assent as there are constitutional reasons why it should proceed.

Hon W.N. STRETCH: In other words, legislation is implemented before the project is ready to be set up.

Hon J.M. Berinson: No. I thought the member was about to clinch the argument but he is destroying his colleague's work.

Hon W.N. STRETCH: We have seen too much of this sort of legislation which is part proclaimed. I do not think that in certain circumstances it has been a bona fide situation such as the Attorney General outlined in his structure. The situation has arisen where certain parts of legislation have not been proclaimed for political reasons. I believe that is an abuse of the system. I welcome the committee's investigation into the whole deal and think this should certainly be given a trial.

I will certainly oppose the amendment if for no reason other than the fact that the 56 day provision gets rid of that possibility of part proclamation written down as "the day or days" of proclamation.

Hon MARK NEVILL: I take up the invitation from Hon Bill Stretch to respond to his criticism of the Attorney General when he said that the Attorney referred him to the Clerk or some of the staff here to get information about which Bills have not been proclaimed. We are all provided with the Statutes of Western Australia which contain an index listing all the Bills and showing those which have not been proclaimed.

The answer given by the Attorney General was quite reasonable, and I say that sincerely. It is like asking him to give one a list of all the phone numbers of members of the Crown Law Department when one can go to the telephone book if one needs them. This is a reasonable thing and not worthy of criticism. This book is available to all members and every member has a copy.

Hon J.M. BERINSON: I spoke at length on this matter originally and do not intend to do so again. I make the following limited points. First, there is an assumption, as I suggested by way of interjection to Mr Stretch, that the flexible form of the commencement date will always have the effect of delaying the implementation of legislation or allowing it to remain unproclaimed. The converse can also apply; namely, one can have an Act with a number of provisions which will take some time because of the need for regulations or for other purposes, or other parts of the legislation are amenable to early implementation. A form of commencement date which provides for a day or days on which various sections can be proclaimed can accommodate that sort of situation in a way which this fixed 56 day period cannot.

Hon Peter Foss put the argument that even if there are general views which can support flexibility in the commencement date they do not apply to this Act. He and other speakers went on to mount what amounts to a conspiracy theory, I suppose, about Governments wanting to abuse the section for their own purposes. I invite Hon Peter Foss to look at his argument from the other side of the mirror.

Hon Peter Foss: I did not say anything about conspiracy.

Hon J.M. BERINSON: I accept that the member did not do so. I was talking about his colleague, Hon George Cash, in particular.

Hon George Cash: I want to place on record clearly the fact that I believe that part proclamation of Bills has at time in fact been a conspiracy, without question, and the Attorney has participated.

The CHAIRMAN: Order!

Hon J.M. BERINSON: I am sorry if I misquoted Hon Peter Foss and that I associated him with Hon George Cash's claims of conspiracy because Hon Peter Foss knows better. I was trying to invite Mr Foss, and other members opposite, to look at the converse of their argument. What conceivable purpose would the Government have in irresponsibly or conspiratorially delaying the implementation of any part of this Criminal Law Amendment Bill? There is no reason for it and the Government would not do it. The amendment is there for the purposes of practical flexibility, and nothing more.

I promised to be brief, and I do not want to encourage further replies, and I know I will if I keep going, but I want to comment on the question of administrative structures raised by Hon Bill Stretch because I believe he has misconstrued the position. I accept that if there is a new administrative structure, such as the Children's Court, which Mr Cash suggested by way of interjection, then of course that has to be provided for specifically in the Bill. One would never contemplate the establishment of a new court by way of regulation. However, to go on from there to say that having provided for it, and having put the argument that it cannot be put in place for 56 days, that one is not serious about it or is not getting on with the job is to seriously misunderstand what goes into the formation of a body such as a new Children's Court. It is not just a matter of leasing the space. We have to look at the transfer of authority from existing magistrates and part time magistrates to a new body of magistrates. We have to take our time - and this is not something that can be done in advance of the passage of the Bill - to select a judge of a court of that nature.

Hon George Cash: Does this apply to section 89 of the Road Traffic Act or to the Fisheries Act?

Hon J.M. BERINSON: I am talking about administrative structures because Mr Stretch raised that matter.

Hon W.N. Stretch: I invite you to compare it with the SESDA legislation. Most of SESDA was put up before the legislation got into this Chamber.

Hon J.M. BERINSON: Mr Stretch was sufficiently firm in his views about administrative structures not to want to retreat from that point. I do not want him to retreat either; I just want him to accept the realities. I have talked about the need for the selection of new magistrates and a new judge. There was also the need in this case to allow the judge the opportunity of consulting with similar courts in other States, simply because of the absence of close experience in Western Australia of the sort of jurisdiction we were setting up.

Hon Mark Nevill: The court had to be remodelled.

Hon J.M. BERINSON: All manner of things had to be done. Some rebuilding had to be engaged in before the thing could work structurally. I am saying that to apply blanket rules and to rely just on some across the board comment that if we cannot do it in 56 days we are not doing our job, and we should not introduce this Bill until later, does not recognise the range of possibilities we have to face. I am not saying that applies in every case but it happens often enough for us to take the flexible route rather than the inflexible route. That is the way I would describe it. I know that members opposite describe it as certainty as against uncertainty. I put to members opposite that in going for this theoretical virtue of certainty they are sacrificing a very desirable level of flexibility and are moving to an inflexible position which sometime or other is bound to go wrong.

Hon PETER FOSS: I admire the Attorney's obstinacy on this matter because most of his arguments do not have any relationship to this Bill, and he still has not explained why this Bill - as opposed to the other Bill amending the same Act - has a proclamation date. The Attorney has raised the question of administrative bodies, and I will briefly deal with that, although I would rather we deferred this argument to some other time because we should deal with it when the recommendation comes from the committee and when it is, strictly speaking, relevant.

Hon J.M. Berinson: I would not have introduced it were it not for Mr Stretch's comments. There is no real need for you to take it further.

Hon PETER FOSS: I draw the Attorney's attention to section 25 of the Interpretation Act 1984, which allows for a fixed date for an Act to come into operation and for that to be sufficiently far away from the assent to enable the provisions of section 5 to be used to set up all the administrative bodies that are required. Section 25 says -

> (1) Where a provision of an Act does not commence on the passing of the Act and that provision would, if it had commenced, confer power to -
>
> (a) make an instrument of a legislative or administrative character;
>
> (b) give or serve a notice or other document;
>
> (c) appoint a person to a specified office;

(d) establish a specified body of persons, whether incorporated or not; or

(e) do any other thing for the purposes of the Act,

then the power may, notwithstanding that that provision has not commenced, but subject to subsections (3) and (4), be exercised at any time after the passing of the Act to the extent that it is necessary or expedient for the purpose of bringing the Act, or provisions of the Act, into operation . . .

It is quite clear that section 25 anticipates the sorts of problems to which the Attorney refers and has set up a mechanism to allow that to occur. I do not want to enter into that argument now because we have to look at all these things in a broader compass. The reason we have already allowed other Bills to go through with not only proclamation provisions but also multiple proclamation day provisions is that we appreciate that is a matter that should be looked at in detail, and detailed recommendations should come to this Parliament. This Bill is no different from the racial harassment legislation because it is just an amendment to the Criminal Code, and it should come into effect on a particular day. I do not see any problem about doing that.

I endorse the Attorney's remarks about deferring the assent to Bills. There is an obligation for Bills, once they have passed both Houses of Parliament, to be presented for assent to be either given or denied, and I do not believe that can be used as an alternative mechanism. We will deal with that point when it arises in the context of those Bills where I see there may be some validity in the argument of the Attorney, but with respect to this Bill I do not see the validity.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell I cast my vote with the Ayes.

Division resulted as follows -

Ayes (13)

Hon J.M. Berinson	Hon B.L. Jones	Hon Bob Thomas
Hon J.M. Brown	Hon Garry Kelly	Hon Doug Wenn
Hon T.G. Butler	Hon Mark Nevill	Hon Fred McKenzie
Hon Graham Edwards	Hon Sam Piantadosi	*(Teller)*
Hon Tom Helm	Hon Tom Stephens	

Noes (14)

Hon J.N. Caldwell	Hon P.H. Lockyer	Hon R.G. Pike
Hon George Cash	Hon Murray Montgomery	Hon W.N. Stretch
Hon Reg Davies	Hon N.F. Moore	Hon D.J. Wordsworth
Hon Peter Foss	Hon Muriel Patterson	Hon Margaret McAleer
Hon Barry House	Hon P.G. Pendal	*(Teller)*

Pairs

Hon Kay Hallahan	Hon Max Evans
Hon Cheryl Davenport	Hon Derrick Tomlinson
Hon John Halden	Hon E.J. Charlton

Amendment thus negatived.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 1 amended -

Hon PETER FOSS: I wish to draw the attention of members to the intention of damage in respect of a record. We asked for this amendment to be made to enable us to pick up those people who destroy records on computers and cause havoc as a result. The definition of the intention to defraud was drawn up on the recommendation of Parliamentary Counsel. It was an attempt to define an intent to defraud, but during the course of reviewing this clause it

appeared that Parliamentary Counsel was not happy with the definition and it was decided to remove it to allow the common law definition to apply. The position is not that there is no definition of attempt to defraud, but it will be left to the common law definition as it was prior to this.

Clause put and passed.

Clauses 5 to 7 put and passed.

Clause 8: Section 121 amended -

Hon PETER FOSS: I wish to draw the attention of members to the fact that the Attorney General has been following a policy of removing the requirement for the consent of the Attorney to be given for a prosecution. This section deals with the prosecution of judicial officers for corruption. The committee was concerned that disappointed litigants might use this provision as a means of retrying their cases. Considerable disruption has been caused by some people who consider that they have been badly treated by judges; they have used the court processes to harass them. It was felt that an official prosecution should be able to be brought without the consent of the Attorney General, but any other form of prosecution should require the consent of the Attorney General.

Clause put and passed.

Clauses 9 to 13 put and passed.

Clause 14: Sections 332 and 333 repealed and sections substituted -

Hon PETER FOSS: I move -

Page 8, line 1 - To delete "unlawfully".

This amendment came about as a result of discussion of clause 17. Perhaps I should mention what happened in clause 17 in order to explain what has happened in clause 14. Clause 17 caused the committee considerable difficulty. It repealed section 338 of the Code, which is to do with threats. Among other things it picks up threats which are of the nature of a threat to harm a person's reputation or financial interest as opposed to threats directed to personal injury or damage to property. This clause went through many redrafts, and it appeared to become worse each time. A problem always seemed to crop up somewhere along the line. The committee had a fairly lengthy discussion with Parliamentary Counsel and pointed out that it appeared that part of section 338 had been lost in the revision of this section. Parliamentary Counsel conceded two things appeared to have disappeared, and a further redraft was made. The committee suggested that the whole set of sections be withdrawn because we were worried that the continual redrafting with problems becoming worse indicated some sort of structural problem. Often when things are continually amended it means there is a structural problem rather than anything else. However, we were asked to leave it in, which we did, somewhat reluctantly, as appears from our report.

After the Bill had been produced with all the amendments together we were able to look at it as a whole. There was one word which I felt should not be there, and that was the word "unlawfully" in section 338. Sometimes one can have a threat which is quite lawful but made with the intention of securing an unlawful result. For instance one might say, "I shall mention something about your unlawful affair with that woman in order to get you to do something." There is nothing unlawful about making that statement, but you are seeking to obtain an unlawful result. Some threats are themselves obviously unlawful. If one threatens to kill someone, what one is threatening to do is in itself unlawful. My concern was that the word "unlawfully" by being included in the definition would be applied to everything that followed. In this instance the word "unlawfully" could be deleted from the definition of threat and included specifically in those circumstances where an action was thought to be unlawful.

Having started the conversation regarding whether the word "unlawful" should be included in proposed section 338, Parliamentary Counsel engaged the committee members in a conversation which discussed whether it should be included in proposed section 332. After a lengthy discussion comparing proposed sections 332 and 338, it became clear that there would be no need to show in a kidnapping offence that an offender is carrying out an unlawful act. This almost begs the question, "What on earth are you talking about?" because it refers to a threat to unlawfully kill, injure and danger or cause harm or detriment to any person. It is hard to see how one could threaten to do that lawfully.

The inquiry into clause 17 raised the peculiarity of what had been suggested in clause 14. It is suggested that the word "unlawfully" be deleted in clause 14 because it was unnecessary and would cause some confusion in expression when read in comparison to the other amendments the committee made.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Section 338 repealed and Chapter XXXIIIA substituted -

Hon PETER FOSS: I move -

Page 8, line 24 - To delete "unlawfully".

Page 9, lines 1 to 5 and 10 to 12 - To delete the lines and substitute the following lines -

(a) kill, injure, endanger or harm any person, whether a particular person or not;

(b) destroy, damage, endanger or harm any property whether particular property or not;

(c) take or exercise control of a building, structure or conveyance by force or violence; or

(d) cause a detriment of any kind to any person, whether a particular person or not.

Page 10, line 10 - To insert after "threat" the following -

to unlawfully do anything mentioned in section 338 (a), (b), (c) or (d)

Page 10, line 25 - To insert after "threat" the following -

to unlawfully do anything mentioned in section 338 (a), (b), (c) or (d)

Page 10, line 28 - To delete "or (c)" and substitute the following -

, (c) or (d)

I have already explained how the committee arrived at the need to deal with "unlawfully". The committee also had some reluctance with proposed section 338. It refers to "harm" on the one hand and "detriment of any kind" on the other hand. The committee was concerned that the concept of detriment had been left out in the original draft. The Parliamentary Counsel then added it to what are now paragraphs (a) and (c). However, the committee was concerned that it would be possible for these words to be read iusdem generis with the other words in the clause. This is especially the case because paragraphs (a) and (c) include the word "detriment". If the word "detriment" was to have an independent meaning there would be no need to include it twice. The committee looked at the possibility of removing "detriment" to make it clear that it was intended to be a separate thing which an offender was threatening. If the word "detriment" is taken out of paragraphs (a) and (c) it would simplify the wording. It would then be more appropriate for paragraph (c) to come after paragraph (a) and for the all-embracing definition to come last. This is indicated in the amendment. The two paragraphs parallel each other except that the first paragraph recognises that the words "kill" and "injure" are used in respect to people. Paragraph (c) has been included because terrorism does not sit well with the other offences.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 18 and 19 put and passed.

Clause 20: Section 390A amended -

Hon GEORGE CASH: Section 390A of the Criminal Code deals with the unauthorised use of vehicles. The intention of the amendment is to increase the maximum period of imprisonment with hard labour from a period of three years to seven years. The Opposition has been calling for this change for some time and therefore supports the change. Section 89

of the Road Traffic Act deals with the offence of the unauthorised use of a vehicle. What is the distinction between the charge of unauthorised use of a vehicle under section 89 of the Road Traffic Act and that of the unauthorised use of a vehicle under section 390A of the Criminal Code? I am interested in hearing the comments of the Attorney General in order to determine what Act the police will use in future when charging people with the unauthorised use of a vehicle.

Hon J.M. BERINSON: My understanding is that section 390A of the Criminal Code cross refers to the unauthorised use of a vehicle as defined in the Road Traffic Act; so for the purposes of the nature of the offence my understanding would be, on a quick reference to this, that there would be no difference.

Hon GEORGE CASH: If, therefore, there is no distinction to be drawn between the nature of the offence under section 390A of the Criminal Code and section 89 of the Road Traffic Act, why is it that more than 90 per cent - and probably more than 95 per cent - of charges of unauthorised use of vehicles are in fact preferred under the Road Traffic Act and not under the Criminal Code? Does it have anything to do with the fact of intentionally depriving an owner of his vehicle for a period?

Hon J.M. BERINSON: I cannot be confident in an answer to this and I would rather take it on notice and advise the Leader of the Opposition subsequently. If he wants to hold up the Bill for that purpose we can report progress; otherwise it is of course open to us to at least complete the Committee stage, on the understanding that I will be able to respond on this matter before the report is adopted. I suspect that it would relate to the simpler procedures available to the police with prosecutions under the Road Traffic Act, but just standing on one foot, so to speak, trying to find my way through these two Acts, and without the benefit of previous reference to it, I would prefer not to go beyond the general indication I have given.

Hon GEORGE CASH: I would be pleased if the Attorney General would make inquiries as to the distinction that can be drawn and the reasons persons are generally charged under the Road Traffic Act when it comes to unauthorised use of vehicles. I would be pleased if he could make those comments prior to the third reading being given.

Clause put and passed.

Clauses 21 to 28 put and passed.

Clause 29: Section 426 amended -

Hon PETER FOSS: I wish to draw to the attention of the Chamber something which has happened which might have escaped the attention of members because it is rather difficult to see. The original Bill came to this place and then amendments were placed on the Notice Paper; the Bill was then referred to the Legislation Committee, which rejected one of those amendments, but as it was not in the Bill as it was placed before members originally, because we rejected the amendment members would not know we had done it. I should point it out because it was an important point of principle. This amendment concerned a suggestion that when a person was charged with stealing property under the value of $400 an option was given to the prosecution as to whether they charged him with a summary offence or an indictable offence. The provision to be found at the bottom of page 15 of the Bill - subsection (4) of section 426 - is a fairly important one. It says -

> (4) If -
>
> (a) a person is charged before a Court of Petty Sessions with an offence under section 378 or 414 . . .
>
> (b) the value of the property in question does not exceed $400; and
>
> (c) the charge is dealt with summarily under subsection (2) or (3),
>
> the person charged is liable on summary conviction to imprisonment for six months or to a fine of $2 000.

The amendment to that would have given the Crown the opportunity to decide whether to charge people summarily or on indictment. If they decided to charge someone summarily he would have been liable to conviction before a magistrate without the protection of a jury, but then the magistrate could have formed the opinion that it was a serious case and referred it back to the District Court for sentence, and the offender could then have received a sentence

that was applicable to an indictable offence. It sounded like a pretty tough situation, so the Committee restored it to what it was when it last appeared before this Chamber; that is to say, if a person were to be charged summarily at the option of the prosecution, that option having been taken, the offender at all times remained before the Court of Petty Sessions and was liable only to the penalty which could be imposed by that court.

The situation is different under the Criminal Code, where the defendant exercises the option and he can find himself up before the District Court for sentence under the higher penalty should the magistrate so decide. However, we thought it was unfair in circumstances where the prosecution made that decision. So essentially, within the Criminal Code there are really two offences - an indictable offence and a summary offence - the elements of which are identical, but once the prosecution has decided how it will proceed it remains for all purposes that kind of offence and cannot be shifted back again. The ability to have both is fairly important, because the last time this was amended the Supreme Court came to the conclusion that the making of an offence of theft under $400 had abolished the alternative indictable offence of stealing something under the value of $400. The Committee has restored that situation so that there is that choice. Of course, it is up to the prosecution to make up their minds as to what is the seriousness of the offence and to charge the offender accordingly.

Clause put and passed.

Clauses 30 to 43 put and passed.

Clause 44: Section 557 repealed and a section substituted -

Hon PETER FOSS: This clause is a most unusual one, and it was seeking to repeal a section which dealt with the possession of explosives and provide that this one be substituted. The Committee could understand that if someone was wandering around with explosives he could reasonably be called upon to explain why he had them and that under those circumstances it might be acceptable to reverse the normal situation and say that if he could not give a reasonable explanation he should be guilty of an offence. This one went a lot further because it says -

> Any person who makes, adapts or knowingly has possession of any thing under such circumstances as to give rise to a reasonable suspicion that it has not been, or is not being, made, adapted or possessed for a lawful purpose is guilty of a crime and is liable to imprisonment for 5 years.

To give an example, if someone bought a pirate tape in Bali and brought it back here, he could not play it lawfully because it would be a breach of copyright. Therefore, if he were found with a Balinese pirate tape and asked to explain why he had it, he would have great difficulty in showing that he had it for a lawful purpose because it would be most likely that he had it for the unlawful purpose of breaching copyright.

If a child had a shanghai and intended to fire it at native birds or at the neighbours' windows, instead of being picked up for a minor offence that child would be charged under section 557 and be liable for imprisonment for five years. That opened up an enormous ability for the police to ask people why they carried that type of object; if one could not give a reasonable excuse one could be charged under that section. We were not reassured by the statement by the police that they would only use that power in certain cases.

Clause put and passed.

Clauses 45 to 52 put and passed.

Clause 53: Section 32 amended -

Hon W.N. STRETCH: This clause provides for amendments to the Bush Fires Act. The penalties will move from $4 000 or five years' imprisonment for wilfully starting a fire to the recommendation in this legislation that people pay $50 000 - and subsequently increased by the Legislation Committee to an amount of $250 000. Could the Attorney or a member of the committee explain the rationale in that? What consultations took place with the Bush Fires Board personnel? I do not query the need for heavy penalties for the offences mentioned because they represent some of the worst kinds of offences. Arson is particularly dangerous in country areas. I do not resile from that at all but I wonder about the rationale applied to the penalties.

Under section 32 of the Bush Fires Act a person who wilfully lights or causes to be lit or

attempts to light a fire, or places a match or other inflammable or combustible substance, will face a very heavy penalty - and rightly so. But, under section 30 of the Bush Fires Act, during the restricted burning times or prohibited burning times for a zone of the State a person shall not dispose of burning tobacco, or a burning cigarette - and the penalty remains at $200. I am interested to know whether the act of discarding a cigarette butt and incidentally setting fire to 100 000 square miles of grassland is a wilful act and incurs the $250 000, or whether a person who discards a cigarette butt - and that is regarded not as a wilful act - will receive only a $200 penalty. The two penalties are incongruous. Did the Legislation Committee address that in its recommendations?

Hon PETER FOSS: The Legislation Committee made that amendment because the same offence in the Criminal Code had that penalty and we are making that consistent with the Bush Fires Act. It was not a matter of going to the Bush Fires Act and making it internally consistent. It was making that Act consistent with the same penalty in the Criminal Code.

Hon W.N. STRETCH: Were all the penalties in the Bush Fires Act reviewed or are they not ones that come under this review of the Criminal Code?

Hon PETER FOSS: It was purely because otherwise we would have had an inconsistency between the Criminal Code penalties and the Bush Fires Act penalties. We were not looking at the Bush Fires Act. This Bill is to amend the Criminal Code principally and there were consequential amendments to those other Acts because of changes made to the Criminal Code.

The Bill is intended to pick up recommendations in the Murray report on the Criminal Code; we just happened to have those other ones recommended to us to avoid any inconsistency between the Bush Fires Act and the Criminal Code. The Coroners Act, the Justices Act, and the Child Welfare Act were amended to pick up changes in the Criminal Code. During the proceedings of the committee the Parliamentary Counsel mentioned those other Acts affected by amendments to the Criminal Code. Our sole intention at that stage was to pick up the consequences of amendments to the Criminal Code. We did not consider the Bush Fires Act.

Hon W.N. STRETCH: I thank my colleague and the Attorney General for the explanations provided. I draw the attention of the Attorney General to the inconsistencies in the Bush Fires Act and suggest that he look at those penalties in section 30 because these matters are of serious concern to my constituents.

Hon J.M. BERINSON: The best I can do is to refer the matter to the Minister responsible for the Bush Fires Act. I will do that.

Clause put and passed.

Clauses 54 to 62 put and passed.

Title -

Hon J.M. BERINSON: It is apparent, having gone through this procedure, that it would have been a nightmare to attempt to deal with the amendments in the traditional way. We have been enormously assisted by the form of the Bill which the Clerk has developed. I am sure this has expedited proceedings no end but more importantly has made the position in this extensive piece of legislation much clearer.

Hon GEORGE CASH: I commend the members of the Legislation Committee for the work they have put into this legislation and, indeed, for the explanations provided during the Committee stage. As we all know, the newly developing committee system is somewhat in an experimental form. All members would agree that the form in which the amendments have been put - that is, the new format developed by the Clerk - has greatly assisted proceedings, but more importantly the form in which the report of the Standing Committee has been put to the Chamber has enabled all members to follow the Committee stage with great ease. It has provided a better understanding of what could have been a very complicated Bill had we attempted to amend it as the committee has recommended during the normal Committee stage.

On behalf of the Opposition I commend the members of the Legislation Committee who took part in proceedings.

Hon GARRY KELLY: Picking up on the comments made by the Leader of the Opposition

in relation to the experimental nature of the Legislation Committee, this is the first piece of legislation considered by the committee. We were thrown in at the deep end. It took us a while to find our feet and to devise procedure, which we are still doing; in fact, we will be holding deliberations tomorrow to find a more appropriate way of handling these matters. This is a complicated Bill and for the non-lawyers on the committee it was even more so. However, as commented upon by the Attorney General, the amendments appearing with the deletions struck out and the additions underlined makes them much easier to deal with in the Chamber. This is in contrast to having pieces of paper floating around with members being unsure as to which supplementary Notice Paper is being referred to. That is something that should be emulated by another Chamber in this Parliament.

Title put and passed.

Bill reported, with amendments.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL

Committee

The Deputy Chairman of Committees (Hon Garry Kelly) in the Chair; Hon Graham Edwards (Minister for Police) in charge of the Bill.

Clause 1: Short title -

Hon GRAHAM EDWARDS: The Government is prepared to accept the amendment proposed by Hon Murray Montgomery. It was my intention to argue against that amendment for reasons that might become apparent a little later; however, having listened intently to debate on the previous Bill, I am inclined not to argue against it. A little problem may arise if the amendment proposed by the Leader of the Opposition relating to appeal procedures is carried because it may not be possible for the changes to be put into effect by the tribunal. However, this matter could be potentially considered in another place because if the amendments are carried, they will go to the other place. If difficulties arise in that situation, they can be accordingly addressed in the other House. I forecast this for the information of members.

Clause put and passed.

Clause 2: Commencement -

Hon MURRAY MONTGOMERY: I move -

> Page 1, lines 6 and 7 - To delete all words after "on" and substitute the following -
>
> the day on which it receives the Royal Assent.

I will not take a great deal of time over this amendment as we spoke about it during the second reading debate. It aims to implement the Bill as quickly as possible. The amendment speaks for itself in that it will result in commercial tenants having protection as soon as possible.

Hon GEORGE CASH: I support the amendment because, as I made clear during the second reading debate, I want this Bill to progress as swiftly as possible given its rather difficult passage on its way through the other place. Members would be aware that originally this Bill was introduced in the other place in mid-1989. The Bill seemed to get lost, or the Government lost its desire to pursue it, as it did not reappear until late 1989. Once again it did not surface until 4 July this year when it was debated in the Assembly and sent to the Legislative Council for consideration. We were unable to consider the Bill last session due to the fact that it was not one of the priority Bills as set out by the Government.

Hon Murray Montgomery's amendment should be carried because, as members would be aware, section 31 of the principal Act requires that as soon as practical after September 1990 the Minister should "cause a review and investigation of the principal Act to be conducted". Unless these amendments are carried we will be put into a position in which these amendments will not form part of the general review which will take place in due course. I am sure that it will be a reasonably lengthy review, and it will not assist small business in Western Australia if these amendments are not carried in their proposed form.

The Minister stated that my proposed amendment may cause some difficulties. I remind the

Minister that as a result of the debate on the previous Bill tonight it is known that section 25 of the Interpretation Act provides for a case in which certain matters are able to be proceeded with even though certain provisions have not come into effect. Therefore, the amendment I intend to move will not cause any difficulty given that the whole matter will come up for review in a very short time. I support the amendment.

Hon GRAHAM EDWARDS: I reiterate what I said earlier: It may well be that the amendment to be moved by the Leader of the Opposition does cause some difficulty. If it does, we will have the opportunity to identify those difficulties. However, there is no reason that the Government cannot accept the amendment at this stage.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 3: Principal Act -

Hon PETER FOSS: I should reveal the fact that I am not keen at all on this Bill as a basic piece of legislation. What I say is predicated to this extent. This is an Act which the Government is trying to get right. When it was first introduced I thought it was a dreadful piece of legislation and I have not changed my view of it. Some things have happened which have illustrated some peculiarities in the legislation; the definition of landlord is one of them. One of the effects of this definition combined with the remaining provisions of the Act is that people who take over premises, and are the successors in title of a piece of land, are liable for the representations made by their predecessor in title. The proposed definition of "landlord" in relation to a lease, means -

(a) the person who, under the lease, grants or is to grant to the tenant the entitlement to occupy the premises the subject of the lease; or

(b) a person who obtains a reversionary interest in those premises,

A person could obtain a reversionary interest by purchasing the premises after the misrepresentations have been made. All that person has done is to come along and perhaps buy a shopping centre and has paid a lot of money for it. He finds that the person who sold it to him breached the Act in terms of representation by certain statements and that person is liable; not the person who made the misrepresentations, but the person who bought the property. I wonder whether we have the appropriate balance?

I have had problems with the balance of this Bill because the people who buy or build shopping centres are not to be disregarded entirely. I know that lessees have a problem if they put all their worldly wealth into their business. They may not have a great deal of financial clout, but it must be taken into account that the people who own or build the premises have committed themselves to an even greater amount of money. If it were not for their having the foresight, putting up the money and taking the risk of building, there would not be a shopping centre for people to lease. The person who has purchased the shopping centre has probably made a greater commitment than the lessee. The lessee may have committed himself to a certain period on his lease, but if things go too badly he can get out and leave. However, if the owner is finding that times are hard and he cannot fill all the shopping centre, he will have difficulty getting out. We must not see this as purely a matter of ownership - people with lots of money putting down small people with small amounts of money.

The definition of landlord causes problems, and although it might be a mere convenience to put it at the front of the Act, it applies throughout the Act. I query the justification of putting a provision in the Act which renders a landlord, who has merely bought into premises, liable for misrepresentations and statements made by his predecessor in title. It would have been quite sufficient for that right of action to be against the predecessor of the title. It is even more extraordinary when one thinks that the landlord, due to provisions inserted in this Bill in the other place, does not have any right of action against the person with whom he is entering into a contract if that person exercises a right of assignment and gets out. If the lessee assigns the lease the landlord has no rights against the person who has left, but the landlord is liable to the person who is coming in. The landlord might be a person who has had nothing whatsoever to do with events which have led to the liability. However, he may find himself in a double bind. He may be liable to people in the premises to whom he has made no misrepresentations, but the person he contracted with, and against whom he thought

he had a right of action, has left and he is stuck with something in which he had no choice because the lessee has a statutory right to assign a lease. I do not think that is an appropriate balance. I think that may have come about by accident because the amendment was made for a particular purpose. I can see that there may be reasons for a change in the definition of landlord, but in this case it is not necessary.

Hon GRAHAM EDWARDS: Landlords have certain obligations to tenants, and a person who obtains a reversionary interest in those premises has the same obligations as the previous owner. I believe this Bill is about balance. It is a matter of how one sees that balance. An attempt has been made to find that balance through consideration and consultation. I do recognise that a situation which involves a landlord and a tenant generally revolves around consumer law, which has two sides. In drawing this legislation together that has been recognised and a balance attempted to be found.

Hon PETER FOSS: One should try to distil the difference in the balance that has been set between landlord and tenant. A person can go into a shopping centre, enter into a five year lease and assign that lease to somebody else notwithstanding any wish of the landlord, and the only right the landlord has to object is if the person is not a suitable person to take over the lease. That person then is completely freed of all liability under that lease. He freely entered into a contract for five years, but he has been able to assign it to somebody else, and he has no obligation under the contract that he originally entered into. On one side we have said that the lessee can enter into contractual obligations, and he can also get out of them. On the other side, under this proposed definition the landlord may have nothing whatsoever to do with the transaction. He made no misrepresentations; all he did was come along and buy a piece of land, yet he is bound to pay for the misrepresentations of his predecessor in title. That has a double standard when lessees are not obliged to carry out their contractual obligations yet landlords are obliged to carry out the statutory obligations of their predecessors in title - people over whom they had no control and no real way of finding out whether misrepresentations were made. This Bill is a very strange balance indeed.

Hon D.J. WORDSWORTH: This is obviously socialistic legislation designed to try to help what is thought to be the underdog. In fact, it will end up with the demise of the person it is trying to help. When one builds a shopping centre, one must provide a number of different shops, including newsagents and chemists, for the convenience of the customers. The same rentals cannot apply to all shops because they are not all equally profitable. Hon Peter Foss pointed out that once the builder of a shopping centre has leased it, he has no further say in it. It is well known that a very high rental can be extracted from a bank, for example. However, one would put only one bank into a premises because a mix of shops is required.

There is nothing in this Bill to stop the original lessee from negotiating the best result for himself, and the original mix is then lost. This State Government has made a habit of leasing space in the city at very favourable rates when buildings are first opened. I do not criticise it for that. It is able to do that because buildings are difficult to lease when they are first opened. Obviously, in the same way developers of shopping centres have to grant cheap leases in the first place to get them going. Many of the shopping centres are built before the surrounding houses are constructed and cheap leases have to be offered.

Hon Peter Foss: A rental holiday.

Hon D.J. WORDSWORTH: That is right. However, this Bill does not allow for any increases. Any increase in value goes to the original holder of the lease. The situation is quite ridiculous. In the end, a code of practice will have to be developed as it has been developed in New South Wales and as is under consideration in Queensland and Victoria. One of the reasons we are being urged to put this Bill through quickly is that a review of the whole situation is necessary.

Hon GRAHAM EDWARDS: The member made broad comments on his perception of the legislation rather than restricting himself to comment on the clause with which we are dealing. The weaknesses that he conceives may be flushed out during the review.

Hon GEORGE CASH: I have had the opportunity of speaking to members of the small business community, the Australian Small Business Association, the retail tenants association and the Building Owners and Managers Association of Australia Ltd. BOMA provided me with comments which I think should be read into *Hansard* not necessarily to

indicate that I support everything that is said by BOMA, but to give some balance to the argument. I will refer to the notes that have been provided to me from time to time because it is important that members of the review committee are aware of the discussion that has occurred both in this place and the other place. It is clear that BOMA has a preferred position on a code of practice. Hon David Wordsworth stated that such a code of practice has been established in New South Wales with the full support of retail and landlord groups. BOMA in Western Australia is likely to put forward that proposition when the committee of review considers the workings of the Act.

There should be no doubt in anyone's mind that, when one is dealing with agreements between landlords and tenants, the Government's entering the negotiations as a third party to try to right the imbalance that some people allege exists often causes more problems than it solves. That is something which small business people and BOMA must recognise. BOMA should not believe that legislation will be written to serve its interests. Equally, the small business community should believe that this Parliament will not pass legislation that causes it to be put in a position superior to the landlords. Some balance, therefore, must be struck.

I am prepared to support many of the amendments contained in this Bill because they were vigorously discussed in the other place and significant amendments were made. BOMA and the small business community have indicated that they are prepared to accept these amendments, although not necessarily with open arms. It accepts them with the very clear understanding that both parties want to have substantial input into the review process. The sooner that comes about the better.

Clause put and passed.

Clause 4: Section 3 amended -

Hon GEORGE CASH: The notes that have been provided to me by the Business Owners and Managers Association state -

> Because the anti-avoidance provision is now extended to any agreement entered into after entering into the retail shop lease, this would have the effect of making a "surrender of lease" void if it occurs within the 5 years of occupation guaranteed under the Act. Application would have to be made to the Registrar, under section 13(7). Surrender of lease is invariably sought by a lessee, usually where they are in dire circumstances, and delays in approval by the Registrar may not be in the best interests of the tenant.

That matter needs to be considered in due course because, as has already been stated, usually the small business tenant finds himself in difficult financial circumstances when the economy tightens and the provisions of the principal Act and the amendments as they are currently written could work against the interests of the tenants.

Clause put and passed.

Clause 5: Section 6 amended -

Hon GEORGE CASH: Under this clause the question arises as to the wording of disclosure statements, the information provided and the time at which that information is provided to the tenant. On some occasions, particularly when information is provided to a tenant some time before the centre is completed, by the time the tenant signs the lease circumstances have changed somewhat. It is important that the landlord not be disadvantaged as a result of changes which may have occurred and which are outside the earlier commitments made to the tenant.

With the construction of premises taking as long as it does, the effluxion of that time could result in information initially provided by a landlord being incorrect at the time of the opening of the centre. I seek advice from the Minister as to whether that would give rise to a situation in which the tenant could take action against the landlord for the information provided originally in good faith.

Hon GRAHAM EDWARDS: I am advised by Parliamentary Counsel that if the information was correct when given, the landlord would not be in breach of the legislation.

Clause put and passed.

Clause 6: Section 9 amended -

Hon GEORGE CASH: I move -

Page 5, after line 8 - To insert after subclause (c) the following -

(d) any sum that the tenant has agreed to pay to the landlord in respect of the transfer from the landlord to the tenant of a licence issued under the Liquor Licensing Act 1988.

The reason for this amendment is that in some cases the landlord who builds premises may apply for and be granted a liquor licence, but he may not intend to conduct the business as a liquor merchant. The provisions of the present Act would preclude the landlord from selling that licence to a tenant and receiving a premium for it, and that is obviously a disadvantage to the landlord. I understand that it probably is not the intention of the Government to create such a situation, even though it is acknowledged that such circumstances would probably occur on some occasions. There is a need to protect persons who have invested money in premises and been granted a liquor licence but who have not traded as a liquor merchant; they should be able to receive a premium for that licence.

Hon GRAHAM EDWARDS: I fear that the Opposition and the Government have a problem in this area and differ quite significantly in their views of the balance to be struck. If the Government agreed to the proposed amendment, liquor store tenants could continue to be faced with paying up-front fees. The whole principle of this Bill is to get away from tenants paying up-front money, no matter in what form it is disguised. Nothing in the Bill outlaws the legitimate practice of an owner/operator of a liquor store selling the business and receiving a goodwill payment while retaining ownership of the premises. The proposed amendment seeks to set liquor outlets apart from other business concerns, and it moves away from the basic premise and principle of the Bill.

Hon PETER FOSS: This raises the topic of another dreadful piece of legislation which was passed in this Chamber before I became a member. I refer to the abominable legislation which dealt with liquor licences and amended the Liquor Licensing Act. A liquor licence is often a very important asset acquired by the owner of property and it can involve him in considerable expense making certain that the premises are built to specification. He must usually go through a court case to get the licence and his application may be subject to objections from certain people. Under the amendments to the Liquor Act, if an owner lets licensed premises the lessee can walk off with that licence at the end of the lease period. It is the most extraordinary appropriation I have ever come across. It is astounding legislation and outrageous that it should have been passed.

Hon Mark Nevill: They cannot use that licence elsewhere.

Hon PETER FOSS: Unfortunately that is the situation. I know it sounds incredible, but I understand that Bill was passed by this Parliament. The landlord can spend a lot of money acquiring that capital asset in order to make those premises desirable, and the tenant can walk off with that capital asset and use it elsewhere. Why is it necessary to include in this Bill the provision that the owner must use that licence as part of the premises before he can charge a premium? It is not as though the owner is letting the licence to the tenant because the tenant has the right to walk away with it. If the tenant cannot be charged for the licence but can walk off with it at the end of the lease, that is an appropriation, if ever I have heard it.

Hon GRAHAM EDWARDS: In the situation described by Hon Peter Foss it may well be the case that the tenant has vacated the premises and taken the licence, but the landlord is left with the building.

Several members interjected.

Hon D.J. Wordsworth: That is a great thing!

Hon GRAHAM EDWARDS: Is that the case or is it not? The landlord is left with the building. I said earlier that this is the clause on which the Government and the Opposition part company and the matters which have been raised by Hon Peter Foss should be dealt with via the Liquor Act.

I come back to the basic premise; that is, there is nothing in this amendment which refers to the landlord trading in the liquor business. We are talking about a situation where a landlord who owns a shopping centre, or whatever, has set up a liquor outlet for someone else to operate.

Hon GEORGE CASH: I refer the Minister to paragraphs (a) to (c) and he should then read proposed paragraph (d). Paragraph (c) means that the landlord had to be carrying on the business prior to its being transferred. Situations do arise in relation to liquor licences and I instance a country town situation in which a landlord develops a substantial retail area, provides special additions to it and fits out the premises in order that it can accommodate a liquor licence. He does not wish to trade as a liquor merchant but wants to pass on his licence to a tenant. Unless he is able to receive some sort of premium for having developed the premises and paid for the extras to create a facility to gain a licence he will be put at a tremendous disadvantage. Not everyone is in the business of being a liquor merchant. As an incidental part of his development a developer includes facilities for a liquor outlet in order that the premises is viable. Therefore, there is a need to include this amendment so that people who find themselves in this position are not disadvantaged. I have taken advice on this matter and have been told that it is necessary to include this amendment and it will not conflict with paragraphs (a) to (c), but is very much an adjunct which is necessary for certain cases as they arise.

Hon GRAHAM EDWARDS: Members on this side of the Chamber do not have any difficulty with anyone the Leader of the Opposition has described receiving a fair and reasonable return, but they do have difficulty in that fair and reasonable return being by way of a premium. If the outlay, under the circumstances which have been described, is made it is the Government's view that the return should be expressed via the rent and not via a premium.

Hon PETER FOSS: The Minister has not considered the one basic problem which exists; that is, once the person has the licence transferred to him he has the right to that licence and it cannot be taken into account in the market value of the premises. The Government has created the problem because it has included an obligation to undertake a valuation on the basis of market rental and if a developer does not own the premises he cannot ask for it to be included in the market rental. This Bill and the Liquor Act prevent the owner from gaining a proper return on the premises - he cannot include it in the rent, he cannot obtain a premium and he no longer owns the licence because the tenant can walk off with it. It is rather like saying that the developer has fitted out the premises with shelves and fridges which belong to him as the landlord and then a law is promulgated stating that tenants can walk off with the fridges and shelves; the tenant cannot be charged for those items and while he is trading from the premises those items cannot be included in the rent.

The Minister has not answered my question: If someone rents one's home while he is on holidays and the person renting his home takes a fancy to his furniture and removes it, it would not be right for him to be told that he should be happy he still has his house.

Hon GRAHAM EDWARDS: The difficulties perceived by the Opposition should be addressed by an amendment to the Liquor Act. Of course the fittings and fixtures will be considered in determining the rent. I advise Hon George Cash that in determining the market rent consideration of the use of the premises can be taken into account.

Hon Peter Foss: Not for a capital asset of the licence - there is a difference.

Hon GRAHAM EDWARDS: The Government is strongly of the view that the return should not be expressed by way of premium, but by way of rent.

Hon D.J. WORDSWORTH: I find this Government a little hypocritical. I remember a debate in this Chamber concerning the difficulty the Lake King community had in obtaining a licence to enable a few hundred people in the town to obtain a drink. The Government charged them $30 000 for the privilege of that liquor licence. They were told that they should buy a hotel and transfer the licence of it to a premises in Lake Grace. The whole thing is quite ludicrous and if the Minister believes what he is saying perhaps he can proclaim this legislation after he has amended the Liquor Act.

Hon GEORGE CASH: The Minister is suggesting that if the owner of a development paid a premium to fit out a liquor store or a hotel premises and he carries on the business in that premises immediately before a lease was entered into, he is entitled to a premium and that is outlined in paragraph (a) of clause 6. The owner may receive a premium in the vicinity of $100 000 or $200 000 depending on what sort of premium can be attached to the licence. Is the Minister saying he has to go through the process of stocking the premises and trading for

a period of time, even though it may not be his profession, to claim a premium under paragraph (a). Clearly that can be done in a technical way and it would not be in breach of the law. I hope that is not what the Government is working towards. I am talking about situations, possibly few and far between, in which developers, as part of their project, are able to fit out a liquor premises and gain a licence, but do not intend to trade the licence themselves, but make it an integral part of the total development.

That might lend some support to other retail establishments that may be operating or established within the complex. The Minister is saying that the landlord, the owner, is not able to claim any premium and that it has to be recovered in rent. In pure commercial terms it is just a nonsense. It cannot work and can only work against those other tenants in the establishment. This would actually preclude them from trading in the best possible manner.

Hon GRAHAM EDWARDS: I think members will recall that among the changes made to the Liquor Act were ones to prevent landlords trading in licences. Hon George Cash is saying that if the person set up the shop, fitted it out and traded, by trading the person would have built up the goodwill and would then be entitled to benefit from the goodwill established.

Hon PETER FOSS: While the Minister is defending the indefensible, will he comment on whether the Government is prepared to introduce amendments to the Liquor Act to get over this iniquitous situation where people can be deprived of an asset into which they have put good money and time? That is what the Minister is saying, that the difference between liquor licences and fixtures and fittings is, first, that at the end of the period the tenant cannot wander off with the fixtures and fittings. That is one difference.

Secondly, during the period of the lease the person can get some rental recognition for the fixtures and fittings whereas with the liquor licence a person cannot do that because by that stage it is in the hands of the tenant. That is the big difference. The person is deprived of this capital asset and cannot pick it up at the end, or at the beginning. All he can do is go to this artificial situation referred to by Hon George Cash of pretending to open up for a day or so after buying some grog so he can get it. That is ludicrous. What the Government seeks to do is indefensible and has not been thought through. Now that has been explained in this Chamber the Minister should back down gracefully.

Hon GRAHAM EDWARDS: What Hon Peter Foss is suggesting is ludicrous. I am not in a position to commit the Government to those changes to the Liquor Act at this time. My view is we should put the matter to the test.

Amendment put and a division called for.

Bells rung and the Committee divided.

The DEPUTY CHAIRMAN (Hon Garry Kelly): Before the tellers tell I cast my vote with the Noes.

Division resulted as follows -

Ayes (13)

Hon J.N. Caldwell	Hon P.H. Lockyer	Hon R.G. Pike
Hon George Cash	Hon Murray Montgomery	Hon D.J. Wordsworth
Hon Reg Davies	Hon N.F. Moore	Hon Margaret McAleer
Hon Peter Foss	Hon Muriel Patterson	*(Teller)*
Hon Barry House	Hon P.G. Pendal	

Noes (12)

Hon J.M. Brown	Hon Garry Kelly	Hon Doug Wenn
Hon T.G. Butler	Hon Mark Nevill	Hon Fred McKenzie
Hon Graham Edwards	Hon Sam Piantadosi	*(Teller)*
Hon Tom Helm	Hon Tom Stephens	
Hon B.L. Jones	Hon Bob Thomas	

Pairs

Hon Max Evans	Hon John Halden
Hon W.N. Stretch	Hon J.M. Berinson
Hon Derrick Tomlinson	Hon Cheryl Davenport
Hon E.J. Charlton	Hon Kay Hallahan

Amendment thus passed.

Clause, as amended, put and passed.

Clause 7: Section 10 repealed and a section substituted -

Hon D.J. WORDSWORTH: This concerns assignment of a sublease and the fact that a tenant has the right to lease or sublease without the landlord being able to withhold consent. I was humorously thinking, as one is wont to do in this place, of walking down Hay Street past the Red Garter, I think it is called. I have often looked at the shop next door, which is usually empty.

Hon T.G. Butler: What is the Red Garter?

Hon D.J. WORDSWORTH: I understand it is a -

Hon T.G. Butler: Oh!

Hon D.J. WORDSWORTH: It is open until 3.00 am. This is a premise under the containment policy, I am told. I suppose that best describes it. Say, for instance, Hon Tom Butler had his electoral office sharing a common portico with the shop next door and the person beside him decided to sell his lease to the highest bidder. I think Hon Tom Butler would be somewhat embarrassed.

Hon T.G. Butler: I think the Red Garter would be impressed.

Hon D.J. WORDSWORTH: It would. Another thing that might be more easily digested is that he could end up with a Chinese restaurant next door. That would be handy. I know the Labor Party loves Chinese restaurants, but restaurants do give off awful odours and can be a damned nuisance under certain circumstances. Landlords may not want them in a shopping centre or in a certain part of it, and they try to make provision for that. That is why earlier I tried to draw the attention of the Minister and other members of the Government to the difficulty that landlords face when they try to assemble a whole complex and set it aside according to a plan. I am afraid this would allow that plan to be completely blown to bits. The least we could do is say that the person has to carry on the same business for which the premise was originally leased. In other words, if a person says he is going to establish a newsagency, the least that should be written in there is that it should continue to be a newsagency.

Hon GRAHAM EDWARDS: I refer the member to the actual wording of the section, which is that a retail shop lease shall be taken to grant to the tenant a right to assign the lease, subject only to a right of the landlord to withhold consent to an assignment on reasonable grounds.

Hon D.J. Wordsworth: That is right, so we can get into an argument about what is reasonable grounds.

Hon GRAHAM EDWARDS: We have a mechanism to determine what is reasonable grounds.

Hon D.J. Wordsworth: What is that?

Hon GRAHAM EDWARDS: The registrar would attempt to mediate the situation, and if he could not, it would be referred to the tribunal for a decision.

Hon D.J. Wordsworth: That is correct, and if the registrar were as socialist as this Government is in its intentions it would say, "To hell with it."

Hon PETER FOSS: I do not like subsection (3), which says -

> A provision in a retail shop lease to the effect that the landlord or a person claiming through him may recover from a tenant, who assigns the lease in accordance with this section, any monies that are payable under the lease by the tenant to whom the lease has been assigned is void.

This means that the person who has entered into a lease, who may be a person that the landlord wants to take on because he seems to be a good tenant, with plenty of money, and who has signed up for five years, may exercise his right to assign the lease under the section, and go away, and the landlord will get someone else. The landlord could object to this on reasonable grounds, but he may not be able to show that the new tenant should not be accepted. The new tenant may not have quite the same financial worth as the tenant with whom the landlord started off, yet the landlord will not have any right to recover from him if he goes.

So on the one hand there is an obligation to take these people, but on the other hand a person who says he is signing up for five years can wave goodbye and disappear, and the landlord will have no right of recovery against him. That is contrary to the usual rules of assignment of benefit. The assignment of benefit could become the assignment of burden and the landlord could take on an obligation that he would be stuck with. This is a strange amendment, and I do not see the justification for it. If a person takes on an obligation why should he not carry out his obligation? It is one thing to have the right to get somebody else to take over the lease but it is another thing altogether to be completely released from the contractual obligation which was taken on in the first place.

Hon GRAHAM EDWARDS: I want to take advice on the matter raised by Mr Foss and it is appropriate that we report progress.

Progress

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

ADJOURNMENT OF THE HOUSE - ORDINARY

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [10.37 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Parliament 100th Anniversary - Celebrations Failure

HON P.G. PENDAL (South Metropolitan) [10.38 pm]: I want to draw the attention of members and of the Government to a matter that warrants some special action on the part particularly of the Government in the next couple of weeks. As members would know, this year marks the 100th anniversary of the introduction into Western Australia of responsible Government and the two House system of Parliament. The community, however, could be forgiven for thinking that there was nothing at all to celebrate. We are now in the position, late in August, where the year is two-thirds of the way gone, and certainly there would be few in the wider community who would know that we have been celebrating any sort of a significant event. Few civilised communities in the world would be in a position to boast of a 100th anniversary of the introduction of a new Constitution. For all of the perceived shortcomings of that Constitution and of our system of Parliament and Government, there are still few countries in the world or few regions or States that could boast of the stability that that system has brought to Western Australia.

I am an original member of the Parliamentary History Committee, and I want to place on record tonight my concern about the failure of - whether it is the Parliament or the Government, I do not know - the authorities to do anything significant to celebrate this event in the wider community. I am aware that events such as the student Parliament will soon occur, and that is an excellent idea as far as it goes. In fact, that idea grew from the committee of which I am and have been a member since 1982.

I am also aware of the excellent work being done under the chairmanship of Professor David Black, who is producing a series of new books on the 100th anniversary, but it still seems to me that those efforts to celebrate this event are modest by any standards. It is significant that the extent to which we are making any effort to celebrate our 100th anniversary are coming from within the Parliament. I put it to you, Mr President, to the members and to the Minister temporarily in charge of the House tonight, that the Government's response has been sadly lacking in what should have been a very significant year.

Only a couple of weeks ago another significant political milestone in Australia was marked, and that was the 100th anniversary of the formation of the Australian Labor Party. That

anniversary, which was celebrated thousands of miles away from here, in fact in Queensland, generated more activity and commitment on the part of the Australian Labor Party - as indeed it should have done - than has the 100th anniversary of responsible Government in this State received from this State Government.

Last week the 15 August milestone was passed with but a ripple of community recognition. I am aware that a seminar was held in Parliament House. That was a seminar which grew out of the parliamentary system. The next major milestone to come up for celebration will occur on 21 October this year when we will celebrate the proclamation date, an event which took place in Perth in the presence of the Governor in 1890.

It is still not too late for the Government to begin to take this anniversary seriously. I hope that between now and 21 October the Government will see fit to put some more serious effort into a series of events - events which I suggest would have attracted enormous Government involvement were it to have happened anywhere else in the world. Is it not ironic that at a time when the people of eastern Europe are fighting for the right to establish democratic constitutions, Western Australia is in the unique position of celebrating 100 years of its Constitution, yet not one half of one per cent of the people of Western Australia know anything about it? This event this year is at least as significant in the parliamentary sense as the sesquicentenary of Western Australia's foundation was in 1979, yet there is no comparison whatsoever between the effort put in by the Government in 1979 and the lack of effort put in by this Government in the year 1990. It is a great tragedy that the people of Western Australia have not been invited to take part in meaningful celebrations. However, the point of no return has not yet been reached, and I ask the Minister temporarily in charge of the House to ensure that my remarks are passed on to the Leader of the House, and in turn to the Premier, and to anyone else within Government ranks to see that that position is redressed before the passing of a great anniversary occurs without even a flicker of interest on the part of the wider Western Australian community.

Adjournment Debate - Peake, Brian - 400th Australian Rules Football Game - Perth Football Club Commendations

HON T.G. BUTLER (East Metropolitan) [10.44 pm]: I apologise to members for prolonging this debate, but I do not want this opportunity of the adjournment debate to go past without placing on record my appreciation and commendations of the Perth Football Club for making it possible for Brian Peake to celebrate his 400th senior game of Australian rules football. Peake is only the seventh Australian Rules footballer to reach that milestone. He is only the second Western Australian to achieve it. The other is Barry Cable. It was interesting to read in the *Football Budget* that they both reached that milestone on 11 August.

Peake is one of the most decorated Australian Rules footballers to play in Western Australia. He has a record of achievement second to none. His 400 games included 304 played for East Fremantle, 66 for Geelong, 22 for Western Australia and seven for the Perth Football Club up to 11 August. His attitude to the game and sense of fair play is and has always been a credit to Australian Rules football. He won the Sandover Medal in 1974 and the Tassie Medal in 1979. He captained Geelong for two years, and I think he captained East Fremantle on seven or eight occasions. He captained Western Australia on about four occasions and he was Australian captain on two occasions.

The Perth Football Club gave Peake his opportunity to reach his 400th game when the East Fremantle Club, the Western Australian club for which he played 304 games, did not guarantee him the same opportunity. The Perth Football Club for whom Brian played his 400th game treated him as if he had played all his games for that club. The club arranged a veterans' game between former Perth and East Fremantle players. The Perth and Claremont teams, together with the veterans, formed a race to run through into a banner recognising his services. The club also arranged for his young daughter, Kelly, to toss the coin to start the game between Perth and Claremont. In the clubrooms a large screen was provided on which a video clip was shown with some of Brian's past performances for the East Fremantle club and for the Western Australian State teams.

The final gesture was to present Peake with a clip of the video, the football used in the game against Claremont and signed by the players on both sides, and the jumper in which he played his 400th game. The Perth Football Club should have endeared itself to football and sports followers throughout the State by its actions. The East Fremantle club was invited to

participate in the day by an approach to turn the day into a double header by transferring the game from Fremantle Oval to Lathlain Park. This would have attracted a capacity crowd which would have been good for the game. I suppose the club could have argued that it had a chance of making one of the two top positions in the final four and it did not want to risk losing the benefit of its home ground.

I suppose they could point to the result of that game to justify their position. I could say also that they are a part of the final four and East Perth, the team they played on the day, are not, and if East Fremantle could not beat a team outside the final four on a neutral ground their situation leading up to the finals is pretty tenuous because all finals games are played on neutral grounds; but that is by the way.

The Perth Football Club's gesture can be described only as magnificent considering the massive financial burden the club is facing. The fact that the club put that to one side for the day is laudable. I take this opportunity to place on record my appreciation to the club's president, Mr Pendal -

Hon P.G. Pendal: What was that name again?

Hon T.G. BUTLER: Mr Pendal. There are some nice people around. Hon Doug Wenn would be pleased to know that he does have a nice relation. I express appreciation also to the club's executive director, Steve Woodhouse, and to all the members of the committee and those involved on the day. I am very proud that I made the decision in 1946 to select Perth as my team to follow.

Adjournment Debate - Middle East Conflict - Australian Ships

HON TOM STEPHENS (Mining and Pastoral) [10.51 pm]: The date of 22 August now marks the day when Australian sailors left Western Australian shores for the Middle East, and some future historian going through the *Hansard* records might think what a crazy Chamber and what a crazy Parliament this is, that that event could somehow go unnoticed, and that members of this Chamber debated and listened to a range of issues despite the fact that at this very moment our men and our ships are steaming towards the Middle East, no doubt full of apprehension on their own part and on the part of their commanding officers, their families and the communities from which they have come.

I know from the experience that I shared with many people on the wharves this afternoon at HMAS *Stirling* that there was deeply felt apprehension on the part of those sailors' families as they watched those ships steam out of our port. I raise this matter not just for the purposes of the record but also because I know that all of us in this House would want to wish those men well, and will be praying for their safe voyage to the Middle East, hoping that their voyage will lead to peace in that region and peace for the world, and hoping at the same time that all of them will come home safely to our shores.

HON GEORGE CASH (North Metropolitan - Leader of the Opposition) [10.53 pm]: I want to add my support, and that of the Opposition, to the comments just made by Hon Tom Stephens. It is important to note that we have two State Parliaments in Western Australia, and the Liberal Party in the Legislative Assembly this morning moved a motion of support for the action taken by the Prime Minister in committing our naval forces to the Middle East conflict, as it now is.

Hon R.G. Pike: And two Labor members abstained from voting.

Hon GEORGE CASH: While that motion was carried by a majority, I am now advised by Hon Bob Pike that two Labor members abstained from voting.

Hon Tom Stephens: You cannot resist political point scoring.

Hon GEORGE CASH: That disappoints me but I do not take anything away from the support that I and members on this side of the House give to the comments of Hon Tom Stephens. We wish our men well and we sincerely hope that the conflict in the Middle East will be resolved without developing any further.

HON GRAHAM EDWARDS (North Metropolitan - Minister for Police) [10.54 pm]: I thank members for their contributions to the adjournment debate and I can assure Hon Phillip Pendal that I will convey his remarks to the Leader of the House without delay.

Adjournment Debate - Peake, Brian - 400th Australian Rules Football Game - Perth Football Club Commendations

I appreciate the remarks of Hon Tom Butler. I think it is very appropriate that he write into the *Hansard* record of this Parliament his admiration, and I believe the admiration of all members of this House, for the sporting achievements and high standards that Brian Peake has set during his years of involvement in Western Australian football.

Adjournment Debate - Middle East Conflict - Australian Ships

I also note and mark the sincerity of Hon Tom Stephens' remarks in relation to those Australian servicemen who are now steaming off the coast of Western Australia to the Persian Gulf, and to who knows what. I certainly endorse his comments and sincerely hope that by the time they arrive at their destination it will be time to turn around and come home. I note, too, the comments of the Leader of the Opposition and I read some sincerity into what he said. This is not and should not be a debate during which people try to score political points and I am sure that this House would echo the sentiments expressed by Hon Tom Stephens and would wish those people a safe return. While I endorse those comments, however, I remain unconvinced that those servicemen should be going there and I join with many other Australians who would simply have liked to see them going as part of a United Nations force. The fact that they are going there is a matter of concern to all Australians and I sincerely hope that there is no need for them to see action in those waters and that they will have a safe return to Australia.

Several members: Hear, hear!

The PRESIDENT: Before I put the question, if I were allowed to say anything I would endorse the comments of Hon Tom Butler in regard to Brian Peake. As I am not allowed to say anything, I will put the question: The question is that the House do now adjourn.

Question put and passed.

House adjourned at 10.57 pm

QUESTIONS ON NOTICE

EMPLOYMENT - 36 HOUR WORKING WEEK
Developers, Builders, or Unions Agreements

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

(1) How many developers, builders or unions have been prosecuted by the State Government for entering into agreements which would provide for a 36 hour working week?

(2) Is the Minister aware of any developers, builders or unions who have entered such agreements?

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

(4) Did the Minister threaten to cut power and water to building sites and block Government contracts going to offending companies as reported in *The West Australian* on 10 June 1989?

(5) If so, will the Minister provide details of any action taken?

Hon J.M. BERINSON replied:

The following information has been supplied by the Minister for Productivity and Labour Relations -

(1)-(3)

Inspectors from the Department of Productivity and Labour Relations have been unable to find sufficient documentary evidence of award breaches.

(4) Yes, 12 May 1989.

(5) Action in this regard would be inappropriate in the absence of a determination of an award breach.

MOTOR VEHICLES - GOVERNMENT VEHICLES
Disposal - Consumer Protection

495. Hon GEORGE CASH to the Minister for Police representing the Minister for Consumer Affairs:

(1) Is the Minister aware that the State Government vehicles which are purchased free of sales tax and other statutory charges are disposed of by the Department of Services without the warranty, cooling off period, or any liability as to the representations made at a Government disposal auction and without recourse as to the fitness or credit worthiness of the buyer?

(2) As licensed motor vehicle dealers are required to indemnify buyers in respect of each of the matters raised above, is it correct that a Government department can sell a motor vehicle without providing the level of protection to the consumer that is required to be provided by a licensed motor vehicle dealer?

Hon GRAHAM EDWARDS replied:

The Minister for Consumer Affairs has provided the following reply -

(1) The Department of Services is not bound by the provisions of the Motor Vehicle Dealers Act. There are no present requirements for cooling off periods for any motor vehicle trader. The Department of Services disposes of vehicles by way of auction and consumers make their own separate financial arrangements to purchase any vehicle.

(2) Licensed motor vehicle dealers are currently not required to provide a cooling-off period for motor vehicle purchasers. The company providing finance is responsible for ascertaining the fitness or credit worthiness of the buyer.

WATER RESOURCES - COUNTRY WATER SUPPLIES DEVELOPERS' CONTRIBUTIONS TRUST FUND

Country Town Sewerage Developers' Contributions Trust Fund - Fund Transactions

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

In approximately July 1982 the then Public Works Department introduced a country water supply and sewerage policy concerning subdivisions and land development. Advice at the time was received from the Director of Engineering that in general terms all funds received from subdividers and developers are to be credited to the Country Water Supply Developers' Contributions Trust Fund or the Country Sewerage Developers' Contributions Trust Fund as appropriate.

(1) How much money has been collected and paid in to respective trust funds since the introduction of the policy to the present time?

(2) If funds have been expended from the respective trust funds please provide full details of where and how much money has been spent on both water and sewerage works throughout the State?

(3) How much money has been collected from developers or subdividers in the Shire of Exmouth since the introduction of the policy for both funds?

(4) How much money has been expended from both funds in the Shire of Exmouth and detail the areas of such expenditure since the introduction of the policy?

Hon GRAHAM EDWARDS replied:

The Minister for Water Resources has provided the following response -

(1) In accordance with the Auditor General's report for the years 1982, 1984 and 1985, transactions against the Country Water Supplies Trust Fund and Town Sewerage Developers' Contributions Trust Fund were as follows -

COUNTRY WATER SUPPLIES DEVELOPERS' CONTRIBUTIONS TRUST FUND

	1981/82 $	1982/83 $	1983/84 $	1984/85 $
Opening Balance	0	105 985	3 230 646	1 568 451
Receipts:				
Local Distribution Charges	105 985	4 372 520	890 181	1 593 549
Subdivisions	0	1 608 480	1 166 291	1 455 306
Payments:				
Headworks	0	-1 667 415	-2 444 670	-1 851 350
Reticulation	0	-1 188 924	-1 273 997	-1 633 667
Closing Balance	105 985	3 230 646	1 568 451	1 132 289

COUNTRY TOWNS SEWERAGE DEVELOPERS' CONTRIBUTIONS TRUST FUND

	1981/82 $	1982/83 $	1983/84 $	1984/85 $
Opening Balance	0	0	674 226	661 848
Receipts:				
Local Distribution Charges	0	612 928	281 230	620 836
Subdivisions	0	918 704	609 941	644 067
Payments:				
Headworks	0	-111 380	-228 587	-233 495
Reticulation	0	-746 026	-674 962	-674 267
Closing Balance	0	674 226	661 848	1 018 989

As from 1 July 1985, the Trust Funds were closed and the balances were transferred to the Water Authority of Western Australia to be handled in accordance with the Authority's policy on Developers' Contributions.

(2) Refer to (1) above.

(3) During the period that the Trust Funds operated a total of $145 915 is recorded as having been received from developers or subdividers in the Shire of Exmouth.

(4) During the period that the Trust Funds operated, an amount of $47 378 is recorded as having been expended from the Water Supplies Trust Fund and $38 432 from the Sewerage Trust Fund, in the Shire of Exmouth.

HOMOSEXUALS - AGE OF CONSENT CHANGE

599. Hon GEORGE CASH to the Leader of the House representing the Premier:

Does the Government intend to lower the age of consent for homosexuals to 18 years?

Hon J.M. BERINSON replied:

The Premier has provided the following reply -

Since the passage of the current legislation relating to homosexual conduct, there has been no further consideration by the Government of this matter.

BANKS - ACCOUNTS UNDER $5
State Treasury Transfer

637. Hon P.G. PENDAL to the Leader of the House representing the Treasurer:

(1) Is it correct that banks now have to transfer amounts of under $5 to the State Treasury if those accounts have not been operated on for one year?

(2) If so, under what authority does this occur?

(3) How many such transfers have taken place each year in each of the past five years?

(4) What is the total amount credited in each of those years?

Hon J.M. BERINSON replied:

The Treasurer has provided the following reply -

(1) No.

(2)-(4)
Not applicable.

QUESTIONS WITHOUT NOTICE

SEXUAL HARASSMENT - MINISTER FOR PLANNING ELECTORATE SECRETARY
Charges

468. Hon GEORGE CASH to the Minister for Police:

By way of preamble, the Minister will be aware that on Tuesday, 3 July I asked a question in this House which related to a written complaint by a woman regarding offences of a sexual nature alleged to have occurred during the course of her employment in a Minister's office in which the alleged offender was employed by a Minister in this House. On Thursday, 12 July, in answer to a question, the Minister advised the House that the police had considered the allegations and had completed their investigations on 28 June.

I now ask the Minister whether he is aware of any charges laid as a result of those investigations and, if not, why not?

Hon GRAHAM EDWARDS replied:

I do recall the questions, although not in the detail. I confirm that the information conveyed in the answer which I supplied to the House is correct. I am not aware whether any charges have been or will be laid, and I do not know that it is appropriate that I be aware.

SEXUAL HARASSMENT - MINISTER FOR PLANNING ELECTORATE SECRETARY
Charges

469. Hon GEORGE CASH to the Minister for Police:

(1) Further to my previous question, will the Minister make inquiries of the Commissioner of Police whether or not charges have been laid in respect of the matter?

(2) If no charges have been or are to be laid, will the Minister make inquiries as to the reasons and advise the House accordingly?

Hon GRAHAM EDWARDS replied:

(1)-(2)

If the Leader of the Opposition cares to put that question on notice I will give it due consideration.

STATE GOVERNMENT INSURANCE COMMISSION - CAPITAL INCREASE REGULATIONS DISALLOWANCE
Motion Withdrawal - Government Undertakings

470. Hon PETER FOSS to the Leader of the House:

What is the state of each of the undertakings given by the Government with regard to the State Government Insurance Commission on the basis of the withdrawal of the motion for disallowance of the SGIC's capital increase regulations?

Hon J.M. BERINSON replied:

As members will be aware, I am not the Minister responsible for the State Government Insurance Commission and accordingly I can take it no further at this stage than to undertake to have the Minister provide me with a report on that. I acknowledge that I was a party to the agreement, and I can add that my understanding from generalised observations by the Deputy Premier is that the undertakings have been met - or would have been met by now; it is some time since I raised the question with him. I cannot say that precisely, though, and I undertake to obtain that information.

RESOURCE ASSESSMENT COMMISSION - STATE REACTION

471. Hon W.N. STRETCH to the Minister for Resources:

Has the Minister been made aware of the Federal Government's Resource Assessment Commission? I believe most members have been sent a circular about it. What is the reaction of the State Minister for Resources to this Commonwealth commission which appears, again, to be attempting to take over a role in assessing the State's resources?

Hon J.M. BERINSON replied:

I have not as yet had the opportunity to consider that and to obtain the appropriate advice that I would be seeking. In the absence of that advice I can only say that I have no developed view on that matter at the moment.

DUNSBOROUGH STRUCTURE PLAN - PRINTING AND RELEASE DATE
Curtis Bay Marina Inclusion

472. Hon BARRY HOUSE to the Minister for Planning:

(1) Has the Dunsborough structure plan been printed and formally released?

(2) If not, when will it be released?

(3) Can the Minister indicate whether the proposed development of a marina at Curtis Bay and a residential-commercial development on part of the adjacent Meelup Reserve is included on the Dunsborough structure plan?

Hon KAY HALLAHAN replied:

(1)-(3)

I understand that the Dunsborough structure plan has indeed been printed, but if it has not it is in the process of being printed and for that reason it has not yet been released but it will be within a very short period. The plan was going through the process of Cabinet at about the time I spoke in response to a question on this matter earlier, so it really is in the final stages before release.

The area in the Dunsborough structure plan which has proved to be most contentious is the Curtis Bay area, and that certainly is referred to in the report. I do not have a copy of the report with me and I am reluctant to inform the House without direct reference to it, but I would hope that what is contained in the structure plan - which, I emphasise, is not a statutory document - will be satisfactory to all of the various interests in that area.

HERITAGE BILL - "KALGOORLIE MINER"
Press Secretary's Information

473. Hon DOUG WENN to the Minister for Heritage:

Has the Minister investigated the accuracy of the claims by Hon Phillip Pendal that her Press secretary told the *Kalgoorlie Miner* newspaper that the Government's heritage legislation was being held up in the Legislative Council?

Hon KAY HALLAHAN replied:

I thank the honourable member for the opportunity to clarify this matter, which was raised yesterday during question time. As I said to the House on that occasion, I have made inquiries on the matter and, needless to say, I am very pleased indeed to report that my Press secretary was not giving inaccurate information. He was responding to an inquiry from the *Kalgoorlie Miner* about the progress of legislation. I understand that during that interaction there may well have been a misunderstanding.

Hon P.G. Pendal: Just a coincidence!

Hon KAY HALLAHAN: Hon Phillip Pendal should not get too cocky, because his behaviour leaves a bit to be desired.

Hon P.G. Pendal: It is against the Standing Orders to threaten me.

The PRESIDENT: Order!

Hon George Cash: The behaviour of some people in your office has not been too good.

Hon KAY HALLAHAN: There has been nothing remiss about the behaviour of the people in my office, and that is why I am trying to clarify it.

Hon P.G. Pendal: There is a lady whose life has been destroyed.

Hon KAY HALLAHAN: Whose life has been destroyed?

The PRESIDENT: Order! I ask honourable members to come to order, including the Minister, who should direct her answer to the member who asked it, through the Chair.

Hon KAY HALLAHAN: I am offering this explanation because I understand that the member who asked the question yesterday became very upset over this incident, which brought him to raise it in this House. When we think about it, I suppose something must have happened that upset the member in order to have him raise it here. The explanation I am offering is that there could have been a misunderstanding in the relaying of the information which my Press secretary gave to the reporter from that organisation.

Hon P.G. Pendal: False information.

Withdrawal of Remark

Hon KAY HALLAHAN: I want that withdrawn. It was not false information and I would like the comment withdrawn.

The PRESIDENT: The member will withdraw it.

Hon P.G. PENDAL: Mr President, I withdraw.

The PRESIDENT: Order! Let me get a few things straight. Firstly, the Minister should not enter into a conversation with members opposite, or anywhere, for that matter; but, more importantly, to refer to a question that was asked yesterday is out of order. Indeed, the Minister is even suggesting to me that the question is the same question that was asked yesterday. If it is, the question is out of order because a member cannot ask the same question that has already been asked.

Hon KAY HALLAHAN: No, I would like to clarify that, Mr President. I think the question asked today was whether I had carried out inquiries, as I told the House yesterday I would do. It is a new question.

The PRESIDENT: All right.

Questions Without Notice Resumed

Hon KAY HALLAHAN: The member looks as though he is poised to leap to his feet again. I am suggesting -

Hon P.G. Pendal: We can deal with it during the second reading and deal with the evidence.

Hon KAY HALLAHAN: There is no evidence to give. The point I am making, if the member would just listen, is that the processes of Parliament with which members are familiar are sometimes not as familiar to other people who are on the receiving end of information. As I understand it, the reporter rang the member and inadvertently indicated, without clarity, what information he had been given. The member got very excited and the poor reporter could not clarify the situation by saying, "Hang on, I don't think I got this right. This is what was conveyed to me." He could not correct that because the member became sensitive, defensive and angry.

The whole situation was very inappropriate. There was absolutely no misrepresentation of information. Every member knows that the heritage legislation is not before this House. My staff are extraordinarily clear on the fact that the heritage legislation is not before this House. There would be nothing to be gained by saying that it was and I hope the matter is laid to rest.

McCUSKER REPORT - ATTORNEYS GENERAL OPINIONS

474. Hon GEORGE CASH to the Attorney General:

(1) Have responses been received from each of the Attorneys General regarding the Rothwells report prepared by Malcolm McCusker?

(2) If so, have any of the Attorneys General indicated that they are opposed to the release of the documents or document, or of any part or parts of the document?

Hon J.M. BERINSON replied:

(1) As at midday today, when I left the office, replies had not been received from all Attorneys General. Perhaps only half had been received.

(2) Pending the receipt of further responses I am not in a position to answer this part of the question.

HERITAGE BILL - "KALGOORLIE MINER"
Press Secretary's Information

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

I thank the Minister for some of the information which she conveyed to the House on the matter of information conveyed to the *Kalgoorlie Miner*. Has the Minister or her Press secretary, Darren Foster, conveyed that information back to Matthew Cawood on the *Kalgoorlie Miner*?

Hon KAY HALLAHAN replied:

I raised the matter with my Press secretary yesterday who raised the matter with the reporter concerned in order to obtain some clarity on why there had been a misunderstanding. The reporter from the *Kalgoorlie Miner* understands very clearly the situation and the information that he was given.

HERITAGE BILL - "KALGOORLIE MINER"
Press Secretary's Information

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

In the view of the information Mr Cawood of the *Kalgoorlie Miner* obtained via Darren Foster that the heritage legislation was being obstructed by the Opposition in the Legislative Council, has the Minister or her Press secretary now conveyed to Matthew Cawood that the heritage legislation has never been obstructed by the Opposition in the Legislative Council, considering that the Bills have never been before the Legislative Council?

Hon KAY HALLAHAN replied:

I make it patently clear that my Press secretary, Darren Foster, did not convey to the reporter on the *Kalgoorlie Miner* that the heritage legislation was being obstructed in the Legislative Council.

Hon P.G. Pendal: That is absolutely what he did convey.

Hon KAY HALLAHAN: He did not convey that. I have inquired into the matter and tried to get to the bottom of it. I do not believe the member opposite has paid any attention. If he had paid attention when implications by the reporter were made he would have been quite clear on the matter. The irony is that my Press secretary actually gave the reporter the Opposition spokesperson's name so he could be phoned in order to get a fair and reasonable report.

Hon P.G. Pendal: That is when he found out the truth that the heritage legislation had never been in this House.

EQUAL OPPORTUNITY COMMISSION - POLICE PRACTICES REPORT
Minister's Support and Repudiation

477. Hon GEORGE CASH to the Minister for Police:

I refer to the Minister's comments during the urgency debate yesterday in this House on the recently released Equal Opportunity Commission's report on police practices. In view of the comments the Minister made, will he identify those parts of the report with which he agrees and supports, and those parts or statements in the report which he repudiates?

Hon GRAHAM EDWARDS replied:

If the member had been paying attention to the debate instead of trying to score political points, he would have recognised that during my reply yesterday, and when I have commented on this matter elsewhere, I identified the parts of the report from which I would like to dissociate myself and identified those parts which I was prepared to support.

LAND - FOREIGN OWNERSHIP REGISTER LEGISLATION

478. Hon GARRY KELLY to the Minister for Lands:

Did the Minister see the comments in the property section of today's *The West*

Australian in which concern was expressed by the property industry over the Government's announcement that it intended to prepare legislation for the establishment of a foreign ownership land register?

Hon KAY HALLAHAN replied:

I thank the member for a question on what is a significant measure being taken by the Government because there has been considerable interest in the question of how much overseas investment there is in property in Western Australia. The reaction to this is understandable; however, the intention of the register is to ensure that accurate statistical information is available to satisfy community concerns about the level of foreign ownership and, indeed, the types of properties that are held, whether they be agricultural land, commercial land or hotels.

The Government fully supports foreign investment. The statistical information the register will provide will create a more favourable climate for foreign investment free from the unfounded concerns that crop up from time to time in the community. The information currently available to the public will be included in the register. It will bring information together and be a reference point for people who need that information or who have concerns.

LORETO CONVENT CHAPEL - HOLMES A COURT, MR ROBERT
Retention Request

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

(1) I refer the Minister to the Loreto Convent chapel debacle. Can she indicate why she has requested Mr Robert Holmes a Court to take steps to retain the Loreto Convent chapel while at the same time has approved the demolition of the Government owned heritage site?

(2) I refer the Minister to remarks made by her in a media statement of 31 July when she said in relation to Mr Holmes a Court that it would be a prudent and responsible approach to commission such an assessment, particularly since the buildings were listed by the National Trust. Is the Minister prepared to commission similar assessments for all Government owned heritage properties in Western Australia in order to ensure that no further properties are demolished?

Hon KAY HALLAHAN replied:

These questions are an attempt to give some credence to the Opposition's untenable position that Government buildings should be preserved but no restrictions should be imposed on private owners of buildings.

(1)-(2)

Loreto Convent chapel is listed by the National Trust and by the Australian Heritage Commission. That is a longstanding recognition of the value of those buildings. A heritage advisory committee for the Claremont Town Council assessed the Loreto buildings and made recommendations that they were significant buildings and well representative of their era and well worth preserving. It was on that basis that it seemed appropriate to suggest an assessment of the building so that the owner might receive an appreciation of the buildings in his keeping. The State has no power until the heritage legislation is in place to impose restrictions on the demolition of buildings.

As I explained yesterday, the National Trust indicated that it had no interest in the Karrakatta Crematorium chapel when the Cemetery Board began its development plans. The two Norfolk Island pines which stand at the front of the chapel are classified, but the chapel itself was not classified. Members will be mystified at the timing of the trust's announcement. It was made after an independent assessment had been made by a very well respected heritage

conservationist. The recommendation that was made, given all the circumstances, including the things around the chapel which detracted from its style, was for demolition. I made that point yesterday but it seems that members of the Opposition did not understand it. When the recommendation for demolition was given the chapel was not listed by the National Trust and at that point the indication was that the trust was not interested. It is very difficult to arrive at assessments in the heritage area as people's values on the importance of buildings are different. The assessment procedure for the Karrakatta Crematorium chapel was instructive. The means which were used to carry out this assessment are the sorts of processes that will be used when the heritage legislation is in place. Great care was taken and a thorough examination of Loreto Convent and the Karrakatta chapel was carried out. It is because the assessments of Loreto Convent chapel and the Karrakatta chapel were professional that different preferred outcomes were accepted in each case.

SUBIACO OVAL - VESTING AGREEMENT

480. Hon BARRY HOUSE to the Minister for Lands:

I refer to clause 30 of the previous Reserves and Land Revestment Bill. Has final agreement on the vesting of the Subiaco Reserve been arrived at between the Subiaco City Council, the West Australian Football Commission and the Subiaco Football Club?

Hon KAY HALLAHAN replied:

In order to give the member a brief update I would appreciate if he would put the question on notice. However, I understand that everything is progressing satisfactorily.

HERITAGE - HERITAGE ASSESSMENT
Government Owned Buildings

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

I thank the Minister for the information in respect of the Loreto Convent chapel. In view of the fact that her Government was prepared to sell and also to sanction the demolition of the Cottesloe Police Station - which has since been saved from demolition - will she order a heritage assessment of all Government owned buildings to ensure that the request that she now makes of Mr Holmes a Court is now applied equally to Government departments?

Hon KAY HALLAHAN replied:

I will check out what happened with the Cottesloe Police Station because it may well be that the House is again being misled by the honourable member.

Hon P.G. Pendal: The Government was selling it.

Hon KAY HALLAHAN: Any building that the Government sells which has heritage value -

Hon D.J. Wordsworth: The Minister does not like it when Mr Pendal says he has been misled.

The PRESIDENT: Order!

Hon KAY HALLAHAN: The record speaks for itself, Mr Wordsworth.

Hon P.G. Pendal: It does not. You have been caught out too often.

Hon KAY HALLAHAN: That is not true. If any building which has a heritage value goes out of Government control it does so on conditions that are appropriate for preservation of the building, including covenants on the title which protect that building. The Government has a proud record in that regard and perhaps one day somebody will ask me a question about the number of buildings that do have those provisions and safeguards.

Hon P.G. Pendal: They went on only because the Opposition forced you to.

Hon KAY HALLAHAN: I do not want to take credit from the member as he is obviously having a great deal of difficulty legitimately establishing any credibility for himself from his own efforts. However, if he wants to take credit, so be it. We should all take credit for preserving heritage buildings. I do not want to get into an "I preserve more than you preserve" argument; that would be a very childish game.

Hon P.G. Pendal: You have demolished more than I have demolished.

The PRESIDENT: Order!

EQUAL OPPORTUNITY COMMISSIONER - POLICE PRACTICES REPORT
Disciplinary Action

482. Hon GEORGE CASH to the Minister for Police:

Does the Minister intend to recommend to the appropriate Minister that any action be taken against the Equal Opportunity Commissioner following the publication of the scurrilous and unsubstantiated statements which she caused to be published and which have undermined the position of police officers in Western Australia and, if not, why not?

Hon GRAHAM EDWARDS replied:

We have to understand the position from which Hon George Cash is coming. It is one he always takes, which is an attempt to talk down the status of the Western Australia Police Force.

Several members interjected.

Hon GRAHAM EDWARDS: I have attempted to look after the long term interests of the Police Force and of those men and women of the Police Force who have to go out and do a difficult job under difficult circumstances. Mr Cash purports to be interested in, concerned about and caring of the members of the Police Force but what we see is an attempt to derive some political satisfaction from this report. That is the first thing he wants to achieve. The second thing Mr Cash wants to achieve is to put the Minister into a situation where he is in conflict with the Police Union and/or the police.

This member does not care about the members of the Police Force. I have read the report and its recommendations, which is obviously something the Opposition spokesman on police has not done. I have conveyed directly to the Commissioner for Equal Opportunity my views on the report. I said yesterday that if and when that matter is addressed at Cabinet I will make appropriate comments.

I have also conveyed to the Minister directly what I consider to be shortcomings in the report. I have attempted to look at the long term wellbeing of our police officers and, if Mr Cash does not like that, that is his bad luck.

EQUAL OPPORTUNITY COMMISSIONER - POLICE PRACTICES REPORT
Disciplinary Action

483. Hon GEORGE CASH to the Minister for Police:

(1) Does the Minister support disciplinary action being taken against the Commissioner for Equal Opportunity following the publication of a report which contained scurrilous, unsubstantiated statements against police officers in Western Australia?

(2) If not, why not?

Hon GRAHAM EDWARDS replied:

(1)-(2)

I recognise and strongly support the independence of the Equal Opportunity Commission in the same way as I recognise and strongly support the independence and autonomy of the Police Force in this State. Obviously, the member opposite does not support in that way either of the two services.