



WESTERN AUSTRALIA

# Parliamentary Debates

(HANSARD)

THIRTY-FOURTH PARLIAMENT  
FOURTH SESSION  
1996

LEGISLATIVE COUNCIL

Wednesday, 16 October 1996

## Legislative Council

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

### PETITION - CRIME

Hon Cheryl Davenport presented the following petition bearing the signatures of 755 persons -

To the Honourable the President and members of the Legislative Council in Parliament assembled.

We, the undersigned residents of Western Australia, call on the government to take immediate action to address continuing unacceptable levels of crime in our community by:

increasing the police presence on our streets

ensuring that police respond quickly and flexibly to community needs

linking operational police more closely with the community itself (e.g. individual police officers in charge of 20 or 30 community blocks.)

Your petitioners, respectfully request that the Legislative Council will give this matter earnest attention.

And your petitioners as in duty bound, will ever pray.

[See paper No 723.]

### PETITION - NORTHERN CITY BYPASS ROAD INQUIRY

Hon J.A. Scott presented the following petition bearing the signatures of 2 035 persons -

To the Honourable the President and Members of the Legislative Council in Parliament assembled.

We the undersigned residents of Western Australia are concerned that

1. Comprehensive alternatives to the Northern City Bypass Road (NCBR) were not investigated in depth.
2. The NCBR will attract more traffic into the inner city than forecast by the Main Roads Dept.
3. Rural and urban roadworks will be starved of funds during NCBR construction.
4. Adequate social and environmental impact assessments were not carried out.

Your petitioners therefore humbly pray that the Legislative Council will

1. Investigate in depth comprehensive alternatives to the NCBR.
2. Investigate the validity of the traffic forecasting methods used.
3. Investigate the need for adequate social and environmental impact assessments.

And your petitioners, as duty bound will ever pray.

[See paper No 724.]

### MOTION - URGENCY

*Mining Industry Deaths; Ground Control Programs*

**THE PRESIDENT** (Hon Clive Griffiths): I have received the following letter addressed to me and dated 16 October 1996 -

Dear Sir,

Pursuant to SO 72, it is my intention at today's sitting to move that the House at its rising, adjourn until 9.00am on January 10th 1997, in order to urgently consider:-

- 1 the alarming total of five deaths in the mining industry so far this calendar year, four of which have occurred as a result of underground rock falls;

- 2 the need for the Government to urgently review the methods and procedures in use in the underground sector of the mining industry for designing and implementing ground control programs;
- 3 the need for improved monitoring and reporting of accidents.

Yours sincerely

HON MARK NEVILL MLC  
Member for Mining and Pastoral Region

In order to discuss this matter, it will be necessary for at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

**HON MARK NEVILL** (Mining and Pastoral) [2.37 pm]: I move -

That the House at its rising adjourn until 9.00 am on 10 January 1997.

There is an urgent need to review underground work practices in the mining industry. As the motion states, there have been five fatalities this year and the Government does not appear to be taking any action to address the problem. I will be speaking on the first and second areas of this motion today, and my colleague, Hon Alannah MacTiernan, will speak on the third part of the urgency motion relating to the improved monitoring and reporting of accidents.

There have been five fatalities in the mining industry this year. That does not include the worker who died from asphyxiation on the goldfields gas transmission pipeline. I am not sure whether a pipeline should come under the definition of a mine. Many members know that railways and many other facilities when they are associated with mining projects come under the aegis of the Mines Safety and Inspection Act. Four of those five fatalities resulted from rock falls underground; that is, 80 per cent of the accidents. Historically, that is way above what we would expect. Three of those accidents happened in Western Mining Corporation Ltd's operations. To focus the House's attention on this matter, I will read a short excerpt which appeared in the Press relating to each of the five fatalities. The first fatality this year was at Hamersley Iron Pty Ltd's operations at Tom Price. The article states -

A miner at Hamersley Iron's Mt Tom Price operation was killed on Wednesday night when heavy steel cables crushed him.

Gino Geracitano, 42, of Tom Price, died after the cables supporting the boom of the bucket-wheeled reclaimer he was operating came loose and fell on the vehicle's cabin. He was the father of an 11-month-old child. His death is the fourth in the industry this year.

It was the fourth in the financial year, but the first in the calendar year.

The report on the second fatality at Kambalda reads -

A MINER was killed in an underground rock fall at Western Mining Corporation's St Ives Gold Mines about 25 km south east of Kambalda, yesterday.

Tom Trueman, 27, of Kambalda, was buried in the accident while working from a mobile platform in the Victory Mine.

He was in the upper level of the mine - about 100m below the surface - with two other men at the time of the rock fall, about 3am.

Mr Trueman is believed to have died instantly.

His companions escaped with minor injuries and were treated on site.

The third fatality also occurred at Kambalda. The report reads -

A UNION safety and health representative at Western Mining Corporation's Kambalda nickel operation was killed in a rockfall yesterday afternoon.

Ricki Birch, 48, of Boulder, had worked at Kambalda for 17 years.

It is believed he was with two other men - who were not injured - in the vicinity of the rockfall, 800m underground at the Otter-Juan mine, about 2.05pm.

Earlier in the day, Mr Birch, a member of the Australian Workers' Union, had been on an inspection tour with mines inspector Bob Leggerini, who returned with colleagues later in the day to start a formal investigation.

The fourth death occurred near Coolgardie. The report reads -

THE Australian Workers' Union has called for an urgent investigation of rock falls in underground mines after the second death in a week.

A 29-year-old underground labourer from Kalgoorlie was killed on Saturday morning when a rock fell on him while he was working at the Tindals mine near Coolgardie.

Clifford James Pearce, of Hanbury Street, is believed to have been fitting a wall plate to a rock belt when the rock fell at 3.10am.

Another worker with him was not harmed.

The most recent death was at Leinster. The report reads -

A 27-YEAR-OLD man killed in an underground mine rockfall this week was the fifth person to die at WA mine sites this year.

A supervisor found Anthony John Bowes, of Mandurah, crushed under rocks at 7.15pm on Wednesday.

He was the third person to die in a mine rockfall this year.

In fact he was the fourth. It continues -

Mr Bowes had been working as a drill operator about 210m underground at Rocky's Reward mine - part of Western Mining Corporation's Leinster nickel operation.

That brings home the reality of these fatalities and their effect on the children and families who are left without fathers as a result of these accidents.

In 1991 a survey conducted by the Department of Minerals and Energy into fatal accidents in the Western Australian mining industry studied all the fatalities that occurred between 1980 and 1991. The study showed that, of those 55 accidents, 20 occurred underground. Of the underground fatalities, 36 per cent were as a result of rock falls. This year it is 80 per cent because four of the five fatalities have resulted from rock falls.

Another point this 1991 report made was that an unsafe place of work caused 50 per cent of the fatalities; an unsafe system of work, 46 per cent; and unsafe work practices, 83 per cent. When we look at the job aspect, the causal factors were that inadequate work standards resulted in 68 per cent of the fatalities; inadequate equipment design, 16 per cent; and inadequate and defective equipment, 16 per cent and 18 per cent respectively. Inadequate communication was a factor in 22 per cent of the deaths. One of the recommendations of the 1991 report was -

THAT greater emphasis be placed on all aspects of ground control in underground mines. The emphasis should include training, excavation design and support, lighting, mechanisation of scaling operations and overhead protection for operators.

The lessons of that report do not seem to have been picked up by many operators in the mining industry. The Act we have is excellent and the regulations are entirely adequate. There is no problem in that area. The problem is with the principal employers and operators of these mines. The mines inspectorate circulated safety bulletin No 14 on 6 March 1996. It addresses the issue of ground support in underground mines. The inspectorate sent out a survey to all the mines in Western Australia. When I read from the bulletin you will see the problem, Mr President. It reads -

The inspectorate has conducted a survey to gather data on ground support and rock reinforcement design methods, selection criteria, usage levels, installation procedures and quality control issues. The basis of the survey was the calendar year 1994. Specific information relating to the survey items was requested from both underground mine managers and ground support and rock reinforcement suppliers.

It is disappointing to report that, with one exception, very little information was forthcoming from suppliers. Of a total of 59 underground mines operating within the period covered by the survey, 18 responses (31%) were received.

Only 31 per cent of the operating mines responded. Mine operators obviously do not think that we have a problem. It continues -

It is believed that this rate of reply, while not what might have been reasonably expected in response to requests for information on a subject of such importance to the industry as a whole, is sufficient for valid conclusions to be drawn.

The principal conclusions of the analysis of the survey are as follows:

67% of mines indicated they were not using any of the recognised ground support and rock reinforcement design methods.

33% of mines were apparently making at least some use of rock-mass classification and/or block analysis techniques.

These are techniques to try to predict the risk associated with that type of ground. There are a number of other findings. I will touch on only a few because of time constraints. The report indicates that 65 per cent of all ground support and reinforcement units installed were of a certain type of rock bolt which is basically a temporary rock bolt which can rust. These are often used in place of permanent rock bolts near which people travel for years after. It reads -

Only 22% of mines appear to have formal written installation procedures of some kind to govern the use of ground support and reinforcement.

Only 6% of mines appear to have formal written quality control and testing procedures for ground support and reinforcement.

The feedback from this survey is an absolute indictment. It reads -

The results of the survey do not indicate an adequate level of awareness of and compliance with the law . . .

It goes on -

The lack of formal and systematic design in ground control is little short of an indictment of the engineering competence and performance of the industry.

Many companies in the industry are not doing enough in this area. These deaths will continue while that occurs. The chief executive of BHP Minerals and the President of the Chamber of Mines and Energy was one of the major speakers at this year's MineSafe Conference. In his address to that conference, Dick Carter said that many companies talked about commitment to safety but did not ensure safety policies were understood and implemented. Companies had to prove they were serious about safety by developing and rigidly enforcing standards and procedures. Many companies have wonderful safety policies and good brochures, but they have to go further and implement those regimes in order to obtain results and change the culture of the work force. It is certainly a top down process; it does not start at the bottom. It has to have the backing of directors and management.

A later safety bulletin, No 19, is entitled "Scaling", which is getting rid of loose rocks above where people are working and rock bolting in large stopes, which is an area which is mined, and development headings. The bulletin refers to the remedial action which can be taken to avoid some of the problems. People can use special explosives and drilling patterns to minimise the fracture of rocks around openings so that they are much safer when people are working under them. Specialised equipment can be used for scaling and getting rid of the loose rocks. At the moment none of this equipment is used in Western Australia; there are virtually no purpose built, rock bolting machines used in this State. This was drawn to the attention of the industry as late as 27 June 1996. Members will recall that I spoke about a 1991 report identifying this as a problem. Western Mining Corporation is currently undertaking an inquiry into this issue. That company operates half the underground nickel and gold mines in this State. It is not good enough for WMC alone to be doing this survey: It should be an industry wide survey. WMC has a real problem in handling and managing people, but giving that job to contractors will not necessarily solve the problem.

I have not seen much real interest from this Government in the issue of mine safety, particularly in the past year. There should be a great commitment to improving safety in mines. If I were the Minister responsible, I would make it a personal job to visit mines after a fatality to show that the Parliament and the Government mean business. This is not good enough. The pressure is off and it must go back on if we are to save lives in the mining industry.

A thorough review of what each company is doing in relation to ground support in the mining industry is absolutely essential if we are to save lives. The unions have previously had a very strong role in this area. Unfortunately, the role of the union movement in mining safety has been wound back and the Government has been gleeful about this. As a result, we need a much greater effort. I call upon this Government to undertake an urgent survey of underground

support systems in the mining industry. The issue is not being taken seriously enough by operators in the industry. I hope for an early announcement of such an inquiry.

**HON P.R. LIGHTFOOT** (North Metropolitan) [2.55 pm]: I preface my comments by saying that any loss of life in a workplace is totally regrettable and preventable. I do not want anything that I say subsequently to this to detract from that comment. Any loss of life is regrettable, and when it occurs in the workplace it is generally a young life that is lost - and that is even more regrettable. However, Hon Mark Nevill's comments, as admirable as their substance might have been, are probably directed at Western Mining Corporation, not because it is the premier employer of mining labour in this State but because it is having some problems -

Hon A.J.G. MacTiernan: Not any more: It does not employ anyone.

Hon P.R. LIGHTFOOT: Hon Alannah MacTiernan's interjection has preceded what I intend to say by endorsing it; that is, Western Mining Corporation is in conflict with the trade union movement and always has been to some degree since I worked for it in the 1960s. One must ask why that is so. Where there is conflict in the workplace it is bound to be extrapolated into workplace accidents and, regrettably, some of those accidents are bound to be fatal. The trade union movement is making a mistake in taking on international giants like WMC and trying to show that it is as strong as they are. Ultimately it is not. That diversion of energy is to the detriment of the work force.

What Hon Mark Nevill has said must cause some concern. I differ from him in relation to the causes for concern -

Hon Mark Nevill: I was quoting the State Mining Engineer.

Hon P.R. LIGHTFOOT: I disagree with what the member said. However, what he quoted to the House was not verbatim. He is not one to stand up here like Hon Jim Scott and quote endlessly. I have no doubt that he was quoting statistics, but there are lies, damned lies, statistics and Family Court affidavits, which one should treat with some caution.

Over the past decade the gold mining industry has very obviously started to mine out its open cut ore; that is, ore that is accessible from the surface without going underground. An increasing amount of ore will be mined underground compared with that which is mined by open cut today. That necessarily means more people will be working underground, and that invariably brings with it, regrettably, rock bursts. It does not mean that any less emphasis is placed on workers' safety, but the fact that there are more underground workers employed per thousand in the mining industry today than there were in the 1960s -

Several members interjected.

Hon P.R. LIGHTFOOT: One of the reasons for the great decline in mining industry deaths and serious injuries is the demise of gold mining since the late 1960s, when only two major mines - Mt Charlotte and Central Norseman - remained open. We had hundreds of mines prior to and immediately after the Second World War. What is happening today is something akin to that.

Hon Mark Nevill: Incidence and frequency has nothing to do with the number of employees.

Hon P.R. LIGHTFOOT: I submit that it does. If my statistics are the same as Hon Mark Nevill's, serious workplace injuries per 1 000 employees in 1965 were 280. I quote these figures as a component of 1 000 employees, not merely to illustrate that the number of deaths is going up. That would be akin to saying that road deaths are increasing, because numerically they are. However, we must look at the number of vehicles on the road contributing to those deaths.

Hon Mark Nevill interjected.

Hon P.R. LIGHTFOOT: This is what Hon Mark Nevill does not want me to say; that is why he keeps interjecting.

In the 1950s there were 60 serious injuries per 1 000 employees; in the 1960s there were 49; in the 1970s there were 30; in the 1980s there were 32; and in the 1990s the figure is 14. The figures have dropped dramatically.

This issue is probably about workplace agreements and the argument that the trade union movement is having with WMC; otherwise, why was it singled out? WMC contributes an enormous amount to this State. It is cognisant of occupational health and safety. If it were not, why did it and other major miners in this State pursue the Government in the 1980s to get the Occupational Health, Safety and Welfare Act requirements implemented in workplaces to provide protection? Why did it take so long for Hon Des Dans, the then Minister for Mines - in 1983, when this was well known - to say that it would be 20 or 30 years before the full impact of the Occupation Health, Safety and Welfare Act would be felt? Why is it that, having been in office for one term, we are being accused of doing nothing about this issue? Nothing much happened in the 1980s under the Labor Government, apart from bringing in the Occupational Health, Safety and Welfare Act, with which we on this side of the House agreed; it had bipartisan

support. Why did the then Labor Minister say that it would take 20 or 30 years? Why are those opposite now trying to blame this Government for doing nothing when their Minister said that it would take 20 or 30 years? It will take time for a major change to take effect. Of course, as we go into underground mining, there will be more deaths, as totally regrettable as they are - I do not want to underemphasise that. However, we should not start polarising views in this House at the expense of those people. If it eliminates - that seems to be an almost impossible task in underground mining with rock bursts invariably happening -

Hon Mark Nevill: Not enough is being done in that area.

Hon P.R. LIGHTFOOT: It must have bipartisan support. I do not believe we can go on in this adversarial manner when both sides of the House hold as a priority the safety of workers, particularly those in the mining industry which affects the economy in this State to such a large degree. If we build in that insecurity, we will say that the gold mining industry, which employs nearly 13 000 people, will be put into jeopardy; that the iron ore industry, which employs 6 000 people, will be placed in some jeopardy. Even the diamond industry, which employs nearly 2 000 people - it is the biggest diamond mine in the world - will be placed in some jeopardy.

The message should not go out to international companies that invest in Australia that the Western Australian workplace is unsafe. Statistically, it is not. The mining workforce in Australia, particularly Western Australia, a State which enjoys 30 per cent of all export income in Australia, is not in jeopardy. On statistical information, the industry in this State provides one of the safest workplaces in the whole of Australia, and that makes it one of the best in the world. We should be looking at protecting those workers in a bipartisan way, and not spuriously singling out the industry to the detriment of Western Australia.

**HON A.J.G. MacTIERNAN** (East Metropolitan) [3.02 pm]: I did not perceive anything detrimental to Western Australia in the way in which Hon Mark Nevill presented his address. He was simply pointing to a very real problem in underground mining. To back up his arguments he used the statistics that have been collected by none other than the State Mining Engineer. After the most recent deaths, Hon Mark Nevill called for a general inquiry into rock falls. He supported that need with an analysis of the technology that has been used and the failure by companies to apply that technology properly. He presented a perfectly reasoned argument. His call for an inquiry was supported by the State Mining Engineer. Today Hon Mark Nevill is attempting to bring these facts before this House and the Government, to urge them into some action and to have this very important inquiry.

Hon P.R. Lightfoot: We have a better record than when you were in power.

Hon Mark Nevill: You will have my support if you do it.

Hon A.J.G. MacTIERNAN: This is a pretty extraordinary thing for me to say, but there was something in what Hon Ross Lightfoot said. This is just like the minimum wage of \$7.10 put forward by Mr Kierath. It is better than the minimum wage of workers 100 years ago, but that does not mean we should accept that and say that because it is better than it was 100 years ago, it is fine. We have moved on from that. Hon Ross Lightfoot quite correctly pointed out that there has been a steady improvement in mine safety. Who would deny that? We take considerable pride in the fact that we believe the legislation we put in place played a pivotal part in that improvement. Our very real concern now is that there has been a flattening out and we are not seeing that constant progression; the improvement has stopped. There are a number of reasons for that and Hon Mark Nevill has outlined some of them.

I will draw attention to a specific problem in the statistics as I see them. In the past 18 months people have telephoned me to talk about the reporting of lost time injuries. People like Hon Ross Lightfoot who like to point out the gains, focus on lost time injuries. An analysis of lost time injuries shows there has been a remarkable decrease. However, this is not necessarily a statistic that can be relied on. I will give some examples.

Hon P.R. Lightfoot: So your statistics should be relied on, and mine should not?

Hon A.J.G. MacTIERNAN: No. The member needs to understand some of the things that are happening on the shop floor that undermine the credibility of some of those statistics. In many enterprises - although I will refer to WMC Resources Ltd, it is not the only organisation I will mention - there appears to be a trend to disguise what are mining injuries, using a number of techniques, most classically by employing people on light duties when they should be at home convalescing.

My first example relates to Mr Jim Faupel, a constituent of mine, who has worked with Western Mining at Kambalda for many years. Last week he spent some time with me going through his experience with that company. For the past couple of years he was a health and safety representative. He says that during the past three years he has suffered injuries for which he should have been allowed to convalesce, and he is just one of dozens of people in that situation. He was working as a driller's offsider in one instance. It is a very physical job. He badly twisted his ankle and could not work. The company required him to come into work and to take on what it called light duties. It told him that

it was trying to get an award and if he did not come into work, it would lose its occupational health and safety award. He says that, as a result, it took him a lot longer to recover. The figures do not show the nature of those accidents.

He described another incident where a worker who was following a practice that was the norm in that company had his hand severely damaged in a wire line spool. His hand needed to be bandaged; he could not use it. He was persuaded by the company not to take time off work, but to come in. He was given a job where he had to try to use his armpit instead of his hand - he was working one handed - to do a job in the tool shop at Western Mining. In another case, a bloke badly injured his back and was taken away in an ambulance. The doctor said that he must have four or five days off work. When he handed his medical certificate to the supervisor a lot of pressure was put on him to come into the office and answer the telephone and do light duties. Once again, that does not show up in the statistics.

Just to show that I am not simply targeting Western Mining, another constituent told me that he was working at a BHP site in the Pilbara. He was employed by Roche Bros Pty Ltd who are contractors. Often we see problems occurring with contractors. He told me that people who work as manual labourers who were injured would be brought into the office to do nominal office work, or pressure would be put on them to take annual leave. Again, that disguises the statistics. The contractors, in particular, when tendering for work must submit their lost time injury record. There is a great deal of commercial pressure on those organisations to conceal the injury rate. That is not to say that these companies do not have a legitimate concern for occupational health and safety, but we must start to question the depth of that concern and the reliability of the statistics.

A case which I have raised in this place previously is a classic demonstration of the lost time injury problem. This time, Mr Lightfoot, it is not Western Mining, but Murchison Zinc Company Pty Ltd and Thiess Contractors Pty Ltd, and the case of Mr John Kelly. Mr Kelly was injured in a fairly nasty accident at the Golden Grove mine, where a rock fell down and pinned him to a metal grate. Thiess telephoned the Department of Minerals and Energy and said, "It is not serious; he will be okay", and no further investigation ensued. However, it turned that after having being pinned by this rock for quite some time, he sustained considerable injuries: Eight broken ribs, a collapsed lung, a spine that was fractured in three places, and internal bleeding.

Hon Tom Helm: That is not much! What is wrong with you?

Hon A.J.G. MacTIERNAN: It is a long saga, and I regret that we do not have time to examine this matter, nor the whitewash report that the Minister tabled.

Hon P.R. Lightfoot: Why did it take you two years to proclaim the 1987 Occupational Safety and Health Act?

Hon A.J.G. MacTIERNAN: One of the interesting facts is that Mr Kelly was reported by Thiess as having returned to work in October 1995. However, a year later, Mr Kelly is still on workers' compensation and has never returned to work. That is massive under reporting! Mr Kelly was determined to try to get some sort of investigation, and the Government's independent investigator of the matter, who happens to be a corporate lawyer who has represented mining companies for 20 years, reached the conclusion that it was just a terrible mistake and that the issue related to a misconception which arose in October 1995 that Mr Kelly had returned to light or alternative duties with Thiess at one of its work sites in the Eastern States. No evidence of this was adduced. Thiess said, "We knew he had not returned to work here, but we thought he had gone to one of our jobs in the Eastern States." It is just fanciful for this company to think it can get away with that.

We must do something about this under reporting. We cannot have confidence in these lost time injury statistics, and that is very unfortunate. We are not blaming the Government for this, but we are saying that we must start to look at a way of addressing that problem.

**HON N.F. MOORE** (Mining and Pastoral - Leader of the House) [3.12 pm]: I wonder who the Opposition is blaming if it is not blaming the Government, having just sat here and listened to two opposition speakers go on about it.

I acknowledge that this is not the first time that Hon Mark Nevill has raised this matter in the House in an urgency debate. I have often said that issues such as this should be the subject of a substantive motion. We argue about issues of this significance for about one hour every couple of months, and that is a very inadequate way of dealing with issues that really should be the subject of a substantive motion. If the Opposition were to clear away some of motions on the Notice Paper in its name instead of having these urgency motions every day, we could use that process more efficiently and effectively.

Hon Kim Chance: We might talk about that.



Hon N.F. MOORE: I hope the Opposition does. The whole idea of urgency motions has become a farce. This is not an urgency motion in the sense that we used to have urgency motions; it is a motion of substance that should be debated as a substantive motion, where we have some time to consider it properly.

Hon Tom Helm: You are the leader; put it on the Notice Paper.

Hon N.F. MOORE: The Notice Paper is there just as the Opposition organised it, in the sense that it does this every day and there is no time to debate motions.

Hon A.J.G. MacTiernan: Get on with the substantive issue, Mr Moore, if you please.

Hon N.F. MOORE: I will make my speech in my own time, as I wish, without any advice from Hon Alannah MacTiernan. The Government is concerned about these matters. Any death in a mine is a cause for concern, let alone five deaths. It is a fact that a large number of the fatalities in the mining industry are caused by rock falls in underground mines. The number of deaths caused by rock falls was two out of three in 1991-92, one out of two in 1992-93, one out of three in 1993-94, and one out of three in 1994-95. We now have a situation where four out of five deaths in the mining industry have been caused by rock falls. No-one has ever suggested that the mining industry is a fail-safe industry and that problems do not arise from time to time, but, as Hon Mark Nevill pointed out, the Department of Minerals and Energy has made it very clear to the industry in Safety Bulletin No 14 of 6 March that it is not acceptable for this level of fatality to occur and for the problems that it has identified to continue to occur. The bulletin indicates the attitude that the Government is taking, through the mines department, to these matters. It states -

Employers and managers are therefore strongly enjoined to conduct a critical review of their own operations with a view to establishing that their geological and geotechnical databases are adequate to ensure valid input to the ground support design process, that this process is professionally carried out using recognised and demonstrably successful techniques and that quality control and testing on the job are adequate to ensure that design capacities of the rock reinforcement systems employed are attained in practice. Anything short of this will leave them exposed to the consequences (including the legal consequences under both the civil and the criminal law) of their failure to act in a responsible fashion.

That is a fairly strong statement. The department recently brought down regulation 10.28, which deals with geotechnical considerations with regard to underground mining. That regulation is very tough. The department has also proposed that the Mines Occupational Safety and Health Advisory Board establish a task force comprising the Mines Inspectorate, the Chamber of Minerals and Energy and trade unions to look at this question and the implementation of regulation 10.28.

At a meeting on 26 September, MOSHAB considered a presentation on a major initiative undertaken by Western Mining Corporation Ltd as part of the elimination of fatalities program. Hon Mark Nevill referred to that. MOSHAB decided that the research being undertaken by Western Mining Corporation should be done initially, and that when the results of that research were known, MOSHAB would take action. We must bear in mind, as Hon Mark Nevill pointed out, that most of the fatalities have occurred in Western Mining Corporation mines. He made the point also that Western Mining Corporation operates 50 per cent of the underground mines in Western Australia. I have a great deal of admiration for Western Mining Corporation. It has operated in Western Australia for a long time. My father worked for that company for 35 years when it was just a tiny company trying to make a name for itself in Western Australia. It is now a major employer and is highly beneficial to the economy of Western Australia, and it has been for many years. It has contributed significantly to the goldfields gas pipeline. Members opposite can make as many comments as they like about that company, but it has a fine record.

Hon Tom Helm: It looks like it is a major killer of people, too.

Hon P.R. Lightfoot: Stop knocking it!

Hon N.F. MOORE: That is the most extraordinary thing I have ever heard in this place. Here we have a member calling a company a major killer because there have been fatalities in some of its mines. Hon Tom Helm will have to live with that comment, not me, but as a result of these problems -

Hon P.R. Lightfoot: That is a disgraceful thing for Mr Helm to say.

Hon N.F. MOORE: It is quite outrageous.

This company is taking action, and the advisory committee to which I referred a moment ago is awaiting the outcome of that research to decide whether it also should take action other than the implementation of regulation 10.28 and other than ensuring that the industry knows very clearly what the Government expects.

Hon Alannah MacTiernan said that we need to improve the monitoring and reporting of accidents. For her information, the department has had in place since 1987 a comprehensive computer based system for recording and analysing data on accidents involving personal injury and fatal accidents. That program is called AXTAT, and it is considered to be world best standard.

Hon A.J.G. MacTiernan: But it is not addressing the issue I raised.

Hon N.F. MOORE: The motion that was trotted out states that the reporting process is inadequate. The system is widely acknowledged to be extremely effective and valuable, and was recommended by the Minerals Council of Australia for adoption as a national system. At the recent MineSafe International Conference held in Perth, the system was recognised for its outstanding quality and value. It is a world first. I would be happy for honourable members to go to the Department of Minerals and Energy to look at that process.

Hon A.J.G. MacTiernan: It does not change the quality of the data put into that system.

Hon N.F. MOORE: The speech by Hon Alannah MacTiernan related to an issue about which she has asked many questions, but is not satisfied with the answers. That is normal for the member. She makes allegations about individuals. She did not mention the lawyer but simply made a snide remark about him. That is her practice in this House.

Hon Mark Nevill: I think she was very kind to that lawyer.

Hon N.F. MOORE: Perhaps she has been kind to that lawyer. However, Hon Alannah MacTiernan makes statements such as that in this House, she does not accept reports and, as we discovered last night, she rejects a review of an Act because it does not fit in with her view of the world. She pours scorn on people, and says there must be something wrong with those who do not agree with her view of the world. I advise the member that she is not always right. I guarantee that. This particular process of monitoring and reporting accidents in Western Australia is considered by the industry to be the world's best practice. If that is not good enough for the member, heaven knows what will be. I cannot think of anything that will satisfy her requirements, other than closing down the industry in case someone is hurt or is not trained properly, or in case the unions cannot run as she would like.

The Government is concerned about the situation in underground mining. It acknowledges that underground mining is a dangerous business. I have said before that I would not be caught working underground in a million years, but people do it. Every attempt is made by the industry to ensure it is safe. The Government has an obligation to put in place regulations and requirements on industry to make sure it is as safe as it possibly can be. Hon Ross Lightfoot indicated, and Hon Alannah MacTiernan acknowledged, that over time the injury rate in mines has decreased. That is a positive sign but it is still not good enough if any fatalities occur. The Department of Minerals and Energy is doing all it can to make sure these accidents are minimised in the future. It will take advantage of the work done by Western Mining to improve that situation.

**HON TOM HELM** (Mining and Pastoral) [3.23 pm]: Perhaps we should pause a moment to allow members opposite to mop up their crocodile tears! I have never heard such tripe as I heard from members opposite this afternoon. I did not hear Hon Alannah MacTiernan or Hon Mark Nevill attack the Government. The motion suggests that the Government should review the methods and procedures. Only a fool would suggest that this is related to the number of people working underground. The reports in this and other places suggest that part of the reason for the accidents is the high tech, capital intensive equipment being used underground which reduces the number of people working underground. They suggest that it may play a part in the number of injuries. I say that Western Mining is killing people, and the statistics bear that out. Western Mining is also ruining people's lives by moving to contracts rather than providing full time employment for its workers. Therefore, more contractors are being used and more machinery is being used underground.

The reports from the Department of Minerals and Energy indicate that the techniques for holding up the roofs of the pits using this new machinery may not be up to date. The department has indicated that training certainly is not up to date, and that was also referred to by Hon Mark Nevill. The Minister did not tell us about the fourteenth report which indicates that only 0.3 per cent of the total number of ground support and reinforcement units installed were load tested, and that 60 per cent of that 0.3 per cent were tested in one mine. Those units are used to hold up the roofs. The Opposition is not suggesting it is anyone's fault, but it appears there is a new set of circumstances. The Department of Minerals and Energy is probably doing all it can. We have a heap of reports from that department, which is most concerned. The Opposition is also concerned, and members opposite should stop the crocodile tears and give the department more resources and more inspectors so that it can report on these accidents and provide a detailed explanation as to why they happen.

It is no good saying that a death is regrettable. Of course it is regrettable. That is a statement of the bleeding obvious. We must do something about it. The Opposition is trying to be as constructive as it can be without saying

it is anyone's fault. We do not know the reasons for the accidents, although some indications are apparent. The Department of Minerals and Energy has given some leads in the matter, and we congratulate the department on its reporting procedures. However, the department needs upgrading.

We know through the Argyle industry and the coal industry that fewer inspectors are being used. We know the new technology needs to be upgraded, and that it has cost the industry a lot of money to put in place this capital equipment. Perhaps the Government, through the taxpayers, must enter into a joint venture with the industry to improve safety techniques for roof supports in the pits. We do not know. The Opposition is not accusing anyone but is pointing out that these things are being indicated by the Department of Minerals and Energy, which should be congratulated. We want the Government to recognise that it must take care of these matters.

**HON MARK NEVILL** (Mining and Pastoral) [3.27 pm]: We can do better in this area of underground support systems. The Department of Minerals and Energy's survey and study shows that the effort in this area of the mining industry is inadequate and it can be improved. The way to focus on this area is to hold an inquiry into those mines to focus people's attention on the problem. That is why the Opposition has called for this matter to be addressed. This motion is not directed against Western Mining Corporation. It operates half the underground mines in the State and, obviously, will figure prominently in any statistics on mine safety. The managing director of Western Mining is a personal friend of mine but, if I think the company is inadequate in some area, that will not stop me from making my views about Western Mining public. I have done that on a number of occasions.

Hon N.F. Moore: It will not stop anyone, but it will not do any good talking about it in the way your colleague behind you has; it was disgraceful.

Hon MARK NEVILL: My colleague can look after himself, but he is upset about the fatalities that have occurred in his electorate. I understand his anger. The AXTAT system was referred to. It is a magnificent reporting system but it is only as good as the data put into it. If Mr Kelly is shown to have gone back to work three months after he was injured but is off work 15 months later, obviously incorrect information has been fed into the system. The system is only as good as the quality of the reporting. That simple point was made by Hon Alannah MacTiernan. The regulations with regard to the data to be collected are excellent. I have gone through them thoroughly. The problem is that many companies do not appear to be implementing the regulations as they have been drafted and passed by this Parliament. We need an inquiry to focus on that area, so that industry knows the Government means business in this matter. The problem in the mining industry is that many people think accidents will not happen to them. However, they happen again and again with regular monotony. With the closure of many of the open pits, mining will go underground and that will increase the risk to workers in the underground mines.

[Resolved, that debate be continued.]

Hon MARK NEVILL: The call we are making is serious. We believe more should be done than just a review by Western Mining Corporation Ltd. It should be broader than that. Other companies operate differently from Western Mining. We believe that the Government should announce the review as soon as possible so that we can nip in the bud this very disturbing trend of death from rock falls in our mines, the incidence of which has escalated this year.

[The motion lapsed, pursuant to Standing Order No 72.]

### **ACTS AMENDMENT (ICWA) BILL**

*Returned*

Bill returned from the Assembly without amendment.

### **BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND AND LEVY COLLECTION AMENDMENT BILL**

*Committee*

Resumed from 15 October. The Chairman of Committees (Hon Barry House) in the Chair; Hon N.F. Moore (Minister for Employment and Training) in charge of the Bill.

#### **Postponed clause 11: Sections 25A, 25B, and 25C inserted -**

Consideration resumed after the clause had been partly considered.

Hon N.F. MOORE: We deferred consideration of this clause until today so that I could seek further advice on the concern raised by Hon John Halden that somehow this place was abrogating its legislative authority on a taxation issue. I indicated that I had taken some advice and that what we proposed was valid. Advice I have since received from parliamentary counsel is along similar lines to that. The way in which this clause is constructed and the

processes to be utilised do not in any way represent an abrogation of parliamentary responsibility for taxation matters. As I explained last night, in the event that a project owner seeks a reduction or exemption from the levy, he must make application to the board. The board will consider that based on criteria issued by the Minister. This Bill provides the Minister with that power. The guidelines or criteria will explain what must take place in the event that an exemption from or reduction of the levy will apply. The board will adjudicate on applications made by a project owner. In the event that the project owner is dissatisfied with the decision of the board, he can appeal to the Minister. The Minister's determination will be final. Yesterday, I mentioned judicial review. There is no suggestion in this legislation that judicial review cannot occur of a decision made by a Minister in an appeal process or by the board.

The case I quoted last night of Cobb and Co before the Privy Council in 1967 was again referred to by parliamentary counsel as justification for this clause. I refer also to a High Court of Australia case, *Giris Pty Ltd v the Commissioner of Taxation of the Commonwealth of Australia* 1969, where a similar conclusion was reached in respect of this type of legislation. It is considered to be a valid delegation of parliamentary authority.

Hon A.J.G. MacTiernan: What sort of tax did that case involve?

Hon N.F. MOORE: The Cobb and Co determination was used as a precedent in the *Giris* case as justification for making a decision in that instance. They both related to similar circumstances; one as precedent for the other.

Hon A.J.G. MacTiernan: I do not think the High Court is bound by it.

Hon N.F. MOORE: The High Court said that it accepted that point of view. That decision was in line with what it considered to be appropriate in the case it was hearing. Without having significant numbers of learned counsel sitting around pontificating about this, advice to me substantiates the Government's view that what we are proposing is valid and that there is sufficient and appropriate parliamentary control over the processes. I ask that the House proceed with this clause even though I understand that Hon Alannah MacTiernan wants to make amendments on other matters.

If people were to take action further down the track that would be their business. I hope we do not delay this Bill any further on this point.

Hon A.J.G. MacTIERNAN: I thank the Minister for taking the trouble to get that second opinion on that jurisdictional question. Based on the evidence, it appears that we are legislatively competent to pass this provision. It is in the Minister's own interest to ensure that is the case.

Hon N.F. Moore: Absolutely.

Hon A.J.G. MacTIERNAN: The Minister is very keen to ensure that this clause comes into operation. Although we have crossed the threshold question of being within our competence to deal with this clause, just because we can do it does not in any way mean that we should do it. I am not totally opposed to allowing some exemptions from the training levy where firms have put in place adequate training mechanisms. It is not the fundamental principle of an exemption to which I object. I move -

Page 8, line 28 - To insert after the word "criteria" the following words -

relating to the provision of internal training arrangements by a project owner

Page 8, line 28 - To delete the word "a" and substitute the following word -

that

Page 9, line 1 - To delete the word "specified".

Page 9, after line 3 - To insert the following new subclause (2) -

(2) The value of that reduction or exemption referred to in subsection (1) may not be greater than the value of training provided by the project owner.

The Minister stated that a 0.2 per cent levy will be placed on the value of every building operation. He also stated that outfits like the Housing Industry Association and independent companies that provide their own training schemes should not be forced to contribute twice. That is acceptable. I do not have an in-principle objection to an exemption. However, I am concerned that descriptions in the second reading speech are not contained in the legislation. The legislation provides for a broad power of exemption; it is not limited to situations where alternative training is provided. The four amendments are aimed at ensuring that the criteria for exemption that the Minister will publish are limited to what is set out in the second reading speech. Those amendments will provide the protections that the Minister assures us he intends to implement. The first three amendments will provide that the criteria that are laid down by the Minister in a gazettal notice relate to the provision of training arrangements of a project owner.

*Sitting suspended from 3.45 to 4.00 pm*

Hon A.J.G. MacTIERNAN: I have explained the point of the first three amendments, into which the fourth amendment is tailored; it is designed to ensure that the level of exemption granted is comparable only with the value of the training provided by the project owner. It will ensure that the mere provision of some training will not discharge a project owner of the entire obligation. It is not fanciful to imagine that if a limitation were not in place on a large project - I do not suggest that this Minister will allow this - one could obviate the intent of the provision by providing a small amount of training as a justification for applying for the exemption. In that case, the value of the training provided by the project owner may not be comparable with the value of the training levy for which he or she gains exemption. Together these two amendments seek to put into legislation the intention of the exemptions as the Minister outlined.

Hon N.F. MOORE: I am prepared to accept the first amendment now that the "internal" reference has been removed. The original amendment suggests that in the opinion or attitude of Hon Alannah MacTiernan external training providers should not be involved with this proposal. Now she has agreed to remove "internal", I am happy to agree to that amendment.

The second amendment will substitute "that" for "a" and is a consequence of the previous amendment. However, I cannot see the reason for the amendment to remove "specified".

Hon A.J.G. MacTiernan: It is difficult to deal with because of the standing orders.

Hon N.F. MOORE: I do not see the member's argument for the board not to specify the amount of the reduction in the levy payable. I would have thought that the board should specify that reduction. The word improves the situation and its exclusion appears to be against the trend of the member's other amendments as it would give the board more flexibility.

In respect of the fourth amendment to insert a new subclause (2), training should be regarded in its quality, not simply in its dollar value. I have been advised that it would be difficult for the board to assess the value of training projects conducted by project owners. It is hard to quantify the value of training. The board will be able to make a decision about the exemption or a request for reduced levy on the basis of the quality of the training provided, not necessarily its cost. I do not accept the fourth amendment.

I cannot see any reason for the last two amendments; therefore, the Government opposes them. In summary, I am happy to accept the first two amendments, but not the others.

The CHAIRMAN: The question is that the first two amendments, to insert words after "criteria", and to substitute "that" for "a", be agreed to.

#### **Amendments put and passed.**

Hon A.J.G. MacTIERNAN: I seek leave to withdraw the third amendment to delete the word "specified".

#### **Amendment, by leave, withdrawn**

Hon A.J.G. MacTIERNAN: I have very grave concerns about the Minister's response to the debate on the fourth amendment regarding new subclause (2). I do not see this proposal as in any way being pedantic. I see the exemption provision without the fetter I propose here as very dangerous as it has the capacity to lead to a great deal of inequity in the industry.

I do not want the Minister to draw the wrong conclusion from my example, which illustrates that such a provision, without amendment, would be most improper and unfair. We know that the Housing Industry Association is very keen to continue the scheme that it had before the commencement of the building and construction industry training fund in which it had an apprenticeship scheme funded through voluntary levies. The Opposition has no difficulty whatsoever with that scheme being granted an exemption, thereby providing those people who participated in that scheme with relief from having to provide the training twice. I am very much concerned that unless one has an idea of the equivalent value of the training, one might find - this is not in the slightest bit fanciful or hypothetical - that the HIA levy might, for example, be levied on the basis of 0.1 per cent of all building work, and the money will be used to provide a training scheme. Therefore, those people who sign up to the HIA and join the voluntary scheme will gain a break, to the value of 0.1 per cent of the value of the building work, over other operators. Given the competitive nature of the building industry, that is a substantial benefit and will lead to great inequality.

I am not opposed to exemptions. However, if one leaves it open to some assessment of quality without consideration of the sums of money involved, one will see a great deal of inequity emerging. This is something which will happen sooner rather than later and it will cause a great deal of disruption in the industry. Also, the value and quality of

training will reduce. I am concerned and surprised that the Minister would dismiss the amendment out of hand. I would not suggest that it is merely a matter of a scheme delivering training of a certain financial value; if it is not quality training, it should not qualify for an exemption. A level playing field must apply. It is improper to propose that individuals be given an exemption for spending less than that spent by others who have no exemption. That is a grave concern. I am not sure whether this might not activate some of the concerns that Hon John Halden spoke about.

Hon N.F. MOORE: Currently project owners are required to pay a levy to the board, and the board puts in place training programs using the money raised from the levy. The report of the review of the fund was quite scathing about the way in which training had been carried out. Evidence suggests that some of the projects which were funded were not all that brilliant. The Minister will be able to publish in the gazette specified conditions and criteria related to training - which we have added - and the board may, if it believes the application meets the criteria and conditions, provide an exemption or a reduction in the levy to the project owner. The board will not provide an exemption or reduction in the levy to someone who is providing training of a lesser quality than provided previously. The aim of the exercise is to improve the level of training. Again Hon Alannah MacTiernan seems to be coming from the angle which suggests that somehow we are seeking to reduce the level and quality of training. The reverse is true. We are trying to make it better by providing flexibility, by giving the board the capacity to make decisions based on the criteria set by the Minister to allow different training programs to be undertaken. It will be necessary for the quality of training to be at least maintained before an exemption or reduction is provided.

Hon A.J.G. MacTiernan: How would you judge the quality? The fund provides training across the industry.

Hon N.F. MOORE: The member's amendment seeks to have the board value the training and then she asks how can it be done. She cannot have it both ways.

Hon A.J.G. MacTiernan: What are you comparing it with?

Hon N.F. MOORE: The board will comprise people able to make decisions about the quality of training. They must make decisions about how the fund will be spent. The current board makes decisions about training programs. It will make a decision about the value of the training programs presented to it for funding. Therefore, it will use the same level of judgment to decide whether an exemption should apply, based on the value of the training program put to it - as it does now. The board will be capable of making decisions about that. No board worth its salt will support a reduction or exemption from the levy if the level of training is not being provided. That is what this is about. As I have said, we cannot necessarily value training in financial terms. The member is arguing that somehow the exemption must relate to the value of the training and that must be in financial terms. The board could not do that even if it wanted to or had to. Secondly, it would not do that anyway because some training programs which are just as effective as others cost more or less depending on how many people are involved, the critical mass of students, and the circumstances of the training. Many different issues can arise between one set of training programs and another. Therefore, the amendment is unnecessary because the board will give an exemption or reduction in the levy only if the level of training meets its requirements. It will have the capacity to make that decision because that is what it is for: It is to make decisions on how the money is being spent and whether the level and quality of training provided by the levy is up to the standard required. The board is capable of making those decisions. Therefore, there is no need for this amendment.

Hon A.J.G. MacTIERNAN: This is very unfortunate, because one of the casualties will be the provision of training to the smaller components of the industry. We are likely to see some large outfits set up and provide at less than 0.2 per cent training programs for their own personnel. The smaller operators will not be able to do that because they will not have the critical mass. They will put in 0.2 per cent to the fund and they will then be at an even greater disadvantage. This is the mechanism that will ultimately create an unlevel playing field so that large firms will be required to spend less on training than many small operations.

Hon N.F. Moore: Spending less is not always a bad thing, so long as the quality is provided. You have the crazy assumption that we must keep spending money to do things -

Hon A.J.G. MacTIERNAN: Expenditure is not the only criterion, but we should have the same criteria. One could say that large companies should be able to opt out of paying tax because they will set up some arrangement with their own employees, but it does not work like that. Training provided by the group fund is participated in by a range of different people. For example, company X would participate in group training, or occasionally send a person to a doggers' or scaffolders' course, but how would we equate what components would be included in the overall training? It is not as if there is a set training program in which the employer compulsorily participates according to the 0.2 per cent; rather the employer may participate in a range of things. It will be difficult to make the comparisons that the Minister talks about, and many shonky arrangements will be set up.

Hon N.F. Moore: The board will make the judgment, no-one else!

Hon A.J.G. MacTIERNAN: One of the reasons that the national training levy was abolished was that people could set up their own training schemes and, having done so, not pay the levy.

Hon N.F. Moore: The board must approve it. It is a compulsory levy, unless there is an exemption.

Hon A.J.G. MacTIERNAN: That is how the national training levy applied. It was a compulsory tax that was payable unless an exemption was obtained by way of establishing certain expenditure on approved training. A great deal of that training turned out to be very flimsy and notional in the extreme. Far from learning from the problems that occurred with the national training levy we seek to turn the fund around. Despite some problems around the edges the bulk of the expenditure has been well targeted and has provided high quality apprenticeships and semi-skilled training. We will see a lot of cost cutting and a range of somewhat questionable schemes emerging to provide a commercial advantage to those who decide to participate. Probably at the end of two years it will be obvious that things are a sham, and the fund will be wound up. This is a huge mistake. I do not know whether we can convince the Minister but at least we want our concerns put on the record. We will be watching with great interest the exemptions granted and the impact on the industry generally. There is already a very real problem with the concentration of ownership in the construction industry, particularly the housing construction industry. This sort of strategy will possibly increase it.

**Amendment put and negatived.**

Hon A.J.G. MacTIERNAN: I move -

Page 9, after line 3 - To insert the following new subclause -

(3) The Minister may, in publishing a notice pursuant to subsection (1), limit the geographic area to which the notice will apply.

The exemption will have a negative impact in some regional areas. If some very large operators are allowed to opt out of the scheme, it will make it difficult for viable courses to be run in many regional areas. For example, one company might employ a couple of hundred people and 20 or 30 firms might employ a few people each. Often that big operator is required in the field to make those training programs viable. In making his declaration of the criteria, will it be possible for the Minister to provide that the board may determine in certain circumstances not to allow a project owner who otherwise satisfies the criteria to obtain an exemption, on the basis that it would have a negative impact on the provision of training generally to smaller operators in a regional area?

Hon N.F. MOORE: One of the biggest complaints I receive about the building and construction industry training fund is from regional employers and regional project owners who put their money in and get nothing out. At present, if people engage in a building project, they pay through the local authority a levy that goes to the BCITF. The BCITF board then hears submissions, as it does from time to time, about training programs. Regularly those training programs have nothing to do with many of the people who put money in the fund in the first place. Probably the biggest complaint I have had about the fund is that the money is spent where the board thinks it should be spent and on programs the board thinks are appropriate.

Hon Alannah MacTiernan suggests that regional people will be disadvantaged by the board's ability to make decisions about who will be exempted. That will not make the slightest difference to what goes on in Western Australia. The conditions in the criteria might suggest that people who contribute to the fund should get something out of it. That might make a nice change for many who contribute now and get nothing out of it.

Hon A.J.G. MacTiernan: How can that be when people are being trained in the skills that are required in the industry?

Hon N.F. MOORE: A huge number of companies around Western Australia that are involved in construction and building activities pay the levy and none of the programs run by the BCITF has any influence on them. None of their trainees gets a guernsey for the BCITF fund. It is spent on projects that the Builders Labourers, Painters and Plasterers Union thinks are a good idea in West Leederville or in Dawesville. The training does not go right across the board; it goes to specific training programs. Many individual companies that pay the levy do not get a benefit from it. Perhaps the industry gets a benefit from it, but the individuals do not. Perhaps the criteria should be that those who contribute get something out of it.

Hon A.J.G. MacTIERNAN: Unfortunately that response from the Minister indicates a profound misunderstanding of how this fund should work and the reason it was set up in the first place. A number of companies do not have any people actively engaged in the training that is provided by the BCITF. However, that is not to say that they are not using the labour of people who have been trained through the BCITF. That is one of the reasons the scheme was set

up: People were not taking on their responsibilities for training people. Part of that is due to the fragmented nature of the industry. However, some people determined that they would just pay higher wages and get people who had been trained by somebody else. The idea of this amendment is to share the burden. All those companies to which the Minister spoke, wherever they are, require people who are trained. They require skilled plumbers, fitters, carpenters and electricians. If they are doing multistorey constructions they require doggers, riggers and scaffolders. Those are the people who are trained by the BCITF. The fact that none of their employees at a particular time may be undertaking one of those courses is irrelevant. We are talking about the overall skill formation and the obligation of every company to participate in that.

I am surprised at what the Minister says about the regional areas because a substantial amount of the group training is done throughout the regional areas. The Master Builders Association of WA, for example, operates successfully a group training scheme in the Kalgoorlie region. It may also have one in the Geraldton region; I am not sure. A south west group training incorporation and not for profit organisation has been set up to provide group training in that area as well. A substantial percentage of the group training schemes are located in regional areas. I am surprised to hear that the regional areas feel that they are not benefiting. That certainly does not apply to all regional areas. This amendment would not compel the Minister to do this, but would simply enable the Minister to do it if it seemed appropriate under those circumstances.

#### **Amendment put and negatived.**

Hon A.J.G. MacTIERNAN: I move -

Page 10, after line 30 - To insert the following new subclause -

(6) Where a determination is varied or cancelled and substituted by the Minister, the Minister shall table in both Houses of Parliament reasons for the Minister's decision within 14 days of making that decision.

The Minister proposes a regime wherein he may gazette certain criteria which, if met, can lead to a project owner obtaining an exception from the building levy. The board looks at the Minister's criteria and judges the individual applications that are made for the exemption. So far so good, except for our earlier comments about the exemption. We disagree with the notion that the applicant should have a right of appeal to the Minister. We think that is not a matter that should go on appeal to a Minister. If any appeal is to be held, it should be to some sort of administrative appeals tribunal rather than to the Minister. We have grave concerns about the preservation of this quasi judicial function for a Minister. I do not think it enhances the legislative process at all. There will be situations where Ministers will be prevailed upon, particularly by persons who might have some influence in the community, to grant an exemption. It is very dangerous. Knowing that we would not succeed in changing the Minister's mind we wanted to put that on the record.

We are keen, however, to see if we can salvage something out of this. We hope that the Minister will agree to the amendment. It does not alter the Minister's power to hear an appeal; it makes the process more transparent. However, it provides protection to the process of accountability by ensuring that, if the Minister grants an appeal, he will put before Parliament the reasons for such an appeal being granted. That very important exercise in transparency must be put into this legislation if the community is to have any confidence that this legislation will be impartially applied.

Hon N.F. MOORE: I do not support this proposition. Under this proposal, every time a Minister makes a decision he will have to table an explanation in the Parliament. We are not talking about only this set of circumstances; we are talking about every other circumstance in which Ministers are involved in making decisions. If Ministers have to table every decision they make in the Parliament, they will not make any decisions, or, if they do, the place will be choked with tabled papers.

The board will make all the decisions with an odd appeal being made to the Minister. However, I suspect that, on most occasions, the Minister will go along with the board. Provision is made in the legislation for the Minister to engage an independent person to assess the situation and provide advice to the Minister provided that person is not involved with the applicant or with the board. The Minister's role is one of final adjudication. However, to require decisions to be tabled in both Houses of Parliaments every time this might happen goes beyond what I think is a necessary arrangement. The Minister is subject to questioning in the Parliament about any decisions made.

Hon A.J.G. MacTiernan: How do we know if it has happened?

Hon N.F. MOORE: Of course members will know.

Hon A.J.G. MacTiernan: We won't know about the decision being made.



Hon N.F. MOORE: The member seems to know a lot about what is going on already. I have no doubt that if somebody is unhappy about what has happened, someone will hear about it.

I am concerned about this amendment, not so much in respect of this Bill, but in respect of the basic principle that every time a Minister makes a decision, it will have to be tabled in Parliament. I can give the member an absolute assurance that, under those circumstances, no decisions will be made.

Hon A.J.G. MacTIERNAN: The Minister's argument is entirely inconsistent. First, he said it would lead to a paper war and a huge pile of paper would be tabled. He then said it would rarely happen.

Hon N.F. Moore: I said one or the other would happen.

Hon A.J.G. MacTIERNAN: The reality is that there will be no way of knowing what the Minister is doing. Bearing in mind that the appeals will be made by people who are unhappy with the board's decision, if those people are granted their appeal, they will be no longer unhappy and we will not hear from them. Therefore, we will have no way of knowing to whom the Minister is granting this concession. This is very troubling. There will be no method of determining what is going on. No record accessible to the public will be kept for it to know how many times the Minister overrides the decisions of his board to grant an exemption in favour of a project owner. With all the pomposity with which the Minister talked about WA Inc, here he is giving himself an extraordinary power to provide a very significant benefit to building companies and project owners and he wants to keep it secret! We are not seeking to interfere with the power of the Minister. However, we are saying that, when he is dispensing largesse or overriding his independent board to make a determination in favour of a project owner or a building company, there must be some mechanism for determining that has happened. If that is not the case there will be no scrutiny or capacity whatsoever for the public to find out who is being advantaged.

That is completely inconsistent with this Government's commitment to accountability. It is truly appalling. We have concerns about the Minister granting to himself an appeal right. However, to then prevent anyone knowing in what way the Minister is acting when granting those appeals is despicable. I am most surprised that the Minister has rejected this. We do not like the whole appeal process. However, we recognised there are precedents for it and that it is something about which the Minister had made up his mind. All we are asking is that there be some transparency in the system and some way of knowing to whom the Minister grants a financial benefit. If the Minister rejects this I hope we will hear nothing more about the Labor years in the 1980s. If ever a provision set up a scene for a Minister to dispense favours and largesse upon a project owner or operator it is this provision. To deny us any form of scrutiny is a very big mistake on the part of the Minister.

Hon N.F. MOORE: I am looking at section 9 of the parent Act, which refers to directions by the Minister. My opinion is that direction by a Minister under section 9(1) would be in respect of the hearing of an appeal. The section states that a Minister may give directions in writing to the board with respect to its functions or powers, either generally or with respect to a particular matter, and the board should give effect to any such direction. Under section 9(2) the text of any direction received by the board under subsection (1) shall be included in a report submitted by the accountable authority of the board under section 66 of the Financial Administration and Audit Act 1985. I interpret that section to mean that any direction to the board under the appeal mechanism is required to be included in the annual report. That process applies to many of the decisions made by Ministers and a Minister's direction of a board is included in the annual report. That is be the vehicle whereby the member would know exactly what happened.

Hon A.J.G. MacTIERNAN: While we were having the debate, I thought of the possibility that this amendment might meet this sort of resistance. Perhaps a less satisfactory method, but certainly an alternative, would be to have the information listed in the annual report. Unfortunately nothing in this clause would suggest that the hearing of an appeal is the equivalent of a direction to the board. I do not have the Act before me.

Hon N.F. Moore: It says that it is either generally or with respect to a particular matter.

Hon A.J.G. MacTIERNAN: I can see nothing in the text of the proposed new section 25C which indicates that there is to be any direction to the board. If the Minister believes that the appropriate mechanism is for the matter to be dealt with by way of listing in the annual report, I suggest we move another amendment to indicate that where the determination is varied or cancelled and substituted by the Minister, the information be tabled in the annual report. As I say, nothing in proposed section 25C gives one any confidence that the decision on an appeal is equivalent to a direction of the board. Nothing in the Bill requires the Minister to make a direction to the board in relation to an appeal.

Hon N.F. MOORE: If we want to adopt a sort of belt and braces approach and have written into every clause something which might or might not apply to a previous clause, I would go along with that. Maybe we should vary subclause (6). I assume the decisions will be reflected in the annual report. If we want to amend Hon Alannah

MacTiernan's amendment and put in the words which she has under subclause (6), I will go along with that, if it satisfies her.

Hon A.J.G. MacTiernan: It does not satisfy me entirely.

Hon N.F. MOORE: The requirement is already in section 9 of the parent Act.

Hon A.J.G. MacTIERNAN: May I seek to withdraw the last amendment standing in my name and move a recast amendment?

**Amendment, by leave withdrawn.**

Hon A.J.G. MacTIERNAN: I move -

Page 10, after line 30 - To insert the following new subclause (6) -

(6) Where a determination is varied or cancelled and substituted by the Minister, such decision shall be included in the annual report of the Board.

I thank the Minister for being prepared to compromise on this. I do not think it is a belt and braces approach. If one looks carefully at new section 25C, nothing in it suggests one can determine the Minister's granting of an appeal to be the equivalent of making a direction to the board. If we are to make sure that it appears in the annual report we must do this.

**Amendment put and passed.**

Hon A.J.G. MacTIERNAN: We have gone over the arguments. Although we do not have an objection to the principle of granting an exemption where bona fide training of equal value is being provided, this provision as it stands leaves itself wide open to a great deal of abuse and the eventual undermining of the fund. We believe it will allow a situation to emerge where certain big players are advantaged over smaller operators in the industry. It has the potential also to see the quality of training generally decline and some bogus training emerge. We are also very concerned about the appeal process that the Minister has provided to himself. Now we have a limited degree of transparency. The annual report may be a year after, but if the BCITF continues its current record, it might be some three years after before we get to see the annual report and know what has gone on. Notwithstanding that, it is not the granting of an exemption itself that is the problem but the way in which the Minister has sought to do it and the breadth of powers involved. For that reason, the Opposition opposes the clause as a whole.

Clause, as amended, 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 (14)**

Hon George Cash  
Hon E.J. Charlton  
Hon M.J. Criddle  
Hon B.K. Donaldson  
Hon Max Evans

Hon Barry House  
Hon P.R. Lightfoot  
Hon P.H. Lockyer  
Hon N.F. Moore  
Hon M.D. Nixon

Hon B.M. Scott  
Hon W.N. Stretch  
Hon Derrick Tomlinson  
Hon Muriel Patterson (*Teller*)

**Noes (11)**

Hon Kim Chance  
Hon J.A. Cowdell  
Hon Cheryl Davenport  
Hon Graham Edwards

Hon Val Ferguson  
Hon N.D. Griffiths  
Hon A.J.G. MacTiernan  
Hon J.A. Scott

Hon Tom Stephens  
Hon Doug Wenn  
Hon Tom Helm (*Teller*)

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**Pairs**

Hon Peter Foss  
Hon I.D. MacLean  
Hon Murray Montgomery

Hon Bob Thomas  
Hon John Halden  
Hon Mark Nevill

**Clause, as amended, thus passed.**

**Postponed clause 12 put and passed.**

**Schedule 1 put and passed.**

**Bill reported, with amendments.**

## **HAIRDRESSERS REGISTRATION REPEAL BILL**

### *Committee*

The Chairman of Committees (Hon Barry House) in the Chair; Hon N.F. Moore ( Minister for Employment and Training) in charge of the Bill.

### **Clause 1: Short title -**

Hon JOHN HALDEN: As members might observe, I have this morning taken some first-hand advice.

Hon P.H. Lockyer: The colour and the curls.

Hon JOHN HALDEN: That is the very issue I wish to address. I spoke this morning to a woman who has had long and broad experience in the industry. Many of the issues which we have discussed in the House and which have been discussed by the Government Agencies Committee were verified by her. The potential danger of chemicals was raised obliquely by Hon Jim Scott, but for our purposes we should seek some clarification. The Government Agencies Committee report stated -

There are issues that go to consumer protection such as the rules governing business conduct and the physical condition of the business premises. There is a firm impression in the industry that salon inspection by local and central government authorities is infrequent and often superficial. The committee is concerned that industry witnesses were vocal in their criticism of an apparent lack of interest or concern by the administering authorities. Whatever the reasons may be for this perception, the point was made too frequently for the committee to ignore. It may be that both hairdressers and their clients need to be better informed about quality standards and safety requirements.

One premise of this Bill is that the registration board has become moribund and other organisations have taken over many of its roles in relation to occupational health and safety, training and so on. Last night we heard the example of the Spearwood case, where a woman was severely burnt, and that case was well publicised. I spoke to a woman this morning who gave me another example. A lady suffered third-degree burns and lost between 75 and 80 per cent of her hair permanently.

### **[Questions without notice taken.]**

#### *Statement - Chairman of Committees - Clause 1 Debate*

The CHAIRMAN (Hon Barry House): I formalise my earlier remarks made during the Committee debate on the Vocational Education and Training Bill regarding the nature and scope of debate on clause 1 of a Bill. The stages of a Bill are intended to achieve two primary objects: First, to enable full discussion of both the substance and form of the legislation. Second, to ensure that decisions already made at one stage are not reopened for discussion at a subsequent stage and do not thus prolong a Bill's passage unnecessarily.

The second reading debate concentrates on the substance of a Bill and the policy of the Bill and whether it is acceptable to the House. Having made that decision the rules of debate prevent further argument on the policy contained in the legislation during subsequent stages. The Committee of the Whole stage is specifically to examine the Bill's provisions to demonstrate whether, as a package, they will have the intended or desired result. That examination may and frequently does lead to amendments. To demonstrate the point I am making, any amendment must be relevant to the scope of the Bill and must not be destructive of its intent; that is, it must not directly contradict the policy principles already agreed to in the second reading debate.

The short title debate does no more than give members the opportunity to range over the clauses of the Bill, foreshadow amendments and indicate, consistent with the policy of the Bill, how its formal content may be improved. It is not a vehicle for continuing debate on policy; rather, if members do not wish the Bill to proceed, the action they should follow is to vote to defeat clause 1 of the Bill as it stands.

#### *Committee Resumed*

Hon JOHN HALDEN: I am not sure whether you were directing that statement to me personally.

The CHAIRMAN: I was elaborating on a ruling I made a couple of weeks ago in relation to the short title debate.

Hon JOHN HALDEN: As I was saying earlier, I do not intend to oppose the policy of this Bill. However, I raise with the Minister a specific problem which has resulted from a policy decision to repeal the legislation. The Government Agencies Committee identified issues such as infrequent inspections of hairdressing salons by local and central government agencies and the serious implications of the use of dangerous chemicals. I have related some fears that were expressed to me this morning in a discussion. No-one denies that accidents occurred while the Hairdressers Registration Board has operated. The Opposition agrees with the Minister that a professional body should develop best practice or a code of conduct. We also agree it is a diversified industry in location and the small size of its operations. We also agree that the industry does not hold a united view of its future direction. The Opposition's specific concern is that if we take away the registration board and allow the industry to set up its own body, because the industry is so fragmented, it will take an enormous time to create such a body and have it accepted by the industry. The consequences in the use of dangerous chemicals could be enormous.

The board has not been spectacular in its approach to the use of chemicals, consumer rights, and how workers should check whether a person has an allergic reaction to a particular substance and so on. However, because of the potential consequences and our belief that the industry should monitor this facet, and in the knowledge that the industry is likely in the short term to experience enormous difficulty, a number of specific issues should be considered. Firstly, the WorkSafe and Health Department regulations in this area should be clear to the community. Secondly, we should know the specific health regulations, so people can be sure that they are in place. I will not make an issue out of this; however, if they are not in place we should fix that quickly. Thirdly, in respect of training the Minister has a far more intimate knowledge of this area than any of us. He should ensure that the use of chemicals is a particularly well canvassed and appropriately addressed issue.

I am not suggesting we should not repeal the Act. However, I am concerned about the hole that will form between repealing the Act and the industry's reaching the point where it can form a professional or trade body. This has always been a divided industry and the concern is that division may create this hole. We need to ensure that occupational safety and health protections are in place.

Hon KIM CHANCE: I want to canvass the Minister's opinion on the same matters that have been raised by Hon John Halden, but in a more specific sense. I will confine my brief comments to Health Department regulations, which have nothing to do with this Bill. That was recognised in the context of the second reading debate. Nonetheless, the policy of the Bill contains in a de facto sense - even though it was mentioned in the second reading speech - the indication that the Government will support the establishment of a professional overriding management group which, among other things, will cooperate with existing agencies such as the Health Department and the Department of Productivity and Labour Relations. Although that is arguably outside the scope of the Bill I ask the Minister to comment on the Government's commitment to, at least, take a good hard look at Health Department regulations. I particularly would appreciate that, because in the debate it has been raised time and time again as a serious issue. In the event of the industry's becoming less regulated, in the public's mind, that is probably the most serious issue. We all accept that whether or not we regulate the industry, health regulations probably will not be much different. However, deregulation could improve the situation.

Hon N.F. MOORE: I do not have the Health Act or WorkSafe regulations with me, so I cannot give the Leader of the Opposition a specific answer to all the matters that he raised.

Hon Kim Chance: I am asking you to look at them.

Hon N.F. MOORE: The decision to go down this path was made by the Government after hearing from the Standing Committee on Government Agencies. That committee conducted the research, came up with the conclusion and said the board should be replaced with another body. Under the heading "Health and Safety" the committee's report states -

The industry may need to show flaws in the argument that the level of risk associated with product use stands to be assessed by the manufacturer and the relevant licensing and enforcement authorities. There are strict statutory and common law standards that manufacturers and suppliers must meet so far as the safety and intended uses of a product are concerned.

When I read that I thought that the committee had investigated this issue and come to the conclusion that processes, regulations and other requirements were in place to deal with the issues that were raised with the committee when it investigated these matters. However, the report goes on to state -

Training in, and observance of advised or mandated safety standards consistent with the risk attaching to, product use need not require discrete regulation.

I could have conducted my own inquiry into the registration board and perhaps arrived at different conclusions. However, I was prepared to accept the overall conclusions of the Government Agencies Committee. I now propose

that we go another step in this exercise. I will give an undertaking - assuming I am still the Minister if this Bill ever comes through the system - that prior to proclamation a steering committee set up by the Minister will be formed to monitor the transitional arrangements; in other words, to look at the formation of the professional body; to bring together industry groups to talk about how that might come about; to make judgments about its composition; and to look at some of issues raised today by Hon John Halden and Hon Kim Chance. Once these matters have been considered I suggest that the steering committee report to the Government Agencies Committee for its consideration, and once the Government Agencies Committee thinks it is a good idea we will proclaim the Act.

Hon George Cash interjected.

Hon N.F. MOORE: I acknowledge that might be a good idea, but members will be busy at that time. I hope this Bill will be passed in the next couple of weeks. The committee would have to look at it over the Christmas period when members will be more interested in looking after their future than reconsidering the Hairdressers Registration Board. If industry people are involved, they can report to the Government Agencies Committee which can tick off the concerns, if it thinks the solutions meet the concerns that have been expressed in this debate. I put that suggestion forward in the spirit of cooperation to make sure what we have now finishes up being something we all want in the long term and that the legislation is not proclaimed until such time as that has occurred.

Hon JOHN HALDEN: It would be unrealistic not to accept the Minister's reasonable proposition. It will allow for some scrutiny of the process of transition and hopefully what members want for this industry will be achieved. I thank the Minister for his offer and, of course, the Opposition will accept it. I cannot speak on behalf of the Government Agencies Committee which now has another task. However, some comfort will be gained for members and the community from the Minister's offer. I advise the Minister that we will not debate any of the other clauses.

**Clause put and passed.**

**Clauses 2 to 11 put and passed.**

**Title put and passed.**

#### *Report*

Bill reported, without amendment, and the report adopted.

#### *Third Reading*

Bill read a third time, on motion by Hon N.F. Moore (Minister for Employment and Training), and transmitted to the Assembly.

### **REVENUE LAWS AMENDMENT (ASSESSMENT) BILL (No 2)**

#### *Second Reading*

Resumed from 18 September.

**HON JOHN HALDEN** (South Metropolitan) [5.54 pm]: The Opposition supports this Bill. This will probably do a great disservice to the Minister for Finance, but I compliment him on introducing the concept of amalgamating these Bills in the form of an omnibus Bill. It is certainly far better than the previous system. Although the Bill is a little disjointed, it covers the same topic areas and it is a far more efficient use of the time of this place and the State Revenue Department than the previous arrangement. I saw a reference to a Stamp Amendment Bill earlier today and I hope we do not revert to the old system.

Hon Max Evans: That legislation was not drafted in time to be included with this Bill.

Hon JOHN HALDEN: This is a better system and the Minister should be congratulated.

This Bill covers a number of Acts and the Minister's second reading speech is comprehensive. I will be repetitive in my reference to the Minister's second reading speech. The first Act which will be amended by this Bill is the Business Franchise (Tobacco) Act. This Bill provides the guidelines for the Commissioner for State Taxation to consider the suitability of a person to hold a tobacco licence. Under the guidelines, the applicant or the applicant association must be fit and proper persons to sell tobacco products and the licence cannot be issued if it is contrary to public interest. The applicant must have the necessary resources, skills and business plan to conduct a viable business and provide suitable premises for the safe storage and distribution of tobacco products. These are quite reasonable requirements and, if nothing else, are parenthood statements. I am not sure whether these requirements are necessary for the licensing of a person to sell tobacco products. In the last five minutes in this place we have had a deregulation and a regulation and I ask the Minister to consider whether this Bill is going a little too far in terms of regulation.

Under the regulations the commissioner can seek the approval of the applicant to carry out an inspection to ascertain whether he has a criminal record. The commissioner will also have the power to grant a restricted licence to allow the licence holder to sell only certain brands of tobacco products. I am a bit confused. If someone is issued with a licence to sell tobacco products why would he be restricted to selling Marlborough or Winfield or certain brands of tobacco and cigars? It appears that the regulations are reaching a nonsense stage. There could be a very good reason for doing it, but surely if a person is licensed to sell tobacco products, that is what he does. The licence cannot be broken down into compartments. To do that is arrant nonsense and it is not an effective use of government resources to regulate or monitor a particular activity. Perhaps there is a reason for doing this, but the situation should be clarified.

The Bill also provides for the commissioner to cancel a licence if the licensee is convicted of an offence against the tobacco regulation legislation. What process is required to cancel the licence and is there a right of appeal? The legislation outlines the practice for discounting cigarettes and how the Minister will have the power to determine the value of tobacco products to be sold. Notice must be published in the *Government Gazette* and a charge is levied on that basis irrespective of what the cigarettes are sold for. I understand that the revenue raised by the State is based on the sale price of the tobacco. We could have a situation where the licensee may sell tobacco to an individual or a group at a discounted rate and consequently the State receives less money.

*Sitting suspended from 6.00 to 7.30 pm*

Hon JOHN HALDEN: Prior to the dinner suspension I referred to the part of the Bill dealing with the Business Franchise (Tobacco) Act which allows the Minister to set the level of taxation to be received by the State from licensees. Basically, that process does not allow the practice of discounting of tobacco prices. Discounting is worked out, of course, on sales value, and if the price is reduced, the amount directed to the State is also reduced. I understand that a discounting practice previously occurred in the State which was not based on a financial premise: When one bought a certain quantity of tobacco product, as a reward one received another quantity of tobacco product to sell. I can only presume that no revenue was received from the gift part of that arrangement, which was an avoidance of the taxation principle.

Some further matters must be considered in this legislation. I understand that the Minister can determine by way of regulation the amount of money to be collected from a licensee. That amount is based presumably on volume, and not just the figure collected by -

Hon Max Evans: The figures from last year indicated that they cannot afford discounting. The margins are so small that it is a recipe for disaster. It is about getting a bigger share of the market.

Hon JOHN HALDEN: Indeed, it is trying to establish market share. Once that is established, one can drop that discount in supplying down the line to that market share. I seek an explanation from the Minister. If one is able to gazette the amount of money payable by a licensee, transparency is required to see how the value is established. It is not necessarily a matter of seeing whether it is wrong - it could be wrong - but clearly a transparent method is needed for calculating the figure. If a licensee believes that the Minister's or department's calculation is not correct, what is the process of come back?

The Bill also seeks to tighten the arrangement for the transfer of licences. The material I have read on this matter is longwinded in not only referring to the individual licensees, but in clearly detailing the corporations and firms. If a trustee makes application for a licence, the legislation defines that appropriately. This part of the Bill deals with issues of transparency and a propensity to overregulate. One can sell only certain brands. Why go down that path? I do not understand it. It even applies to certain products. I would have thought that if one has a tobacco licence, one can sell tobacco, be it pipe tobacco, cigars, cigarettes or whatever. I await the Minister's response to that query.

The second part of the Bill deals with the Debit Tax Assessment Act, and the problem it will overcome arises from the fact that debit tax was originally collected by the Federal Government and transferred to the State.

Hon Max Evans: That is right.

Hon JOHN HALDEN: The Federal Government had an anti-avoidance provision; namely, it meant that every time one made a transaction, a debit was made against the operator. That seemed fair and reasonable. However, a difficulty has arisen, as was clearly defined in the second reading speech, when an employer decides to pay his employees by cheque. If under the existing arrangement the employer had 20 employees, he could be required to pay 20 lots of debit tax. One could have a payroll of, say, \$10 000 to which one paid a \$2 debit for one transaction. If one had 20 employees, one could be forced to pay \$15 rather than the \$2 per transaction as one would have to pay \$2 on each transaction into the account of the employer.

Some big advantages are gained in using the automatic banking system relating to security and convenience to both employer and employee. With this provision, the Government is within the bounds of reason.

Hon Max Evans: It is trying to clear up a problem.

Hon JOHN HALDEN: I can understand why the Federal Government would have applied the general rule, but it seems to be fair enough to assist employers and employees in this way.

Hon Max Evans: It will only assist the employers as they pay the debit.

Hon JOHN HALDEN: It will also make things more convenient for employees. Imagine being paid in cash, and taking it home overnight for banking the next day. It would create risk factors which are totally unnecessary in today's society. It is in everybody's interest that it is avoided. That is the only issue arising in that part of the Bill which I could imagine no-one opposing.

The third part of the Bill deals with the Land Tax Assessment Act and will provide concessions to landowners who are primary producers but fail to meet the income tax levels in relation to the existing Act. They must earn more than one-third of the income from primary production. I have some concern about that which I will explain in a moment. There are some qualifications and it is important to put them on the record. I do not have any problems with the qualifications. The first is that the land must be used by the owner; the second is that the income produced must be over the one-third. The problem is that some genuine people earn less than one-third of their income from primary production. Their income may be quite small. Therefore, the land tax is a significant burden if they are to remain in that primary occupation or significant minority occupation. This Bill proposes to lower the threshold of the income tax below one-third. Nevertheless, the same criteria will be applied. This will provide to the landowner a 50 per cent concession. However, there is a problem. To give an example, I know a former doctor and former member of the Liberal Party who had an enormous income because he was a physician. Also he had a significant parcel of land to the north of Perth, and in every respect he was a primary producer. Because of his large income he would never meet the one-third criterion. This Bill provides someone who has no equity grounds with a 50 per cent concession. I do not agree with that.

We should provide the commissioner with discretion rather than with a blanket absolution - one could say - of the 50 per cent concession. I see no reason why the physician in Wanneroo should receive this benefit. No equity considerations are involved. It is not something that cannot be managed in an administrative sense. When one considers the number of well-heeled people who have a subsidiary income from primary production throughout the State - particularly around the metropolitan area and in significant regional centres - one cannot justify these sorts of people receiving that sort of benefit. I concede that we are not talking about enormous amounts of money.

Hon Max Evans: This is land outside the metropolitan area.

Hon JOHN HALDEN: Yes. If we wanted to make concessions on state taxation for those who need it, this is a group of people - admittedly in a specific area - who should not receive the benefit. It is a very inappropriate taxation concession for people who perhaps do not need it. It can be seen as a form of taxation relief to the well-heeled, but not in every case -

Hon Max Evans: It is a minority.

Hon JOHN HALDEN: A significant number of people - and "significant" should be defined - do not need this benefit and are, in my opinion, not entitled to it. At the same time I concede the Minister's point that there are those who will benefit from this provision.

Clause 26 takes a reasonable approach to this matter so that it cannot be used as taxation avoidance and have the benefits of that avoidance accrue only to the individual. This is a call-back provision: If the land is subdivided within five years the amount of the concession of 50 per cent, for whatever time, is claimable by state revenue. I do not have a problem with that; it is a fair enough arrangement. Anyone who had a problem with that would be silly.

I seek some clarification. A moment ago the Minister said that this provision applied to outer metropolitan Perth.

Hon Max Evans: It is within the metropolitan area.

Hon JOHN HALDEN: I have the view - perhaps it is wrong - that it is the metropolitan area, and any area in the State where there is a town planning scheme -

Hon Max Evans: That is right.

Hon JOHN HALDEN: I thought that clause 26 amends that, and provides it to people who use land for primary production and expands the provision more significantly. I do not have my copy of the Bill with me.

Hon Max Evans: Many country towns are classed as urban, but the land is farmed right up to the edge of town.

Hon JOHN HALDEN: That is right, but the Minister referred to the metropolitan area. I thought it was the metropolitan area and significant regional centres with town planning schemes.

Hon Max Evans: That is right.

Hon JOHN HALDEN: I understand that is what it is now. However, I thought that clause 28 removes that provision and makes it for certain land use for primary purposes, and that definition which contracts the impact of this amendment is removed. I do not know whether I am right or wrong.

Hon Max Evans: I cannot say off the top of my head.

Hon JOHN HALDEN: I thank my colleague for his copy of the Bill. Clause 28 reads, in part -

(1) The Schedule to the principal Act is amended in part I -

(a) in clause 12 (a)(i) -

- (i) by deleting the definitions of "metropolitan region" and "town planning scheme"; and
- (ii) by deleting "; and" at the end of the definition of "total net income" and substituting a full stop . . .

It appears we are not applying the provision Statewide. From my reading of the legislation, I do not think that is what the Government intended to do.

Hon Max Evans: Many people on small rural farms just outside country towns pay land tax because they are on urban land and run rural activities. A quarter of a mile further on they would be zoned rural and have no land tax at all.

Hon JOHN HALDEN: There is a difficulty there. In those small country communities where no town planning scheme exists the Government is providing a concession for land tax for people on incomes that could be quite small. Because they are small holdings, it is easy to say that their primary purpose is primary production. However, realistically, as an element of the industry of primary production, to be blunt, they are not much more than hobby farmers except that their primary purpose is to perform a task. I cite the example of a person who has five acres of land outside a town where there is no planning scheme and who runs five cows on it, only as fat stock. That is the primary purpose of the land and it is all the land is used for: The person buys the cattle, fattens the cattle, and sells the cattle.

Hon Max Evans: There is no land tax for those in any case. It does not apply to them.

Hon JOHN HALDEN: It would currently.

Hon Max Evans: No, they are rural properties. They are not paying land tax now. There is a fine line around some country towns between urban and non-urban land.

Hon JOHN HALDEN: I thank the Minister for that. I am now much clearer about that.

The next part of the Bill I will deal with seeks to amend the Stamp Act to provide exemption for transfers of shares in Western Australian companies that are listed on overseas stock exchanges. As a result of that listing each time a transfer of shares occurs the company can be required to pay the stamp duty in the country where they are listed and, of course, in Western Australia. The Minister's second reading speech states that the Government is providing this exemption specifically for one company. Which company is that? It seems that the Government is doing this for the benefit of that one company and the London Stock Exchange, and that it is being limited to the London Stock Exchange, I presume for the benefit of that one company, particularly, but perhaps in future for other companies that are listed also on the London Stock Exchange. If the Government is going to do this - I am not sure why - in effect it should be done for stock exchanges anywhere this problem exists, not just in London and not just for one company.

Hon Max Evans: In Canada they don't pay any at all.

Hon JOHN HALDEN: That is the problem. I was just going to suggest that this creates that window of opportunity for avoidance, particularly if the rate of duty is lower in the overseas country. I do not see any reason to do that. I am at a loss to understand why the State Government would provide that window of opportunity. It will take all of five seconds for a smart operator to work out what is in his interests and to proceed to do that. I understand that in London the level of stamp duty in this area is 0.05 per cent and in Western Australia it is 0.06 per cent. I am at a



loss to understand why the Government would provide that window of opportunity to one company, first, but then to a variety of companies. I accept that in raising capital -

Hon Max Evans: That's the whole thing. They can't raise some of this risk capital on the stock exchange these days.

Hon JOHN HALDEN: I understand that. However, why does the Government not ensure that it gets at least the equivalent rate of duty in Western Australia, so that if the London Stock Exchange rate is 0.05 per cent and ours is 0.06 per cent, the company can pay the 0.05 to the London Stock Exchange but 0.01 per cent to the State?

Hon Max Evans: It is a whole electronic system these days which is automated.

Hon JOHN HALDEN: Yes, but we must live in this world, although the Minister and I might be getting a little beyond that electronic automation. The Government has a responsibility, first, to collect tax; and, second, to collect it equitably. However, this legislation will provide a loophole, and it should not be provided. If the rate for the Toronto Stock Exchange is 0.03 or 0.04 per cent -

Hon Max Evans: It's nil. One company has been to see us and others are already avoiding it. We don't know who they are.

Hon JOHN HALDEN: If a company wanted to raise capital in North America - many companies would want to look at that option - it would establish itself on the Toronto exchange. Because of the precedent the Government is setting with this legislation, such companies would want the same benefit that is being provided to this one company, and will be provided to others in the future. It is a rod for our own backs. If Western Australian companies based in Western Australia must pay 0.06 per cent, Western Australian companies enjoying the benefits of the State and the nation in one way or another should pay the same rate of tax. I do not care about the component parts of it, but I care that companies can establish themselves offshore to gain benefits that they cannot gain in Perth. There is an element - I concede it is a small element - of discrimination against ourselves. I understand why those companies do it; I do not want to go over the top on that.

The Minister's advisers made it clear to me that many of the shareholders of these companies were overseas shareholders.

Hon Max Evans: Initially they are all over there. That might change later.

Hon JOHN HALDEN: I concede that. However, at the end of the day they will probably be exploiting a Western Australian resource. If a company is going to be given a licence to exploit, it should be equally capable of paying the appropriate tax. I understand that the commencement date of the legislation to which I have just referred is to be backdated to 30 November 1995. I wonder what is the reason for that. I am not suggesting anything sinister. However, I wonder why that is necessary.

Part 3 is the section of the Bill that tries to come to grips with the new world in which we live in relation to marketable commodities and seeks to ensure that the State gets its appropriate quantum of duty. The first of these referred to in the Bill is the instalment receipt on shares, as it was described to me. An example of that was the share offer that was made in relation to the Commonwealth Bank. The novel part of that was that the Government made two payments on those shares. The first part was for \$6. The second part is not payable until 14 November 1997. I understand the Government only paid the duty on the first part and not the second part. In my view, that is an evasion; it cannot be called anything else. It is appropriate that we should endeavour to remedy that quirk in the system. I have not been in a position to ask anyone who would know, but I wondered if it was deliberate to provide a benefit to people who bought shares in the Commonwealth Bank.

Hon Max Evans: You would not say deliberate; it was a big advantage.

Hon JOHN HALDEN: The Minister has been talking to the Attorney General for too long!

Hon Max Evans: They pay an amount up front and the balance in instalment receipts to put them all on par. It avoided stamp duty.

Hon JOHN HALDEN: It is appropriate that we close that loophole, otherwise it will become a far more common practice.

Hon Max Evans: One cent up-front and \$5 dollars later.

Hon JOHN HALDEN: Exactly. I am aghast that people have not tried that more frequently. It is a problem that needs -

Hon Max Evans: You mentioned that stamp duty legislation is a reduction of the capital. That would have avoided all the stamp duty completely. It was a new way of doing it.

Hon JOHN HALDEN: There is a second new commodity, if I can express it in that way, that is related to the electronic settlement system for foreign securities. It was introduced on the Australian Stock Exchange in 1994 under a scheme called CHESSE or the clearing house electronic subregister system. That allowed for the transfer of stocks and securities to be done electronically. The problem was that a significant number - I am not sure how many - of foreign companies listed on the stock exchange were unable to use this system because the laws in their countries do not recognise electronic transfers. Therefore, we now have to enable foreign listed companies to have access to CHESSE. A system has been devised to overcome this problem for foreign companies known as CUFS or CHESSE units in foreign securities. It allows foreign securities to be transferred to a depository nominee who can hold the commodity on the company's behalf. The owner will then be recognised as the beneficiary of the securities. Do we charge duty at that point?

Hon Max Evans: We still get the duty, yes.

Hon JOHN HALDEN: At that point. We are making easier the process of transferring shares in this way. By doing that we can then get the stamp duty; otherwise, we cannot get it. We do not object to that.

The next part of the Bill which will also be retrospective is part 4. That will commence on 1 October 1996. It relates to stamp duty relief for corporate reconstructions. This was announced in the Budget and involves assisting companies that have the same ownership or, as the Bill says, have a 90 per cent common ownership. It allows them to restructure in such a way as to not pay the duty. My understanding is they now have to pay the duty no matter what. I am not sure because of my lack of knowledge in this area - therefore I am not implying anything sinister - what are the significant benefits to companies in this area and why we should be providing what is a small tax relief when we can provide, as I said before, more appropriate tax relief in other areas. It seems to me that there is every likelihood that these corporate citizens can afford this duty. It is not a high duty; in fact, it is a low duty.

Hon Max Evans: Not if they are property rich companies. The duty is a lot higher. It is 4 per cent. That can run into millions for some of them or they do not do it at all.

Hon JOHN HALDEN: I agree with the 4 per cent. However, in relation to property rich companies, I am not yet convinced of the necessity for providing this form of tax relief when we could provide better or greater tax relief in other areas. I will give an example in this Bill. Instead of the 50 per cent concession to the deserving landowners that we discussed before, it would be better to have given them a 100 per cent concession than to do this. The Minister may well convince me that there is an enormous and significant benefit in this provision. I do not see this as a spectacular impost on companies, even if they are property rich. In fairness, I acknowledge that this measure of relief is subject to certain significant conditions. The movement of assets between associated companies must take place when those companies have existed for three years. I am not sure what happens if that is not satisfied. Is there a right of appeal?

Hon Max Evans: No, not at this stage. There is a five year test, which some people are complaining about at the moment. We will review that in two years' time.

Hon JOHN HALDEN: I mentioned before that there must be 90 per cent ownership.

Hon Max Evans: That is right.

Hon JOHN HALDEN: There is the issue of the five years, which is a reasonable proposition to put forward. In essence it seems to avoid asset stripping.

Hon Max Evans: Absolutely.

Hon JOHN HALDEN: That is a most appropriate mechanism. If people do not qualify for the five year rule, if I may call it that, they are liable for the duty.

Hon Max Evans: That is right.

Hon JOHN HALDEN: That is appropriate.

Hon Max Evans: The person who complained about this probably had in mind asset stripping further along the line.

Hon JOHN HALDEN: Without this provision that is exactly what would be set up. The provision will probably cost the State in the order of \$5m in a financial year.

Hon Max Evans: Most of those people are not doing the deals because they do not want to pay the stamp duty. That is their choice. It is a bit similar to farms not being transferred to the next generation. People were not doing it.

Hon JOHN HALDEN: The next major issue -

Hon Max Evans: Have you many more clauses to speak on?

Hon JOHN HALDEN: I am trying to deal with the major issues rather than the smaller ones. It is appropriate that we look at the issue of the transfer of marketable security being off market and not subject to tax or stamp duty. That has been rectified in the way the Minister has suggested. Again there are fall back provisions for any abuse and quite clearly the 90 per cent test must be met, if I may refer to it in that way. That reasonable safety measure has been provided.

If I may just go back to the previous issue I was discussing of the benefits to companies on the transfer of property, if a company fails to meet the five year rule it could also face a fine of 20 per cent plus the taxation.

Hon Max Evans: That is really just to stop them.

Hon JOHN HALDEN: Yes. The Minister has structured it in an appropriate way to minimise the potentiality of asset stripping. I have brought up the most significant issues. The Opposition supports the Bill. Certain matters need clarifying. The Opposition is concerned that in providing some form of taxation relief at state level the Minister may have opened up the potential for further avoidance, even though it may not be spectacular.

Hon Max Evans: That is a reference to overseas stock exchanges?

Hon JOHN HALDEN: Yes. In order to provide a far more equitable taxation system the Minister could have provided greater relief in certain areas and no relief or reduced relief in other areas. I concede that is a matter of judgment. Certain companies which do not need relief will benefit, and small companies or individuals could have benefited far more significantly by the transfer of the monetary benefit. Some members of our Caucus would probably express those views a little more strongly. I do not propose to do that. Quite clearly we cannot amend a taxation Bill in this House as it was part of the Budget. That is the Minister's prerogative as part of the Government.

For what it is worth at this stage, I want to emphasise the comments I have made, maybe not to pursue changing this Bill, but purely from the point of view that perhaps in future the Minister may either look at it differently or look at areas where there could be further concessions to those who most need them. I do not say this from a philosophical position, but purely from the position of those who are responsible for the collection of state taxation. We should not necessarily be providing benefits to companies which are more than likely well heeled. It would be far better to provide those benefits to individuals in times of need. With those few comments, the Opposition will support the Bill. I thank the Minister for cooperating and clarifying certain matters during this debate and I look forward to his response.

**HON MARK NEVILL** (Mining and Pastoral) [8.18 pm]: One of my constituents in Boulder has asked a few questions about the Bill. The more the constituent asked, the less I seemed to understand the Bill. Having read it, I am even more confused. I am looking forward to the Minister clarifying a few of the points I do not understand. In his second reading speech the Minister said -

... the Act provides for licence arrangements to control the sale of this dangerous substance.

That is a reference to tobacco. It continues -

This is done by requiring tobacco sold within the State to be sold subject to a licence issued by the commissioner, or to be sold where it has been purchased from a person who has had a licence issued to them by the commissioner.

I assume at the moment there are only wholesale tobacco licences and no retail tobacco licences.

Hon Max Evans: That is right.

Hon MARK NEVILL: Does this amending Bill create what one might call a retail tobacco licence?

Hon Max Evans: No, it is tightening up the wholesale tobacco licence.

Hon MARK NEVILL: So it is still only a wholesale tobacco licence?

Hon Max Evans: Yes.

Hon MARK NEVILL: There are about only three.

Hon Max Evans: There are a few more. We have smaller ones and other special lines of imports.

Hon MARK NEVILL: This is not creating a licence at the retail level.

Hon Max Evans: We never would.

Hon MARK NEVILL: That is not clear in the Bill or the second reading speech. Clause 9 refers to section 7B and the applicant being an individual or carrying on tobacco retailing or wholesaling under the licence. It sounds as though it is creating a separate licence.

Hon Max Evans: That is on the basis that they can be a wholesaler and a retailer, especially some of the smaller businesses. In the old days we had Sharps, which was a big wholesaler. It might also have carried special lines of tobacco.

Hon MARK NEVILL: We are clear about the fact that there is still a wholesale tobacco licence, but no retail tobacco licence. However, the second reading speech states that a third party can sell tobacco as long as it is purchased from a wholesaler.

Hon Max Evans: The wholesaler pays the tax.

Hon MARK NEVILL: Clause 9 deals with the conditions for the issue of the licence. We are now obviously referring only to a wholesaler.

Hon Max Evans: Yes.

Hon MARK NEVILL: It refers to the applicant, who I presume is now the applicant for a wholesale licence and not a retailer. It requires the applicant to have suitable premises for the safe storage and distribution of tobacco. It also requires the applicant - the potential wholesaler - to be a fit and proper person to sell tobacco, but it does not put that requirement on the retailer. Is that correct?

Hon Max Evans: That is correct and I will explain why.

Hon MARK NEVILL: It seems odd to have those requirements for a wholesaler and not a retailer.

Hon Max Evans: The fit and proper person will end up paying the tax.

Hon MARK NEVILL: I asked those questions because of my confusion as to whether this was creating a retail licence.

I am pleased to see that the commissioner must notify the applicant in writing of the reasons for the refusal of a licence or for imposing certain restrictions. I would also like the Minister to outline what is contemplated by clause 9, in that the licence may specify restrictions on tobacco products that may be sold under it. What restrictions are contemplated? The commissioner may cancel the licence of a person who is convicted of an offence against the Tobacco Control Act, which is understandable. However, it also provides that the commissioner may cancel the licence of a person convicted of any offence against any law of the Commonwealth or the State that has a maximum penalty on conviction of \$5 000 or more or a term of three months imprisonment. That seems an incredibly sweeping power for the commissioner.

Hon Max Evans interjected.

Hon MARK NEVILL: Someone with a tax penalty could quite easily have a fine of \$5 000 as a result of an oversight. My main concern was whether it applied to someone with a retail licence. That is no longer an issue.

Hon Max Evans: It may and there is an appeal back to the Minister. I will explain the reasons for that.

Hon MARK NEVILL: Perhaps these issues would be better dealt with during Committee.

The PRESIDENT: I was about to say that.

Hon MARK NEVILL: I am not sure I will be here for the Committee. I will take some licence.

The PRESIDENT: You are taking too much licence - not a wholesale tobacco licence!

Hon MARK NEVILL: The instrument published in the *Government Gazette* to approve a method to determine the value of tobacco where there is discounting should be specified. There is no clue in the second reading speech or the Bill as to how that may work. I am sure that the new federal member for Oxley will be very glad that any records required to be kept under section 17 shall be kept in English. If the Minister can address those issues in his response I will be satisfied. I am pleased to see that there is no retail licence.

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [8.25 pm]: I thank opposition members for their support of this legislation. I hope I can deal with all the questions raised. If not I will have to do that during Committee.

The major amendments to this legislation have no effect on retailers, only on wholesalers. In fact, the method of collecting the business franchise fee for tobacco is clean and simple. When I became Minister I wanted that to apply to the liquor business. There is a retail tax and the hotels, clubs and restaurants must pay 11 per cent tax on the sale of goods, which involves a lot of paperwork. I would like to make that a wholesale tax; it would be easier.

Hon Mark Nevill: It would make it even easier if it were collected by the Commonwealth. There would not be any paperwork.

Hon MAX EVANS: We might not get it back. We were doing a deal with New South Wales. We were both pursuing a wholesale liquor tax. However, Crown Law was worried about the High Court. We were prepared to take it on because it would make life so much easier for liquor retailers. It was then discovered that each State had a different rate of tax and there were many suppliers. There are 129 types of whiskey on the market. It was out of control. Given time, an excise may be the easiest way of doing it and then we can look at getting the revenue back another way. I wanted to do that because it is a far cleaner and easier way of collecting tax for petrol and tobacco, but not alcohol.

Most of the changes have been introduced because of the incidence of major avoidance schemes. People can buy a large amount of tobacco and go out of business very quickly, thus avoiding paying tax to the State Government. The Victorian Government estimates that in recent years it has lost over \$40m in tobacco tax. I will not spell that out for obvious reasons.

Hon Mark Nevill and Hon John Halden raised clause 9, which refers to specifying restrictions on the tobacco products sold under the licence. Someone might obtain a special licence for cigars or a limited range of products, but if he has an open licence he might buy millions of dollars worth of products and shut down the next day. We want some protection in that situation. We are preventing abuse of the system.

The cancellation of a licence upon a conviction has to do with some people who have been convicted in other States and are moving interstate. They have been trying to buy businesses through business brokers in the Eastern States. We really need to find out who will be the end owner of these businesses. In some cases these people will buy \$5m worth of cigarettes. Taking into account the business franchise fee, big money is involved. We are trying to eliminate all the problems in the areas that we know have been exploited in the other States. People who believe their licences have been cancelled unfairly have the right of appeal to the Minister. I do not envisage discounting wars and the setting of prices will occur very often. The Minister for Health was getting quite worried when we discussed the issue of discounting on the last occasion. He thought that with a lower price for cigarettes young people would start to smoke.

Hon John Halden: You are more worried about the loss of revenue.

Hon MAX EVANS: The member is quite right. When I found out that the State was not losing revenue, I was not worried at all. Hon John Halden explained how discounting had gone on in the past and how it had cost us nothing, but it meant a loss of revenue to some of the other States. Philip Morris Ltd started the discounting war and the other cigarette companies followed. At the end of the day, none of them made much profit. It is a little like selling wool. They made half of one per cent net profit, a very small figure. We have included this provision to protect the price range of cigarettes, if it is considered necessary. I do not envisage that it will be applied very often because I cannot see the cigarette companies acting in that way.

We are concerned about people who have been convicted before they apply to obtain a licence. Under the provisions of the legislation people can lose their licence if they are convicted of an offence. In this game we are dealing with a lot of money. In this State \$200m in revenue is raised through the sale of tobacco. With a tax rate of 100 per cent a lot is to be gained from beating the system. The discounting price rate will be determined by the normal wholesale price before it was discounted.

Hon John Halden referred to the debits tax. Some people may gain a small advantage from that. Since I have been the Minister for Finance every time I have found an anomaly I have tried to fix it. We have dealt with quite a few anomalies since we have been in government, one being the debits tax. Members might recall that in the last revenue amendment Bill we cleaned up the anomalies with the debits tax under federal law and state law for charitable institutions, which got an exemption under one law but not the other.

One of my biggest headaches in the administration of tax has been to deal with rural landowners within the metropolitan region. Some of these people have only one residence. If a person owns a property in Subiaco worth the same amount as one of these rural properties, that person would not have to pay land tax. Properties, depending on the size, may be subject to the land tax. If the landowners are school teachers, for instance, it is fairly safe to assume that they will not earn one-third of the amount of their salary from the property. This provision came in in about 1976. It was thought to be a good idea, but I think it has been a headache ever since.

The member for Swan Hills, June van de Klashorst, runs quite a big property, one and a half kilometres inside the red boundary at Gidgegannup. Had her property fallen six inches on the other side of that boundary, she would not be up for land tax at all. She could never make one-third of her income as a school teacher from that farming property, no matter how much she tried.

Hon John Halden: Is she to be a beneficiary?

Hon MAX EVANS: There would not be much land tax involved there! The owners of a very large property within the metropolitan area were paying \$90 000 in land tax. They had a very big farming operation, as well as other income. They received interest of a few hundred thousand dollars which was put into the operation, and that soon solved the problem. It meant that 100 per cent of their income came from farming. Bad accounting cost these people a lot of money.

Hon John Halden: You are not warming the cockles of my heart with this.

Hon MAX EVANS: It just happened to be the case that this property fell on the wrong side of the red line in the metropolitan area. These people had been farming the property for 60 or 70 years.

Hon Bob Thomas: Why is it that land tax must be paid three months earlier than before?

Hon MAX EVANS: That is a good question. It is not to be paid three months earlier, but a month and a half earlier. Next year we must fix a date when payment will be required. I do not disagree with this suggestion put forward by the member. We must look at it. When amendments are passed by Parliament, the payments are required on different dates. On one occasion under the previous Government the provisions came into force in July. On another occasion the assessments had to be reissued and they did not come into force until January. The date has fallen anywhere from July to January. I accept the point made by the member and I think we should have a gazetted date for the payment of land tax so that people can plan their budgets around that day.

Hon Bob Thomas: Everyone says that it has gone up dramatically and that it has to be paid earlier.

Hon MAX EVANS: I will not go through that debate again now. The concession is restricted to land within the metropolitan region town planning scheme. It does not apply across the board. Many people who have properties are subject to this land tax; however, if it is their only property and is located in a residential area, they could have a property the value of which is much more than a rural property, but they would not be subject to land tax.

The figure of one-third has always been a problem. To set up an operation involves costs for fertiliser, plant etc, so people will probably not make a profit in the first year, but rather the second. Under the previous provisions, if people made a loss, they would pay land tax which meant an even bigger loss. We were able to give exemptions to people for the first couple of years if they were developing their business. However, it was very hard to determine a cut-off point.

Hon Bob Thomas: You said in question time today that there were no exemptions.

Hon MAX EVANS: We were talking about exemptions from payroll tax, not land tax. There are a lot of exemptions from land tax on rural properties, charitable institutions, schools and hospitals. As I say, the one-third factor has been a problem, and we are trying to get away from that. We are saying that if people get this benefit and they sell the property within five years, we will have a claw back situation with the land tax for which they have been granted an exemption.

Hon John Halden may be correct; people who have very large properties do not deserve to be affected by this change. It is very difficult to draw a line between those who will get the exemption and those who will not. I would hate to be the Minister who has to make that decision because in these matters of discretion it is very hard to decide. A consensus will never be reached about where the exemption should apply. We know that some people who buy land in company names are trying to get an exemption from land tax. We can see quite clearly that they will subdivide the land in future. If those people are given an exemption, we will require the repayment of land tax at the time a profit is made.

I refer to stamp duty on overseas transfers. One Western Australian company raised money on the London Stock Exchange. I cannot recall its name at the moment. This company could not raise money on the Australian Stock Exchange Ltd in Perth. It is very hard these days to get risk capital, venture capital. Some years ago companies with small boards gambled on the stock exchange, buying company stock. It was just like gambling at the races. Nowadays the big investors are going for the blue chip shares. It is very difficult to raise risk capital of between \$10m and \$30m. Previously it has been very hard to raise money in this country for gambling casinos. However, it is the in thing since the establishment of Crown Casino. As soon as casinos start to lose money, they will no longer be the flavour of the month as being a good investment. The company that went to London wanted to raise about

\$12m, and it was planning to issue shares. The stamp duty would not be payable then but when it transferred those shares. Under the current legislation, there would be a double tax situation.

Since then, one mining company has raised \$33m on the Toronto Stock Exchange. It was finding it very difficult to raise that sort of money in Australia. We also had the president and four or five other people from the Vancouver Stock Exchange over here about a month ago, and I met up with them. They were trying to raise venture capital. The Toronto Stock Exchange case involved investment capital in a mining company. The Vancouver Stock Exchange has made a name for itself on the American continent in venture capital. European money comes in and is placed into venture operations, which are usually high risk, but some people put a certain amount of their capital into high risk ventures. We know of one company that has listed shares on the Toronto Stock Exchange, and we have been told of others in Vancouver. We have not gone over there to inspect the register to find out who or what they are. We are worried about giving those companies a total exemption from stamp duty, because that may create an avoidance scheme where all the shares of Western Australian companies are transferred to a register in Canada and we miss out on the stamp duty.

It is important that new companies in Western Australia can raise capital. The company that went to London intends to invest the money in Europe by opening up some new ventures there. The mining company that put \$33m onto the Toronto Stock Exchange will invest that money in a mining company here. That will be to our benefit. We have not solved the problem of the companies that have gone to Canada. We do not want to give them a total exemption because that may give rise to an avoidance scheme, so we are not moving in that direction. They came to me and told me of their problems. They were quite honest about it, and they are very good operators. We know that other companies are avoiding stamp duty, but do not know who they are.

Hon John Halden: The point I was trying to make is that the same rate of stamp duty should be paid whether a company is based on the London Stock Exchange or the Toronto Stock Exchange. I do not expect companies to pay more, but I do object to them paying less. Surely you could have provided in the legislation that if the rate of tax in London was 0.05 and it was 0.06 here, they would pay 0.05 there and 0.01 here. It should not be beyond the realms of your ability to have the legislation achieve that.

Hon MAX EVANS: I understand what the member is saying. We are really looking at moneys raised on the London Stock Exchange and shares that are being transferred on the London Stock Exchange, not here. If we are not careful, we will get back to the bidding war that Queensland initiated last year when it did a special deal for stamp duty. That cost Queensland \$10m, it cost us \$15m, and it cost New South Wales and Victoria about \$250m.

Hon John Halden: I fear that you will create a bidding war here, because you will provide an opportunity for avoidance.

Hon MAX EVANS: I do not see a problem, but if that does happen, we will have to stop it.

Hon M.J. Criddle: People are looking at Hong Kong and so forth for venture capital. Do you see it coming into that area as well?

Hon MAX EVANS: I think people will be looking around the world for venture capital because there is not a lot of venture capital in Western Australia. I am not certain of the rate of stamp duty in Hong Kong, and after June next year it may be different from what it is today.

With regard to the backdating to 1995, that might have been when the request was made to us. We have had to do a bit of work on the legislation. I think we made an administrative ruling that companies could continue to trade in shares on the basis that the legislation would go through, otherwise we would have had a problem trying to collect tax in both places. I am pretty certain that is correct, but I will check that.

We come now to corporate reconstructions. We had hoped originally to get the legislation through Parliament by 1 October. The legislation will not be retrospective. It will be effective from when it is proclaimed. I did not want companies to rush off and start doing things, because Parliament is the only place that can make certain that this decision goes through. Although the Treasurer said in the budget speech that he hoped to have this legislation through by 1 October, we did not succeed. We have done quite a lot of work. Queensland has very sophisticated legislation, and we have learnt from it. The legislation in New South Wales and Victoria is fairly simple; it is at ministerial discretion. However, that leads to a lot of difficulties and accusations about who has been helped and who has not been helped. I would hate to be in that position.

Hon John Halden: It is all very handy until you get caught.

Hon MAX EVANS: It is very difficult, and a Minister may have shares in that company at the time, which is even worse!

We have tried to use all that legislation. We have left in the provision about the three years before the transfer and the three years afterwards. One or two companies have been a bit upset that we have left that in. We have said that we will leave that in, and if there is any way it can be safeguarded, we may change it later. We have been under pressure from accountants and lawyers because we are not providing for unit and discretionary trusts at this stage. It is a bit like my intergenerational farm transfers. The reason that I am not providing for discretionary trusts in this legislation is to make certain that there are no avoidance schemes. Some people are upset that that has not been included.

With regard to the amount of revenue lost, I know of one or two large companies that have a parent company in the Eastern States and three or four subsidiary companies here. The assets of the different companies are not being utilised fully, and they want to combine all the companies, but they do not want to pay \$2m or \$3m in stamp duty. Therefore, for many years we have not received that stamp duty. Some companies have given up waiting and have gone ahead and paid the stamp duty. In this State, they can get around it in other ways. One way is to liquidate some of the companies, and the distributions and specie are free of stamp duty, because, after all, the shareholders all own a proportion of the total assets, so why should they pay stamp duty on something that will come to them? It is the same thing if a parent company owns 10 subsidiary companies and wants to combine all their assets. It already owns all the assets, whether it takes them out of the left hand pocket or the right hand pocket.

Hon John Halden: Why did it set up those 10 companies in the first place?

Hon MAX EVANS: It may have had a wholesale company, a manufacturing company and a food company, each of which had a separate manager. It may have had subsidiaries operating in other States, or in Kalgoorlie and Albany. Some years ago, there were a lot of subsidiary companies. In the early days, it was done to avoid payroll tax.

Hon John Halden: That is the point I was getting at. They did it in the first place to minimise tax, and now having done that and having created a problem for themselves, we will bale them out of that problem. That is not appropriate.

Hon MAX EVANS: Most of them did not do anything about it until now. They were also trying to create a better business climate for themselves and to avoid the high cost of auditors' fees to keep them going. Very few companies were set up deliberately to avoid payroll tax. They were then all grouped by legislation. It is nearly 20 years since that grouping came in. That has been around a long time. There may be a few companies like that. I know some of the big mining companies have many different subsidiaries. When we were in opposition, Hon Peter Foss and I tried to help. Three companies might do a bit of exploration. Two companies have 30 per cent and the other has 40 per cent. The ones with 30 per cent might want to be transferred back to the company with 40 per cent. This legislation will not help such companies because they do not have the 90 per cent factor. A great deal of work has been done to make certain we are not caught out. Queensland has done most of the work. New South Wales and Victoria are updating their systems and we follow them fairly closely. We are in regular consultation with them. In a liquidation situation it could be done in any case.

With regard to the London Stock Exchange, from memory we gave the date of November 1995 for the Administration's ruling so that the transfer could get under way. I do not know whether the transfer is there. We consider that 0.01 is a fair risk, when the percentage is zero in the other States. We are not doing anything about it at this stage.

Question put and passed.

Bill read a second time.

#### *Committee*

The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

**Clauses 1 to 25 put and passed.**

**Clause 26: Section 15B inserted -**

Hon BARRY HOUSE: This clause provides an ideal opportunity for me to raise a particular problem for an organisation in my electorate. I refer to the Villa Maria Homes, which is a non-profit, non-denominational, aged care organisation located west of Busselton. It has an area of land that previously was exempt from land tax. It has been subdivided and some of the subdivided blocks have been sold. However, the organisation is now being taxed on the unsold blocks. It is not a land developer or a profit making organisation, but it does not fall within the category of a church or charitable organisation. Therefore, it cannot gain exemption through that process. It is the only



organisation of that type I have come across, and it claims that it is treated differently from other organisations performing the same functions. Why is it treated differently?

Hon MAX EVANS: I am not too certain if it is the same case, but I have sent one member a lengthy reply to a query about Villa Maria Homes. I know the site and I have driven around it. The Government gives exemptions to retirement homes. Villa Maria subdivided the land to sell blocks to make a profit to pay for the rest of the organisation. On the blocks are units which are residential and not specifically for retired persons. They are for profit. The Government put through specific exemptions for retired persons' homes because problems arose with those with strata titles, blue titles or purple titles. Some paid land tax and some did not. The Government clarified that situation. If Hon Barry House did not receive the letter to which I refer, I will send a copy to him. The blocks were subdivided to make a profit.

Hon Barry House: I did receive that lengthy letter.

Hon MAX EVANS: In any commercial venture, no matter who is involved, land tax must be paid. If the aged persons homes had been kept as they were, no problem would have arisen.

**Clause put and passed.**

**Clauses 27 to 44 put and passed.**

**Title put and passed.**

#### *Report*

Bill reported, without amendment, and the report adopted.

#### *Third Reading*

Bill read a third time, on motion by Hon Max Evans (Minister for Finance), and passed.

### **FINANCIAL LEGISLATION AMENDMENT BILL**

#### *Second Reading*

Resumed from 25 September.

**HON JOHN HALDEN** (South Metropolitan) [8.58 pm]: The Financial Legislation Amendment Bill can best be described as a housekeeping Bill.

Hon Max Evans: Well put.

Hon JOHN HALDEN: On that basis it would be fairly difficult for the Opposition to do other than support it. It has six major features which are: The requirement for departments to prepare financial statements on an accrual basis; the transfer of a net appropriation upon the transfer of a function; amendments to the operation of the revenue equalisation account; alteration to the need for internal audits in small departments and agencies; extension to departments and agencies of the banking arrangements currently available to statutory authorities; and eligible net appropriation revenues to be made applicable to all revenue other than taxes, fines, royalties and other prescribed revenues.

Hon Max Evans: That one is also saying it can be done during the year rather than before the Budget is done.

Hon JOHN HALDEN: The Minister is right. The Bill also tidies up certain matters. An interesting aspect is the tidying up of some variations in definitions that have come about over the past 20 to 30 years, to ensure that the appropriate terminology is in place so that people know to what they refer. Again, I could not imagine how that could be considered to be anything but appropriate. I know that legal advice has been received which raises some doubt about whether the consolidated fund should be allowed to run into deficit at any time of the year. This Bill will allow for that. Quite clearly it is possible for the consolidated fund, particularly in the first part of the year, to run into deficit. There is nothing sinister about that.

Hon Max Evans: Land tax revenue may come in and something else may go out.

Hon JOHN HALDEN: It is a reciprocal arrangement and the fact that the consolidated fund goes into deficit is of little consequence, assuming it is not spectacular. Whether that happens should not be under question. If there were any problem in that area it would be very silly not to allow the consolidated fund to go into deficit. If that were not allowed it could create enormous problems for Government and government suppliers and contractors.

By my reading of the Bill the net appropriation arrangements for departments allow for them to establish trust accounts in which any savings of money or appropriations throughout the year can be placed and spent in subsequent years. Having been a public servant I recall the wonderful end of the year spend-up we used to have if any money was left over. It is fair to say that situation was often abused. Small items that had not been considered a priority by those who made decisions in the department suddenly received funding. That is inappropriate management.

It is appropriate that be stopped and some positive incentives will result from the Bill. However, a potential problem could arise if we were to allow net appropriation and the department accumulated significant amounts of money. Although I know it requires approval to spend the money, one must ask whether the issue is the saving of money or the delivery of services. Clearly departments are there to deliver services. I hope they do not diminish their service delivery responsibilities in order to save for a new policy or direction they want to take.

Hon Max Evans: Often a budget of 12 months to a certain service will not get up and running until 1 January. Before that, they lost that money; it would not be available until the next year.

Hon JOHN HALDEN: I concede that, but it is a situation that should be monitored very carefully.

Hon Max Evans: Treasury officers are doing that, but they were told there was a 3 per cent limit for this last year. It cannot be a saving at the expense of the service.

Hon JOHN HALDEN: Exactly. Another potential problem exists in departments which have dual responsibilities. The best example of that is probably the Department of Conservation and Land Management which has on the one hand a conservation responsibility and on the other hand an exploitative responsibility.

Hon Max Evans: Yes, forestry.

Hon JOHN HALDEN: There is nothing wrong with either of those.

Hon Max Evans: You put them together; we didn't.

Hon JOHN HALDEN: I have a clear view of what should happen now, and it is not the status quo. I concede that there is nothing wrong with net appropriation. However, if a situation arises where money can be carried over and one of the functions is somewhat entrepreneurial - for example, the functions of a primary producer - would the 3 per cent rule apply? Perhaps in some instances, for commercial reasons, it should not. If the net appropriation trust account becomes too large, should not a proportion of that money over a set limit come back to the consolidated fund sooner?

I would appreciate the Minister's general comments when he sums up. Again that situation must be monitored. I am quite sure CALM, like any other government department, could think of a number of ways -

Hon Max Evans: The Department of Conservation and Land Management is repaying \$127m of debt.

Hon JOHN HALDEN: The Department of Conservation and Land Management may not be the best example.

Hon Max Evans: I will explain the situation.

Hon JOHN HALDEN: Other departments have that dual responsibility; State Revenue is one.

Hon Max Evans: We do not give it net appropriations. They are all fines and taxes, etc. You may remember the debate on the charges for information on land. It is not net appropriations at this stage.

Hon JOHN HALDEN: I would like the Minister to clarify what are the safeguards and perhaps we will discuss either privately or in here any concerns I have. As I said earlier, as I understand it, accrual accounting already exists following a circular or instruction that went out some time ago.

Hon Max Evans: It is coming into existence.

Hon JOHN HALDEN: That reflects reality and there are no great concerns about it.

The other issue in the Bill is that of internal audits which, at first hand, could cause some concerns; for example, a department may not have an internal audit process. When we consider this is legislation directed to small departments and agencies, the internal auditing functions of those organisations -

Hon Max Evans: It is overkill.

Hon JOHN HALDEN: That is fair to say. It does not mean that there will not be external audits or, as you propose in the Bill, internal control mechanisms which, if they were not adhered to strictly, would result in repercussions.

Again this is a sensible amendment. However, I do not know the definition of a small department or agency. I am not sure how that will be established.

Hon Max Evans: I would hate to define it. People try to define it. It varies from State to State; it is fairly flexible. One agency may have 10 people and spend \$10m and another may have 100 people and spend \$1m.

Hon JOHN HALDEN: I accept that. There is basically a rewrite of some of the investment provisions under the Financial Administration and Audit Act which allow for statutory authorities to pool their money with government departments. If those funds are invested the benefit is a larger pool of money which is more likely to yield a higher return. Again that is a very sensible arrangement and uncontroversial. That will be done under prescribed guidelines thereby providing considerable safety.

Another provision in this Bill allows for money collected by private individuals as part of a tendering process to be invested at the depositor's preferred financial institution. I do not see any problem with that, as long as the investment is secure. How would that be monitored to ensure the depositor could not remove that money?

Hon Max Evans: It would normally be a joint signatory account, where both parties must sign. It will be similar to rental bonds.

Hon JOHN HALDEN: Another provision concerns the revenue equalisation account and the quaint tactics that have traditionally been used by Governments with that account. What is proposed is much better than that which existed previously. It changes the quaint ability to take money that had been accumulating over time out of this account to balance the Budget in weird and wonderful ways. The Government will still be able to return this year's interest to the consolidated fund, and that may assist in balancing the Budget, but that is totally appropriate. It allows far more transparency about the real state of government transactions than was previously the case. I have some recollection that at certain times that account has been significant.

Hon Max Evans: In the 1980s it reached \$130m. There were a few boom years for the previous Government. It was originally called the state development account. Large sums were involved during the years when the interest rate was 18 per cent, but the interest rate is now only 6 per cent or so.

Hon JOHN HALDEN: This Bill will protect the Auditor General from claims for damages as a result of his actions. I am a little confused, because it is my understanding that by virtue of the opinion being tabled in this Parliament it gains privilege. I am also of the view that the Auditor's opinion is not a public document, and therefore I am at a loss to understand how it would fall within defamation laws if it is not published.

Hon Max Evans: It is not just defamation; it is losses.

Hon JOHN HALDEN: The Bill improves transparency; it probably sets a standard that the Government could use when it proposes to tell us how it will make savings in expenditure of \$40m or \$90m.

Hon Bob Thomas: It has already been decided.

Hon JOHN HALDEN: This Bill is about housekeeping matters. It makes some reasonable progressions in accountability and transparency. The Minister should not get too carried away; it does that only in narrow areas. However, I am happy to acknowledge the improvement. On that basis it would be difficult for an opposition to oppose this Bill. We support the Bill.

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [9.13 pm]: I thank the Opposition for its support. The Financial Administration and Audit Act was introduced in 1985, from memory. It replicated legislation in Queensland. It replaced the old audit Act, which was a 1950s Act requiring a lot of updating. It has needed a few changes since then. The FAAA and the Treasurer's Instructions need rewriting. I have already given a note to the Under Treasurer about rewriting them into simple English to make them easier to understand. They are too difficult for the ordinary person to understand.

All the statutory authorities have had accrual accounting balance sheets since 1986. Consolidated fund agencies such as the Police and Education have cash basis accounting. The introduction of accrual accounting was put off because they did not have a property register of the assets they owned. I have put that in place. We own about 180 000 blocks of land.

Hon John Halden: You could sell them.

Hon MAX EVANS: Unfortunately, the previous Government sold off \$258m worth of property in four years and I was left with properties that were hard to sell. Westrail has something like 22 000 blocks of land. Many of them are kerbs and roads which are worth nothing, but many are worth something. Homeswest holds properties in the

name of the State Housing Commission, Homeswest etc. Some properties are held in the Crown's name for use by Westrail.

Hon Bob Thomas: I know where Westrail has a vacant shed where 35 people used to work.

Hon MAX EVANS: The problem has been solved by agencies setting up their own accounting systems. This has been slower than I would like. Accrual accounting allows for better financial management of a business. I have found that some agencies could not even prepare a spreadsheet for the next 12 months. I had to rejig that. There was resistance from the Department of Marine and Harbours and Agriculture Western Australia for net appropriations. Not long after I got that legislation through the Parliament I was talking to Ian Taylor. He had been a Minister for Finance at one stage. He thought it was one of the best things I could have brought in. Apparently he had not been allowed to bring it in. It worked out very well. For example, in the old days when the Zoological Gardens Board made some money Treasury gave it less money in the next year. Now the Zoo can keep its extra revenue and reinvest it in the Zoo. That is an incentive.

Hon Bob Thomas: It is the same with CALM.

Hon MAX EVANS: The Department of Conservation and Land Management is even more interesting. CALM started with a \$30m debt in the early 1980s. Kemerton's assets and liabilities were handballed to CALM. That lifted its debt to \$50m. Its debt slowly crept up through buying land and planting tree crops. However, as CALM sold off its timber the revenue went to the consolidated fund and not debt reduction, so the debt crept up. Treasury would charge CALM \$10m or more in interest, so that increased the debt even more. CALM was paying interest on interest on interest, up to \$127m. Since the introduction of net appropriations CALM has sold off a lot of land and has reduced that debt. Previously, all the revenue from parks and reserves went into the consolidated fund. It might have cost \$100 000 to carry out improvements to a park, but it had to come out of the operating budget and what was left in the operating account went back to Treasury. In other words, there was no incentive to do the work. Nowadays there is an incentive to improve parks and reserves. Hon Bob Thomas is aware of what is occurring in the parks in the south west. The revenue which is generated by the people visiting the parks is spent on improvements.

Hon Bob Thomas: I still don't think they should charge an entry fee.

Hon MAX EVANS: That is the member's point of view. If that were not the case, the Department of Conservation and Land Management would need to be allocated perhaps an additional \$5m to pay the staff. It is a judgment which people make. Some people say that there should be no entry fees to the Zoo, the Art Gallery of Western Australia or the Museum or that people should not pay for information from the Department of Land Administration simply because of the taxes people pay. There are two arguments and I will not go into them now.

I refer now to the revenue equalisation account. I said by way of interjection that it is an account into which any interest as at 1 July would be paid. In the early days Sir Charles Court would allocate the money to capital expenditure. In recent years it was used to top up the consolidated fund. The interest rate was high and approximately \$130m was involved. However, there was always some doubt about distributing the money. Hon Peter Foss and I spoke to Treasury officers about this when we were in opposition and we introduced the term "revenue equalisation account". It became clear after our discussions with Treasury how the money could be put in and taken out of that account. We have now moved to banking trust accounts and cash can be carried forward to the next year rather than each agency indicating how much money it requires. Members will recall that last year the revenue equalisation account had approximately \$35m in it which was unused. We were able to leave it in the account and carry it over to the next financial year. Every agency can have its own bank account. They draw their own cheques rather than the Treasury drawing 30 000 or 40 000 cheques a month.

Hon John Halden: It was bizarre.

Hon MAX EVANS: They thought it was easy but the paper work involved was incredible. It was beyond my comprehension how anyone could work like that. The method was introduced in the 1970s when the Treasury wanted to control the Government's bank account to maximise the interest. They did not want money left in separate accounts. With modern technology the agencies operate their own bank accounts with the Reserve Bank. This method was introduced in New Zealand some years ago. Each night interest is allocated on the total structure. It is a far better system.

I want to move away from the term "trust account" because it really is an operating account. Under the previous Government a number of trust accounts were not audited. However, the previous Government closed those accounts for obvious reasons. The Queensland Government, under Sir Joh Bjelke-Petersen, had several trust accounts and that is how it beat the Federal Government. The money was put into trust accounts and then put into hollow logs so that the Commonwealth did not cut back on that State's grants. That is the reason the Queensland Government was in a very strong financial position at that time.

As soon as the agencies have their own bank and accounting systems they will be able to pay their creditors through the electronic transfer system. This is being looked at now, but it should have been done years ago. A few years ago an instruction was issued that accounts must be paid within 30 days. The government agencies took that as 30 days from the date of invoice. In the real world, accounts are paid 30 days from the end of the month. Therefore, the Government has been paying people three or four weeks ahead of schedule, which is unnecessary and has cost a lot of money. The government departments, with their own bank accounts, will be able to carry forward up to three per cent of their funds from one year to the next. They will not be able to reduce major services; for example, disability services. The departments will also have the ability to borrow money from the following year to start a new service. Therefore, 30 June will no longer be the date on which all account systems stop. There will be more flexibility. The Government anticipates that the new system will work extremely well.

I am trying to get the Western Australian Art Gallery and the Museum onto the net appropriation system, but it is a long term procedure. Quite a few things need to be done. The Crown Law Department is not certain of some of the legalities of the accounting procedures and is currently clarifying them. Under this legislation the Auditor General will be indemnified in a couple of areas. Generally, auditors are protected from being sued for defamation - for example, they may be derogatory of the management. If the Auditor General were not protected he would need to be very careful about what he said. This protection is being extended to the Auditor General in this Bill. He will also be indemnified against any loss incurred from something he missed when auditing the accounts. In the real world, an auditor could be sued. However, if that were the case with the Auditor General, the money would come from one area and go into another. I am not saying that I agree with that, but it is the way it will be done. The Government must indemnify doctors, physiotherapists and other people within the government service by taking out insurance for them. The legislation is simply clarifying the position.

I thank the Opposition for its support of the legislation.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate and passed.

## **HOME BUILDING CONTRACTS AMENDMENT BILL**

### *Second Reading*

Resumed from 18 September.

**HON A.J.G. MacTIERNAN** (East Metropolitan) [9.31 pm]: The Opposition is very pleased to see this Bill finally emerge. I have been raising the question of housing indemnity insurance for the last three years inside and outside this place as it is a matter of great concern to a large section of the community; namely, new home buyers. It is recognised that a substantial gap has existed in the consumer protection available to home buyers. In the last three years over a dozen builders have gone into bankruptcy or liquidation, leaving uninsured home buyers high and dry. Unfortunately, home buyers do not have a lot of opportunity to gain any expertise in this area. Most home buyers purchase a new home only once in their life, or at the most twice; therefore, they have little opportunity to learn from experience.

I note that one of the first times that I raised this issue in the House, Hon Peter Foss, who was then the Minister for Fair Trading, said, "Well, people should be better educated." That was not really an appropriate response. I am glad that the Government has seen that this is not just a matter of people being better educated as people have no opportunity to build up expertise in this area. The purchase of a home is usually the most significant financial investment of any Western Australian's life and, hence, has a commensurate importance.

The major problems in this industry have been debated in this place. In many respects, this Bill follows the policy paper that the Labor Party published in June 1995 outlining the case for compulsory housing indemnity insurance and the ways in which the proposal might be achieved. A number of mechanisms were suggested in this document. A month or two later, the Government announced that it would introduce housing indemnity insurance. This Bill has had a long gestation.

Hon Max Evans: Even before this Government came in. It has been around for a while.

Hon A.J.G. MacTIERNAN: It has been a long time since the Government announced its policy decision and the intention to introduce the legislation. It finally introduced this Bill almost a year later, during which time quite a number of builders went broke and another 20 000 or so building contracts had been signed. It is often said on the other side, "Why did Labor not do it?" However, members cannot keep using that line. I was not in Parliament in the previous Government.

I have spoken to Mrs Henderson, who made significant gains in consumer affairs in her time as the responsible Minister. She set the priority to establish the Home Building Contracts Act in the first place. The Minister for Finance will acknowledge that she took the initiative to enact that legislation, which is probably the first legislation targeted at specific protection for home buyers.

Hon Max Evans: It is a forerunner to this Bill.

Hon A.J.G. MacTIERNAN: It is the basic architecture onto which this legislation is added. The various industry lobby groups, such as the HIA, which has featured a lot in debate in this place, have been pushing for compulsory indemnity insurance. Mrs Henderson perceived that the push was for a substitute for the change instituted in the Home Building Contracts Act. However, she thought it was more important to enact the Home Building Contracts Act first. If it were done in the other order, it was felt that the home contracts Act might not come into play at all.

I like to think that the pressure the Opposition brought to bear in this place, together with groups such as Home Buyers Seeking Justice, has had some effect on the Government's decision to introduce this legislation. At the moment, approximately 20 000 Western Australians enter a new home contract each year, 45 or 46 per cent of whom generally have no insurance. It is my experience that many more people than that believe, and have every confidence, they are insured. One of the great rorts is to tell people that they are insured and then not to take out the insurance. The Bill before us, unfortunately, does not provide adequate protections in that regard. I note that the proposed amendments, which were strongly supported by the Labor Party in the Legislative Assembly, and which the HIA strongly endorses as well, will tighten up the legislation. We will go into more detail about those in a moment.

I have a number of problems with the legislation, and I have more general comments to make on insurance. A few of the problems are not necessarily shortfalls in the legislation, and some problem areas with insurance will not necessarily be cured by this legislation. My first concern is the question of deposit protection. Some confusion has arisen about whether this Bill adequately provides for the protection of deposits. As I have said on a number of occasions, deposits are particularly vulnerable in this business. When builders are going down, they often race around madly offering very cheap prices in order to secure deposits. In that way, they have a cash flow to keep the show on the road in the increasingly vain hope that somehow or other they will be able to catch up, but in fact they fall further behind. They would never be able to catch up, given the sorts of prices they offer to attract the new deposits. Usually it is just to stave off the evil day. In many instances when builders go bust they have a disproportionately high number of contracts in the deposit stage. That is at the stage where a deposit - usually the statutory 6.5 per cent - has been taken but the building work has not commenced. In that circumstance people are left with no building work performed and lose their deposit. In a number of cases that I have brought before the House over the years that could have tragic consequences. I have set out cases of young couples who have saved very hard to get together a deposit of between \$7 000 and \$9 000 and put it on a project home, only to lose the lot and have to start the heartbreaking task of beginning to raise the funds again. Of course, if they were persons engaged on Mr Kierath's minimum wage and earned \$7.10 an hour it would be tough - even if they earned double that amount it would be tough.

The question of providing protection during the deposit phase is very important. I note that the legislation specifically provides that the insurance cover that must be taken out to satisfy the requirements of the legislation must also include protection for the deposit. My concern which I will address during Committee relates to the way the clause is written. It provides the basic prohibition that one must not require payment for residential building work until one has taken out that insurance. It is far from certain that that would preclude a person accepting a deposit without having obtained -

Hon Max Evans: Why do you say that?

Hon A.J.G. MacTIERNAN: I will go into detail during debate on that clause. It states that no payment shall be made for residential building work. That may be interpreted as being the equivalent of a progress payment, whereas the deposit strictly is not payment for residential building work but payment on the contractual undertakings to provide residential building work. It would not be difficult to construct a case like that, particularly given that we are talking about a criminal prosecution. The provision is far from certain, although I understand from discussions with the Minister's adviser and from references the Minister has made that it is the intention that the deposit be covered. I am not confident that the drafting has managed to do that, and I will propose an amendment to that end.

We are also concerned about the enforcement mechanisms. That provision has been improved. I am glad to see that the system we advocated that a local authority not be permitted to grant a building licence without sighting a certificate of insurance has been included. That is a very simple control point to ensure that builders do not proceed. I have seen a number of situations where builders have told home buyers that they have a certificate of insurance. In one case, a document that looked like a certificate of insurance was provided to a home buyer. If we have a system where someone is used to seeing certificates of insurance and can be in a position to verify them - and intervene and

determine that it is a certificate - there is a greater likelihood that a proper and adequate certificate would be provided. That is an important safety mechanism.

I have a concern about the way in which the definition is written - not the content of the definition but the fact that it is very hard to decipher what is meant by it. It is a rather roundabout way of expressing the scope of work included. We can do that more easily. That does not matter. Some pieces of legislation such as the Land Tax Act are virtually impenetrable, but by and large they are dealt with by professionals. However, this legislation will be accessed by many home buyers. We have attempted to set in place the Building Disputes Committee, another Labor initiative. The original principle was to enable people to represent themselves. We are encouraging people in this area to act without reference to lawyers. In this circumstance, it is beholden on us to make crucial definitions as straightforward as possible. I will propose an amendment which does not change the substance but alters the way in which the definition is expressed, to make it more straightforward.

I do not propose an amendment in this regard but I put this in because when the Act is reviewed it may be seen to be a real shortfall: The legislation provides protection for home buyers, specifically at the deposit phase and certainly at the stage during which the home is being constructed, and thereafter for the six year statutory warranty period. In the event that the builder becomes bankrupt or insolvent in some way - or simply disappears from the face of the earth, as is the wont of builders, and increasingly more so in these days of mutual recognition - the most dramatic cases call for intervention. Frequently, builders have an order made against them by the Builders Registration Board and decide they will not comply. They receive an order to pay and do not comply with that either. It is up to the home buyer to attempt to take the matter to the civil courts to have it enforced. By that stage most home buyers are bereft of funds and throw up their hands in horror.

Hon Max Evans: Are you saying that those who don't go broke just disappear?

Hon A.J.G. MacTIERNAN: I am talking only about the people who default on orders, or fail to meet the orders made by the Building Disputes Committee, and the time for appeal against the orders in the District Court has expired. Therefore they have no intention of using the legal process to overturn the orders but simply decide that they will not meet them. These people should be covered by insurance because the insurer would be much better placed to impose some discipline on the builder to meet those orders. One of the concerns the builders would have thereafter is that they might have difficulty getting a contract of insurance, which would then take them out of business. That would be an effective and efficient way of getting the builders to far more promptly obey the orders that were issued, by either the disputes committee or the court.

Hon Max Evans: They will just put them on a black list. Senator Bolkus tried to put through legislation that stipulated there couldn't be a black list.

Hon A.J.G. MacTIERNAN: It is not so much a black list -

Hon Max Evans: It is a non-insurable list.

Hon A.J.G. MacTIERNAN: It is more that the insurance company would be able to take legal action against the builder to recover the costs that were not paid by the builder. This is not a fanciful proposal because in many respects the Housing Industry Association scheme effectively provides for such insurance. In a number of cases that the Opposition initially found very puzzling the HIA paid out to homebuyers who were unable to obtain from the builder any satisfaction, even though the builder was not insolvent and was still alive and kicking. One classic example involved John Hollywood Homes, which made a substantial payment to the home buyer when the builder refused to take any further part in the proceedings or to meet the orders that were made by the Building Disputes Committee. The Opposition has on its records a number of cases in which the HIA insurance has done that. Notionally that may be because it is insuring the builder against faulty work of the subcontractor. However, it means that the scope of the insurance is much broader than is proposed in this legislation.

If some of the builders were aware of that, they might be a little concerned. Some builders are subsidising with their premiums those builders who refuse to pay from their own funds to remedy the defects, as ordered by the Building Disputes Committee. They are getting away with it by getting the HIA insurance to cough up, whereas the other insurers must pay out of their own funds. This is not fanciful; the practice exists. I will not push that point at this stage. However, I note that the Minister has included in the legislation provision for a comprehensive review of the legislation in a couple of years. This is one area that should be looked at in detail after the more basic system has been up and running for some time.

I am concerned about differential insurance. In one respect it is a benefit and in another it is a worry that this Bill will put the insurers in a pretty powerful position vis-a-vis the builders. The insurers might be able to take advantage of large builders, as opposed to the small builders, in the premiums they charge. That has not happened to date. As far as I can see, in the two schemes that have been running in Western Australia there has been no bias towards the

large builders. A major problem already exists in this State with the concentration of ownership and we would not want the system that will be set in place by this legislation to give an even further competitive advantage to those very large companies.

Hon Max Evans: The insurance companies still must live. If there is too big a risk at one end of the market, they will either have to put premiums up or not insure.

Hon A.J.G. MacTIERNAN: That is right. All I am saying is that we do not want volume sales to be treated in preference to single sales, because that would lead to an added bias towards the big builders. We should guard against that. Although the Opposition has that concern, it recognises that the role of the insurers will be to put a little more discipline into some of the builders, because the builders will be aware that if they have a bad claims record they may find it difficult to be insured.

Hon Max Evans: The claims record is only for those who go into liquidation or receivership or who abscond.

Hon A.J.G. MacTIERNAN: That is true. The insurers could properly say that one company was a much higher risk because of the amount of work the insurers would be required to do under the statutory warranties if the company liquidated. This is something the Building Disputes Committee in conjunction with the Builders Registration Board should have been able to put in place.

We have seen bizarre things occur. Someone who is powerfully advocated by Hon Ross Lightfoot, Mr Rawson of Kestral Homes, was the subject of some 45 orders before finally, after about five exposés on television, the Building Disputes Committee found that the houses he was building were a trifle substandard and took his builder's registration off him. The insurance companies that have something to lose will be somewhat more diligent in the task of monitoring the performance of the builders than unfortunately the Builders Registration Board has been. The legislation has a benefit in that regard.

The Opposition agrees with the concept that there should be approved insurers. However, I find the increasing powers the Government seeks to give Ministers under the legislation extraordinary. They are powers at large; powers not fettered by any guidelines and, therefore, unable to be challenged, even under judicial review.

Hon Max Evans: What are you referring to specifically in this Bill?

Hon A.J.G. MacTIERNAN: I am referring to the power the Minister has given herself to approve or not approve insurers. The insurers must first reach a threshold; that is, they must satisfy a federal requirement. The Opposition does not have a problem with the requirement that the insurer be authorised under the federal Insurance Act to carry on insurance business. That is right and proper. Another condition is that they be approved in writing by the Minister. There is no fetter on what the Minister can take into account in determining whether to approve that insurer. That is far too wide a power. I would like to see that aspect of it go.

Hon Max Evans: The Government has to approve the insurers and if they fall over and do not pay, people can claim against the Government. It should be indemnified. A lot of insurance companies have crashed in the last 10 years.

Hon A.J.G. MacTIERNAN: It gives the Minister arbitrary powers because it is not prescribed in any way.

Hon Max Evans: He wants to protect the Government so that an insurance company that he has approved does not roll over -

Hon A.J.G. MacTIERNAN: We will go into that in detail. I thought that was the point of requiring authorisation under the insurance legislation. It is the job of those who administer the insurance legislation to ensure that the insurers meet the basic prudential standards that we would expect.

I do not have any problem with the provision that talks about compliance with other prescribed requirements. That is the conduit that the Government should be using; not the unfettered and untrammelled power for a Minister to refuse or accept an insurer. That is something we must talk about.

We support the notion that the legislation be reviewed in a couple of years, because a couple of areas may be able to be improved. However, in terms of the scope, it is probably better to start with the more fundamental and basic insurance and, if things are working out well, we can look at that stage to expansion of the scope of protection.

I want to draw attention to some insurance cases. The problems these home buyers have will not be solved. However, there is an obligation on some of these insurance companies to behave in a more responsible fashion. I refer, unfortunately, to the company, Allied Minet, which is running the housing indemnity scheme for the Master Builders Association. This is no criticism of the Masters Builders Association because I am sure it is not aware of some of the conduct in which Allied Minet is engaging.



Hon Max Evans: Isn't Allied Minet broker to other insurance companies? It is the middleman.

Hon A.J.G. MacTIERNAN: Yes, but it established the scheme and processes the claims.

Hon Max Evans: That is right. It is not the insurer; it is just the broker. Most claims go through the brokers.

Hon A.J.G. MacTIERNAN: Although Allied Minet has arranged a syndicate of brokers underneath, it is the manager of the scheme and it is with the manager of the scheme that I have the problem. We have raised here on a number of occasions the issue of serial liquidations in the building industry. In some instances we could argue that these insurers are encouraging, if not aiding and abetting, the principals of these liquidating companies, these serial bankrupts, in their endeavours. I will not go through the list of companies. However, what might be described as the Designer Lock Home Group has gone through a whole raft of companies. Each time one company folds and it moves on to the next company, the insurer has provided it with the next corporate vehicle and with the contracts to complete the last job. For example, a company such as Maywood Enterprises, trading as Designer Lock Homes, which has a contract for \$100 000, went broke. It took \$70 000 worth of value out of the contract and left only \$30 000 in the contract. However, it will cost \$60 000 to finish the home. The directors form a new company, and instead of having to bear the loss of a \$30 000 cost overrun, that overrun is picked up by the insurer and paid to the new corporate vehicle. Not only do they escape their liability -

Hon Max Evans: The cost overrun is paid -

Hon A.J.G. MacTIERNAN: The directors of company No 1 take their new corporate vehicle to the insurer and say that they are the same guys who were building that house before, that they know how to do it, and they can finish that house and all the insurer has to pay is an extra \$30 000 over and above the contract price. Creative Builders WA, which was the successor of Maywood Enterprises, managed to pick up seven contracts from the builder in that way. The contracts it had run into the ground were reawarded with a bonus of the additional payments. However, eventually it went down the gurgler again. I contacted the insurer when a very elderly lady came to see me with her insurance contract from Creative Builders WA. I pointed out to the insurer that Creative Builders WA was not a registered builder at the time and I would like to think that, because of the number of complaints we had raised about this outfit, the Builders Registration Board decided not to allow it the time to get the company registered. The insurer had issued a certificate of insurance in the name of a company that was not a registered builder, a disgraceful act. Subsequently there was an article in the *Sunday Times* about the fact the company was not registered and was still engaging in building works. Therefore, without any reference to the home buyer, the insurance company wrote to her and said -

You may have noted in the *Sunday Times* dated 26 March 1995 an article regarding T Veneziani and Creative Builders.

After discussions with our Lead Underwriters, GIO Australia, please find enclosed an amended Certificate of Insurance for the above Scheme noting the Builder name change. Please disregard the original Certificate forwarded to you.

It had added on the name of another builder who was registered, notwithstanding the fact that the contract that our person had was with Creative Builders. I would like to think that this insurer had, through a complete lack of sophistication, demonstrated at the very least that it did not understand the functioning of the Builders' Registration Act or its obligations to the persons it was insuring.

Hon Max Evans: Has that been rectified now?

Hon A.J.G. MacTIERNAN: This woman decided she would not proceed with this builder and got all her money back. When we pointed out to her the contract was with a non-registered builder it quickly gave her back her deposit. However, a number of people were not so lucky. They came to me recently after Creative Builders went broke. Those people had their certificate of insurance and they had their contracts with Creative Builders, but the insurer, knowing well the problem, had actually put the insurance certificates in the name of this fellow T. Veneziani, an employee of the company at the time. He simply said as a sole operator, "It is not my responsibility. I was only working for them." He is the company that was the party to the contract. He is the company that for all intents and purposes was building the homes, and those people are now unable to get the company to pay out on that insurance. I think the insurer has been aware from the very start of the problems with Creative Builders. I would even go so far as to say the insurer was probably a contributor to many people being caught out again, because it facilitated this company with a shocking record going into business with its fourth set of companies by handing over to it the contracts it had managed to mess up previously.

Hon Max Evans: Did you go to the National Insurance Brokers Association and the Australian Insurance Council?

Hon A.J.G. MacTIERNAN: They did go to the Insurance Council and apparently it said that it was the one style of insurance that the council did not cover. My first suggestion was that they go there. It is certainly a matter that must be pursued. I am not sure how we should deal with this, except to say that it is one of the questions of probity that needs to be taken into account when deciding whether an insurer should be reinsured.

Hon Max Evans: The Minister could have discretionary powers to strike out those who should not be there, if the Australian Insurance Council does not do it. I am just thinking aloud.

Hon A.J.G. MacTIERNAN: There needs to be other considerations than the person being registered under the Insurance Act. We perhaps should prescribe those things to be taken into account. The people are understandably very angry, because they had taken a precaution of getting insurance. They signed their contract with Creative Builders. They did not understand why the certificates came back with the other name together with Creative Builders on them. The insurer has avoided responsibility entirely and has been a party in many instances to fraud by Creative Builders. If the insurer did not accept Creative Builders as a builder it should not have put Creative Builders on the insurance certificate.

Hon Max Evans: What about the National Insurance Brokers Association? People could be looking to the brokers because the brokers are wrong to allow it to go on.

Hon A.J.G. MacTIERNAN: It may be there is a case for making some reference to that body. Anyhow that is an issue. We should look at the way these insurers are conducting themselves and any performance should be taken into account. Certainly we should be contacting the Master Builders Association and letting it know about that performance.

With that I will wrap up our comments. We are pleased that this legislation has been introduced, albeit belatedly. It will certainly improve consumer protection for home builders in this State and I hope will ultimately have the capacity to improve the standard of home construction, because obviously we will now have another body, the insurers, who will be playing a very active and watchful role over the question of quality.

**HON B.K. DONALDSON** (Agricultural) [10.15 pm]: I do not think that anybody disagrees that consumer protection has probably been long overdue in the building industry. I am a little concerned that at times we are protecting the consumer when the consumers themselves have a responsibility. When people build houses it is generally and probably the biggest expense most people will be involved in. This Bill seems to be moving some of the onus from the owners themselves.

Hon A.J.G. MacTiernan: How?

Hon B.K. DONALDSON: If one were going to build a house would one not be taking a close look at the builder and making sure that he had a certificate of insurance for the project?

Hon A.J.G. MacTiernan: People are naive enough to believe that the Builders Registration Board is doing its job and sees that the person is financially solvent and capable of performing the task and has the necessary technical component.

The DEPUTY PRESIDENT (Hon W.N. Stretch): Order!

Hon B.K. DONALDSON: I hear what the member says but I am trying to say that it is a pretty big outlay for anyone and I often wonder whether we are not becoming too mollycoddling by taking away the owner's responsibility for that. I am not against what we are trying to do in this Bill. However, I wonder who would be liable. I looked in the second reading speech at the reference to liability on the grounds of misrepresentation and the non-disclosure by the builder in the case of succession in title by the original home owner who will always have to provide the intended benefits but cannot avoid liability. It is his responsibility.

When it comes to local government issuing the building licence approval, I wonder whether any liability is attached to them issuing that licence in error or possibly not looking at it closely enough when they issue the building licence. I assume from my reading of the second reading speech that the insurer would still be liable because a third party comes onto the scene.

Hon A.J.G. MacTiernan: Are you saying that the local government was negligent or did not act properly?

Hon B.K. DONALDSON: It may have acted inadvertently.

Hon A.J.G. MacTiernan: You have to bear in mind that they have to have been negligent. It is not a straight liability.

Hon B.K. DONALDSON: It is important to raise this issue because we are involving a third party in the procedure. I do not know whether that is the case. According to the second reading speech they certainly cannot be held liable for misrepresentation for non-disclosure.

Hon A.J.G. MacTiernan: The second reading speech would not relate to the local government authority.

Hon B.K. DONALDSON: I am talking about insurance. The Government is also aware that insurance policies do not always provide for misrepresentation or non-disclosure by the builder or for succession in title by the original home owner.

Hon A.J.G. MacTiernan: That puts the onus on the insurer to determine financial solvency. I can tell you that the insurer is better placed to do that than Mr and Mrs Average.

Hon B.K. DONALDSON: I appreciate that. The question I raise is whether the local government will be charged with that responsibility before the issue of a licence, as indicated on the Supplementary Notice Paper. Maybe the Minister in his summing up could say whether there would be a liability and whether the consumer could say that the council or local authority was negligent. I do not know, but it is an important issue.

Hon A.J.G. MacTiernan: If they were negligent?

Hon B.K. DONALDSON: It is an important issue if we want to do this properly. I was very pleased to see that within two years the Minister will review the insurance scheme itself, and that is important. It is proposed that a separate certificate be issued for every building project. Perhaps during that two years, consideration could be given to moving away from a separate certificate to an annual housing indemnity insurance scheme.

Hon Max Evans interjected.

Hon B.K. DONALDSON: The Minister can probably tell me the reason it cannot be done. I would like that idea examined because it has benefits for consumers in the longer term. I believe that a loading would be added to each individual contract. An annual housing indemnity scheme may not be workable; I do not know. However, it could be investigated when the review is undertaken. I would appreciate it if the Minister could address the issues I have raised.

[Resolved, that the House continue to sit beyond 11.00 pm.]

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [10.23 pm]: I thank the Opposition for its very strong support of this legislation and acknowledge the contribution of the previous Government. Hon Yvonne Henderson did a lot in terms of protective legislation. The previous legislation was a stepping stone to what we are now doing to get insurers to provide this sort of cover.

I do not agree with Hon Bruce Donaldson's statement that people building big houses should be able to look after themselves. This relates to young people getting carried away with finance. The Eastern States have had more trouble than we have in this area. Because the lending institution lends people a lot of money they think they can afford it. These people need some sort of protection, and it is unfair to say that they should look after themselves.

Hon Alannah MacTiernan is correct: There have been many failures over the years. I have liquidated a number of building companies. It is awful going in as a liquidator and trying to finish a job, because so many short cuts have been taken. That is a problem when another company comes along to finish a job.

Hon B.K. Donaldson interjected.

Hon MAX EVANS: I have not really worked this out; I do not have the answer and I do not know whether Hon Alannah MacTiernan has. This must add a certain amount to the cost of a house.

Hon A.J.G. MacTiernan: It is between \$260 and \$500. About 45 per cent or 46 per cent of the homes already have it. It is not a huge expense.

Hon MAX EVANS: As time goes on those premiums will probably change as a result of complaints to the Builders Registration Board. That indicates that there might be some trouble. If I were a person writing insurance I would be wary if I saw these companies being sued for payments and involved in many disputes - and disputes are short cuts in the building industry for companies going out of business. Insurance companies would watch that fairly closely.

Hon Alannah MacTiernan raised the issue of the deposit and whether it is part of the purchase. I will deal with that in Committee. Responsibility will rest with local government authorities to provide a certificate. The only liability on local government authorities could be if they issued a building certificate when the builders did not have a certificate of insurance, the insurance was doubtful or something like that. In those instances the authorities could be proved to be negligent and action could be taken. As this is compulsory insurance, if an insurance company rolled

over I fear that the Government could be held liable to a certain degree. As was put to me in relation to third party insurance, if we put it out to the private sector and an insurance company fell over, the Government could be liable for the losses. These certificates work quite well. When the New South Wales Government put its compulsory third party insurance out to the private sector, people were required to get their insurance certificate before they were issued their registration certificate. That has worked well and it can work here.

Hon A.J.G. MacTiernan: Is this your latest plan for privatisation?

Hon MAX EVANS: The New South Wales premiums are twice ours. They have the competition but no-one has the track record on the claims.

Hon A.J.G. MacTiernan: So privatisation does not always work?

Hon MAX EVANS: They did not privatise it. The New South Wales Government gave out \$750m in premiums for nothing. That is not privatisation: It is stupidity! They wanted me to provide \$250m worth of premiums for nothing. We had to pick up all the claims. That is stupidity.

Hon A.J.G. MacTiernan: It is the sort of thing Eric would do.

Hon E.J. Charlton: Whatever I do is a roaring success.

Hon A.J.G. MacTiernan: Like Lenny on the wharf.

Hon E.J. Charlton interjected.

The PRESIDENT: Order!

Hon MAX EVANS: We have won that debate. The matter will be reviewed in two years. At least we can put the scheme in place and see how the insurance companies react.

Hon Alannah MacTiernan said that the Insurance Council of Australia does not take responsibility for this type of insurance. It is indemnity credit insurance, not insurance as we normally see it. The member mentioned people failing to finish the job properly -

Hon A.J.G. MacTiernan interjected.

Hon MAX EVANS: Then one starts opening a whole new ball game of insurance cover. One is virtually indemnifying everyone against any loss.

Hon A.J.G. MacTiernan: I would agree except that, interestingly, it appears that that is what HIA insurance is effectively doing at the moment.

Hon MAX EVANS: It sounds like that. It must have another fund. People say that they will not worry, they will get more credit because someone will underwrite it and so on. At the end of the day some insurance company pays or they go out of business. The only risk for local government authorities is where they do not ensure that the insurance certificate is correctly drawn up or made out to the right people.

Hon Bruce Donaldson mentioned a blanket policy. Insurers must have an insurable interest in something against loss. That is why the insurance policy must be made out to the person buying the house. The insurance policy must be made out to cover the people buying the house because they will be the losers. The benefits of the policy would be transferred to the purchasers.

Hon B.K. Donaldson: It is like public liability insurance. If a builder is planning on constructing 25 homes at an average of \$150 000 each, he would take out cover for the total amount.

Hon MAX EVANS: He cannot insure himself against going broke. We must try to protect the person who is buying the house. The builder can take out public liability insurance, but he cannot insure himself from going broke. There must be beneficiaries of this scheme. That is why it is not possible for the builder to be insured. It will be interesting to see how many insurance companies take up this opportunity. Hon Alannah MacTiernan made a valid point that if insurance companies are to go into this sort of business, they will keep a fairly close watch on the people they are writing business with. They will develop their own history on those in the building industry. They will find those who might have given problems in the past. This is the right thing to do. Hon Alannah MacTiernan and I see some value in this proposal. We are dealing with amounts of money that the person buying the home cannot recover. I thank the Opposition for its support of the Bill, and I commend the Bill to the House.

Question put and passed.

Bill read a second time.

*Committee*

The Chairman of Committees (Hon Barry House) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

**Clauses 1 to 4 put and passed.**

**Clause 5: Part 3A inserted -**

Hon A.J.G. MacTIERNAN: Can I speak to the first three amendments and move them together? Effectively they form one amendment.

The CHAIRMAN: I ask that the amendments be moved one at a time. Because the second and third amendments are consequential upon the first, the member can speak to them all in a package after she has moved the first amendment.

Hon A.J.G. MacTIERNAN: I move -

Page 4, line 14 - To delete the words "other than" and substitute the words "that is".

This is a situation where one amendment has been divided into a number. In this package of amendments I am seeking to change the definition of "residential building", but not in substance. In effect, it will mean exactly the same.

Hon Max Evans: The Government accepts the first amendment.

**Amendment put and passed.**

Hon A.J.G. MacTIERNAN: I move -

Page 4, after line 14 - To insert the following new paragraph (a) -

- (a) home building work described in paragraphs (a), (b) and (c) of the definition of that term in section 3;

Hon MAX EVANS: The Government does not agree with the wording of this amendment. Parliamentary Counsel has looked at it and has advised that the word "and" should be replaced by the word "or".

The CHAIRMAN: The easiest way to deal with this matter is for the member to seek leave to change her amendment.

Hon A.J.G. MacTIERNAN: I seek leave to change my amendment so that the word "and" becomes the word "or".

Leave granted.

**Amendment put and passed.**

Hon A.J.G. MacTIERNAN: I move -

Page 4, line 17 - To delete the word "unless" and substitute the word "when".

Hon Max Evans: The Government accepts this amendment.

**Amendment put and passed.**

Hon MAX EVANS: I move -

Page 4, after line 24 - To delete the lines and substitute the following -

but does not include home building work where the cost of the building work is the minimum amount or less;

We are trying to rectify the last part of Hon Alannah MacTiernan's amendment.

Hon A.J.G. MacTIERNAN: It is a bit difficult to work out how these will fit together, but do those words also need to qualify my amendment to paragraph (a) or is it adequate that they qualify only paragraph (b)?

Hon Max Evans: I am advised that the amendment is consequential.

Hon A.J.G. MacTIERNAN: I understand that. It would not worry me if that caveat at the end did apply to home building work as described in the definition because it might make it broader than was intended.

**Amendment put and passed.**

Hon A.J.G. MacTIERNAN: I move -

Page 5, line 29 - To insert after the word "work" the following words -

including any deposit payable under the residential building work contract

This amendment deals with a different issue. It deals with the offence provision. Proposed section 25C will make it an offence for a builder to perform residential building work to which the division applies if he does not have a complying policy of insurance, so it is a key provision and one that we must interpret carefully. There is a great deal of doubt about whether the second part of that provision will make it unlawful for a builder to accept a deposit, because arguably the residential building work is the actual commencement of the construction, and payment is then requested for the residential building work that has been performed. It may be that a deposit is not interpreted as being a demand for any payment for residential building work, because obviously no building work has taken place. It is arguable that the deposit is a payment in respect of the contract and not for the performance of the residential building work. There is every likelihood that a builder who has taken a deposit and who has taken out a certificate of insurance prior to commencing to pour concrete or to do any other work on the site pursuant to the contract has not committed an offence. That does create a problem, because the deposit phase is a time of great vulnerability for the home buyer. Builders who are going down the shute often seek to buy up premiums by offering unrealistically low contract prices. Therefore, they often have a high percentage of contracts in that deposit phase. This clause may allow people to continue to do that without being in breach of the law. I know now from the Minister's statements and the scant reference in the second reading speech that it is not the Minister's intention that the demand for a deposit should precede the issue of a certificate, but I am not confident that the wording of the clause is sufficient. It seems there is a very legitimate concern that the clause may not be broad enough. The proposed amendment would put it beyond doubt and would give full effect to the Government's avowed intention in relation to this provision.

Hon MAX EVANS: Parliamentary Counsel has confirmed that the wording "any payment" includes any deposit and, therefore, from a legal point of view the amendment is not necessary. However, I accept Hon Alannah MacTiernan's comments. It probably clarifies the situation for everyone and ensures there is no misunderstanding. I do not completely agree with the member's interpretation of the word deposit, because it is really a part payment for the building. The Government will accept the amendment.

**Amendment put and passed.**

Hon MAX EVANS: I move -

Page 6, line 19 - To insert before "fact" the word "the".

Page 6, line 33 - To insert before "fact" the word "the".

This will correct a drafting error.

**Amendments put and passed.****Clause, as amended, put and passed.****Clause 6 put and passed.****New clause 7 -**

Hon MAX EVANS: I move -

Page 12, after line 29 - To insert after clause 6 the following new clause to stand as clause 7 -

**Consequential amendment**

7. The *Local Government (Miscellaneous Provisions) Act 1960\** is amended by inserting after section 374AA the following section -

“ **Local government not to issue building licence unless home indemnity insurance held**

**374AAA.** A local government shall not issue to a person a building licence under section 374 unless satisfied that -

- (a) a policy of insurance is in force in respect of the work under Division 2 of Part 3A of the *Home Building Contracts Act 1991*; or

- (b) a policy of insurance referred to in paragraph (a) is not required in respect of the work. ”.

[\* *Reprinted as approved 24 June 1983.  
For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1,  
pp.130-133 and Act No. 14 of 1996.*]

This matter was raised by the Opposition in the other place, and it has been agreed to by the Government. It clarifies the responsibility of local government and it is a very good mechanism to put in place.

Hon A.J.G. MacTIERNAN: The Opposition supports this amendment. It was part of the policy paper the Government put out in June 1995. I respond to some of the comments by Hon Bruce Donaldson, who was concerned that we were creating a nanny State and putting an obligation on local government. One of the great difficulties is that people believe the current system has a range of protections, but they do not work. People believe - as I think they should believe - that the existence of the Builders Registration Board and the fact of builders' registration means they do not need to independently research the building companies they are engaging. It is extremely unrealistic to expect many people to be in a position to do that. Many of the ordinary punters do not know the difference between a business name and a corporate entity. It is unrealistic to expect them to engage in an education program in which they learn about the Australian Securities Commission, carry out business name and company searches, learn to read the information, and do an index search on the directors of a company. It is fantasy land to think an ordinary punter is in a position to do that sort of thing. I suggest quite a few members in this place do not know how to go about it. It is extremely difficult for people to make an intelligent decision about the solvency or technical competency of a company on the basis of the limited information available. It is a bizarre concept.

Also, people generally have a great deal of confidence in the fact that the local government is involved in the approval of the plans, issue of building licences and inspection of the building. However, in many instances the involvement of local government is extremely limited. In fact, Hon Bruce Donaldson might be interested to know that some local authorities are being sued for negligently approving plans. That is because there is no insurer to sue. The classic case is Kestral Homes, which has re-formed itself in a new corporate guise. The company is rated so financially unsound that the litigation assistance fund would not advance the court case, so it is now going to the longer pockets of the local authority. Local authorities are already in the firing line with respect to the approval of building licences because in many instances they are still making it a condition of the building licence that they carry out inspections beyond that which they are statutorily required to do. In many instances the inspections are incredibly cursory, and the local authorities are putting themselves in a very vulnerable position by including them as a condition of the building licence. It is giving an avenue to victim home buyers to sue the local authority in the event that the building company becomes bankrupt. The effect of this insurance is likely to provide a protection for local government. It means that there is one point of vulnerability but it is probably far less than the other points of vulnerability. It will be far easier for a local authority to take reasonable measures to ensure that a certificate has been issued. This will not be a strict liability so that all it must do is take reasonable care to ensure that the proper certificate has been issued.

Hon B.K. Donaldson: They must understand that it is with an approved insurer.

Hon A.J.G. MacTIERNAN: That will not be such a complex task to people who are professionals in the area and issuing building licences on a daily basis. A list of insurers will be circulated, similar to what happens with workers' compensation.

Hon B.K. Donaldson: It is important to clear it up so that it is on the record.

Hon A.J.G. MacTIERNAN: That is right. It would be improper if we sought to change the legislation to take away that responsibility from local government. We could say to local authorities that we are imposing on them an obligation to do this, but if they cannot be bothered doing it with reasonable and due care, they should not worry about it because we will give them indemnity. That would defeat the whole purpose.

Hon B.K. Donaldson: I was not asking for indemnity for local government but I wanted it to be clear to ensure that they not only do building approvals but also -

Hon A.J.G. MacTIERNAN: Although this creates an additional area of liability for local government, in many ways it eases the burden from some of those other areas. If the insurance is in place, when there is default local government will be less likely to be in the firing line in the event of a very defective home. The Opposition supports this important amendment.

#### **New clause put and passed.**

Hon A.J.G. MacTIERNAN: Could we recommit clause 5 so that we can debate the approval of the insurers issue?

The CHAIRMAN: We cannot recommit during this Committee; it would have to be recommitted in another Committee.

**Title put and passed.**

**Bill reported, with amendments.**

*House adjourned at 11.05 pm*

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### QUESTION ON NOTICE

#### BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND - BUILDING CONSTRUCTION INDUSTRY COUNCIL, ANNUAL REPORTS TABLING DELAY

801. Hon A.J.G. MacTIERNAN to the Minister for Employment and Training:

- (1) Why has the Building and Construction Industry Training Fund and the Building and Construction Industry Training Council annual report for 1993-94 not been tabled in Parliament?
- (2) Is it correct that the chief executive officers at these agencies in fact submitted a report to the Minister but the Minister rejected the report and sent it back for rewriting?
- (3) What aspect of the report did the Minister not accept and why has the matter not been finalised some two years after the end of the reporting year?

Hon N.F. MOORE replied:

- (1) The annual report of the Building and Construction Industry Training Fund for 1993-94 was delayed because the Auditor General was not satisfied with the accounts as originally presented. The Auditor General's general report No 2 of May 1996 records that his opinion was delayed and issued on 30 November 1995. That the annual report for 1993-94 was not then tabled was due to an oversight in the office of the fund. My office, unfortunately, also failed to notice the oversight and the report was tabled yesterday. The Building and Construction Industry Training Council is not required to report to the Parliament.
- (2) No, the delay was occasioned by the Auditor General's investigations as explained above.
- (3) Not applicable.

### QUESTIONS WITHOUT NOTICE

#### HOSPITALS - NURSING STAFF, REDUCTION

912. **Hon KIM CHANCE to the Leader of the House representing the Attorney General representing the Minister for Health:**

- (1) Does the Minister now have the answer to the question I asked yesterday regarding nursing staff?
- (2) If so, will the Minister now provide the answer?

For the benefit of the Leader of the House, the question stated -

- (1) Will the Minister confirm that the number of nursing staff employed in our hospital system fell by 377 full time equivalents between 1993 and 1997, and that medical and technical support staff - often professional - fell by 523 FTEs?
- (2) Were these positions compensated by contracting out staff positions; if so, how many?
- (3) What is the breakdown by profession of medical and technical staff positions shed between 1993 and 1997?

**Hon N.F. MOORE replied:**

This is a little confusing because two questions have been asked today and three were asked yesterday. The answers to the questions today are -

- (1)-(2) Yes.

The answers to the questions yesterday are -

- (1) Yes.
- (2) No, with the exception of the radiation oncology services at Royal Perth Hospital, which included six radiation therapists and one nurse.
- (3) This information is not held by all health services. I regret that I am unable to answer the question.

## PAYROLL TAX - EXEMPTIONS

**913. Hon JOHN HALDEN to the Minister for Finance:**

- (1) How many companies in Western Australia which are eligible to pay payroll tax have an exemption or partial exemption?
- (2) Which companies are they?
- (3) Are there any current proposals to allow a payroll tax exemption or partial exemption to any company?
- (4) If so, to which companies?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

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

## ROADS - KWINANA FREEWAY, NARROWS BRIDGE, TRAFFIC CONGESTION

**914. Hon J.A. SCOTT to the Minister for Transport:**

- (1) Given the congested state of the Kwinana Freeway caused by the bottleneck at the Narrows Bridge, is the Minister planning to widen the Narrows Bridge or to build a new bridge at the Narrows before extending the freeway any further south?
- (2) Is it expected that the linking of the Roe Highway extension to meet the Kwinana Freeway will create additional traffic on the freeway?
- (3) If yes, firstly, how much; secondly, how will the excess be managed; and thirdly, what effect will there be on nitrogen oxide emissions and, thus, photochemical smog, in Perth's southern suburbs?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question.

- (1) Main Roads Western Australia is investigating a range of possible options for improving the traffic flow on the freeway system. As part of this investigation, options for increasing traffic efficiency on the Narrows system are being examined.
- (2) No.
- (3) Not applicable.

## ALINTAGAS - DOMESTIC ACCOUNTS, DUE DATE FOR PAYMENTS

**915. Hon KIM CHANCE to the Minister representing the Minister for Energy:**

Some notice has been given of this question by Hon Mark Nevill. Why are AlintaGas domestic users permitted only 10 days within which to pay gas bills when other government agencies routinely allow 30 days before the due date?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question. The due date for payment of AlintaGas accounts is 16 days from the date of issue of the account. Some other government agencies require payment of accounts in less than 30 days; for example, Telstra Corporation Ltd and Western Power.

WORKSAFE WA - PETERS FACTORY DEMOLITION SITE, SCARBOROUGH BEACH ROAD,  
INSPECTION**916. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:**

- (1) Did a WorkSafe Western Australia inspector visit the demolition site of the old Peters factory on Scarborough Beach Road on the morning of 4 October 1996?

- (2) Can the Minister confirm that the inspector made no orders against the operator of the site, other than the standard order requiring that a registered builder be engaged pursuant to the new regulations?
- (3) Can the Minister confirm that later that day, following union complaints about the state of the site, another inspector was sent to the site?
- (4) Can the Minister confirm that this second inspector did not enter the site after he was threatened with physical violence by the operator?
- (5) Were statements taken by officers of WorkSafe Western Australia from persons who witnessed those threats?
- (6) Was the operator of the site subsequently interviewed by a senior WorkSafe officer; if so, who was that officer?
- (7) Were any agreements made between WorkSafe and the operator about the improvement to the site?
- (8) Have any charges been laid against the operator over the threats of violence; if not, why not?
- (9) Was the inspector who first visited the site one of the inspectors named in complaints to the building industry task force?

**Hon MAX EVANS replied:**

I ask that this question be placed on notice.

WORKSAFE WA - CONSTRUCTION BRANCH, CORRUPT CONDUCT COMPLAINTS

*Building Industry Task Force Inquiry*

**917. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:**

- (1) Has the building industry task force received complaints alleging bribe taking and other corrupt conduct by officers of the construction branch of WorkSafe Western Australia?
- (2) If yes, how many WorkSafe officers were named in such allegations?
- (3) Were detailed statements taken by officers with the building industry task force from persons making such allegations?
- (4) When were those statements made?
- (5) What persons within WorkSafe Western Australia were advised of those allegations?
- (6) What investigations of the allegations have been made by the building industry task force, and what were the results of the investigations?

**Hon MAX EVANS replied:**

The Minister has asked that this question be placed on notice.

WESTERN AUSTRALIAN TOURISM COMMISSION - MACPHERSON, ELLE, MARKETING CONTRACT

**918. Hon N.D. GRIFFITHS to the Leader of the House:**

- (1) Can the Leader of the House confirm that Ms Elle Macpherson is about to be engaged by or on behalf of the Government to be associated with a launch of a new tourism strategy?
- (2) Will the launch take place in November?
- (3) If not, when will it take place?
- (4) Is a fee of \$1m, or thereabouts, to be paid for this service?
- (5) Is this part of the Government's election strategy?

**Hon N.F. MOORE replied:**

- (1)-(5) I can confirm that the Western Australian Tourism Commission has been working for some time on the development of a marketing strategy for Western Australia. This is not news; it has been out in the tourism industry for quite some time. From our research conducted in our potential tourism markets we have

discovered that Western Australia is not well identified in the minds of most people who are looking for a place to visit. They have only a very vague understanding of what Western Australia has to offer by way of tourist attractions. Our research has indicated that we need to identify a brand for Western Australia and to work out strategies for marketing that brand; that is, our identity.

It is proposed that this brand be launched early in November. Several negotiations have been conducted with various individuals to be associated with this selling of Western Australia exercise. I cannot confirm whether any arrangements have been made with any particular individual, but I do know that many countries which promote themselves through the tourism industry or markets often use well known personalities to promote their product. I do not know the situation with regard to any contracts that may have been entered into with Elle Macpherson to market Western Australia.

I can confirm that we are in the process of putting together a marketing package for the State. It is not part of the election process. This exercise has been undertaken during probably the past 12 months, because the essential ingredient in the exercise has been the research. An enormous amount of research has been done not just in Australia but locally, in the Eastern States, in South East Asia, in Europe, and in the United States, because we are adamant that the research is vital to getting across the right message at the end of the day. We think we have come up with an excellent message, and I am sure the member will be delighted to come to the launch of the brand. We intend to invite every member of Parliament to that launch. I am sure that Hon Nick Griffiths will be as delighted with that launch as I will be.

Hon Tom Helm: You could get Mr Bean!

Hon E.J. Charlton: Or Onslow!

#### WESTERN AUSTRALIAN TOURISM COMMISSION - MARKETING BRAND, LAUNCH

#### 919. Hon N.D. GRIFFITHS to the Leader of the House:

Can the Leader of the House confirm that it is not Ms Elle Macpherson?

#### Hon N.F. MOORE replied:

As I said, negotiations have been undertaken by the Tourism Commission. I am not involved in those negotiations and I do not wish to confirm who may have been approached or who may become part of the exercise, but be assured that in the event that we do enter into a contract with a personality to help promote Western Australia, that person will be very effective in that sales exercise.

Hon Tom Stephens: I thought it might be you - come to the State of the dinosaurs!

Hon P.R. Lightfoot: You would not leave any footprints in Western Australia, I can assure you!

Hon N.F. MOORE: I can assure Hon Tom Stephens it will not be him and it will not be me who will be at the front line trying to promote Western Australia. It certainly will not be Onslow!

#### SCHOOLS - GREENFIELDS PRIMARY; DUDLEY PARK PRIMARY, ENROLMENTS

##### *Coondanup Primary Plans*

#### 920. Hon J.A. COWDELL to the Leader of the House representing the Minister for Education:

- (1) What is the current student population of Greenfields Primary School?
- (2) What is considered to be the optimal student population for Greenfields Primary School?
- (3) What is the current student population of Dudley Park Primary School?
- (4) What is considered to be the optimal student population for Dudley Park Primary School?
- (5) What is the estimated primary school student population in the Coondanup catchment area?
- (6) When will the proposed Coondanup primary school come on stream?

#### Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) 420 primary and 40 preprimary students are currently enrolled at Greenfields Primary School.

- (2) Greenfields Primary School has 14 permanent and one transportable classroom for primary students. The site could accommodate up to 750 primary students with additional temporary accommodation. Given the demographic implications of its catchment area, this figure will almost certainly not be reached. Accommodation could be provided to cater for up to 100 full time five year old preprimary children. Again, this figure is highly unlikely to be achieved in the future.
- (3) 584 primary and 104 preprimary students are currently enrolled at Dudley Park Primary School.
- (4) Dudley Park Primary School has 18 permanent and two transportable classrooms for primary students. The site could accommodate up to 800 primary students with additional temporary accommodation. An additional transportable preprimary unit would be provided if required.
- (5) 359 students from Coodanup are enrolled at Dudley Park Primary School and 31 are enrolled at Greenfields Primary School.
- (6) The Education Department has no definite plans for a primary school at Coodanup. This will depend on the timing and rate of future residential developments in the area and any pressures that these place on Dudley Park and Greenfields Primary Schools. If the school were constructed in the near future it would result in significant underutilisation of the permanent infrastructure already available at Dudley Park Primary School.

#### ADVERTISING - RECYCLING CAMPAIGN; DRUG AWARENESS CAMPAIGN

#### 921. Hon KIM CHANCE to the Leader of the House representing the Premier:

Some notice of this question has been given, but I advise the Leader of the House that there is an insubstantial change to the first words of the first part of the question.

With respect to government advertising campaigns -

- (1) What is the total budget for -
  - (a) the recycling campaign; and
  - (b) the drug awareness campaign?
- (2) What was the cost of production and printing of the drug awareness campaign advertisements which have appeared in *The West Australian*?
- (3) What other forms of advertising are being used in this campaign?
- (4) What forms of promotion and advertising are being used in the recycling campaign?
- (5) What is the budgeted cost for each form of promotion and advertising in both campaigns?

#### Hon N.F. MOORE replied:

I thank the member for some notice of this question. I do not have an answer at this time. I suggest the Leader of the Opposition either put the question on notice or ask it again tomorrow.

#### PERTH PHOTOCHEMICAL SMOG STUDY - METROPOLITAN TRANSPORT STRATEGY

#### 922. Hon J.A. SCOTT to the Minister for Transport:

Given that the Perth photochemical smog study identifies the car as the chief source of 51 per cent of the total nitrogen oxide and 44 per cent of the total reactive chemical compound -

- (1) Will the Minister drop plans to build the western suburbs highway?
- (2) Will the Minister take proper steps to provide a greater funding percentage to public transport?
- (3) Will the Minister reduce car parking in the central business district?
- (4) Will the Minister lobby for changes to the building code to reduce the high requirement for parking spaces?

#### Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) The Government has no plans to build the so-called western suburbs highway. The Government does not even know what -

Hon J.A. Scott: You put out a book the other day with that in it.

Hon E.J. CHARLTON: Hon Jim Scott has, I understand, been referred to as a member who asks discredited questions on most issues.

Hon Kim Chance: By whom?

Hon E.J. CHARLTON: I must now associate myself with that. The so-called western suburbs highway alignment has been in the Perth planning publications for over 30 years. Hon Jim Scott is living off a headline that was run in a discredited article in *The West Australian* before Christmas of last year which said that road would be built. We have a 10 year road building program, and if Hon Jim Scott is interested in what roads will be built in Western Australia in the next 10 years he should open that booklet and look at what roads are identified and also what roads have funding allocated to them in that 10 year program. That highway is not in it. I want to let Hon Jim Scott know, as well as anyone else, that the misinformation that he peddles -

Hon J.A. Scott interjected

Hon E.J. CHARLTON: Hon Jim Scott must feel discredited himself when he asks these sorts of questions. I will probably have to do a letter drop to the whole of the western suburbs again to tell them about this situation. The Government does not have any plans; Hon Jim Scott need not worry about it.

- (2) I have taken significant steps to ensure that Perth residents continue to enjoy the best public transport system in Australia. We have done more than any other Government has ever done to ensure that the people of Perth can look forward to an improved public transport system. The Government has released the metropolitan transport -

Hon Tom Stephens: The buses are still getting lost, are they not?

Hon E.J. CHARLTON: The one thing that my friends over there will never be accused of is doing anything to make any changes in public transport. To their great credit, they put in the northern suburbs railway as a political initiative, but they did not put in one cent to enable it to be paid for. This Government and the people of Western Australia inherited that situation. It is a great railway but, unfortunately, the Opposition -

Hon A.J.G. MacTiernan: What about the Fremantle service?

Hon E.J. CHARLTON: That has been there for 100 years.

Several members interjected.

The PRESIDENT: Order! Although I have lost my voice and cannot yell loud enough to be heard over the interjections, it is not a signal for people to disobey the rules. The member asked a question and he should allow the Minister to answer it. The Minister should answer the question as quickly as possible.

Hon E.J. CHARLTON: The Government has released the metropolitan transport strategy which, for the first time, outlines the directions to achieve a balanced transport system in which the steady decline of public transport patronage can be reversed.

Secondly, it has initiated the central area transit system, using small buses which exceed the most rigorous emission standards. The system has the highest standards in the world and everybody acknowledges that the service is one of the greatest innovations in free travel around the city area.

The Government has also agreed to acquire five two-car rail sets and 133 low-floor buses to augment and replace existing public transport infrastructure. It is progressing that as fast and hard as it can. The Government has initiated eight new services, improved evening and weekend services and extended many other services. This is the first time in 10 years that new services have been added without other services being stopped.

- (3) The City of Perth and the State Government are acting cooperatively to ensure that proper levels of parking are provided to meet the requirements of businesses, residents and visitors to Perth, without causing road congestion or other problems.
- (4) I regularly discuss transport matters with local government officials, with the aim of achieving the Government's vision for the state transport policy, and the vision for the Perth region as outlined in the metropolitan transport strategy.

## ROADS - STEPHENSON HIGHWAY, ALIGNMENT CHANGE

**923. Hon JOHN HALDEN to the Minister for Transport:**

Following the Minister's berating of Hon Jim Scott, I pose a question about the proposed Stephenson Highway. As it has been in the metropolitan region scheme for 30 years and is unlikely to come to fruition, why was the alignment of the highway altered for the new Bold Regional Park plan in 1995?

**Hon E.J. CHARLTON replied:**

It was altered for a couple of reasons. The first was a safety issue involving the bottom section of the current west coast alignment. Secondly, it was changed because an additional area was allocated to Bold Park following discussions with the local community. It was done in response to its request.

Hon John Halden: You will not build a highway.

Hon N.F. Moore: Why did you not take it out? You were 10 years in government.

Hon E.J. CHARLTON: Hon John Halden is not suggesting that it be removed. He is suggesting that because the people in the Bold Park area wanted the alignment changed and the Government responded to that request, it means the Government will build the highway. The only section of the alignment constructed was built by the previous Government, with federal government funding, and it went beyond what the local community wanted. There is now duplication of roads linking with Scarborough Beach Road, which is a total waste of money. Members opposite can be proud of that as their contribution to the Stephenson Highway. If I were Hon John Halden, I would keep my head down and say nothing about the Stephenson Highway because the only funding allocated to it was provided by his Government in its dying days. It did that as a gimmick and for political reasons because it thought it might induce people to vote for the Labor Party. As has been demonstrated over and over again, those activities do not work.

## POLICE SERVICE - COMMONWEALTH FUNDING CUTS

**924. Hon JOHN HALDEN to the Leader of the House representing the Minister for Police:**

In an effort to comply with Treasury's request to reduce every department's expenditure by 1.4 per cent as a result of the reduction in financial assistance grants to the States announced in the federal Budget, how will the Police Department attempt to meet this target?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question. It is proposed to dispose of surplus land. The proceeds of the sale will meet the 1.4 per cent figure required of the department as a result of the federal government initiated budget measures.

## SCHOOLS - ALBANY HIGH, FUTURE PLANS

**925. Hon BOB THOMAS to the Leader of the House representing the Minister for Education:**

Has the Minister or the department made a decision to either amalgamate the two senior high schools in Albany or create a superschool in 1998 or a subsequent year?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question. The Education Department of Western Australia is currently working with the Albany community in a consultative process investigating the current provision of secondary education in the schools. Options are being investigated, and no decision about the future of the existing secondary schools in Albany has yet been made.

## PRODUCTIVITY AND LABOUR RELATIONS, DEPARTMENT OF - LABOUR PRODUCTIVITY CALCULATIONS

**926. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:**

- (1) Is the Department of Productivity and Labour Relations able to provide details of annual productivity changes from 1992 to 1996?
- (2) If yes, will the Minister table those statistics and provide the method used to calculate those statistics?
- (3) If no, how does the Minister for Labour Relations measure the success or otherwise of his Government's policies, and in particular his industrial relations regime?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question. The Minister for Labour Relations has provided the following reply -

- (1) I refer to my reply yesterday to question without notice 898, and reiterate that the Department of Productivity and Labour Relations has calculated labour productivity between the years 1991 and 1993-94. Data for the years from 1994 to 1996 has not been calculated since the methodology of calculation has been under review.
- (2) The labour productivity calculations mentioned in (1) were done using a methodology developed in conjunction with the Australian Bureau of Statistics. The methodology is outlined in an internal DOPLAR document, a copy of which I seek leave to table.

Leave granted. [See paper No 725.]

Hon MAX EVANS: The new methodology, as explained in reply to the question without notice yesterday, is being developed.

- (3) Labour productivity is not a definitive measure of the success of the Government's industrial relations reforms. Direct measures of the success of the industrial relations reforms are difficult to devise, but there are a number of indirect measures which should also be considered. These include the take up rates of workplace agreements, the youth unemployment rates and average weekly earnings of this State. Other policy initiatives introduced by the Government are also important. Among these I refer to the greater flexibility and choice in labour relations contracts, the minimum conditions which provide basic protection for all employees in the State, the work and family strategy and the launch of the Productivity WA 2000 Vision.

#### DEATHS - DEMOLITION SITE 8 NOVEMBER 1988, EMPLOYER

**927. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Labour Relations:**

Who was the employer of the 28 year old Western Australian man who, according to the WorkSafe fatality description, was killed on a demolition site on 8 November 1988?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question. The Minister for Labour Relations has provided the following reply: The name of the employer was John Holland Constructions Pty Ltd.

#### MASTER MEDIA AGENCY - CAMPAIGN ADVERTISING BUDGET

**928. Hon KIM CHANCE to the Leader of the House representing the Premier:**

Given that the Premier has under his control the Master Media Agency, which coordinates and handles all campaign advertising for the Government, will the Leader of the House provide -

- (1) The total campaign advertising budget by the Government in 1996-97, compared with the previous three years?
- (2) The reasons for, and total cost of, individual campaigns already scheduled in this financial year by the Government?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question. I do not have an answer to the question, and ask that it be placed on notice or be asked again tomorrow.

#### COMMONWEALTH GRANTS COMMISSION - FINANCIAL ASSISTANCE GRANTS REDUCTION

**929. Hon JOHN HALDEN to the Minister representing the Treasurer:**

- (1) Following the latest Commonwealth Grants Commission hearing, what is the effective reduction in dollar terms of the grants to Western Australia based on the previous year's allocation?
- (2) Is the reduction in addition to the cuts to specific purpose and financial assistance grants announced in the federal Budget?



**Hon MAX EVANS replied:**

- (1) The Commonwealth Grants Commission recommendations have resulted in a reduction to Western Australia's 1996-97 financial assistance grants of \$67m, based on the pool of funds in the previous year. This reduction, together with increases for inflation and population growth, was reflected in the federal budget estimate of \$1.54b for Western Australia's 1996-97 financial assistance grants. The state Budget was based on the Commonwealth Grants Commission's original recommendation of a \$73m reduction in funding for Western Australia. However, the June 1996 Premiers' Conference agreed to correct the commission's recommendations on the basis of an error identified by Western Australia. In September 1996 the Grants Commission visited Western Australia as part of a review of its methods. This review will not be completed until 1999.
- (2) The commission's recommendations were reflected in the financial assistance grant estimate in the federal Budget. The Commonwealth also announced changes to the specific purpose grants which have been estimated to cost Western Australians \$30m in 1996-97. The total specific purpose grants paid to Western Australia in 1995-96 amounted to \$1.363b. The federal Budget also includes a fiscal contribution to the Commonwealth's deficit reduction from Western Australia of approximately \$60m for 1996-97.

## SMALL BUSINESS - LAND TAX INCREASES

**930. Hon KIM CHANCE to the Minister for Finance:**

I refer the Minister to the editorial of *The West Australian* of 14 October in which a Curtin business school report is cited as finding that Western Australia's small business confidence is at its lowest ebb since 1992.

- (1) Does the Minister plan to take any action to address problems encountered by small business in paying large increases in land tax?
- (2) Does the Minister believe that small business should be liable for increased land tax because of increased land values when that increase is brought about partly or wholly by improvements made on their business premises by owners or proprietors.

Hon E.J. Charlton: If it was in *The West Australian* it was not accurate.

**Hon MAX EVANS replied:**

I thank Hon Eric Charlton; he took the words right out of my mouth.

- (1) The Government has taken action to reduce land tax rates on three occasions since coming to office, including in the 1996-97 Budget. One of the objectives is to remove the effect of "bracket creep" so that any increase in land tax will primarily reflect increases in land values. In addition we have introduced a pay-by-installment option and a much fairer system of annual values for land tax.
- (2) Land tax is based on unimproved values. That counters the problem of valuations increasing as a result of improvements to premises. Consequently, improvements made on business premises by owners or proprietors should not affect viability for land tax.

The Press did not pick up my comments on radio about the City Hotel.

Hon John Halden: They probably could not understand them.

Hon E.J. Charlton: *The West Australian* would not understand it. You would have to draw a picture for it.

The PRESIDENT: Order! Members should let the Minister answer the question.

Hon MAX EVANS: In its first year of office the Government assessed all the land valuations agreed to in 1992 at the rates of 30 June 1993. If we had retained the old scale of charges government land tax receipts would have increased from \$128m to \$209m. I was conscious that land values had gone down in the city and that problems were being experienced throughout the State. We then struck new rates for land tax to collect \$6m less than the previous year to June 1993. The scheme that evolved was much fairer to all taxpayers. In 1993-94, 80 per cent of all taxpayers received a lower land tax assessment than in 1992-93.

In 1995-96, based on June 1995 figures, the Government again legislated to reduce the land tax scale to offset the increased land valuations which applied during the year. This change further resulted in land tax collections being \$8m less in 1995-96 than would have been the case if the scale had remained unchanged. Moreover, the total collections from land tax in 1995-96, including new land, increased by 16 per cent, which is less than the average

increase in the valuation base. The number of people who pay land tax has increased from 120 000 to 140 000 as a result of the release of a lot more land.

In 1996-97 as part of its budget process the Government revised both the land tax rate and the scale to offset increases in property values. The scale which applied when we came to office had not changed since 1987, with a maximum rate of 2c in each dollar being reached at an unimproved valuation of \$150 000. This contrasts with the maximum rate of 2c in the dollar for \$1.1m. In the first year, I increased \$150 000 to \$1m. It has increased since then and this has provided protection. In the case of the City Hotel, in 1991-92 - under 1991 values - the value of the land was \$1.3m. Land tax was \$27 000. The next year, based on the value of the land, it dropped to \$19 000. In my first year of office it dropped to \$11 000. Mrs McEvoy has not written to thank me for that! That drop from \$27 000 to \$11 000 reflects the decrease in the scale of charges. It had a big impact on small business.

Hon Tom Helm: She still complains.

Hon MAX EVANS: She now has all the facts. In 1994-95 the valuation increased to \$1.2m and land tax increased to \$18 000. I reduced the scale the next year which brought the land tax down to \$17 900 and in 1996-97 on a valuation of \$1.85m it was taxed at \$30 940. In five years the rate of land tax has increased by less than 10 per cent. If we had not reduced the rate this year the tax rate would have been \$31 877, up by \$937. The Government is proud of what it has done with land tax. This year the main changes affected the \$250 000 to \$400 000 property values of small shops in suburban areas, not big shopping areas. Their valuations were being affected by large hotels and other big businesses. I believe that as a result of the changes we have made they have been well looked after.

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