

from Fremantle Prison has gone out and worked very hard indeed to establish this phone connection to Karnet.

The State Electricity Commission has almost completed a power line to connect the institution with S.E.C. power. Applications have been called for the position of farm manager, and applicants for this position will be interviewed next week. The selection of suitable staff for the institution will follow almost immediately.

This institution will, of course, be under prison management; and it is along as modern lines as we can develop. Selected prisoners will be accommodated there who will be, it is hoped, trained and employed under strict discipline and supervision. They will be able to do the farm work and other labour which will assist in their rehabilitation. Modern penal systems provide training for prisoners in self-respect, and it is hoped that Karnet will give prisoners a sense of responsibility which will assist them in their rehabilitation and social adjustments.

The problem of the alcoholic has been under review by the Government for some considerable time, and the general conclusion emerging from organisations and individuals conversant with the problem of alcoholism show that imprisonment over a long or short term is no answer to the problem. Imprisonment has no curative value. Unfortunately, until now little has been done in the way of any constructive attempt to overcome it, and it was with this view in mind that the Government decided to incorporate an alcoholic institution at Karnet for convicted alcoholics.

Accommodation will be provided for 60 men in the area set aside for normally convicted prisoners, and for 60 convicted alcoholics in the area set apart for the alcoholic institution. The inmates will be housed in open dormitories under close observation, and each dormitory will have its own recreation and dining room attached. Ablution blocks and toilets will be on modern lines, and the whole of the institution and staff building will be septic sewered.

It is expected that after a period when the farm has begun to function fully, it will supply vegetables and farm produce to a number of Government institutions under the Prisons Department. Further areas will be planned for pastures in order that a dairy may be established, and we also hope eventually to establish a beef herd.

It will be apparent then that the establishment of the Karnet Rehabilitation Centre will be a big step forward in the practical treatment and rehabilitation of convicted alcoholics, and it is a step which has been long delayed but which will now, I feel sure, receive widespread approval from the community.

Debate adjourned, on motion by Mr. Norton.

BILLS (2): MESSAGES

Appropriation

Messages from the Governor received and read recommending appropriation for the purposes of the following Bills:—

1. Mental Health Bill.
2. Prisons Act Amendment Bill.

House adjourned at 5.18 p.m.

Legislative Council

Tuesday, the 11th September, 1962

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The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4.30 p.m., and read prayers.

ADDRESS-IN-REPLY

Acknowledgment of Presentation to Governor

THE PRESIDENT (The Hon. L. C. Diver): I desire to announce that, accompanied by several members, I waited on His Excellency the Governor and presented the Address-in-Reply to His Excellency's Speech, agreed to by the House. His Excellency has been pleased to make the following reply:—

Mr. President and honourable members of the Legislative Council: I thank you for your expressions of loyalty to Her Most Gracious Majesty the Queen, and for your Address-in-Reply to the Speech with which I opened Parliament.

POLICE ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines) [4.36 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to amend several sections of the parent Act with a view to the better enforcement of the law in the interests of the community.

Clause 2 of the Bill proposes an amendment to section 66. In section 66 are set out many offences, upon the conviction of which a person is deemed a rogue and a vagabond. One of those offences has to do with a person proved to have had in his custody certain housebreaking instruments. That is in paragraph (4) of subsection (2c) of the section.

In that paragraph, however, there is no mention of explosive substances. Such substances are used from time to time, in the course of housebreaking actions, and the purpose of this amendment is to add to the housebreaking implements listed, explosive substances.

A new section—numbered 89A—was introduced into the Act last session with a view to the prohibition of certain slot machines. In subsection (3) of that section, a slot machine is defined generally as a machine which is operated by the installation of a coin or valuable token.

The purpose of the amendment which appears in clause 3 of the Bill is to enlarge that definition to the extent of adding that if the machine is not so operated and may nevertheless be designed for entertainment or amusement and is made available for use on the payment or prospect of payment of any valuable consideration, it shall be deemed to be a slot machine.

This amendment is desirable for the reason that certain operators of these machines have been evading the Act by closing the coin slots in the machines and having

attendants operating the machines by remote push button control and collecting money from customers.

Lest machines which are being operated for a completely innocent purpose be exposed to the provisions of the Act, it is expressly set out in the Bill, as previously mentioned, that it is only those machines for the use of which valuable consideration is demanded, that come within the scope of this amendment.

The second amendment under clause 2, which appears in paragraph (b), provides for the insertion of a new description of an offence on conviction of which a person may be deemed a rogue and a vagabond. The intention behind the insertion of the offence—numbered (13)—is to encompass the activities of "peeping Toms." The police are able to resort only to the "loiter" section—section 43—of the Police Act at the present time in respect of that offence; and, unfortunately, the nightly patrol cars are kept quite busy dealing with complaints of such offenders.

The provisions of section 13 of the Police Act are considered to be unsatisfactory, and also rather doubtful in their application to this particular type of offence, and the insertion of this new definition under section 66 is considered most desirable in order that the position may be policed more effectively. There is this further point that the offence as now defined will carry a penalty with a maximum of 12 months' imprisonment, with or without hard labour, as against current penalties up to a maximum of one month only.

Clause 4 of the Bill proposes the repeal and re-enactment of section 90A of the Act. That section deals with false reports to the police. By way of introduction to this amendment, it might be desirable to recall a recent incident of a person causing the police and others a great deal of trouble and expense by falsely reporting a boat in distress.

In spite of the fact that section 90A, as existing, deals with false reports, it was not found possible to take effective action against the culprit under that section; recourse had eventually to be made to prosecution under the Posts and Telegraphs Act, which is a Federal law.

Again, although a conviction was obtained, the police were unable to claim recoup of expenses incurred in the search. It has therefore been decided that the wisest course is to recast the section rather than amend parts of it. Subsection (1), for instance, imposes a high onus of proof, and, in some respects, the provisions are considered inadequate.

In the case of subsection (3), the existing provisions do not take into account that persons other than the police may be put to considerable expense by reason of the mischief which can be caused

through these offences, and for which—as mentioned previously—there is no provision for recovery.

It must be remembered that it is not the Police Department only which is required to shoulder such expense; others, such as the Fremantle Harbour Trust, or the Flying Doctor Service, become involved.

Action has been taken through the introduction of this measure to remove the comparatively unsatisfactory provisions of subsections (2) and (3). These subsections at present deal with the recovery of expenses by the Police Force and the payment of such money to the Treasury. The new subsection (3) replaces those sections with new provisions enabling the court to make an order for the indemnity of any person, and provides a penalty of £100, or imprisonment for three months, or both.

The amendments are considered very important ones, particularly as they will prevent the exploitation of several loopholes or weaknesses in the Police Act.

Debate adjourned, on motion by The Hon. F. J. S. Wise (Leader of the Opposition).

LOCAL GOVERNMENT ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 28th August, on the following motion by The Hon. L. A. Logan (Minister for Local Government):—

That the Bill be now read a second time.

THE HON. E. M. DAVIES (West) [4.42 p.m.]: This Bill seeks to amend the Local Government Act, 1960-61. It was expected that experience of the operation of the new Act—being the amalgamation of the Municipal Corporations Act and the Road Districts Act—would reveal the necessity for amendments. In the measure before us there are some 30 amendments, and they have been introduced mostly for the purpose of clearing up anomalies and making corrections to the Act.

There are some provisions in the Bill which seek to extend the powers of local authorities. One seeks to give the power to them to subsidise dentists or veterinary surgeons, or to enable them to give a guarantee to medical officers or veterinary surgeons. When we take into account the fact that in many country areas it is most important that local authorities should have the opportunity to induce these professional people to serve in their districts, this particular provision in the Bill becomes necessary; and, in my view, local authorities in country districts should be given that power.

There are a number of minor amendments contained in the Bill. I would like the Minister, during his reply to the

second reading debate, to give further consideration to clauses 6 and 7. Clause 6 seeks to add a passage to section 117 to enable the counting of absentee votes to proceed during the course of a poll. This provision proposes that if there is a scrutineer appointed for each of the candidates contesting the election, the absentee votes may be counted in the course of the election, instead of after the close of the poll, which is the existing position.

I realise that an attempt is being made to permit the electoral staff to count the absentee votes during the course of an election, when there is a lull in the voting. However, the proposed method will break down unless every candidate in the election appoints a scrutineer. If one of the candidates does not do so, it will not be possible to count the absentee votes in the course of the election.

In many local government elections—I know this is a fact in Fremantle—it is rare for every candidate to appoint a scrutineer to look after his interests at the counting of the poll. At the last local government election in Fremantle, when four candidates contested the representation of a ward, only one appointed a scrutineer. I point out to the Minister that in such a case the proposed method of counting absentee votes will be ineffective, because not all candidates will have appointed a scrutineer. I therefore cannot give my support to clause 6 in the Bill, although the intention is to assist in regard to the counting of absentee votes. In many cases the new method will not be workable. If a scrutineer is not appointed for every candidate, the counting of absentee votes will still have to be carried out after the close of the poll. I ask the Minister to give further thought to clause 6, when he replies to the second reading debate.

Consideration might also be given to clause 7, because it concerns the making of by-laws. Under the existing provision in the Act local authorities have the power to make by-laws, but these have to be submitted to the Minister for Local Government before they can be promulgated. In turn the Minister advises the Governor whether or not such by-laws should be accepted. There appears to be some reason for including this amendment in the Bill, because if a by-law is not in accordance with the policy of the Government, the Minister can decide not to accept it. I would, however, like the Minister to give the House some other reasons for this particular amendment.

If I remember correctly, there are two other clauses—clauses 18 and 19—to which I would like the Minister to give some consideration. The local authority, having fixed the amount payable in lieu of rates, divides the sum by the rate in the pound for the rating period, and the

resultant figure is in effect a net annual unimproved value of land for the purpose of assessing votes. This deals with railway land or public land that is leased to certain organisations for the purpose of carrying on a business. Sometimes it is necessary for a vote to be calculated for these particular people. I would like the Minister to consider these two clauses to see whether more equitable arrangements could not be made.

We know that local government was one of the first forms of government. Even in the days before civilisation there was always some form of government, even among the illiterate people of the world. From time to time they appointed their own leaders; and certain laws were made in each particular tribe. Local government is very old indeed. It is called "local" government because it is government by the people in the localities in which they live.

It has become necessary from time to time to decide on the method of electing those who will represent the people in each particular local authority. The old Road Districts Act and the old Municipal Corporations Act were replaced by the Local Government Act, and in this Act again it has been stipulated that certain people shall be given the right to elect representatives to the local authority.

I would say that there appears to be some departure from the democratic principle of electing people to represent residents of a particular district—or should I say to represent the ratepayers? I notice in one provision the owner and occupier are both entitled to a vote; but when it comes to a man and his spouse, or a woman and her spouse, who are owner and occupier of the land on which they live, we find that one of them must make application to be placed on the roll in order to be eligible to vote. That should not be necessary. If an owner and tenant are eligible to have their names placed upon the roll for the purpose of recording votes to elect their particular representative, I cannot see the force of the argument that a man or his wife—if one is the freeholder and the other the householder—should have to make application to be placed on the roll. Therefore when the Bill is in Committee I intend to move that a new clause be inserted to alter that particular method of enrolment.

The Bill is essentially a Committee Bill and I do not believe any purpose would be served by debating it for any duration during the second reading. Members may debate the various clauses during Committee and ascertain any information they may desire. Therefore I will support the second reading of this Bill but I reserve the right to disagree with some of the clauses if the Minister's explanations do not satisfy me.

THE HON. N. E. BAXTER (Central) [4.56 p.m.]: There is only one clause in this Bill to which I wish to make reference and that is clause 22 which deals with section 552 of the Act. It concerns minimum rating.

I am pleased that the Minister has seen fit this year, after representations made last year, to amend the Act. The unfortunate part of it is that certain ratepayers had an imposition put upon them last year by this section, because the size of the towns that exist in certain shire districts vary as do the valuations. For instance, in the Wyalkatchem district the value of blocks of land in Wyalkatchem is greater than the value of those in some adjoining townships. Again, we could not compare the valuations in Kellerberrin with those in Doodlakine and Baandee, and the result has been that under the section which is to be repealed the shire has had to impose a minimum rate applicable to all three towns irrespective of valuation. In some instances it was a lot heavier on the less valuable blocks in the smaller towns than on the blocks in the larger ones.

There is one aspect of this amendment I would like the Minister to clarify. I notice that in this clause 22, which deals with section 552 of the principal Act, is the provision that the minimum rate shall apply to land, but in the repealed section the words are "on ratable land or if the council thinks fit each of the several lots if any." I take it that under this amending legislation, if a person holds four blocks in Wyalkatchem, Kellerberrin, or Moora, the minimum rate, or the maximum-minimum rate, which could be applied would be £5 for all four blocks, and the same maximum-minimum could be applied to one block. However, under the section to be repealed, that maximum-minimum could be applied to each of the blocks. Therefore, if there were four blocks and the minimum was set at £2 the total rate would be £8; but under the new provision I take it that the total rate cannot be greater than £5.

I would like the Minister to comment on this point when replying to the second reading debate. I would like to know whether that was the intention when the amendment was drafted; or does the amendment cover several lots of land? Normally the rating applies to all land owned by a person, irrespective of the number of lots.

The Hon. L. A. Logan: Not necessarily so.

The Hon. N. E. BAXTER: It does appear to me that an error has been made in the drafting of this amendment. That is all I wish to say on this matter; but I trust that when some of these propositions are put up the Minister will hurry them along and not allow a year to go by during which people are imposed upon; because this year those persons to whom the mini-

mum rate is applicable will pay the additional amount; and this could have been adjusted had this section been amended last year.

Even if the amendment is agreed to, it will be too late now for the shires to alter their assessments for this year. It means that anybody who paid the heavy rate last year will pay it again this year, but will be relieved of it next year; but he will have to pay it for two years running.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [5.1 p.m.]: This is mainly a Committee Bill, but I would like to make one or two comments on the remarks passed by Mr. Davies. He first of all raised a point in connection with the counting of absentee votes. I quite agree with him on this aspect, and will be happy if he likes to remove the provision in connection with having a scrutineer present. I included this amendment for the purpose of ensuring that no-one would put anything across someone else.

The Hon. G. Bennetts: I think it is right, too.

The Hon. L. A. LOGAN: If there are four candidates, and the returning officer and one scrutineer—or no scrutineer, perhaps—present, and the result of the poll is a difference of one vote, and no-one has been able to check the votes that have been cast by the postal or absentee voters, it could lead to all sorts of trouble.

The Hon. F. J. S. Wise: Mr. Davies' objection is that you must have four scrutineers if there are four candidates.

The Hon. L. A. LOGAN: If Mr. Wise, Mr. Willesee, and I are candidates, and Mr. Wise has a scrutineer present but Mr. Willesee and I have not, and there is a difference of one vote at the finish, does Mr. Wise think that Mr. Willesee and I would be happy about the situation if the absentee votes had been counted in our absence and we were not able to check whether they were informal or otherwise? This provision was put in for the purpose of ensuring there would be no skulduggery. I know the situation is not easy. At the moment the votes cannot be counted during the poll.

The Hon. F. J. S. Wise: The way this is drafted, you could not count them if one scrutineer were absent.

The Hon. E. M. Davies: It never entered my mind about there being any skulduggery.

The Hon. L. A. LOGAN: We could get the situation where there was a difference of one vote; and it would not be very nice to have one or no scrutineers there when the votes were checked and there was one vote difference at the finish. I was only trying to safeguard the situation.

I am easy on this. Mr. Davies can take out all the scrutineers and leave it to the returning officer if he thinks that will make the position any easier; but I think it might be dangerous to do that.

I do not think there is any great need to count these votes before the end of the poll; but where scrutineers are available, and the returning officer wants to count them, this will give him the opportunity to do it. Actually, this has only been put in to hurry up the count.

The Hon. G. Bennetts: Why do they want to hurry up the count?

The Hon. L. A. LOGAN: With every election, people want to know the results as soon as possible.

The Hon. G. Bennetts: The honest way is the other way.

The Hon. L. A. LOGAN: I was only trying to safeguard the position.

The Hon. G. Bennetts: I agree with you there.

The Hon. L. A. LOGAN: In regard to the by-law provision, the position at the moment is this: If a council in its wisdom submits a by-law to the Minister, he has to submit it straight to the Governor; and, if it is not in the interests of the Government or the people concerned—this does not happen very often—the situation could be reached where the Minister has to submit the by-law to the Governor with the recommendation that he disapprove of it.

The Hon. F. J. S. Wise: Because of some parochial angle?

The Hon. L. A. LOGAN: It could be for anything. I do not think that is a good position for any Minister to be in. This is not likely to happen very often, but it could. I have had it happen once to me, and it is a very difficult situation.

Mr. Davies mentioned clauses 18 and 19 in respect of valuations for the number of votes. When the Local Government Act was passed, the provision in the old Road Districts Act was omitted; and, in regard to people living on railway property and with electricity concessions, there is no way of giving them a vote at the moment because we cannot work out their valuations. The voting power is according to the valuation of the property. I think that in respect of a mayor it is: up to £750, two votes; over £750, four votes; and it is one vote and two votes, respectively, for a councillor.

We have to get down to some basis of valuation to enable the voting strength of the person to be entered on the roll book. That is the reason for this amendment.

The Hon. E. M. Davies: I offered you an alternative and asked you to consider it.

The Hon. L. A. LOGAN: What was the alternative?

The Hon. E. M. Davies: I read it out.

The Hon. L. A. LOGAN: The honourable member read it but did not offer it. This is in conformity with the old Road Districts Act, and I think members will find there is not very much wrong with this system.

Mr. Baxter mentioned minimum rating. If he reads the provision, he will find that the same principle applies in the amendment as in the old section. The honourable member took me to task somewhat for not amending the Act straight away; because he brought it to my notice last year. I say in all sincerity that despite all the problems Mr. Baxter raised in this connection, the only two objections I have had in regard to minimum rating were from two members of Parliament—Mr. Baxter and Mr. Simpson. Their objections were the only two received from people throughout the whole of the State. I realise, however, that there is an anomaly in this provision, and so I have introduced this amendment.

The Hon. N. E. Baxter: So did we; and that is why we brought it up.

The Hon. L. A. LOGAN: The honourable member and Mr. Simpson are the only two who raised it.

The Hon. F. R. H. Lavery: A reflection on members.

The Hon. L. A. LOGAN: No. We have to be careful when we amend the Act to see that it is in conformity with the requirements of the local governing authorities; it is their concern, not ours. If Mr. Baxter looks at the clause he will find it has the same meaning as has the present Act.

The Hon. N. E. Baxter: Are you sure of that?

The Hon. L. A. LOGAN: Yes; from a quick look I have had at it.

The Hon. N. E. Baxter: You had better have another look at it.

The Hon. L. A. LOGAN: I understand that Mr. Davies wants to move for the insertion of a new clause. If that is the case, I want some time to study it. I suggest that we can deal with the Bill in Committee up to that point, when I shall ask that progress be reported in order that I may have an opportunity to consider his amendment.

Question put and passed.

Bill read a second time.

In Committee, etc.

The Chairman of Committees (The Hon. W. R. Hall) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clauses 1 to 5 put and passed.

Clause 6: Section 117 amended—

The Hon. E. M. DAVIES: I oppose the clause. The Minister did give an explanation of it, but what he said does not alter the fact that if there is not a scrutineer for each candidate the counting of the absentee votes cannot take place until after the close of the poll. So, with this amendment, we would be no better off than we are at present. I do not wish to amend the clause to provide that there shall be no scrutineer, because I think that would be wrong. I think it would be best to allow the *status quo* to remain. I ask the Committee to vote against clause 6.

The Hon. J. D. TEAHAN: I, too, oppose the clause. There are never many absentee or postal votes recorded in local government elections in country districts. If this provision were agreed to, it would not preserve the secrecy of the ballot. If only two or three postal votes were recorded at a country town and they were counted during the day, there would be the presiding officer and his poll clerk checking them, and if they knew the votes were sent in from, say, Perth, they would know how the people who sent them in voted.

The Minister should ensure that such votes, whether they are checked during the course of the poll or at the end of it, are put in with all other ballot papers to preserve the secrecy of the ballot.

The Hon. C. R. ABBEY: I cannot see why this clause should not remain in the Bill. If there are no scrutineers available, the votes would not be counted and the position would remain as it is at present. Why take out a provision that will merely facilitate, in some cases, the counting of the votes?

I feel this is a legitimate inclusion in the Bill, and the Minister should be commended for trying to hurry things along a little to allow the results to be known sooner than otherwise.

The Hon. L. A. LOGAN: This was a request from the Country Shire Councils' Association; but its request was "any scrutineer." It was I who stipulated that unless a scrutineer for each candidate was present, the counting should not take place. I made that stipulation to safeguard the position. Whether this happens only once in any one election, or does not happen at all, it does not do any harm by being in the Bill.

If the occasion arises where there are only two candidates and they both have a scrutineer present and the returning officer wants to have the absentee or postal votes counted, there is no reason why they should not go ahead and count them. There is no harm in this provision being in the Bill.

The Hon. F. J. S. WISE: I think we all agree the Minister is trying to meet, and to meet validly, a set of circumstances

which might occasionally arise. I am concerned with the necessity to meet such circumstances, because they are so rare. The two provisions state that providing there is a scrutineer present for each candidate during the course of the day on which the poll is being taken, the examination and the counting of the votes may take place during the day.

By removing the word "after" from section 117 of the Act and substituting the word "during," we are giving full authority for all the things that are now done after the poll to be done during the day; because that is how section 117 reads. All of the provisions of section 117 are prefaced by the words "after the close of the poll the returning officer shall" do certain things; and there are seven or eight provisions.

In an endeavour to meet the individual circumstances we are opening up not merely the examination of the votes, if seven, five, four or less scrutineers are required to be present and are present; but we are enabling the counting of the votes during the day, even though there are only a few votes to be counted. I think we should let things remain as they are.

The Hon. G. BENNETTS: With my 18 years of experience in municipal elections I see no reason why we should depart from the old system. This amendment means we would need a scrutineer for each person; and he would perhaps be there all day long waiting to count a dozen votes. How long will it take after eight o'clock at night to find out the final result? I think we would be far better off if Mr. Wise's suggestion were accepted. We cannot expect a scrutineer for each of four persons to be present all day waiting to count votes. If the votes were counted afterwards the scrutineers would only be there for one or two hours.

The Hon. J. G. HISLOP: My only doubt is the possibility of leakage of information during the day if the votes are counted during polling time; because it will not be the returning officer alone who will be involved, as it has been suggested that scrutineers are also to be considered. Would not a scrutineer endeavour to get the information to his party? The Minister might give me some sort of assurance to the contrary but I think the possibility does exist.

The Hon. L. A. LOGAN: I would not attempt to give Dr. Hislop the assurance he requires, because I am not in a position to do so. The provision in the Bill was a request made by the Country Shire Councils' Association. It was in a much more drastic form, and I have endeavoured to make it a lot fairer. It is not a vital part of the Bill, and if it is taken out we will revert to the present position.

The Hon. S. T. J. THOMPSON: This amendment does not really matter, because it cannot be used very much. The Minister has more or less neutralised its effect

by saying each candidate must have a scrutineer. The polling officer has a pretty long day standing around from 8 o'clock in the morning till 8 o'clock in the night; and he is anxious to get his business finalised as soon as possible. That is why the Minister received the request from the Country Shire Councils' Association.

The Hon. L. A. LOGAN: You would not like it the other way.

The Hon. S. T. J. THOMPSON: No.

Clause put and negatived.

Clause 7: Section 190 amended—

The Hon. F. J. S. WISE: This amendment gives the Minister the authority to determine whether the council has not only complied with the requirements of section 190 in respect of a by-law, but whether in his view the by-law is necessary and desirable. The Minister mentioned that once during his term of office he had to put forward a recommendation that the Governor do not agree.

The Hon. L. A. LOGAN: We got around it a different way.

The Hon. F. J. S. WISE: I wonder whether it has come to the notice of the Minister that within the operations of a local governing body there are certain decisions made which are possibly not in the best interests of all of the shire or local authority; and whether he has some knowledge that is not conveyed to him in the recommendations. It could be that there is a feud of some sort in a local governing body, and the majority perhaps decide on a certain way of presenting a by-law; yet if the Minister considers it is not necessary or desirable, the majority decision of the shire council becomes wrong. The Minister must know something, or he would not vary the request of the local governing body. Could the Minister enlighten us on the sort of thing he anticipates as not being necessary or desirable?

The Hon. L. A. LOGAN: I cannot give Mr. Wise a specific instance at the moment. The case in point was not serious, and I did not have to put a by-law up to the Governor and recommend his refusal. We used other means to overcome the problem. But the position could arise where it might be necessary for the Minister to recommend that the Governor disallow a by-law put up to him; and that is what I am trying to safeguard.

The Hon. F. J. S. WISE: Section 190 confers upon councils the power to make by-laws, and gives the detail of the procedure they must adopt, and how they must recommend a by-law for confirmation by the Minister and the Governor. It will be seen that after all the procedure requisite within the law is followed by the council the Minister—if this amendment is accepted—has the power of veto against a local governing body. I wonder whether

some angle has arisen to warrant this overriding authority, because the form of presentation and of authorisation by the full council is set out in section 190.

Would the Minister report progress and have another look at this? I feel this amendment would give the Minister complete control of the by-laws of a local governing body, and he could reject them if he thought they were not necessary or not desirable. That gets away from the intention of section 190; unless the councils are doing things that have been not desirable and not necessary in the framing of their by-laws.

The Hon. L. A. LOGAN: I am quite happy to report progress and get the information Mr. Wise wants. Out of the 200 by-laws that have been gazetted in the last two years, I have only had trouble with one. So Mr. Wise's fears are not likely to be realised.

The Hon. F. J. S. Wise: In those circumstances this power is not necessary.

The Hon. L. A. LOGAN: In one of these instances it was. If the honourable member wants to leave it where the Minister says that the Governor should not approve, he can. But I do not think he would like to be in that position. It is not likely to happen on many occasions.

He can put it up in that form, but I think it is better the other way as it is not likely to happen very often. The fact that we have so many by-laws promulgated to the satisfaction of everybody proves there is nothing very much wrong, with the exception of this one particular instance. If I recall correctly, one of the metropolitan local authorities was concerned; and I think it had something to do with town planning. The by-law was definitely against policy as laid down by the town planning authority and was not in the interests of the general public.

I can give the honourable member the exact instance if he would like me to, but I do not wish to place the whole facts before the Committee. If the honourable member would like to report progress I would be quite happy.

The Hon. F. J. S. WISE: If the Minister will read paragraph (f) of section 190 with these words added it will be clear to him that the by-laws as submitted to the Minister need not be presented to the Governor. That is the position that will be created. The Minister will be under no obligation to present to the Governor by-laws submitted to him if he considers them not necessary and not desirable. Is that a fair position for the local governing bodies to be placed in, or a fair position for the Minister to be placed in?

I would prefer the other situation where, if, within the knowledge of the Minister, something objectionable happened in a district under certain circumstances—something which would be validly recorded

on the files—he would be quite within his rights not to recommend. However, this amendment would prevent his sending the by-laws on. We have to consider the *bona fides* of all the local governing bodies in regard to the presentation of their by-laws after conforming to the strictures, needs, and requisites in section 190, and therefore must protect their interests.

The Hon. L. A. LOGAN: If a by-law were diametrically opposed to Government policy or not in the interests of the people, the Minister, if satisfied that that was the case, would get in touch with the local authority and advise it of the position so that the by-law could be corrected accordingly. When the by-law was again presented, the Minister would then submit it to the Governor in its amended form.

The Hon. F. J. S. Wise: Not necessarily opposed to Government policy, but opposed to the requirements of our law.

The Hon. L. A. LOGAN: A by-law could be diametrically opposed to Government policy. I do not think the honourable member need have any fears in this regard. An offending by-law would go back to the local authority concerned, and if the local authority were satisfied it was right it could perhaps convince the Minister that he was wrong.

Clause put and a division taken with the following result:—

Ayes—15.

Hon. C. R. Abbe	Hon. H. R. Robinson
Hon. N. E. Baxter	Hon. C. H. Simpson
Hon. A. F. Griffith	Hon. S. T. J. Thompson
Hon. J. G. Hislop	Hon. J. M. Thomson
Hon. A. R. Jones	Hon. E. K. Watson
Hon. L. A. Logan	Hon. F. D. Willmott
Hon. G. C. MacKinnon	Hon. J. Murray
Hon. R. C. Mattlake	(Teller.)

Noes—11.

Hon. G. Bennetts	Hon. J. D. Teahan
Hon. E. M. Davies	Hon. R. Thompson
Hon. J. J. Garrigan	Hon. W. F. Willisse
Hon. E. M. Heenan	Hon. F. J. S. Wise
Hon. R. F. Hutchison	Hon. F. R. H. Lavery
Hon. R. H. C. Stubbs	(Teller.)

Pair.

Ayes.

Hon. A. L. Loton

Noes.

Hon. H. C. Strickland

Majority for—4.

Clause thus passed.

Clauses 8 to 15 put and passed.

Clause 16: Section 532 amended—

The Hon. E. M. DAVIES: This clause refers to the licensing of land, and it is an improvement on the previous provision because it gives local authorities the opportunity of rating certain lands that are leased for purposes other than railways. I would like to ask the Minister why Co-operative Bulk Handling Ltd. is exempt under this amending Bill.

The Hon. L. A. LOGAN: Co-operative Bulk Handling Ltd. is not a profit-making organisation; it is purely a

handling organisation. The reason for the amendment is to provide that commercial firms will pay rates. Co-operative Bulk Handling does not pay rates, because it is a non-profit-making concern; and that is the reason why it is exempt.

Clause put and passed.

Clause 17 put and passed.

Clause 18: Section 537 amended—

The Hon. E. M. DAVIES: The Minister said he did not hear a suggestion which I made previously. I will make this suggestion again; and it will apply to clauses 18 and 19. A local authority, having fixed the amount payable in lieu of rates, divides the sum by the rate in the pound for the rating period, and the resultant figure is, in effect, the net annual unimproved value of the land for the purpose of assessing votes. From information given to me, that would be preferable to the system that has become the subject matter of the amendment.

The Hon. L. A. Logan: Can you give me any reason why it will be better?

The Hon. E. M. DAVIES: I am asking you, as Minister. I am told it is better.

The Hon. L. A. LOGAN: I would like to see what the honourable member has written down before passing an opinion. This method applied previously under the old Road Districts Act, and apparently it worked with entire satisfaction. Therefore I do not know why the situation should be altered now. If the honourable member can give me an example to show how an alteration will be better, I will be prepared to listen.

The Hon. E. M. DAVIES: All I can say is that a local authority, having fixed the amount payable in lieu of rates, divides the sum by the rate in the pound for the rating period and the resultant figure is, in effect, the net annual unimproved value of the land for the purpose of assessing votes. It is claimed that this is a better method of ascertaining the value of the land for the assessment of votes than the proposal in the Bill. I am just offering the Minister a suggestion, and I would like to know what he thinks about it.

The Hon. L. A. LOGAN: To be perfectly frank, I cannot see any value in it. Here we have a definite amount set aside; but I do not see where we are going to get an amount from what the honourable member suggests. Under his suggestion he assesses a ratable value, but if we have not got a ratable value, how can we rate on that? We have to get a value somewhere along the line to give a voting strength.

The Hon. E. M. DAVIES: This is worked out on the basis of a payment in lieu of rates. I think the Minister knows very well that in connection with some business organisations, particularly where they lease

land, they pay an amount to the local authority in lieu of rates; and it is considered that this amount should be divided.

Clause put and passed.

Clauses 19 to 30 put and passed.

New clause 5—

The Hon. E. M. DAVIES: I move—

Page 3—Insert after clause 4, after the word "expire" in line 5, the following new clause to stand as clause 5:—

5. Subsection (14) of section forty-five of the principal Act is amended,

- (a) by deleting the words "on written application being made by her in that behalf to the council" in lines 4 and 5; and
- (b) by deleting the passage "if he so applies and, if the application is granted by the council," in lines 8 and 9.

Section 45 (14) says—

Where a person is the owner of rateable land his wife, if residing on the land, is entitled to be registered as an elector on the roll as the occupier on written application being made by her in that behalf to the Council and where a woman is the owner of rateable land her husband, if residing on the land, is entitled to be so registered as occupier if he so applies and, if the application is granted by the Council, it shall divide the valuation of the land equally between the owner and the spouse.

The persons referred to in section 45 (1) (c) do not have to make any application to be registered on the roll. Apparently, it is the duty of the local authority to see that they are registered, one as an owner and one as an occupier, and in each instance they are entitled to vote in accordance with the annual value of the land.

The persons referred to in section 45 (14), namely, married couples owning and occupying ratable land, cannot both be registered as electors unless one or the other make application for registration. Furthermore, the annual value of the land in such instances is divided to assess the number of votes applicable to each.

It appears to be difficult to understand why there should be this differentiation between married couples owning and occupying property, and all other owner-occupiers of property. This amendment seeks to remedy an undemocratic situation.

Chairman's Ruling

The Hon. L. A. LOGAN: Mr. Chairman, I must ask for a ruling as to whether the proposed new clause is in order. It seems to me to be outside the scope of this Bill.

The CHAIRMAN (The Hon. W. R. Hall): I have to advise the Minister for Local Government that I consider the clause to be quite in order. It seeks to amend the Bill, and the title of the Bill is "An Act to amend the Local Government Act."

Dissent from Chairman's Ruling

The Hon. L. A. LOGAN: I must disagree with your ruling, Mr. Chairman. If you are going to allow this amendment, then the procedure of this House in the past has been wrong. To my knowledge this is the first time such a thing has happened; that something outside the scope of a Bill is to be allowed. If we allow this amendment, an amendment to repeal the whole Act could be accepted.

The CHAIRMAN (The Hon. W. R. Hall): I have already ruled that so far as I am concerned the amendment to the Bill is in order.

The Hon. L. A. LOGAN: Then I must disagree with your ruling, Mr. Chairman.

The CHAIRMAN (The Hon. W. R. Hall): The Minister will submit his objection in writing.

The President Resumed the Chair

The CHAIRMAN (The Hon. W. R. Hall): Mr. President, I have to report that the Minister for Local Government has asked me for a ruling with regard to a new clause to be inserted in the Bill by The Hon. E. M. Davies. I have given my ruling on the matter, and the Minister for Local Government, in conformity with Standing Orders, has objected to that ruling.

The Hon. L. A. LOGAN: Mr. President, whilst not enjoying the necessity of having to disagree with the Chairman's ruling, I am not entirely satisfied with his ruling without first having an opportunity of studying the ramifications of it. It seems to me that the proposed new clause has nothing to do with the Bill now before the House. I contend that the policy of this House in the past has been to disallow any new material being brought in which is not contained in the Bill itself. If the proposed amendment is allowed and the Chairman's ruling is agreed to, it will mean that any section of the Act will be wide open to amendment.

In my 15 years as a member of this House I cannot recollect where any matter outside the scope of a Bill before the House has been allowed to be brought in; and because of that fact I have disagreed with the Chairman's ruling.

The PRESIDENT (The Hon. L. C. Diver): I will leave the Chair till the ringing of the bells.

Sitting suspended from 5.59 to 7.39 p.m.

President's Ruling

The PRESIDENT (The Hon. L. C. Diver): Prior to my leaving the Chair the Minister for Local Government had given

his reasons why he disagreed with the Chairman's ruling. Does any other member wish to add to those submissions? There being no further debate, I should like to state that during the tea suspension I gave this matter some consideration. The Minister for Local Government asked the Chairman of Committees whether the amendment moved by The Hon. E. M. Davies was in order. On two previous occasions, in 1957 and 1959, the point of inserting a new clause in a Bill that was not restricted in its long title was raised, and it was ruled that an amendment similar in substance to that contained in the Bill was in order. I therefore uphold the ruling of the Chairman of Committees.

Point of Order

The Hon. A. F. GRIFFITH: Before we proceed, Mr. President, and in order to get some clarity in my thinking on this matter, may I ask a question? Do I take it from your ruling that unless the long title of any Bill introduced into Parliament, seeking an amendment to an Act, specifies in the long title the actual clauses that are to be amended, any section in the Act that the Bill seeks to amend can be dealt with by way of a new clause as an amendment?

The PRESIDENT (The Hon. L. C. Diver): I do not propose to give the Minister a ruling on this question now. I will give it consideration because I may not have heard the Minister aright, and I may give a wrong ruling. It is a very serious question that the Minister has asked me. The Committee will now resume.

Committee Resumed

The CHAIRMAN (The Hon. W. R. Hall): The question now before the Chair is whether the new clause shall be inserted.

The Hon. L. A. LOGAN: I should like to point out to members just what Mr. Davies' amendment will do. In effect it leaves the right for enrolment with the wife, if the owner happens to be the husband; and it leaves the right with the husband, if the wife happens to be the owner and he is the occupier. However, there is no provision to show how they will get on the roll, because that will be taken away; and if that is the case I do not know how they will get on the roll even though they have the qualification.

That is what will happen with the amendment, unless the honourable member expects the shire clerk to go around and check every owner to see whether the wife is living with the husband, if he is the owner, or check every husband to see whether he is living with the wife, if she is the owner.

The Hon. E. M. Davies: You know that is the way local government has worked over a period of years.

The Hon. L. A. LOGAN: Not in this case, because this is something new. It was brought into the legislation last year. There are many women who are owners but whose husbands are not living with them, and there are many men who are owners but whose wives are not living with them. How would it be possible to force the shire clerk to place their names on the roll? Although the amendment has left the right for their names to be placed on the roll, it has taken away the machinery for this to be done.

The Hon. R. F. HUTCHISON: The Minister states that the amendment would mean the shire council would have to send an officer out to inform these people they could be enrolled. In my opinion that is what should be done. When we amend this legislation, we give the spouse the right to vote. Therefore I think it is only fair and just that the shire council should inform these people that they have the right to vote. In my opinion this is one of the smothering provisions in local government. One often hears the statement that there are no politics in local government, but to me local government is backdoor politics. It affects many men and women.

When legislation is passed granting the right to a man and a woman to have their names placed on the roll, they should be informed of that right. How would a person know he has the right to have his name placed on the roll if he is not informed? Every local authority should send a man out to enrol any person who has the right to vote. The City of Perth does it, so why cannot every shire council do it? The Minister should lead the way, through this legislation, and instruct the shire councils to put the names of people on the roll when they have the right to vote. If this were done we would be getting somewhere in local government.

The Hon. R. THOMPSON: The point raised by the Minister would not put an obstacle in the way of any local authority. In the various districts in which I have lived from time to time, the local authority has employed a man to go from house to house asking the question, "How many adults are there in this house?" He then asks a few leading questions, and generally concludes by asking, "Have you a dog?" The fact is he is not concerned about putting the names of people on the roll but about getting the fee for the dog license. Such an officer could, whilst travelling from door-to-door during his normal routine, be informed of the name of the spouse of the owner of the property, and he could enrol those people who were eligible to vote. The canvass I am referring to is made every year in the South Fremantle district. Therefore, I do not think the Minister will place a burden on any local authority if he agrees to the amendment.

The Hon. H. R. ROBINSON: I oppose the amendment because it would be ridiculous to delete the words in question from subsection (14) of section 45. It would place the responsibility on the administration of the local authority to find out who should be enrolled as electors.

The authority with which I am associated has 26,000 ratepayers, and one can envisage the staff that would be necessary each year to go around and ascertain from each householder whether or not he should be an elector and placed on the roll. The cost to the ratepayers would be out of all proportion to the facility afforded. The present position is working very satisfactorily under the new Act. People are able to get on the roll now; and in the next three or four years quite a number will have availed themselves of the opportunity of being placed on the roll as electors.

The Hon. F. J. S. WISE: It is necessary to be clear as to what is provided in regard to enrolment and entitlement to enrolment, which appear in the parent Act. There is difficulty for a person who is eligible to be registered as a voter to be so registered without application. It causes no difficulty to the governing body to register people as voters and place them on the electoral roll of the municipality as electors, provided they have attained the age of 21 and are natural born or naturalised British subjects, and are the owners or occupiers of ratable land in the district or municipality. Those people do not apply to be enrolled; they are enrolled by the municipality.

The Hon. R. F. Hutchison: Of course they are; that is the point I am making.

The Hon. F. J. S. WISE: So all the people, excepting cases of husband and wife owner-occupier relationship, are automatically enrolled after inspection by the field man or valuer.

This is not an amendment to be treated in a frivolous manner. The local governing bodies have asked Mr. Davies to take this up as it is unnecessary and imposes on wives and husbands in their owner-occupier relationship something which applies to no other person entitled to vote. So, the words and the motive are both extraneous to the needs; because those who are qualified to vote are known to the municipality or to the shire, and would be so registered as electors even if these words were deleted.

The Hon. L. A. LOGAN: It is not as easy as Mr. Wise makes out. I certainly would not like to be the person mentioned by Mr. Ron Thompson; because the question that would have to be asked on knocking on the door would be, "Is it your wife who is living with you?"

The Hon. R. Thompson: Now you are being ridiculous.

The Hon. L. A. LOGAN: No, I am not.

The Hon. J. J. Garrigan: They would be in the minority.

The Hon. L. A. LOGAN: It would certainly be a leading question. This was a new clause in the Bill when it was introduced, and it was intended to make sure that where the wife was the occupier and owner, or *vice versa*, application should be made. Once the husband and wife are on the roll after the initial application, it is not necessary to apply a second time, because the clerk will automatically make up the roll from the list already in existence. The original application is all that is necessary.

The Hon. E. M. DAVIES: I am surprised at some of the debate that has taken place, particularly by people who have been interested in local government. Particularly am I surprised at the question of having to employ somebody to go around a municipality to enrol people. I thought the local authority was there to represent its ratepayers; not to try to get people off the roll as some would have it do. Is it such an awful thing for a married couple to be on the roll; and for them to be asked a certain question?

How is it that the owner and tenant of ratable property are on the roll without having to make application? It goes to show what would happen if some people had their way. I have had considerable experience in local government; probably more than some people who claim to know a lot about it. There has been no trouble in my district in getting people on the roll, because the local authority took action to keep them on the roll. If it is possible for an owner and tenant to be on the roll without making application, it is just as equitable that a husband and wife should be on the roll without either one or the other having to make application to be enrolled. This is the essence of democracy, and I fail to see why there should be so much debate on it. Some of the arguments are far removed from the democratic set-up in which we live.

The Hon. S. T. J. THOMPSON: I cannot agree with Mr. Davies. The local authority is responsible for drawing up the roll of ratepayers each year. A man who is an owner does not have to make application to get on the roll. I cannot see any hardship in a person having to apply. It is the essence of democracy that people should apply and, if eligible, be enrolled.

The Hon. R. F. HUTCHISON: I cannot agree with Mr. Syd Thompson. This is the old camouflage which seems to pervade the question of elections. It extends from this House of review right down to local Government. There is very little democracy practised by the Perth Shire Council, the chairman of which is a member of

this House. The people of this State have to be told what legislators place on the statute book. If Labor Party members do not tell the people, nobody else will.

The CHAIRMAN (The Hon. W. R. Hall): I ask the honourable member to keep to the amendment before the Chair.

The Hon. R. F. HUTCHISON: The opposition to the amendment has been brought about by a desire to hide the fact that the Labor Party is trying to widen the franchise. When the parent Act was passed it was said that the franchise was being widened, but that is not the case, because all that a local authority has to do in regard to the publication of the roll is to exhibit it on the official notice board for a certain time.

When I was in England some time back I told the people there that adult franchise in local government had not been adopted in Western Australia, and they were amazed and thought we were a backward people. It is the duty of every local authority to inform the ratepayers of their rights, and to ensure that they are enrolled.

The Hon. G. C. MacKINNON: Mr. Wise informed us that this amendment was brought forward at the request of some local authorities, so there must have been a fair amount of time to enable it to be placed on the notice paper. I have only had a limited opportunity to study the amendment, typewritten copies of which have been distributed.

It seems that the Act provides for an extension of the franchise; and surely some responsibility must lie on those to whom the franchise has been extended to ensure that their names are on the roll. It has never been a duty under democratic government for local authorities to tell the ratepayers that they should vote.

The Hon. E. M. Davies: Nobody has suggested that they should be told to vote.

The Hon. G. C. MacKINNON: The people have the opportunity to place their names on the roll; if it is important for them to be on the roll, surely we should leave it to their good sense to ensure that that is done. We should not agree to the amendment and thus increase the work and the cost of local authorities. I oppose the amendment.

The Hon. N. E. BAXTER: I also oppose the amendment; and I refer to section 46 (3) of the Act. There is no hardship for a person who considers he is entitled to be enrolled to make application. It is ridiculous to suggest that an officer of a shire council should be directed to go from one part of the district to another to see whether the spouse of an owner or occupier of land desired to be placed on the roll.

The Hon. E. M. Davies: How do the tenants get on?

The Hon. N. E. BAXTER: Where it appears to the shire clerk that a tenant is entitled to be enrolled, he is enrolled.

The Hon. E. M. Davies: We are trying to alter the Act.

The Hon. N. E. BAXTER: The honourable member says he is trying to alter the Act; but the amendment is so framed that it will preclude rather than assist people being placed on the roll. I am sure that no shire council would be prepared to go to the expense of employing someone to check on the enrolment of spouses of owners or occupiers of land.

As for the suggestion that members of shire councils should go among the ratepayers and explain to them their entitlement, I would point out that in no Act of Parliament is it provided for a similar procedure to be adopted. It would be ridiculous to suggest that those members should explain to the ratepayers every amendment to the Act that is passed by Parliament. The existing provision has been working reasonably well, and the suggestion of improper practices does not become those who make it.

Amendment put and a division taken with the following result:—

Ayes—11.

Hon. E. M. Davies	Hon. J. D. Teahan
Hon. J. J. Garrigan	Hon. R. Thompson
Hon. E. M. Heenan	Hon. W. F. Willesee
Hon. R. F. Hutchison	Hon. F. J. S. Wise
Hon. F. R. H. Lavery	Hon. G. Bennetts
Hon. R. H. C. Stubbs	(Teller.)

Noes—15.

Hon. C. R. Abbey	Hon. J. Murray
Hon. N. E. Baxter	Hon. H. R. Robinson
Hon. A. F. Griffith	Hon. C. H. Simpson
Hon. J. G. Hislop	Hon. S. T. J. Thompson
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. L. A. Logan	Hon. F. D. Willmott
Hon. G. C. MacKinnon	Hon. H. K. Watson
Hon. R. C. Mattiske	(Teller.)

Pair.

Aye.	No.
Hon. H. C. Strickland	Hon. A. L. Loton

Majority against—4.

Amendment thus negatived.

Title put and passed.

Bill reported with an amendment.

BILLS (11): RECEIPT AND FIRST READING

1. Painters' Registration Act Amendment Bill.
2. Western Australian Marine Act Amendment Bill.
3. Pilots' Limitation of Liability Bill.

Bills received from the Assembly; and, on motions by The Hon. A. F. Griffith (Minister for Mines), read a first time.

4. Health Act Amendment Bill.

Bill received from the Assembly; and, on motion by The Hon. L. A. Logan (Minister for Local Government), read a first time.

5. Stamp Act Amendment Bill.

Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Mines), read a first time.

6. Town Planning and Development Act Amendment Bill.

7. Metropolitan Region Town Planning Scheme Act Amendment Bill.

Bills received from the Assembly; and, on motions by The Hon. L. A. Logan (Minister for Town Planning), read a first time.

8. Child Welfare Act Amendment Bill.

9. Guardianship of Infants Act Amendment Bill.

Bills received from the Assembly; and, on motions by The Hon. L. A. Logan (Minister for Child Welfare), read a first time.

10. Justices Act Amendment Bill.

Bill received from the Assembly; and, on motion by The Hon. L. A. Logan (Minister for Local Government), read a first time.

11. Interstate Maintenance Recovery Act Amendment Bill.

Bill received from the Assembly; and, on motion by The Hon. L. A. Logan (Minister for Child Welfare), read a first time.

BILLS (6): RETURNED

1. Evidence Act Amendment Bill.
 2. Coal Mines Regulation Act Amendment Bill.
 3. Church of England (Northern Diocese) Act Amendment Bill.
 4. Declarations and Attestations Act Amendment Bill.
 5. Interpretation Act Amendment Bill.
 6. Cemeteries Act Amendment Bill.
- Bills returned from the Assembly without amendment.

LAW REFORM (STATUTE OF FRAUDS) BILL

Second Reading

Debate resumed, from the 30th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. E. M. HEENAN (North-East) [8.25 p.m.]: This is a very short Bill to which I propose to give my support. The Minister when introducing the measure gave a very interesting historical outline of

the original Act and the reasons which now prompt a revision of section 4 as proposed in this Bill.

The Minister mentioned that section 4 had already been amended in England; that times have considerably changed since the Act was passed nearly 300 years ago; and that the proposals now before the House have been recommended by the Law Reform Committee of the Law Society of Western Australia, whose aims and objects are to suggest amendments from time to time to our laws which the committee deems wise and necessary. Actually, there is very little for me to add to the Minister's outline; but in case members forgot what he had to say I will make a few comments which I hope will be of interest.

The Statute of Frauds was passed in the year 1677 in the reign of Charles II, and it has for its title "An Act for the Prevention of Frauds and Perjuries". I have here a book by Messrs. Cheshire & Fifoot, who are well-known authors on the subject of contract. If members will bear with me for a few minutes, I will read an extract dealing with the history and policy of the Statute of Frauds. The authors set it out much more clearly and concisely than I could hope to do. They say that of the 25 sections of this Statute two are important in the Law of Contract; namely, section 4 and section 17.

We are dealing, in this little Bill, with section 4. That section provides that no action shall be maintainable in the courts in respect of certain classes of contract unless a person to be charged has signed some memorandum in writing. Members will know that the law enforces verbal contracts, but section 4 of the Statute of Frauds enacted nearly 300 years ago that certain classes of contract must contain some memorandums in writing; otherwise the courts will not validate a contract.

The Minister has explained the five classes of contract dealt with in section 4. The first is where an executor or administrator makes any special promise to answer damages out of his own estate. The second refers to any contract upon any special promise to answer for the debt, default, or miscarriage of another person. That class of contract is usually referred to as a contract of guarantee, and therefore when one person guarantees another there must be some memorandum in writing. The third is an agreement made upon consideration of marriage. The fourth is rather important and deals with any contract for the sale of lands, tenements, or hereditaments, or any interests in or concerning them. The fifth refers to any agreement that is not to be performed within the space of one year from the making thereof.

This Bill proposes to eliminate three of those classes of contracts, and to leave us with contracts relating to guarantees and dealings with land. The proposals in this

Bill have already been adopted in England, and from time to time over the years judges have recommended that something along these lines should be done. Now the Law Society gives this proposal its full blessing.

This is the extract which I wanted to read from the book *Law of Contract*. It reads—

Section 4 remains intact in the modern law, save that the provision as to contracts for the sale of interests in land has been repealed and re-enacted with slight modifications by s. 40 of the Law of Property Act, 1925. S. 17 has been replaced by s. 4 of the Sale of Goods Act, 1893. It is impossible to appreciate the language of either section or the voluminous litigation which each has provoked without some historical excursus; and even this, while it may explain, will hardly justify the result.

The *raison d'être* of the statute is to be found partly in the conditions of seventeenth-century litigation and partly in the background of social and political uncertainty against which it must be focussed. On the one hand, the difficulty of finding the facts in a common law action was considerable. Not only were juries entitled to decide from their own knowledge and apart from the evidence, but no proper control could be exercised over their verdicts. Moreover, until the middle of the nineteenth century, a ludicrous rule of the common law forbade a person to testify in any proceedings in which he was interested, and the parties to a contract might have to suffer in silence the ignorant or wanton misconstruction of facts which they alone could have set in a proper light.

There is a footnote to that which states—

Readers of *Pickwick Papers* will remember that, in the case of Bardell v. Pickwick, neither the plaintiff nor the defendant entered the witness box.

The quotation continues—

On the other hand, the confusion attending the rapid succession of civil war, Cromwellian dictatorship and restoration had encouraged unscrupulous litigants to pursue false or groundless claims with the help of manufactured evidence. The statute, therefore, avowed as its object "prevention of many fraudulent practices which are commonly endeavoured to be upheld by perjury and subornation of perjury."

Members will probably agree that the Statute of Frauds was fully justified under the conditions which apparently existed in the year 1677, but the time has come for some modification of its provisions. Fortunately, nowadays when there are disputes in the courts the persons involved can place the full facts for and against

before a judge, and they are not precluded from having every facility for stating their cases. Therefore, some of these provisions are no longer necessary.

It is interesting to have a look at the original Statute. The quaint wording and spelling is a subject of interest, and I note that, in the same session of that Parliament, there was a law passed dealing with Sunday observance; and it might be apropos to point out that this law dealing with Sunday observance provided some dire penalties. For tradesmen and others working on Sundays there was a penalty of 5s.; and for people exposing their goods for sale the penalty was £1. It also provided that in order to pay the fine the goods that were offered for sale were seized, and if the money obtained for them was insufficient to pay the penalty the miscreant "shall be set publicly in the stocks for the space of two hours." Another interesting provision is that "if any person or persons shall travel on the Lord's Day and shall be robbed they shall be barred from bringing any action for the robbery."

I just quote those two pieces of legislation, which were passed in the year 1677, to point out that the time is now ripe to make some modification of the Statute of Frauds. I think it is important that contracts relating to the sale of land should still call for some memorandum in writing; and it is also important that contracts of guarantees should be evidenced by some memorandum in writing. If the Bill is passed in its present form that will be the effect. I have much pleasure in supporting the second reading.

THE HON. H. K. WATSON (Metropolitan) [8.41 p.m.]: This Bill serves to remind us of the ancient earth in which this Parliament and other Parliaments of the British Commonwealth have their roots; because 1677 was quite a long while ago. As Mr. Heenan indicated, the Statute which this Bill purports to amend is not readily available in the Western Australian Statutes, as such. It is found in a volume entitled, *The Statutes from 1235 to 1713*. It is an extraordinary volume, and one can hardly thumb the pages of it without some kind of feeling which is difficult to express, because in this one volume one finds Magna Carta; the first and second Statutes of Westminster; the Bill of Rights, the Union of Scotland and England; legislation relating to first fruits and tenths; and the Statute of Frauds.

The purpose and the objects of the Bill have been explained by Mr. Heenan. I think one of the results of the passing of the measure will be to cause the textbook writers, including Cheshire and Fifoot—from whose publication Mr. Heenan read an extract—considerable work and reprinting. This will be so because for nearly 300 years every textbook has devoted probably

a chapter to the ups and downs and the intricacies of the Statute of Frauds and the litigation resulting therefrom.

The passing of this legislation will require all of us, including those who have embarked on a law course, and also those accountants who are supposed to understand the rudiments of commercial law, to bring our knowledge up to date, because from time immemorial—or from 1667 at least—it has been drummed into every budding law and accountancy student that there are certain contracts that must be in writing if they are to be enforced, and those contracts are specific in the Statute of Frauds.

It has been said that "the proper study of mankind is man," so on a parity of reasoning one could suggest that the proper study of parliamentarians is Parliament. By this Bill we are reminded that when Captain Stirling landed here in 1829 he brought with him the common law of England, and apparently the Statute law of England. He did not bring them on tablets or even in cases; he just brought them with him.

One of the first Acts ever passed by the Legislative Council of Western Australia in 1832 was legislation designed formally to adopt certain Acts which had been passed by the Imperial Parliament. As the Minister said, when introducing the Bill, section 57 of the Constitution Act of 1899 still provides that the laws of England shall prevail throughout Western Australia, except when they have been modified or repealed by legislation enacted in this State. So with the foundation of Western Australia it was found that Acts of the British Parliament, such as the Sale of Goods Act, the Wills Act, the Thelluson Act, the Statute of Frauds, and so on, were either expressly, or by implication, adopted and made applicable in Western Australia.

It would seem that this curious position also developed and also, perhaps, still obtains: that when some of these ancient Acts were adopted and made applicable in Western Australia, they still continued to apply here even although they were subsequently repealed in the United Kingdom. So far as I can ascertain, that curiosity would seem to apply. I am not quite sure of the position, but there are one or two incidents which would suggest that that is so, which, to say the least, seems rather anomalous.

In 1895, Western Australia passed its own Sale of Goods Act. Previously, the Sale of Goods Act of the United Kingdom had automatically applied throughout this State, but in 1895 we passed our own Sale of Goods Act. I would suggest that, in this year of 1962, although it is an exhilarating experience to browse through the United Kingdom Statutes of 1200 or 1600—if they can be found—in respect of the Statute of Frauds and the Wills Act and such few remaining Acts as appear to follow the adoption principle, we should do as we have done with the Sale of Goods Act;

namely, pass our own Statute of Frauds and our own Wills Act; and, in so far as there are other remnants of British legislation still applicable to Western Australia, they too should be repealed and enacted by the Parliament of Western Australia.

Members may recall that last session we considered a Bill entitled the Civil Aviation (Carriers' Liability) Bill. We then decided that we would not follow the rather untidy principle of passing an Act which did nothing more than say, "Section so-and-so of the Commonwealth Aviation Act is hereby adopted as the law of Western Australia." We repeated the contents, and made the Act a substantive Act; and not merely an adopted Act of some other Parliament.

If only for the convenience of having the laws that apply to Western Australia in the Statutes of Western Australia, and in the volumes of the Statutes of Western Australia, I would suggest that Parliament give serious consideration to the principle I have just suggested. Let us take the long title of this Bill as an example. Its long title is, "An Act relating to the Statute of Frauds 1677." I suggest that explains itself; but when we come to the short title I doubt whether any good purpose would be served by giving the short title of "Law Reform (Statute of Frauds) Act, 1962"; because after all is said and done, any amending Bill is law reform. I think the short title could well be the Statute of Frauds.

Then again, instead of clause 2 of the Bill saying that the provisions of section 4 of the Statute of Frauds, 1677, continue in force in this State in relation to the matters then set out, I suggest it would be tidier parliamentary practice for us to say that the Statute of Frauds, 1677, shall cease to apply, and that the following provisions shall apply in Western Australia—and then we should substantially enact section 4 of the Statute of Frauds.

I would like to see that done not only with respect to the Statute of Frauds, but also with the Wills Act; and, as I have said, with the few remaining Acts where, for some reason or other—and goodness knows why—we have not seen fit to enact our own legislation. We have done it with respect to the Sale of Goods Act; and I see no reason why it should not be done with respect to all other legislation, particularly having regard to the fact, as I have already mentioned, that we are in 1962; and in these times of surprise and change we may well find in the next ten years or so that the law of England could conceivably be the law of Brussels—or whatever capital city the prospective United States of Europe may operate from. They are a few suggestions which I offer as a practical member of Parliament.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

LOTTERIES (CONTROL) ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 30th August, on the following motion by The Hon. L. A. Logan (Minister for Local Government):—

That the Bill be now read a second time.

THE HON. W. F. WILLESEE (North) [8.57 p.m.]: This Bill is a validating measure containing two clauses. The first deals with the provision of the statutory declaration to be offered to, and accepted by, the Lotteries Commission in the case of lost tickets, or destroyed tickets. In the past these tickets have been honoured by the commission when it felt the case put forward by the applicant was justified. The Bill, however, will make a statutory declaration essential where a ticket is lost, or destroyed, and will virtually confirm what has been happening up till now.

The second clause of the Bill adds a series of names for what are termed one-day raffles; and the commission gives permission for this type of raffle to be held. They are generally conducted by private organisations and charitable institutions; and this, as a principle, has been consistently permitted within the auspices of the Lotteries Commission. The measure now makes this previous practice law. I see no more than that in the Bill, and I therefore support it.

THE HON. J. G. HISLOP (Metropolitan) [8.59 p.m.]: It is rather surprising to me that an organisation, set up by Parliament with terms of reference which are so perfectly clear, should extend its functions and carry on over a number of years without approaching Parliament for the necessary permission to do so. We find that this body which Parliament has organised decides at a later date to extend its functions of its own volition, and then merely comes to Parliament for ratification of what it has done illegally over a number of years. It is extraordinary that this sort of thing can continue; and it looks as if we are to lose control over a matter which should be controlled rigidly.

When we first contemplated control over the lotteries, we established a commission as a body to govern the situation which existed in the city when organisations were conducting lotteries for their own benefit. The commission was established so that such raffles or lotteries could be reviewed from time to time. In the early years of the Lotteries Commission, Parliament reviewed what was happening year

by year; and, if I remember rightly, its term of office was extended for a period of three years, and later on it was made a permanent feature of life in Western Australia. It is possible that when Parliament lost control over the Lotteries Commission, the extension of its activities occurred. One wonders whether there will be any control of the activities of the commission in future if the amendment in clause 3 is agreed to.

In various parts of the State I have seen recreation grounds which were provided by the Lotteries Commission, but some of them were in pretty poor repair. When the commission is granted the power to contribute funds for the promotion and advancement of social welfare, including public recreation and sport, do we expect it to maintain such establishments, or will that be the responsibility of the body concerned? A loose organisation can result if there is no actual control over the gifts made by the commission.

Section 4 of the Act sets out very clearly the definition of "charitable purpose"; and in the early days of the commission gifts were made only for charitable purposes. Since that time the purposes have been extended to any object which the Minister classes as charitable. I do not know how far the term "including public recreation and sport" will extend the activities of the commission. I suppose the commission has a different interpretation of the term.

Section 4 of the Act sets out the charitable purposes for which the commission can grant funds. In giving an organisation the right to hold a lottery at a fair or function, the Lotteries Commission can be said to be granting its own funds to the organisation. I wonder if these organisations are being watched by the Lotteries Commission. If a football club is granted permission to conduct a lottery, does the commission pay particular attention to the number of tickets that are sold, and does it receive a report from the football club?

The Act states that the commission may demand a full account of what takes place at one-day fairs or functions. Section 19 provides as follows:—

The Commission may at any time demand a full account from any promoter, secretary, treasurer, or any one of the committee of any religious body or charitable organisation holding any guessing competition, raffle, or art union under section eighteen of this Act, and may in connection with the account require the production to it of all books, tickets, butts of tickets, documents, vouchers and things relating thereto.

Does the Lotteries Commission receive from all football clubs statements showing the amounts received and expended? Is

it aware of the proportion of the receipts which is used for certain purposes? Does a football club conducting a raffle have to notify the commission of the purpose for which the funds are to be raised? In these days many of the clubs and organisations are becoming fairly wealthy.

I would appreciate the views of the Minister on the extension of the activities to which gifts are granted by the commission, and as to whether such activities are being policed. One aspect which the Lotteries Commission could inquire into is the value of the prizes awarded in the raffles that are conducted. I wonder whether the amount allocated to the prizes is in keeping with the amount which the organisation receives from the raffle.

I would also like to know whether the Lotteries Commission imposes a fee for the granting of a permit to hold a lottery. I do not know anything about the working of the commission, but I have enough business sense to realise that some work must result in the granting of permits to the various bodies. The secretary must perform some work in this regard, and some correspondence must result. Is all this being done by the Lotteries Commission without recompense? Is it not reasonable for the commission to receive some small donation for the issuing of a permit, so as to cover the cost of the work involved? I am asking these questions because I cannot see any provision in the Act which prescribes the payment of such a fee.

Another feature I commend to the Minister is that consideration be given at this stage to reviewing the salaries paid to the members of the Lotteries Commission. I do not remember any public statement, or any statement to this House, being made since the introduction of the Act on payments to members of the commission for the work they perform.

In the early days of the commission, the amounts raised by it were small; but looking at recent publications I notice that the commission is distributing about £500,000 a year. That is, indeed, a big business undertaking. I understand that whilst the chairman is employed full time, the other members are engaged part time. I am sure that the amount of work performed by the part-time officers has increased considerably.

I do not know whether any of the officers of the commission tour the country districts, but I do know that the commission members visit various centres to inquire into the status and standing of organisations to which it makes gifts. I came to the conclusion that the commission would not make gifts to organisations outside the metropolitan area, without either having received a report of the activities of the organisations or having visited the centres in which they were established.

I do not think that a gift to an organisation in an outlying centre is decided upon entirely on a report by the secretary or chairman of the commission. Therefore, the time is due for a review of the Lotteries Commission on account of the way in which its activities have expanded and in view of the increase in the funds which it now handles.

I pass these suggestions to the Minister in order that those of use who are interested in the distribution of money to charitable organisations will feel that that money is not being given away needlessly to such groups as sporting bodies and to recreation centres, the equipment for which was provided in the past by local people rather than their asking the Lotteries Commission for help.

I would ask whether the control of the Lotteries Commission is sufficiently tight over the small lotteries which it now permits, and whether the commission receives any emolument for the work it does in this connection. I would also like to know whether the Minister would think of reviewing the whole set-up of the commission to see whether the members are being adequately rewarded for the time they spend in the work of distributing £500,000 for charitable purposes. This is no small undertaking; and if we want the job well done we have to be prepared to pay for the services of those who do that work.

It is my intention to vote for this measure, but I do query some of the extensions which have been made in the past.

THE HON. F. R. H. LAVERY (West) [9.12 p.m.]: I support this Bill. I was interested to hear the remarks passed by Dr. Hislop. So far as social service benefits to my constituents are concerned, I will take second place to no-one. I know very little of the technical parts of the law, but I do know a lot about what goes on in the community in the way of raising funds and the way in which they are spent, particularly in a district such as the one I represent where there are quite a number of voluntary organisations.

With due respect to Dr. Hislop, I would say he has no cause to worry so far as the distribution of funds from the Lotteries Commission is concerned. Unfortunately, we do not receive reports from the Lotteries Commission with the same frequency as we do from other Government departments such as the Public Works Department, the Main Roads Department, etc., but I am of the opinion that the funds of the commission are well controlled.

I have taken to the Lotteries Commission many deputations with certain requests, and although we have always been given an attentive hearing we have not always received what we sought. Because of this fact, I am of the opinion that the Lotteries Commission really safeguards its

funds to a very high degree. I would even say that its system of administration and bookkeeping leaves no cause for alarm on the part of anybody at all.

I believe that Dr. Hislop was quite sincere in what he had to say; and I think he was concerned as to whether the large sums of money raised by this commission were being used to the best advantage. As far as I am concerned, I can assure him that they are. When organisations such as parents and citizens' associations—there are 39 in my province—make application to the Lotteries Commission for permission to run raffles, they are allowed to sell 1,500 tickets at 1s. each, and the commission is not in the least concerned with regard to the value of the prizes. That is left to the good sense of the people who are raising the funds.

If one works out 1,500 tickets at 1s. each, the amount is £75. Usually the prize is not more than £20; and after printing costs are allowed for, these organisations usually expect to make about £50. On behalf of certain organisations I have made applications to the Lotteries Commission for permission to run small lotteries, but my requests have been very smartly refused because permission is granted within well-defined bounds.

In regard to the amendment to section 18 of the parent Act, I would like the Minister, when he is replying, to explain the words "promotion and advancement of social welfare, including public recreation and sport." I ask this because, as I have said before in this House, the Melville Amateur Athletic Association caters for about 400 to 450 young people each year on the grounds at Melville. It made application to the Lotteries Commission for assistance so that it could light the sports ground to provide for night training in an endeavour to give the young people something to do at night and perhaps prevent them from committing the misdemeanours that are alleged to take place amongst young people. Although section 12 of the Act gives the Lotteries Commission wide power, it did not agree to that request. However, it does make moneys available for the provision of playground equipment for children.

I would suggest to Dr. Hislop that the purpose of this amendment is to ratify what has been going on in the past—actions which were unlawful. In my opinion the Lotteries Commission is an organisation that is beyond reproach. There is no doubt that many organisations are making financial appeals today; and I am pleased that the Chief Secretary's department is now combining the collections of several organisations on the one day.

Although I play a small part in the activities of the Slow Learning Children's Group at Fremantle—this association

raised £13,000 last Sunday week—I am of the opinion that the sanctity of the Sabbath should not be disturbed by charitable collections, no matter for what purpose funds are being sought. If this money cannot be collected on one of the other six days of the week, it should not be collected at all. I am pleased to support the Lotteries Commission in what is required under this Bill.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [9.20 p.m.]: Naturally, I cannot provide all the answers required by Dr. Hislop and Mr. Lavery. However, I will refer to their queries briefly, and I will endeavour to provide complete answers during the third reading stage.

The first query dealt with the payment on a statutory declaration. The commission apparently found there were many people like myself who lose tickets. Of course, sometimes they win, but I never do. The only fair way out of the problem was to pay on the statutory declaration, provided the signature was the right one. I do not know who has been remiss—I think, firstly, the Auditor-General, and then the commission. It was not until the Auditor-General's Department impressed upon the commission that it was wrong, that the Act was amended. There must be a guardian angel somewhere making sure the commission does the right thing.

With regard to the other point dealing mainly with one-day raffles, I think Dr. Hislop will agree with me that whilst the commission is able to control the applications from various organisations that normally run one or two sweeps during the year—where such organisations are allotted a certain number of tickets of a certain value—it is difficult to control sweeps conducted at a bachelors' supper and those conducted through public bars, and so on.

Prosecutions have taken place in respect of unauthorised sweeps, and prosecutions have taken place in connection with organisations which have sold more than their allotted number of tickets. There must be some policing of the law in that regard.

The Hon. J. G. Hislop: I would like to know what happens, in order that the public will know.

The Hon. L. A. LOGAN: I will provide a complete answer for the honourable member during the third reading stage. Representatives from the Lotteries Commission do a certain amount of travelling throughout the metropolitan and country areas. When the commission makes a substantial contribution to a worthy cause, there is an invitation extended to the commission, and perhaps two or three members of the commission will visit a certain area. While in that area they look

at other problems which may exist. I think the point raised by Dr. Hislop is also covered.

With regard to the payment of remuneration, I know that this matter was discussed not so very long ago; however, I will look into it. I appreciate that the volume of work is getting greater, and I think this is a very good thing.

The Hon. F. J. S. Wise: It started off at a low figure, and it has kept low.

The Hon. L. A. LOGAN: The more work undertaken by the commission, the greater will be the amount which people will contribute to very worthy causes. No Government can contribute to this extent, and I am afraid the general public will not do so. We have to give the Australian an opportunity to gamble in order to provide contributions for organisations.

The Hon. E. M. Davies: I would not say Australians—the football pools in London make this look sick.

The Hon. L. A. LOGAN: I agree with the honourable member, but I am talking about Australia just now. At the third reading stage I will endeavour to provide complete answers to the points which were raised—and rightly raised—in the interests of the public. Not everyone takes an interest in the operations of this commission; but this is the place where the public should be informed about it.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

COMPANIES ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 23rd August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. W. F. WILLESEE (North) [9.26 p.m.]: This measure, which seeks to amend the Companies Bill, which I supported last year on the basis of uniformity, is now before the House. The Companies Act was assented to in February of this year, but has not as yet been proclaimed, due to the fact that the uniform Act throughout Australia will this year be adopted in each State.

I was somewhat disappointed to find the number of clauses in the measure now before the House, as I had expected there would be only very minor alterations which would be in keeping with discussions which the Attorneys-General might have had on the basis of uniformity.

The Minister, in introducing the Bill, said—

It may be said, in conclusion, that though complete uniformity might not be a practicality, it is considered that the Attorneys-General have achieved uniformity in all matters of practical application throughout Australia. It had originally been intended to proclaim the uniform Companies Act on the 1st October. That now becomes contingent on the passage of this measure, and also on a review of the situation which has transpired in all States so as to ensure that this State's legislation achieves, as near as possible, effective uniform legislation.

I was somewhat disappointed at those remarks of the Minister because I felt that we had to achieve a great degree of uniformity on this occasion, probably a greater degree of uniformity than when we adopted the principle last session; because all fields of commerce and all the avenues of business which are connected with the commerce of Western Australia must be geared to the proclamation of this Act in October of this year. Already there are publications dealing with indices to the uniform Companies Act; and there is a publication sponsored by the Australian Chartered Institute of Secretaries drawing comparisons between the old Act and the uniform Act—I think there are 40-odd pages of reference material. There is also a publication dealing with the application of the Act, as against the old Act, right throughout Australia. I understand that the only two States which have to proclaim this Act on a uniform basis are Western Australia and South Australia.

The Hon. A. F. Griffith: And Tasmania.

The Hon. W. F. WILLESEE: I am sorry—I missed Tasmania. I realise some benefit could be derived by extending the provisions of this Act to Western Australia. I was conscious of that 12 months ago. However, I feel that so much has been done in good faith and in the belief that the proclamation date of the legislation will be fairly soon, that the fewer alterations we make to the uniform agreement the better it will be.

While I do not intend, of course, to oppose the Government's proposals in this matter, I cannot help but repeat that I am disappointed at the fact that there are so many amending clauses on this occasion. There are within the Act now some features which are most confusing. I suppose that would be the case with all laymen who attempted to read the Act and get from it material which they desired. I refer to section 37 of the Act, firstly, which reads—

A person shall not issue circulate or distribute any form of application for shares in or debentures of a corporation unless the form is issued circulated or distributed together with a

prospectus a copy of which has been registered by the Registrar.

It occurred to me that this would cause great difficulties for a proprietary company that wished to augment its funds under the provisions of the Act; because as far as I know proprietary companies do not circulate a prospectus and therefore could not issue debentures, unless there is some other provision in the Act which I have not yet seen.

Also, with regard to fees, in the second schedule to the Act at page 387, it appeared to me that an anomalous situation could exist. I refer to the table of fees to be paid under the second schedule, and I shall deal with a company registered under the old Act which proposes to increase its capital under the provisions of the new Act. It is difficult for me to understand the third paragraph of the second schedule because it reads—

On lodging notice of increase of share capital—an amount equal to the difference (if any) between the amount that would have been payable on first registration by reference to its capital as increased and the amount that would have been payable by reference to its capital immediately before the increase but in the case of a company registered before the commencement of this Act, with a share capital of less than £5,000 the fee shall be £5 per £1,000 or any fractional part of £1,000 for any increase up to £5,000 and thereafter an amount calculated as aforesaid.

I tried to create an example of this situation and I shall take first of all a company that I shall term company A. It was registered under the old Act for £500 and was paying the prescribed fee at that time, and it proposes under the present Act, to lift its capital by £4,500 to a figure of £5,000. According to the schedule, as I read it, it would be £5 per £1,000 for the first £4,000 and £5 for the extra £500, which would cost in all £25 to increase the capital of the company from £500 to £5,000. If we take another company, which I shall call company B—a new company—it could be registered under the new Act with a nominal capital of £5,000 and yet the total cost would be only £20. Therefore the company which had been operating in Western Australia for some considerable time would pay more, under the new Act, to increase its capital by £4,500 as against a new company registering with a capital of £5,000. I pass that thought on to members; because that is what would happen according to the calculations I have made and according to my reading of the schedule.

I feel no great purpose would be served by delving into the problems that the Bill could create; because I feel that at this stage the sooner we can get a uniform Companies Act the better it will be for

commerce and for those students who have to study the Act. Therefore it behoves Parliament to pass the Bill and let us get the uniform Act on to the statute book and, in the light of experience, demonstrate what is best as regards the application of this legislation to the commercial world of Western Australia. On the basis of uniformity I support the legislation.

THE HON. H. K. WATSON (Metropolitan) [9.38 p.m.]: When this House was considering the Bill which is now the Companies Act—that is, the major document—last session, I did raise various criticisms against it, principally on the grounds that the long-established and eminently fair provisions of the existing Companies Act of Western Australia were, to quite an extent, particularly in respect of proprietary companies, being jettisoned, so to speak, in the interests of uniformity; and, in my humble opinion, to the detriment of proprietary companies in Western Australia.

Members may recall that I could not see the wisdom of limiting the definition of an exempt proprietary company. It was not at all clear to me why in a series of proprietary companies, each one being a wholly-owned subsidiary of its parent, the first three should be exempt, but any succeeding ones would be public companies within the meaning of the Act. Also, to my mind it was unnecessary to alter the existing provisions of our Companies Act with respect to the appointment of auditors by proprietary companies, and the method and manner of completing their accounts.

In the Bill brought down 12 months ago I criticised strongly—among other things—the huge increase in fees for registering a company, or even for filing the many documents which a company is required to file; not of its own accord, but because the Act requires a company to file them.

The minimum fee for registration was increased from £2 to £20. The filing fee for any document was increased from 5s. to £1 or £2; I am not sure which it was, but it was a substantial increase. The Bill we passed 12 months ago was passed on the basis of saving time. It was also passed on the understanding that many of the suggestions made at that time by other members and myself to improve the Bill would, during the ensuing year, receive consideration.

It is a matter of not a little regret to me that although this amending Bill is one of 15 pages, I am unable to find in it even one suggestion that was made in this House last year to improve the legislation. So far as I can see the proposals in this measure have been instituted by the Attorneys-General of New South Wales and Victoria for some special reason and for some special benefit of companies in those States. No alteration to the fees

that were contained in last year's Bill is made except that the registration fee for a foreign company—that is, any company incorporated outside of Western Australia which is registered in Western Australia—is to be reduced by half.

In the Act as it stands at the moment it is provided that a foreign company shall pay the same registration fee as a local company. When the Bill was being considered last year that was thought to be fair and adequate. However, apparently the fees have since been considered to be excessive, and this Bill proposes to reduce the registration fee for all foreign companies by half notwithstanding that the local company will still continue to be charged the full fee prescribed in last year's Bill.

As a matter of practical politics, and as one who, in common with many other citizens in this State, will have quite a bit of work to do on the passing of this legislation, I would deplore this circumstance: That whereas, in Melbourne or Sydney, the practitioner in those cities has at least the advantage of picking up one volume knowing that it is an orderly presentation of the whole Act with which he is dealing, in Western Australia, because we passed the uniform Companies Act last year, and because we now have 15 pages of amendments to it, we commence not with an orderly volume, but one of 600 pages, and another volume containing 15 pages of amendments which have to be interleaved and cross references made in regard to the provisions contained in the Act. That is a real and practical disability. I do not know whether it is proposed to print a new Act.

The Hon. A. F. Griffith: If we had delayed the introduction of the Bill last year we would have to make a start today and so be 12 months behind.

The Hon. H. K. WATSON: So be it. Had we adopted the suggestion made by Mr. Strickland last year and postponed the passing of the 1961 Bill until this year, when we could have reintroduced it at the stage at which it was postponed, we could have done just as has been done in the other States; namely, passed the Bill in a complete form instead of having to amend it by the measure now before the House.

When discussing the Bill last year, I drew attention to section 433 of the Companies Act of 1943, which section provides that when a company reconstructs, the Treasurer may exempt it from the payment of stamp duty on the reconstruction. At that time I freely admitted that the point could, very conveniently, and should, more appropriately, be covered by an amendment to the Stamp Act rather than by a provision in the Companies Act. My recollection of the situation at that time is that either the Minister in charge of the Bill in this House or the Attorney-General in charge of it in another place,

when dealing with the Bill, indicated that the Stamp Act would be amended accordingly.

The Hon. A. F. Griffith: I think mention was made by the Attorney-General of the day that it would be done.

The Hon. H. K. WATSON: Yes. Now that the Minister is the Minister for Justice, I would like him to bear that point in mind because it was an extremely fair provision and I think it should be embodied in our Stamp Act.

The Hon. A. F. Griffith: In regard to the other point concerning the amendments, the 1960 Bill was held over for a year, and then we brought down the amending legislation.

The Hon. H. K. WATSON: But there was no comparison between the 1960 Bill and the 1961 Bill; it made substantial alterations.

The Hon. A. F. Griffith: Would a reprint of the Act, with the amendments contained in this Bill, assist you?

The Hon. H. K. WATSON: It would be rather an expensive proposition, but it certainly would assist the legal fraternity, members of the accountancy profession, directors of companies, and so on—

The Hon. A. F. Griffith: As a matter of fact, copies of this Bill are in short supply. We have had to have extra copies printed.

The Hon. H. K. WATSON: —because it is one thing when we are working with the Statute of Frauds Act, which we turn to every 400 years or so; and quite another thing when we are working with the Companies Act to which we refer every five minutes of the day. A reprint would certainly be very helpful.

One aspect in which I think this Bill is deficient—but again it is a question as to just where the point should be covered—is on the money being borrowed by a company. The Act contains extensive provisions for the borrowing of money by a company. The company has to issue a prospectus, and publish its statement of affairs, its financial position, and so on.

I think it is generally agreed by anyone who has given thought to the subject, that borrowing by a company should in no circumstances be under the control of the Money Lenders Act; because if it is we can strike all sorts of ridiculous anomalies, whereby some person lending to a company may through no fault of his own be infringing the Money Lenders Act; and the company may thereby be entitled to deprive him of his rights by some unexpected legal quirk.

When a company borrows money it dictates the terms—the moneylender does not dictate the terms. If an individual borrows money from a moneylender, it is the moneylender who dictates the terms. But when a company borrows money, it sits down, works out its prospectus, and

decides how much it wants, and the rate of interest it will pay. It goes to a share-broker and endeavours to get it underwritten, and invites the public to subscribe on that basis.

When we remember that, and when we remember section 9 of the Money Lenders Act which provides that anyone who lends money shall give a memorandum to the borrower, we can see how futile and absurd the position can become. For example, it would be conceivable that a person carrying on business as a moneylender could not subscribe for, say, Broken Hill Pty. Co. Ltd. debentures, without first going to the company and saying, "Give me a copy of the debenture which you have prepared; let me take it away; I will copy it, and I will then hand it back to you as your copy of this document to comply with section 9 of the Money Lenders Act.

All the finance companies today, in addition to accepting deposits at so much per cent. for so many years, as members know, have fixed terms such as 4 per cent. on call, 5 per cent. for one year, 6 per cent. for two years, and so on. They also offer 6½ per cent. compound interest for any period between four to 20 years; and this is a very handy method of building up funds for various purposes.

But if a moneylender happened to subscribe for one of those 6½ per cent. compound interest contracts that are advertised by the finance company he would be liable to a fine, and his capital would be at risk, because under the Money Lenders Act he happens to be prohibited from lending money at compound interest.

So as far as companies are concerned, the Money Lenders Act was intended to protect individuals; it was never intended to apply to companies borrowing money. If we sit down and study the matter we will see that it cannot be logically applied to companies borrowing money.

A problem has arisen under section 292 of the Companies Act, on which the Minister may care to give the House some information. That is the section which relates to the winding up of a company, and which makes provision for the priority of the payment of its debts. It provides that—

Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts—

- (a) firstly, the costs and expenses of the winding up
- (b) secondly, all wages and salaries
- (c) thirdly, all amounts not exceeding in any particular case £1,000 due in respect to workers' compensation
- (d) fourthly, all remuneration payable to any employee in respect of annual leave or long service leave or both, . . .

- (e) fifthly, the amount of all municipal or other local rates due from the company at the date of the commencement of the winding up and having become due and payable within the 12 months next preceding that date, the amount of all land tax and income tax assessed under any Act or Act of the Commonwealth before the date of the commencement of the winding up and not exceeding in the whole one year's assessment.

It then says that if those debts cannot be paid in full in that order they shall rank equal between themselves.

It is the fifth item to which I would draw attention. The High Court, in a judgment delivered last month, reversed one of its own judgments which has stood since 1947. In 1947 the High Court decided it was within the province of the State Parliament in its Companies Act to legislate for a priority such as I have just read. But the judgment which has just been given by the High Court in the case of the Commonwealth of Australia and Another v. Sigamatic Ltd. (in liquidation) and Law, overruled the previous decision given in the case of Uther v. the Commissioner of Taxation in 1957, and held that, notwithstanding anything contained in the State Companies Act, the Commonwealth or the Crown in right of the Commonwealth had full and first priority for any amount due in respect of income tax, Commonwealth land tax, Commonwealth sales tax and any other Commonwealth tax; or any other claim due to the Crown in the right of the Commonwealth.

That was a rather startling decision, as Mr. Justice McTiernan, who was one of the dissenting judges, pointed out. He said that it completely upset the order of priority provided for in section 292 of the new Act. So it would seem that before the Act is launched on its way there is quite a major upset in the provisions. Inasmuch as these provisions are eminently fair, and inasmuch as it would be a pretty poor show if workmen and others had to stand by while the Commonwealth collected its pound of flesh, some complementary legislation should be passed by the Commonwealth to endorse, approve, or permit the order of priority which is at present contained in section 292.

The Hon. A. F. Griffith: Of course this State has no control over the Commonwealth.

The Hon. H. K. WATSON: No, except that this State has a pretty strong moral case, as was suggested by Mr. Justice McTiernan, in that the Commonwealth has always had power to legislate directly to override a State Act, if it so desired. For

that reason he said it was not for the High Court to reverse the longstanding judgment which had stood since 1947.

When we were discussing this measure last year the Minister went to great pains—just as I went to great pains to have the Bill deferred to this session for consideration—to get the Bill passed, but on the distinct understanding that we would have the opportunity to amend it during the present session of Parliament. These were the words the Minister used, as recorded on page 2708 of the 1961 *Hansard*.—

Members can rest assured that in the months to follow an opportunity will be given to the States, at conferences, to consider the whole measure with all its virtues and its defects, so that next year we will have a chance to consider amendments. We will then be able to agree on the date on which this legislation will be proclaimed. There will be a uniform time for proclamation, and a uniform basis on which the legislation is framed.

The words to which I particularly draw attention are these—

We will then be able to agree on the date on which this legislation will be proclaimed.

Although Western Australia was showing undue enthusiasm in getting the Bill through last year, the understanding was that all the other States would at least have their legislation passed at this point of time, or that agreement would be reached to put the legislation through by the end of the present year. I understand that South Australia has not faced up to the barrier so far as the introduction of the legislation in that State is concerned.

The Hon. A. F. Griffith: The Bill is before the South Australian and Tasmanian Parliaments now.

The Hon. H. K. WATSON: I might be wrong, but during my recent visit to the Eastern States I gathered the impression that the Bill would make an appearance in the South Australian Parliament but it was extremely unlikely that it would ever reach the statute book.

The Hon. A. F. Griffith: I understand it was introduced in the South Australian Parliament last week. I want to draw your attention to page 2248 of the same volume of *Hansard* to which you were referring, where I confirmed your opinion that the legislation would come into operation in a year's time.

The Hon. H. K. WATSON: That does not in any way affect what I have read out.

The Hon. A. F. Griffith: Everyone has known for a year that the date is to be the 1st October next.

The Hon. H. K. WATSON: That was in regard to the introduction of the legislation by all States. As far as I am concerned, that was the distinct understanding, and I think that was also the general understanding. There is certainly not a uniform Bill, if one State is standing out.

The Hon. A. F. Griffith: Some State has to be first and some State last.

The Hon. H. K. WATSON: If the legislation were passed by all States, a uniform proclamation date could be decided on afterwards. That was the idea. Some State had to be first to introduce the Bill, but when the six States had all passed it, then the same proclamation date would be decided on. That is uniformity. If all the six States had passed the Bill it would be a very simple matter to declare a uniform proclamation date.

The Hon. A. F. Griffith: In two States the Bill was proclaimed two months ago; in fact, in three States.

The Hon. H. K. WATSON: Where is the uniformity if two States are already operating under the legislation? I do feel that in all the circumstances no harm would be done if this Bill were not proclaimed until the South Australian legislation was passed.

The Hon. A. F. Griffith: Didn't you foreshadow something that will take place on the 1st January?

The Hon. H. K. WATSON: I am coming to that now. I feel no harm would be done if the proclaiming of the law was left until the South Australian Act was passed. I have gathered within recent days there is a firm intention—perhaps the Minister indicated that when introducing the Bill—to proclaim this Act on the 1st October; and I would make one plea for the commercial community of Perth: That even if the Act is proclaimed those companies which have not yet held their annual meetings for the year ended the 30th June, 1962, at least be permitted to carry on with it just as they would have if the Act had not been passed.

There is this extraordinary transitional period. Probably today a company is issuing notices for a meeting to be held on the 1st October; and those notices have been issued in accordance with the existing Act. The company has complied with all provisions of the Act; but conceivably if the uniform Act comes into operation on the 1st October, the day on which the company is to hold its meeting, it could be infringing some of the provisions of that Act.

The Hon. A. F. Griffith: Don't you think they knew that a year ago?

The Hon. H. K. WATSON: No; I do not. A year ago, and even up to three months ago, there were quite a few who shared my opinion that some of the proposals that I put up 12 months ago would

be considered and adopted. This was a reasonable assumption, and I suggest to the Minister that this proposal of mine is not a question of postponing the proclamation of the Act. The Act would be proclaimed on the 1st October and all of its provisions would come into operation except one section. We would have coming into operation 373 out of 374 sections of the Act.

A company would not be able to raise money without a prospectus and would have to comply with all the other provisions of the Act. All the new fees would be collectable from the 1st October; and the only thing that would happen would be that any company holding its annual meeting for the year ended the 30th June, 1962, between now and the 31st December next, would not have to comply with all of the new provisions in regard to accounts and audit and all the rest of it.

The Hon. A. F. Griffith: What does "all the rest of it" mean?

The Hon. H. K. WATSON: "All the rest of it" is simply the accounts and the audit. In other words, the companies would be permitted to do just what their more fortunate colleagues have done, but who, for some reason or other, were able to hold a meeting before the 1st October. Anyone who held a meeting last week would simply produce accounts which did not strictly subscribe to the ninth schedule of this Act but which were as near as could be by complying with the corresponding section of the old Act.

Similarly, in respect of proprietary companies, the accounts for 1962 need not have been audited. For all future years they will have to be audited, and I suggest to the Minister that it would ease the transition. There is no doubt that there is a lot of confusion. If the Act comes into operation on the 1st October, so far as the holding of the annual meeting is concerned and the manner in which the accounts are prepared, the company would carry on just as it has in the past for this one year only, just as everyone else up to the 30th June, 1962, has already prepared accounts and statements of their businesses.

The Hon. A. F. Griffith: What do the words "to conduct proceedings" mean? What sort of proceedings?

The Hon. H. K. WATSON: I will give the Minister one illustration: At the moment a meeting is called and notices of the meeting are sent out. That is all that is required under the existing Act. However, under the new Act a company might find itself in the same position as did Custom Credit under the Victorian Act. That company called a meeting in the ordinary way; and having called that meeting discovered that under this new Act the notices calling the meeting had to include a footnote at the bottom telling the members that they may appoint a proxy, and the

proxy need not be a member of the company. That is a tiddley-winking requirement but it would have been sufficient to invalidate the meeting and Custom Credit had to spend goodness knows how much in advertising throughout Australia and sending out fresh notices with this footnote.

The Hon. A. F. Griffith: Don't you think the sections would conflict?

The Hon. H. K. WATSON: These tiddley-winking things can render a meeting invalid and the persons liable to a fine. Whilst there may be many people who, like the Minister, are fully aware of the 374 sections in the Act, there are conceivably some who are not so knowledgeable, and I would make this plea on that one point: I do feel the whole Act should not be proclaimed. I know the Minister's desire is to proclaim the whole Act, but I earnestly suggest that he agree to this one provision to cover a transition period to the 30th June, 1962. This would enable everyone to work on the same basis. I have nothing further to say on the Bill.

THE HON. R. C. MATTISKE (Metropolitan) [10.18 p.m.]: Sufficient has been said about the importance of having uniform company legislation to facilitate the commercial work throughout Australia. By uniform legislation I do not mean that it needs to be 100 per cent. uniform in each of the States. I think that the words of the Minister when introducing this amending measure covered what I have in mind: that it should be basically the same in each of the States.

I, along with Mr. Watson, am quite disappointed that many of the points raised in this Chamber last year have not been incorporated in the present amending Bill. I think that there was some very sound argument advanced for the necessity for certain other amendments and therefore I can only be disappointed that they have not been included this year.

The Hon. A. F. Griffith: We would have to disregard uniformity if we included those amendments.

The Hon. R. C. MATTISKE: Basic uniformity we would still have. While Mr. Watson was speaking it was suggested by the Minister, by interjection, that it might be of benefit to the commercial community to have a fairly early reprint of this measure incorporating the amendments as proposed in the Bill. I feel that from the practical angle this would not be a good thing. My reason is that despite the fact that this has been given very thorough consideration, not only by Attorneys-General but by all those who have to operate under the provisions of the new legislation, nevertheless there must be, when we get down to the practical application of the Act, many points which will arise and which will necessitate amendments in the same way as occurred with the Local Government Act.

The Hon. A. F. Griffith: Do you know how many of these are available now?

The Hon. R. C. MATTISKE: The Minister told the House 1,500.

The Hon. A. F. Griffith: There were 1,500 printed, but it is out of print now and it is unavailable. Surely you do not suggest that we should not put the amendment in the new reprint.

The Hon. R. C. MATTISKE: No. What I am suggesting is that it must necessarily follow that during the first year of operation of this legislation there will be important amendments required; and I feel that if it could be possible to hold over any reprinting or to make certain provisions in the reprinting so that there could be a further reprint after the Act had been operating for a year or even a couple of years, then that would enable the persons who have to work under the legislation to have something which will be, to use the word of Mr. Watson, orderly.

The Hon. A. F. Griffith: But the 1961 Act is now out of print. There are no more copies available. You would not suggest that we should reprint the 1961 Act and the Act which we now have before the House, making two separate Acts?

The Hon. R. C. MATTISKE: Not at all; but at the same time I am drawing attention to the fact that even if the two Acts were incorporated in the one reprint, some provision could be made by the printers so that a further reprint could be carried out in a year or two with a minimum of cost.

The Hon. A. F. Griffith: Further reprints will be carried out as necessity demands.

The Hon. R. C. MATTISKE: Good. There is one other point in regard to this legislation as a whole to which I draw attention, and that relates to the rather large scale of fees contained in the second schedule. They have, as other speakers have stated, been increased considerably, and I cannot see why they should have been increased to such an extent. But it having been agreed by the various States that these would be reasonable figures, then all right; let us not quibble at them.

There is, however, one matter of mechanics which is very closely tied up with this: Under any other legislation where it is necessary for certain classes of people to complete statutory forms and to file them—forms dealing with the different types of taxation, statistical forms, and many other forms required under other types of legislation—there is always an ample supply of forms available to those who have to submit them. But this has not been the case under company legislation in this State. On certain occasions a single copy of the form is sent out by the Companies Office and additional forms have to be purchased, and in many cases even the original form has to be purchased from

booksellers or from somewhere around town before the statutory requirements can be complied with.

I feel this is one of the niggardly little things that turn so many executives against many types of legislation. I think that if, in common with other government departments, the Companies Office could, in future, make available, free of cost, ample supplies of the various forms to the accountants who have to use them, it would do much to assist in the ready lodging of the returns and would create a much more co-operative feeling between the accountants and the department; and I think that in the ultimate it must result in something which will be good for the department itself.

The amendment which has been referred to by Mr. Watson has, I feel, a lot of very good substance in it. Those companies which have been operating in the last few months in the same way as they have been in years gone by—although there has been talk about new legislation being operative as from the 1st October—would not in many cases have conducted their proceedings in such a way as to comply with the requirements of the new legislation. I therefore think that if the amendment which Mr. Watson suggests is adopted, then that again will assist the business community of this State very considerably; and I do hope that if and when it comes before the House it will be accepted.

The Hon. A. F. Griffith: I understood Mr. Willesee to say that commerce was geared to accept these amendments.

The Hon. R. C. MATTISKE: I hope this particular amendment is accepted by the House. In general terms I think the Bill before the House at the present time is a good one, but I put forward the proviso, as it were, that further amendments should be accepted from the commercial world in the next 12 months—after it has had an opportunity of operating under the new legislation. I support the measure.

Debate adjourned, on motion by The Hon. A. F. Griffith (Minister for Justice).

House adjourned at 10.29 p.m.

Legislative Assembly

Tuesday, the 11th September, 1962

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