Legislative Assembly

Tuesday, the 7th November, 1978

The SPEAKER (Mr Thompson) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS

Questions were taken at this stage.

WHEAT INDUSTRY STABILIZATION ACT AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Mr P. V. Jones (Minister for Education), and read a first time.

MINING BILL

In Committee

Resumed from the 1st November. The Chairman of Committees (Mr Clarko) in the Chair; Mr Mensaros (Minister for Mines) in charge of the Bill.

Progress was reported after clause 11 had been agreed to.

Clause 12: Delegation—

Mr T. D. EVANS: I take this opportunity to express the strongest opposition possible to this Bill. Naturally I opposed strongly also clause 3 which spells the death knell of the existing Act provided the rest of the Bill passes through Parliament. However, clause 12 proposes to act by implication as far as the Minister is concerned; and to act dumb expressly in relation to others in regard to delegation of power by the Minister to make a "state of mind" ever important. It refers to the state of mind not only of the Minister concerned, but also of some unknown officer in the Mines Department.

I should like to read clause 12 very carefully so that it can be reported in *Hansard* and in years to come people may look back and pass judgment on it. I believe in the future people will condemn this Government for daring to introduce into Parliament legislation of this type. It is a violation of the Westminster system. I shall read clause 12 carefully and then analyse it. It reads—

> 12. (1) The Minister may—
>
> (a) by instrument in writing delegate any of his powers and functions (except this power of delegation) to any officer of the Department; and
>
> (b) vary or revoke a delegation given by him.
>
> (2) Any delegation of a power or function under this section by the Minister ceases to have effect upon the appointment (other than in the capacity of an acting Minister) of another person to be the Minister for the purpose of this Act.
>
> (3) A power or function delegated by the Minister under this section—
>
> (a) shall, if exercised or performed, be exercised or performed in accordance with the instrument of delegation; and

We then have paragraph (b) which is the most offensive part of the whole clause and it reads—

> (b) may, if the exercise of the powers or the performance of the functions is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter—be exercised upon the opinion, belief or state of mind of the delegate in relation to that matter.

I pass judgment as follows: the Minister is accepting a terrible onus. Whilst the clause provides the Minister may delegate power in writing and the recipient of the power must perform the duty in accordance with the delegation, there is no sanction against performance by the officer concerned of the delegation of power in a manner not desired by the Minister. No sanction at all is provided. Therefore, if the officer performs the delegation in an incompetent manner, in a malicious manner, or in a capricious manner as a result of subclause (3) of clause 12 I contend the Minister himself is powerless to take action. The Minister is assuming a terrible onus and responsibility.

In other words, if an officer performs a duty not strictly in accordance with the way the Minister would have performed it had he attended personally to the matter, the Ministers says, "I am to blame."

When the Minister stands up in the manner in which he stood up this afternoon, the law provides he will have to say, "I am to blame." This is a shocking position in which the Minister is placing himself. He must take the place of somebody else.

Let us have a look at subclause (3) (b). This relates to the state of mind of the Minister being deemed to be the state of mind of the officer. Where the state of mind of the Minister is involved—and throughout the Bill I have found at least seven instances where the Minister's state of mind is involved, and there may be more—and an officer performs a duty which has been delegated to him, regardless of the manner of performance,

the state of mind of the officer is deemed to be the state of mind of the Minister. It is immaterial whether the performance of the duty falls far short of the manner in which the Minister himself would have performed it.

I should like to refer to some of the provisions. One of the few complimentary comments I have in regard to this Bill relates to a good piece of drafting contained in clause 19(5). It refers also to the state of mind of the Minister. This is one of the good parts of the Bill.

Mr Bertram: What does it say about that?

Mr T. D. EVANS: It is the only good part in the whole Bill. Clause 19(5) reads—

> Where the Minister is satisfied on reasonable grounds—

We should note those magical words, Mr Chairman. To continue—

> —that an area to which an application for a mining tenement relates should not, in the public interest be disturbed, he may, by notice served on the warden to whom the application has been made, refuse the application irrespective of whether the application has been heard by the warden.

That refers to the state of mind of the Minister and it is the only place in the Bill where the expression "reasonable grounds" is used. This expression has been interpreted by the House of Lords, and I believe also in the Walsh case which arose in Ceylon and was argued before the Privy Council, to mean in a case where that formula has been used the person in whom the power is vested—in this case the Minister or if power is delegated to an officer, it refers to the Minister or the officer as the case may be—can be called upon to appear before the appropriate forum, in this case the Warden's Court, to prove the grounds upon which he acted were reasonable. The Minister may not relish this, but it appears in his own Bill.

If the Minister delegates the power the officer may be called before the Warden's Court to show the grounds upon which he acted were reasonable. However, nowhere else in the Bill do we find that formula being used.

Let us examine some of the other clauses in the Bill which depend upon the state of mind of the Minister which means that if the work is delegated to an officer, it depends upon the state of mind of the officer. If there is any doubt about it, it can be said, "This is the state of mind of the Minister."

I should like to refer to clause 99 on page 62 of the Bill. Subclause (1) reads in part as follows—

> The Minister, after receiving the recommendation of the warden as provided in section 98, may, as the Minister thinks fit—

It is not a case of whether he acts on reasonable grounds; it is a case of "as the Minister thinks fit". This matter was referred to in the Anderson and Liversidge case where the formula was used that a Minister of State may take certain action as he thinks fit. It was held by the House of Lords that under no circumstances could that Minister be called upon to give reasons for his acting in such a manner. But had the formula that he acted upon reasonable grounds been used, it would have been a different matter. It would have been a horse of a different colour.

We have a case in clause 99 where the Minister may act as he thinks fit. If under this clause the Minister were to delegate his powers pursuant to clause 12, it would be a case of "as the officer thinks fit", and if the officer did not perform the delegation of the power in the manner in which the Minister wished it to be performed, the Minister could not take any action because no sanction is provided under clause 12 for any breach of the obligation which says the officer shall perform the delegation according to its tenor.

Mr Grill: This must be made clear. Exactly what is being done under clause 99?

Mr T. D. EVANS: The honourable member will have an opportunity to speak later. I am trying to say as much as I can in the time available to me. I refer members to the wording of clause 12(3). No sanction is provided if the officer performing the duty fails to take heed of that subclause. This means the Minister will stand up in Parliament on a future occasion and will have no excuse, as he had this afternoon. He will not be able to refuse to answer questions. The law will say, "You are to blame." What a terrible onus for the Minister to thrust upon himself. He is doing this willingly and voluntarily.

I should like to refer to clause 102(3) on page 64. This clause refers once more to the state of mind of the Minister which means that if the powers are delegated to an officer, the state of mind of the officer is taken into account. Clause 102(3) reads as follows—

> (3) Notwithstanding the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of subsection (2) of this section, a certificate of exemption may also be granted for any other reason which may be prescribed or which in the opinion of the Minister is sufficient to justify such exemption.

If and when—and I say "if"—we ever reach this clause, I shall have something more to say about it. This relates once again to granting exemption from working mining leases. We have a provision that, in the opinion of someone—presumably the Minister, but in the case of delegation of power in the opinion of an officer—certain action is taken; but no sanction is provided under clause 12 for any breach of the manner in which the power delegated is carried out.

As I mentioned earlier, this Bill is ill-conceived despite the fact that it has been floating around in one form or another since 1972. The Minister was the first to rush in and provide an amendment which will restore the full plenary jurisdiction of the Warden's Court. There is an indication that the Bill has not been given sufficient and proper care and attention. As I have said, I believe the appropriate place for the Bill is the garbage bin.

Mr Bertram: It is slapdash.

Mr T. D. EVANS: I oppose the clause.

Mr GRAYDEN: May I say I agree with virtually everything the member for Kalgoorlie has said. The Bill differs from the current Act in many ways. Fundamentally, the differences are, firstly, in respect of the delegation of power. The delegation of power under the new Bill is infinitely more sweeping than under the old Act.

The second fundamental way in which this Bill differs from the present Act is that it enables the Minister to bypass the Parliament when he enters into agreements relating to the mineral resources of Western Australia.

The clause was referred to at some length by the member for Kalgoorlie, and I will compare the powers of delegation with those which apply under the present Act. In section 82(1) of the Act it is stated—

> . . . or of an officer acting with the authority of the Minister, transfer, sub-let, mortgage, encumber, or otherwise deal with the lease or application . . .

As the member for Kalgoorlie has already pointed out, the proposed powers are infinitely more sweeping. Clause 12(3) of the Bill reads—

> (3) A power or function delegated by the Minister under this section—
>
> (a) shall, if exercised or performed, be exercised or performed in accordance with the instrument of delegation; and
>
> (b) may, if the exercise of the powers or the performance of the functions is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter—be exercised upon the opinion, belief or state of mind of the delegate in relation to that matter.

I ask: What is the reason the Minister has made the proposed powers infinitely more sweeping? This Bill is extremely serious, particularly because of the delegation of power which we are being asked to write into the new legislation. Parliament is being asked to do a number of things: It is being asked to place the mineral resources of Western Australia in the hands of one man, or his delegate, with the inherent right to do what he wishes with those mineral resources—unfettered by any obligation to refer major agreements to Parliament for approval, and unhampered by any existing niceties such as a provision for appeal by an aggrieved would-be mineral explorer or miner.

Parliament is being asked to give an open cheque to the Minister for Mines with regard to the mineral resources of Western Australia; we are being asked to give him authority to operate on that bank account.

Point of Order

Mr HASSELL: On a point of order, Mr Chairman, I question the relevance of these comments to the clause in the Bill.

The CHAIRMAN: I ask the menber for South Perth to ensure that he does confine his remarks to the clause before us.

Committee Resumed

Mr GRAYDEN: I can well understand the member for Cottesloe being anxious to ensure I am confined in my remarks, but I am relating them to the clause.

Mr Pearce: Very well, too.

Mr GRAYDEN: The clause deals with the delegation of power by the Minister. I am pointing out the implications of the seriousness of decisions and opinions of the Minister, or the person to whom the power is delegated.

Parliament is being asked to place the mineral resources of Western Australia into the hands of one man to do with them what he will. We are being asked to give an open cheque to the Minister for Mines and, as I have pointed out, the mineral resources of Western Australia are a bank account on which he will operate. Further, we are being asked to give this open cheque in the full knowledge that the ministerial spending on the bank account can be delegated.

The CHAIRMAN: I would say to the member for South Perth that I do not agree that his most recent remarks are tied to the clause under discussion. I ask him to confine his remarks to the clause.

Mr GRAYDEN: I accept your ruling, Mr Chairman, but it does seem to me that in pointing out the seriousness of the power we are being asked to delegate, I am debating the clause. I could go on at great length and mention many other aspects of the Bill which are quite distasteful, such as the lack of a requirement for the Minister to obtain parliamentary approval of agreements. The person to whom the Minister delgates his power can enter into agreements and virtually give away the mineral resources of Western Australia. That may not be the present incumbent of the office of Minister for Mines, but it may be the incumbent of the office in 20, 40, 60, or 74 years' time. The present Act has been operating since 1904—a total of 74 years—and it is logical to assume that the new Act will be in operation for the next 74 years.

Mr Coyne: I am sure it will.

Mr GRAYDEN: At that time we may have additional political parties, and we do not know who will occupy the position of Minister for Mines. Yet, the Minister in power at the time will be in a position to delegate power to any person in the Public Service, and that officer could simply sign away the mineral resources of Western Australia. That is the power we are being asked to write into the present Bill. That is what I am questioning.

We are being asked further not to give any right of appeal against ministerial decisions, or against decisions of the person to whom the Minister delegates his power. Parliament is being asked to give this open cheque to the Minister for Mines or to the person to whom he delegates his power. Those decisions might be made improperly, and might be contrary to accepted and established procedures in the allocation of mineral claims.

I join with the member for Kalgoorlie in expressing my horror at this particular clause which Parliament is being asked to include in the Bill. As a result, I propose to do something to correct the situation. At this particular stage I do not intend to move the amendment which I have placed on the notice paper. I intend to move that amendment when I have an opportunity to speak subsequently, because I want that extra opportunity to refute any spurious arguments which might be put forward in opposition to the amendment which I intend to move.

There are all sorts of people and organisations in Western Australia who have protested most vehemently to the Minister and the Government against this power of delegation and against the powers of discretion which the Minister is writing into this Bill. One protest I would like to quote comes from the Australasian Institute of Mining and Metallurgy. I understand the organisation has 620 members in the Perth branch.

Mr Coyne: And the executive disowns it.

Mr GRAYDEN: So, this is their decision. This submission was prepared by a subcommittee of the Perth branch, after reviewing carefully the views of many of its 620 members. The protest is signed by Peter Parkinson, whoever he may be, and is addressed to the Minister for Mines. I believe a copy was sent to each member of Parliament. I repeat: It is a most influential body and it states—

> The Minister for Mines is responsible to the government and the people for the orderly development of the State's mineral resources and some discretionary power is necessary to enable him to achieve optimum results. However, the right of the Minister to apply such power without publicly stating reasons is not justified. It is therefore suggested that, in those Sections where he has such discretionary power, the Minister should publicly state his reasons for using it and within a specified time.

Then, it goes on—

> As a prerequisite to democratic and open government there must be a means for appeal against the Minister's decision.

Now, that is the decision of that particular organisation.

The CHAIRMAN: Order! I would point out to the member for South Perth that whilst his present line of argument certainly would be appropriate in regard to the amendment he has on the notice paper, I do not regard it as being appropriate to the clause under discussion. I ask him to desist from his particular line of argument at this stage.

Mr GRAYDEN: Well, I bow to your ruling, Sir. Could I say we are talking about clause 12 which states that the Minister may, by instrument in writing, delegate any of his powers and functions, except this power of delegation, to any officer of the department, and vary or revoke a delegation given by him. The whole of clause 12 deals with delegation.

The document I am about to quote came from the Amalgamated Prospectors and Leaseholders'

Association of WA. It is a submission to the Minister for Mines and it refers to those particular powers. The submission, under the heading of "Specific Objections", in referring to clause 12 sets out—

> This Clause gives the Minister power to delegate any of his powers and functions to any officer of the Department, irrespective of rank standing or experience in the Department.

What I am saying is that the above association has given careful consideration to this clause, and is opposed to it.

Mr Coyne: It is an unconstitutional body.

Mr GRAYDEN: That is the attitude of the association. Again, we have Mr George Compton, a very prominent person in the goldfields, expressing his opinion in a letter to the editor which appeared in the *Kalgoorlie Miner*. The letter, in part, reads—

> Granting of descretionary and indefinite power over the conditions of mining title, especially when hedged with such terms as the delcgated "Opinion or State of Mind of the Minister," appears to be an open invitation for corruption of the department by those who might find it cheaper to gain title in the department than to gain it in the field.

This person is pointing out the dangers of this type of delegation. I repeat that he is a very responsible citizen and a person known to everybody associated with mining in Western Australia.

Mr Grill: And a geologist.

Mr GRAYDEN: He is also a geologist. We have Amax, another huge mining company also in the electorate of the member for Murchison-Eyre, which wrote to the Minister for Mines, again in relation to the power of delegation, saying—

> The Bill contains large areas where decisions will be left to the Minister's discretion. However in section 12 the Bill also provides for an absolute delegation of the Minister's discretion to any officer of the Mines Department.

The CHAIRMAN: The honourable member's time has expired.

Mr T. D. EVANS: I would prefer that the member for South Perth had the opportunity to continue, but his time has expired. Clause 12 refers to the state of mind of any officer performing a delegation of power being deemed to be the state of mind of the Minister. As I said earlier, I found at least seven instances throughout the Bill where the state of mind of the Minister is in question. Therefore, if we assume in one of those instances the Minister delegated power, the state of mind of the officer becomes important and is deemed to be the state of mind of the Minister.

One of these instances appears in clause 114 on page 68 of the Bill. That clause relates to the situation where a mining lease expires or is forfeited for any reason and it sets out the right of the previous holder of the lease and, in the case of forfeiture, the obligation upon that person to remove his mining machinery and equipment. In subclause (3) of clause 114 we find this, in relation to that situation—

> (3) Where any such mining plant is not so removed within the prescribed period, the Minister may, at any time thereafter, call upon such holder or other person as is referred to in subsection (2) of this section to show cause, within such period as the Minister may determine—

They are the material words, "as the Minister may determine"; not as the regulation may determine or as the Parliament may decide, but as the Minister in his state of mind may determine. Therefore, if in this instance the Minister delegated power pursuant to this provision, it would be as the officer may determine; not as Parliament may determine or desire but as an officer to whom power has been delegated may determine. The clause continues—

> —why any mining plant that has not been so removed should not be sold and removed.

The CHAIRMAN: Order! The level of audible conversation is too high. *Hansard* is having difficulty. I ask members to lower the level of their conversation.

Mr T. D. EVANS: Subclause (4) of clause 114 is again relevant to the state of mind of the Minister and, assuming power is delegated under this provision, relevant to the state of mind of an officer.

The CHAIRMAN: Order! I ask the member for Kalgoorlie to relate his remarks much more closely to the aspect of delegation.

Mr T. D. EVANS: I thought I had done that quite clearly. Referring back to clause 12, paragraph (b) of subclause (3) reads—

(b) may, if the exercise of the powers or the performance of the functions is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter—be exercised upon the opinion, belief or state of mind of the delegate in relation to that matter.

I am citing those instances throughout the Bill where the state of mind or belief of the Minister is relevant, and therefore, if a delegation is made under clause 12, the state of mind or belief of the officer is relevant. I am trying to indicate these are dangerous powers we are placing in the hands of officers.

The CHAIRMAN: I have no objection to that.

Mr T. D. EVANS: Subclause (4) of clause 114 continues to relate to the situation where a lease has expired or been forfeited, and there is an obligation upon the person to remove his equipment at a time determined by the Minister or by an officer to whom power has been delegated. That subclause reads—

(4) Where such holder or person does not, within the period determined by the Minister—

Where power has been delegated it will be in a period determined by an officer. To continue—

—show cause to the satisfaction of the Minister—

Where there has been a delegation, it will be to the satisfaction of the officer. The subclause continues—

—why any such mining plant should not be sold and removed, the Minister may direct the mining plant to be sold by public auction and be removed.

We are being asked to approve of an officer to whom this power can be delegated by the Minister being able, within a period determined by the officer, to direct and enforce the removal and sale of someone else's equipment.

Is this in keeping with the Liberal Party's private or free enterprise philosophy? Surely to goodness it is not. Even socialists baulk at this. It is complete confiscation. I am a democratic socialist, not a communist. It appears to me to be outright communism for an officer to be delegated this power, with no sanction provided in clause 12 relating to the manner in which he performs his delegation of powers. He may perform these powers incompetently or maliciously, and there is nothing in the Bill to say the Minister can do anything about it.

If the person who owns this equipment does not satisfy the officer within a time determined by the officer, the officer can direct that the equipment be confiscated and sold. This seems to me to be quite wrong. Does it strike the conscience of members who profess to be the promoters of free and private enterprise?

Let us have a look at one more instance in the same vein, referring to the same golden thread. In the same situation where a mining lease expires or, in the opinion of an officer to whom power has been delegated, it should be forfeited, subclause (8) of clause 114 provides—

(8) The Minister shall determine the amount of rent that shall be paid for the use and occupation of the land—

If the Minister delegates this power, some officer shall determine the amount of the rent. I always thought it was a practice for the easy bringing into operation and maintenance of Acts of Parliament that these matters were determined, not necessarily by the Parliament but at least by regulations which are tabled in the Parliament and can be challenged by the Parliament. But here the Minister may determine the rent—not the Government by way of regulation—and if the Minister delegates his power—

Point of Order

Mr HASSELL: Mr Chairman, the member's time has been sitting on seven minutes for considerably in excess of one minute.

The CHAIRMAN: I am not aware whether or not the clock is operating as it should. I will pay attention to it and if it is not operating I will take steps to remedy the situation.

Committee Resumed

Mr T. D. EVANS: My words have agonised the honourable member so much, as a legal practitioner, that time seems to have stood still.

Subclause (8) of clause 114 continues—

—on which the tailings or other mining product are allowed to remain . . .

For easy bringing into operation and maintenance of Acts of Parliament, it has been our custom that matters such as this are determined by regulations which are tabled in the Parliament and subject to challenge in the Parliament.

Finally, we have subclause (5) of clause 119 on page 73 of the Bill, which reads—

(5) Where the holder of a mining tenement is a corporation the Minister may cancel the mining tenement if in his opinion the control of the corporation has passed to any country and the Minister has not consented to the control so passing.

Who is this Minister? Is he a wooden god? Does not this provision go against the very grain of private enterprise? But it is worse than that. If the Minister delegates the power in clause 119, an officer who does not approve of a company selling some of its shares to another country can cancel the mining tenement.

I think I have highlighted the very strong objections to this clause. The member for South Perth indicated that in the existing Act there are instances where powers are delegated, and this is obviously a necessary provision in an Act such as the Mining Act, but nowhere in the existing Act, and nowhere except in the fuel and energy law, do we find this artificial and unnecessary reference to the state of mind of the Minister and, where there has been a delegation of power, to the state of mind of the officer being deemed to be the state of mind of the Minister.

I indicated that in only one instance in this Bill has the draftsman used the formula where the Minister acting upon reasonable grounds—and, if there has been a delegation of power, an officer acting upon reasonable grounds—may be called upon in the appropriate forum—namely, the Warden's Court in the first instance—to show why he so acted.

It is not the intention of the Opposition to move any amendments to this Bill because, following the words of the Premier as the member for Nedlands in 1956 when the Hawke Government of the day introduced what is known as the unfair profits Bill, we will not shake hands with a viper—or a cobra.

That is the attitude we are adopting now. I am aware the member for South Perth intends to seek an amendment to this clause to provide a right of appeal to a judge of the Supreme Court and therefrom an appeal to the Full Court of the Supreme Court in two instances: firstly against decisions of the Minister, certainly where he is not called upon to act upon reasonable grounds but to act upon his opinion, etc; and, secondly, where an officer so acts. I agree there should be the right of appeal against the decisions of the Minister, particularly where he cannot be called upon to show he acted upon reasonable grounds. Surely to goodness if there is argument in favour of the right of appeal against a decision of the Minister there is certainly strong justification for a right of appeal against the decision of an officer acting upon the delegation of power, where the officer is under no sanction to carry out the direction of the delegation in the way the Minister may desire.

I strongly oppose the clause.

Mr HASSELL: There have been some extraordinary performances in respect of the short list of clauses we have debated so far. Matters are being questioned in this Bill which normally are never questioned and are commonplace in other legislation.

Points of Order

Mr GRILL: Mr Chairman, the member seems to be addressing himself to other provisions of the Bill and not to the clause we are discussing. I would ask you to rule that he should not range widely over other provisions, as he is beginning to do, but should confine himself to the clause under discussion.

The CHAIRMAN: As would be obvious to everybody in the Chamber, there is no point of order.

Mr BRYCE: On a further point of order, Mr Chairman, I am concerned that the clock shows the member for Cottesloe still has 15 minutes remaining. The clock has been on 15 for quite some time, and I am concerned that the electronic device is not functioning properly.

The CHAIRMAN: I regard that as a frivolous point of order.

Mr Bryce: Watch the clock; it is still stuck on 15.

Committee Resumed

Mr HASSELL: Clause 12, which is under consideration at the moment, is a provision which is usual and common in legislation and not in any way extraordinary. The arguments put forward in relation to this and other clauses are indicative of the fact that some people in this Chamber do not really want to debate the substance of the Bill but want simply to carry on a tactic of blocking and delaying to achieve some obscure political purpose of their own. The essence of the matter having been dealt with already in the second reading debate, those members are not satisfied to accept the vote of the House but want to go back and rerun the debate on every clause.

In relation to clause 12 of the Bill, let me refer to legislation introduced in 1948 by the Chifley Labor Government in Canberra, which contains a clause almost word for word with the one we are discussing in this Bill.

Mr Stephens: What happened to that Government in 1949?

Mr HASSELL: The Act to which I am referring deals with important property and rights, and it contains a provision which has not been changed under successive Canberra Governments, including the Whitlam Government. I refer to the Broadcasting and

Television Act, and the amendment inserted in 1948 by Act No. 64. Bear in mind this Act delegates very important functions not to a Minister subject to parliamentary control, but to a board which is not subject to that direction or control. Section 14(1) of the Act provides—

> The Board may, in relation to any particular matter or class of matters, or to any particular place, by writing under its seal, delegate to any person all or any of its powers and functions under this Act (except this power of delegation), so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters, or to the place, specified in the instrument of delegation.

The argument presented by members opposite about clause 12 is a rort. It is a waste of time, and shows a fundamental misconception of the process of government.

Mr GRILL: This provision is the most insidious and obnoxious provision in an insidious and obnoxious Bill. It gives a general power of delegation that I have not seen in any other legislation in this State. It is interesting that the member for Cottesloe had to go outside of the legislation of this State to come up with a provision anything like that in clause 12.

Mr Hassell: It was the first Act I looked at.

Mr GRILL: I might add that section 14 of the Broadcasting and Television Act does not delegate anywhere near the powers clause 12 of this Bill delegates; because the powers under the Federal Act are nowhere near the powers the Minister will have under the Bill.

Mr Hassell: The board has power to take away or to grant a broadcasting licence. What are you talking about? It is a vital piece of legislation.

Mr GRILL: Clause 12 has no precedent anywhere within the legislation of this State; and thank God for that. Let us hope it will never become law. It is the epitome, the acme, the pinnacle, or the zenith of bureaucracy.

Sir Charles Court: You must have stayed up all night to work out that.

Mr GRILL: I have heard the Premier rant and rave about bureaucracy, but he is the king of the bureaucrats.

Mr Rushton: You don't even believe that.

Mr GRILL: This provision makes the Premier the king of the bureaucrats, along with the Minister for Mines.

Mr Sodeman: It is a pity *Hansard* cannot record your smile.

Mr GRILL: The provision delegates the state of mind of the Minister. How can a state of mind possibly be delegated?

Mr Mensaros: Ask the member for Kalgoorlie.

Mr GRILL: We know a state of mind cannot be delegated. The clause delegates a state of mind and powers under conditions where there are no guidelines within which the Minister must exercise his powers; there are no criteria within which he may exercise his powers. The clause is completely open-ended and completely without precedent.

The member for Kalgoorlie referred to clause 99, relating to forfeiture; clause 102, relating to exemptions; and clause 114, relating to the removal of plant. However, the provisions within this Bill which allow the Minister to have discretion are legion. The Minister is given discretion in almost every aspect of the measure—certainly in every aspect of importance.

We should consider the machinery of the Bill because clause 12 operates in conjunction with some other clauses. Clause 10 says the Minister, for some unknown reason which he would not explain earlier, will become a corporation sole.

The CHAIRMAN: Order! The member needs to relate his remarks much more closely to the matter of delegation than he is currently relating them. I request him to do so.

Mr GRILL: I am relating my remarks to the situation in which clause 12 operates in conjunction with other clauses.

The CHAIRMAN: I cannot accept the argument that a Minister could delegate anything, so one would be entitled to pick up any subject and debate that, too. We are debating principally the question of delegation, and I ask the member to relate his remarks more closely to that matter than he has done so far.

Mr GRILL: I am indicating that under clause 10 the Minister shall become a corporation sole, and then he need no longer use his signature but may use a seal. He may delegate the use of that seal not only to one person but to 100 persons, or to anyone within his department. That takes no account of the rank, standing, or experience of the officers to whom the use of the seal may be delegated. The Minister is completely unfettered in that discretion alone. The office boy may be selected to exercise this discretion; he could be the person who will use the seal. There could be legions of office boys and officers within the department using the seal.

The CHAIRMAN: Order! I determine that the member is opening up the question of the official

seal, referred to in clause 10. I cannot tolerate that. I ask the member to relate his remarks to clause 12.

Mr GRILL: I am relating them to the delegation of power to use the seal. With respect, Sir, that is what the provision is about.

The CHAIRMAN: I advise that if you debate the question of the official seal at the length you were beginning to debate it, I will have to rule you out of order.

Mr Davies: Fair go!

Mr GRILL: We are discussing powers of delegation. One of those powers is the delegation of the use of the official seal. If that does not relate to clause 12, I do not know what does.

We have within this Bill a drawing-in of all the powers into the hands of one person; and then, having had those powers drawn in, we see a delegation out of those powers. Perhaps only the hack work will be delegated, but the Bill provides for delegation without criteria, without fetters, and without any discretion. The powers may be exercised by people without rank, standing, or experience within the department.

If an officer exercises that power incompetently, is there any right of appeal? The answer is, "No." If he exercises the power maliciously or with bias there is still no remedy to the situation. I am the first to admit there has not been general corruption within the Mines Department. Tonight we have two of the foremost members of the department in the Speaker's Gallery. Certainly they are men of high standing and officers whom I admire. However, in the past corruption has occurred within the department and most members are aware of some of it.

In the words of George Compton, a geologist in the eastern goldfields, this provision invites corruption because it invites the unfettered use of discretion. If improper use of discretion occurs either by corruption, by incompetence, or by malicious use of the power, we have no remedy whatsoever. The aggrieved person can do absolutely nothing about the matter. The person who exercises the power will not even be answerable to this Parliament. I should not imagine that would worry the Minister; he is quite complacent, sitting back there biting the end of his pencil and contemplating these facts. He is not at all disturbed. But this matter should disturb the Minister. It is scandalous. That is why it should disturb him.

The powers of the Minister go a lot further than members might imagine. The powers under this provision would allow the Minister to circumvent Parliament itself. This is the point the member for South Perth was raising a while ago.

Mr Hassell: What has it to do with delegation?

Mr GRILL: It has a lot to do with delegation because that circumvention of this Parliament can be done by the office boy within the department. That should disturb the Minister. This particular provision allows the Parliament to be circumvented because it allows the Minister an uncontrolled discretion in respect of the setting of conditions upon the granting of tenements. In other words, the Minister can set whatever conditions he likes upon the issue of those tenements. The Minister does not have to come to Parliament for the approval of an agreement in respect of the use of those tenements.

Mr Mensaros: That is nonsense.

The CHAIRMAN: Order! I again remind the member that he is straying from the central theme of clause 12. I ask him to confine his remarks to clause 12.

Mr GRILL: The central theme is in respect of delegation where the Minister has power to circumvent Parliament and that power also is being placed into the hands of the office boy and the other officers within the department.

Mr Coyne: You forgot the tea lady and the typists.

Mr GRILL: If the member for Murchison-Eyre wants to add them in, we will add them in. That is as wide as this particualr clause allows the delegation.

There is no qualification within clause 12 as to whom those powers may be delegated. If the member for Murchison-Eyre wants to include the tea lady, we can do that as well because the clause allows it.

This particular provision fits in well with the present philosophy of this Government. The Government is obviously authoritarian; it is obviously bureaucratic. It has passed some of the most bureaucratic legislation in the history of this State. It is proceeding with the most bureaucratic mining Bill the country is likely to see.

This provision is a disgrace, and I hope that every member here votes against it.

Mr GRAYDEN: In view of the fact that the Chairman is taking exception—probably quite rightly—to the way we are dealing with the matter, at this stage I shall move the amendment standing in my name on the notice paper. I move an amendment—

> Page 10—Add after subclause (3) the following new subclause to stand as subclause (4)—

> (4) Any person aggrieved by any decision of the Minister or any person appointed by the Minister may within thirty days from the date of such decision appeal against the same to a single Judge of the Supreme Court of Western Australia and therefrom to the full Court of the Supreme Court.

I am moving that amendment in view of what has been said during this debate.

It has been pointed out that the powers this Parliament is being asked to confer on the Minister are wide in the extreme. We are virtually conferring dictatorial powers upon the Minister. We are not placing any restraints upon him. In fact, we are going out of our way to say that not only are we placing the mineral resources of Western Australia in the hands of the Minister, but also we are allowing him to delegate his authority and place the mineral resources of Western Australia in the hands of the individual whom he appoints. In the light of that, it becomes absolutely necessary to have an appeal provision of the type I propose.

The Minister indicated the other day that nowhere in the world does the sort of provision in my amendment obtain. I want to tell him that this sort of provision obtains in many Provinces of Canada.

Mr Coyne: Have they not nationalised mining in Canada?

Mr GRAYDEN: I had occasion to obtain a copy of the Act in force in Nova Scotia. I point out that mining has been taking place in Canada for an infinitely longer period than it has been in Western Australia.

Mr Coyne: And it has been nationalised right around.

Mr GRAYDEN: It is a mining country, and there is a right of appeal. I will read a passage from the Act in Nova Scotia. It is section 118, which reads—

> 118 Any person aggrieved by any decision of the Minister or a person appointed by the Minister, except as in this Act otherwise provided, may within thirty days from the date of such decision appeal to the Trial Division of the Supreme Court and therefrom to the Appeal Division of the Supreme Court.

Section 119 reads—

> 119 An assessment shall not be varied or disallowed because of any irregularity, informality, omission or error on the part of any person in the observation of any directory provisions up to the date of the issuing of the notice of assessment.

Section 120 reads as follows—

> 120 Neither the giving of a notice of appeal by any operator nor any delay in hearing of the appeal shall in any way affect the due date, the interest or penalties, or any liability for payment provided by this Act, in respect of any royalty that is the subject matter of the appeal, or in any way delay the collection of the royalty but in the event of the royalty being set aside or reduced on appeal, the Minister of Finance shall refund to the operator the amount of the royalty or excess royalty paid by him, and of any additional interest or penalty imposed and paid on such royalty or excess.

That is the actual provision.

I telephoned Canada to inquire how the Act is working, because that is a mining country. Mining has been taking place in a very large way for infinitely longer than it has been in Western Australia. In the Mining Act of Nova Scotia there are appeal provisions. The Minister indicated that he was not aware of those provisions. I sent a telex to Canada which read as follows—

> Have enquiry from colleague concerning Canadian Mining Act. Is there a Province in Canada where companies or individuals have right of appeal against a ministerial decision relating to mining laws etc. If so could you briefly outline details of right of appeal. Also if right of appeal situation does exist what is opinion of industry to it, does it work?

In reply, I received a telex which stated—

> Re: your telex 17/10/78. Each Province of Canada has jurisdiction over its mineral resources and each has a Mining Statute.

Mr Coyne: Nationalisation!

Mr GRAYDEN: An appeal now becomes nationalisation! I will continue with that telex—

> In general all Statutes embody right of appeal from administrative decisions, usually including right of appeal to Provincial and Federal Courts and right up to the Supreme Court. We consider this a fundamental right essential to the mining industry.

Because we specifically asked a question, the telex continues—

> It works if you have the fortitude and financial muscle to battle authority.

That is the situation in Nova Scotia.

Sir Charles Court: That is the milk in the coconut.

Mr GRAYDEN: This is working well in Nova Scotia.

Mr Coyne: If you have $1 million.

Mr GRAYDEN: This is a favourite argument. As far as I am concerned, it is not in the present Act, and it is not necessary in that Act because all sorts of precedents have been established under the old Act. In the Bill, various changes are contemplated—sweeping changes in respect of delegation. The Bill also enables the Minister to bypass the Parliament in respect of the larger agreements affecting our mineral resources.

I maintain that this sort of provision is not vital in the present Act. However, I tell the member for Murchison-Eyre that I believe it is absolutely vital to have this sort of provision in this Bill, in the light of what is contained in clause 12.

Mr Coyne: You should not have read out that last bit.

Mr GRAYDEN: Goodness gracious me, I have a lot more to read out, so if the member for Murchison-Eyre will be quiet for a minute, as I have not much time, I will continue.

I also contacted the Canadian High Commissioner in Canberra, and he supplied me with details in respect of Quebec. Those details are as follows—

> Mining judge deals with appeals from decisions of the Minister, and with those cases referred to him by the Minister. The mining judge is appointed by the Lieutenant-Governor in Council.
>
> He has to the exclusion of any other court, jurisdiction over all litigation respecting in general any rights, privileges or titles conferred by the Mining Act, and in particular: a) the existence, validity or forfeiture of any prospector's license, operating license, mining concession mining lease, special license or exploration permit, b) the perimeter boundaries and extent of the land covered by such titles.

The information continues—

> Decisions of the mining judge may be appealed to the Court of the Queen's Bench.

In respect of New Brunswick, the information I received is as follows—

> The Minister may appoint one or more persons known as adjudicators who may investigate and decide all contentious matters relating to any rights or privileges arising from the Mining Act.
>
> Decisions of the adjudicators may be appealed to the Supreme Court of New Brunswick.

So it goes on.

I received another telex on the same issue—

Mr Coyne: Who paid for all these telexes?

Mr GRAYDEN: On this occasion, a telex was sent to the Minister for Natural Resources in the Province of Quebec. The answer received will be of great interest to members. The telex we sent reads as follows—

> Urgently request telex confirmation of the following:
>
> 1. Does Quebec mining law provide for companies or individuals the right of appeal against ministerial decision relating to mining law etc?
>
> 2. If right exists where is appeal directed?
>
> 3. If right of appeal does exist what is the opinion of the mining industry to the law? Does it work?
>
> Your cooperation requested as Western Australia Parliament currently in process of passing new mining legislation.

The telex we received from the Minister for Natural Resources in the Province of Quebec reads as follows—

> In answer to your telex addressed to the Minister of Natural Resources dated November 3rd:
>
> 1 et 2: Section 51 of the Mining Act (s.q. 1965, c. 34) provides for an appeal to the mining judge following the procedures set out in sections 282 and 283, when the Minister makes a decision pertaining to the refusal to record or to the cancellation of a claim.
>
> In particular, the mining judge has jurisdiction over all matters within the competence of the Minister under the Mining Act:
>
> a) by way of appeal in cases where and appeal lies
> b) upon a reference by the Minister in every case where the Minister deems it expedient.
>
> There is an appeal to the Court of Queen's Bench of any final decision of the mining judge.

I repeat that this was received from the Minister for Natural Resources in Quebec, who also said—

> 3: The mining industry is pleased with the procedures of appeal and reference and it works quite well.

> We will be pleased to send you a copy of our Mining Act.

This deals with the Province of Quebec, an area where mining has been conducted for longer than it has been conducted in Western Australia. There is an appeal provision in the Act there. The Minister said—

> The mining industry is pleased with the procedures of appeal and reference and it works quite well.

Mr Coyne: As long as you have a million quid!

Mr GRAYDEN: What a spurious sort of argument! We have it from the people there that it works for small and large operators alike. All sections of the mining industry in Quebec and other Provinces of Canada, after having experienced such a provision, welcome it. Why then are we opposing it? Members will remember the amendment I proposed, which reads as follows—

> Any person aggrieved by any decision of the Minister or any person appointed by the Minister may within thirty days from the date of such decision appeal against the same to a single Judge of the Supreme Court of Western Australia and therefrom to the full Court of the Supreme Court.

If there are any lawyers in the Chamber—and I understand there are—some of them would know the meaning in law of "aggrieved". It does not mean one can appeal to the Supreme Court simply because one does not like the decision of the Minister. If any member has that impression, let me disabuse him of it immediately. I have an extract from one of the law dictionaries in the office of the Clerk of the Parliaments. It deals specifically with the words "person aggrieved", and it reads—

> Generally
>
> If one came to the expression 'person aggrieved by the decision' without reference to judicial authority one would say that the words meant no more than a person who had the decision given against him; but the courts have decided that the words mean more than that and have held that the word 'aggrieved' is not synonymous in this context with the word 'dissatisfied'. The word 'aggrieved' connotes some legal grievance, for example, a deprivation of something, an adverse effect on the title to something.

Members will see that the word "aggrieved" has a meaning which, unfortunately, appears to be escaping some members. The extract continues, and instances the use of the word in other Acts. In respect of bankruptcy, it reads as follows—

> The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongly affected his title to something.

The CHAIRMAN: Order! The member's time has expired.

Sitting suspended from 6.17 to 7.30 p.m.

Mr MENSAROS: I should like to reply to the amendment by taking the reasons put forward by the member for South Perth individually in order to try to show why they do not fit the case and why they are inappropriate and do not necessitate the moving of such an amendment.

The member for South Perth said the amendment is necessary, firstly, because of the delegation powers contained in the Bill. He said it was necessary secondly because of the powers conferred on the Minister. The member implied the Minister can bypass Parliament. Thirdly, the member for South Perth said the amendment is necessary to provide a right of appeal to a judicial authority. He said such right of appeal was not necessary under the present Act because some sort of custom or usage had built up, but that such custom does not exist based on the Bill; therefore, the appeal right is required.

I should like to deal separately with the three main arguments in favour of the amendment. The first argument relates to the delegation powers contained in the Bill, and the fact that an avenue of appeal is necessary as a result of these powers. The member for Kalgoorlie implied—I have forgotten the adjectives he used—that the delegation powers were evil, because they talk about the opinion, the belief, and the state of mind of the Minister and/or the delegatee who is the officer of the department.

I respect the argument of the member for Kalgoorlie, but it would have been much more convincing had it not been for the fact that the very same terms appeared in almost a dozen Acts during the time he was Attorney General. I should like to give a few examples of this. One is the Environmental Protection Act, 1971, which was assented to on the 15th December, 1971. If my memory is correct, that was at the time the Tonkin Government was in power.

Mr Bertram: Are you suggesting that was not right?

Mr MENSAROS: The member for Mt. Hawthorn might have been the Attorney General at that time. That Act contains a power which provides for delegation to any officer of the department. It contains almost the same verbiage as appears in the Mining Bill. It then says that the exercise of the power of the performance of a function in relation to a matter is dependent upon the opinion, belief, or state of mind of the authority—that is the delegator—and upon the opinion, belief, or state of mind of the delegatee in relation to that matter.

I do not want to waste a great deal of time; but the same expression appears in the Aboriginal Affairs Planning Authority Act, 1972, which was assented to on the 9th June, 1972, during the time of the Tonkin Government. I cannot recall whether the member for Mt. Hawthorn or the member for Kalgoorlie was the Attorney General.

Mr Bertram: Why do you not do your homework?

Mr MENSAROS: We then had the Aboriginal Heritage Act, 1972, assented to on the 2nd October, 1972. Exactly the same verbiage appears in that Act as appears in the Mining Bill. Powers may be delegated to any officer of the department; in fact, to any person or body purporting to exercise the power. Another example is the Firearms Act, 1973, assented to on the 18th October, 1973.

Mr Cowan: Are there any rights of appeal?

Mr MENSAROS: We see the same expressions in that Act as are in the Mining Bill. That was during the period of administration of the Tonkin Government and either the member for Mt. Hawthorn or the member for Kalgoorlie was the Attorney General. We have the Youth, Community Recreation and National Fitness Act, 1972, assented to on the 15th September, 1972. It contains exactly the same verbiage regarding the delegation of power as we see in the Mining Bill. A further example is the Industrial and Commercial Employees' Housing Act, 1973, which I believe was one of the best pieces of legislation passed by the Tonkin Government.

Mr T. D. Evans: Would the Minister please read out the delegation section contained in the Youth, Community Recreation and National Fitness Act, 1972? He said it is identical. I defy him to show it is identical in essence with the clause in the Mining Bill.

Sir Charles Court: He said it contained the same verbiage.

Mr MENSAROS: I do not have the whole Act in my possession at the present time. I have a list of the Acts to which I am referring.

Mr T. D. Evans: It does not depend on the state of mind of the delegator.

Mr MENSAROS: Even if the member for Kalgoorlie is right and there are not a dozen Acts, but 11 only, they were all introduced during the time the Tonkin Government was in office and he was the Attorney General.

Mr B. T. Burke: And you were still wrong; that is the point. The point is what you are telling the Chamber.

Mr MENSAROS: From the point of view of the argument in relation to this amendment, I welcome the member for Balcatta. We did not miss him very much.

Mr Bertram: We certainly did. What about his electorate?

Mr MENSAROS: I said, "We". Regarding the argument in favour of the amendment being necessary on the grounds of the delegation powers, I wanted to point out that such expressions have appeared in legislation since 1970. The Crown Law Department has used it with very good reason, because what is the purpose of delegation? Among other things, the purpose of delegation is that the burden of workload should be removed from the top executive and in this case we are talking about the Minister. The burden should be placed on someone else who is given delegated powers. If this type of drafting was not used it would mean the person who delegates the power would have to instruct the delegatee as to what he should do. What is the purpose of delegation in that case?

In every case the person delegating the power would have to examine the situation and instruct the delegatee in what to do. One would have to spend twice as much time as in the situation where one undertook the work oneself. Therefore, it is logical that the Crown Law Department has adopted this type of drafting, because once the powers have been delegated the delegatee is someone in whom the person who delegates the power has confidence. The person who delegates the power is confident the delegatee can use and apply the law in the way he sees fit or, in other words, according to his opinion or state of mind.

Mr Cowan: What if he makes a mistake?

Mr MENSAROS: What if the Minister makes a mistake? We are all human.

Mr Cowan: In all the cases you have quoted, how many of them have the right of appeal? You

should take it the full length of the way and talk about the rights of appeal in these cases.

Mr MENSAROS: The leader of the juvenile party in Parliament has something to say.

Mr Cowan: If that is your opinion, you are juvenile yourself.

Mr MENSAROS: The member for Merredin is the youngest member; he is a juvenile and his party is juvenile.

Mr B. T. Burke: Mr Chairman, can you ask the Minister to speak to the Opposition? We do not want this carry-on on the Government side.

Several members interjected.

Mr MENSAROS: The comments made by the member for Merredin are not relevant, because human error can be made anywhere, whether it is an error by the Minister or by an officer. Therefore, the argument that only the Minister is infallible is not relevant. I happen to be a Minister at the present moment and I do not claim to be infallible. I do not think any other Minister, past or present, would claim to be infallible either.

Mr B. T. Burke: You certainly could not claim to be infallible.

Mr MENSAROS: The other fallacy in the argument put forward by the member for South Perth in favour of the amendment is that a number of provisions appear in the Bill which allow certain action to be taken by the Minister if he sees fit; therefore, he has a great deal of power. That provision appears in precisely the same way in many sections of the present Act which the opponents of the Bill wish to retain. I cannot see what the argument is in relation to this matter.

The other question in relation to the delegation of power and the necessity for an avenue of appeal is that no sanction appears in the Bill to cover the case where a delegatee makes a mistake. I ask the member for Kalgoorlie or the member for South Perth to show me one piece of legislation where a sanction is built in against the delegatee making an error if and when there is a right of delegation. I could not find one piece of legislation where remedy would be made to the person subject to the decision if the delegatee made a mistake or even abused the power he has received. The provisions for repercussions are found in the Public Service Act and related Acts. If the delegatee acts in an improper manner he is dealt with accordingly.

Mr Bertram: What about an error of judgment?

Mr MENSAROS: If the Minister acts improperly he is answerable to Parliament and to the public. Generally speaking, the argument which has been put forward to show that the amendment is necessary because of the delegation powers contained in the Bill is incorrect.

It could be debated also that in any Government, or in any business, leadership depends to a large degree on the proper delegation of power. One man, whether in Government, in business, or in any other occupation, cannot do everything himself if he has a proliferation of matters with which to deal. If this man can delegate his power by an authority contained in the Statute or by a simple administrative action to proper persons, he is a better administrator. That could be said for the American President down to the general manager or chief executive of a business.

With your permission, Sir, I should like to say a few words in defence of the officers of the Mines Department. With the exception of the member for Yilgarn-Dundas an implication has been made throughout the debate that all the officers are rogues and when we delegate powers to them everything will go wrong.That, of course, is not so.

I should like to point out also the pragmatic way in which the powers of delegation which have been claimed to be a reason for this amendment work. I have explained to the Chamber already in the second reading debate that a Minister has an immense number of files, most of which involve routine matters. No controversy is involved and they do not concern conflicting interests. The law is applied and it is a waste of time and money for every file to be dealt with by the Minister. A couple of minutes need to be written, they have to be signed, and all that involves work and time. The Minister signs the file in such cases where no conflict or controversy is involved anyway.

The second argument in favour of the amendment was in relation to the powers of the Minister. I should like to correct one statement made by the member for South Perth. I have no doubt he made this statement with the best of intentions; but it is entirely incorrect. The member for South Perth said that under this Bill the Minister can bypass Parliament. Mr Chairman, the Minister cannot bypass Parliament as a result of the provisions in this Bill any more than he can do so under the present Act.

There was some conversation—I cannot recall where—that the Premier or I, or maybe both of us, had said that the argument that the present Act had served the community tremendously well was not correct because there was not enough security in it, and we had to write agreements

between the companies and the State. We never said that under the new Bill we would not write agreements. In fact, that is the policy of the Government. It was an entirely new dimension in resource development and it was adopted by other countries and States. Numerous people from overseas countries have asked me about the Acts of Parliament incorporating the agreements, because they want to follow our example. The present Bill, however, gives so much more additional security.

Never did the Premier or I say that the Bill would make it unnecessary for such agreements to be presented to Parliament. This will be done just the same because the agreements deal not only with mineral rights, but also with the rights and obligations of the Government and of the companies which are developing. That situation will prevail in the future. All that was said was that the Bill would give more security to the companies contemplating large development before they come to the stage of writing the agreement with the State and therefore the Bill will be better than the Act. Consequently the announcement that an open cheque is being given to the Minister or the delegatee and that the right of appeal provided for in the amendment is necessary, is not correct.

The third argument in respect of the necessity for the amendment was that under the Act certain customs and usages had developed and therefore there was no necessity for a right of appeal, but the Bill will be new and consequently no precedents will be available. If members consider the matter properly they will realise that that is not quite right. Obviously, there will be new and different provisions in the Bill which are not contained in the Act.

However, by and large, the same people and methods will be involved and I am sure that, on reflection, the members for South Perth and Kalgoorlie will realise that once the Bill comes into operation the same customs and usages will prevail. In fact, in judicial tradition, if a Statute is changed it does not prevent a judicial authority referring to precedents under similar Statutes which have been amended.

According to the member for South Perth, the necessity for the right of appeal was fortified, because it exists in Canada. He indicated that I had said that I did not know of any place in the world where it existed. That is right, but I did emphasise that in no Australian State or New Zealand, where the principle prevails that the minerals belong to the Crown, does this right of appeal exist. The member for South Perth is right that in Canada it does exist, but not in all Provinces. It exists in four of the 10 or 11 Provinces. It prevails in various ways in the Provinces of Manitoba, Ontario, New Brunswick, and Quebec, but in many other Provinces—for instance in Nova Scotia—there is special provision for no right of appeal.

I confess that I did not have time to ascertain whether in the Canadian Provinces and federation the principle prevails that the minerals belong to the Crown, but it does prevail in Western Australia and in all the other States of Australia. As I have explained, because the minerals belong to the Crown it is logical the Crown should allocate them without a right of appeal. I was instancing the example, particularly for members representing remote country areas, that conditional purchase land was allocated on a freehold title by the Minister.

Mr Cowan: No, by a board.

Mr MENSAROS: But there was not a judicial authority which is in the amendment under discussion.

Mr Cowan: It was not allocated by the Minister, but by the board.

Mr MENSAROS: It was allocated by a board nominated by the Minister and the Government. It had nothing to do with an independent judicial authority. The arms of government according to the old principle are the Executive, the Legislature, and the judiciary. In the American system there are three different arms, and in our system there are two.

A member: It is not on a freehold basis, either.

Mr MENSAROS: It is, as long as the person abides by the conditions, and ultimately it will be freehold, as the member for Mt. Marshall would know. Does he not own his own land freehold? He does. Was it not a conditional purchase?

Mr McPharlin: Under conditions.

Mr MENSAROS: But he owns it freehold. There was no outcry, criticism, or even a suggestion in Parliament that that should be allocated by a judicial authority or that there should be an appeal from the board or Minister to a judicial authority.

As I said, pastoral leases are much nearer to mining tenements because they give the use of land, not in freehold title, but for a certain period of time which is a longer period than applies to mining tenements. They are allocated by the Minister. Is there any appeal against them? There is not. If there are conflicting applications, the Minister decides. Has there been any complaint in this Parliament? I ask the member for South Perth because he has been here the longest and,

after him, the member for Welshpool. Has there been any complaint in this Parliament that they should be allocated by a judicial authority?

Mr Jamieson: There have been some arguments about it.

Several members interjected.

Mr MENSAROS: The argument would have been perfectly logical because in that case the use of the land is for profit making.

Mr H. D. Evans: Rubbish!

Mr MENSAROS: I would ask the member for Warren to explain to me why it is rubbish.

Mr H. D. Evans: The use of the land is different. In one case it can be worth millions of dollars an acre.

Mr MENSAROS: Is that an argument from this point of view?

Mr H. D. Evans: Of course it is.

Mr MENSAROS: It is difficult to debate such a statement! In principle the argument is that it is a usage of land which is allocated by the Crown to whom the land belongs, through the Minister, and the same applies to the mining tenements. There was no complaint in this Parliament that pastoral leases should be allocated by a judicial authority or that there should be an appeal to a judicial authority. So the third argument in favour of the amendment concerning a right of appeal does not hold water.

Mr Grill: The situation is quite different. Land alienated from the Crown under the Land Act is not subject to a change of condition upon which the land is held at the whim of the Minister like a mining tenement under the Bill.

Several members interjected.

The CHAIRMAN: Order!

Mr MENSAROS: As I was saying,—

Mr Pearce: That is a fake analogy. There are minerals on only some sections of land, but most land can be used for agriculture.

The CHAIRMAN: Order! I advise the member for Gosnells that when I call for order I do not wish him to continue his interjection.

Mr Pearce: I did come to order and waited until the Minister began again before I interjected again.

The CHAIRMAN: I totally object to that and I ask you not to continue to behave in the manner in which you behaved before the tea suspension when you interjected on the Chairman. It is not your place to do so.

Mr MENSAROS: Having dealt with the three arguments submitted in favour of the amendment, let me deal with the pragmatic applications of such an amendment.

The member for South Perth has said that in those four Provinces in Canada where the right of appeal exists or a similar right of appeal exists, people who have the fortitude and finance can use it very well. This is precisely the pragmatic argument against it, apart from the philosophical argument, and it has been against it for the last 74 years.

Imagine the situation which would occur. Here we are trying to cut down on administration, but even now four to five months elapse, depending upon the number of applications, before decisions are made. What would be the situation if those people with fortitude and finance appealed against most of the applications? There would be a period of three to five years before finality was reached. What would happen to the land and minerals during that time? The land would remain idle. Is that what we want?

Mr Bertram: What we want is Government action!

Mr MENSAROS: The member for Mt. Hawthorn might, but I do not, and the Government does not because we want an economic climate for mining exploration. No matter how much I respect legal practitioners, this is not an exercise for them or for those who have the money to appeal and to use the provision incorporated in the amendment instead of relying on the Mines Department which has served the mining community without any fault, and the Minister of the day against whom there has been no accusation about improper actions. Certainly I cannot recall any, and that statement applies in respect of Ministers of both political colours.

I have indicated to the Committee that neither on the reasoning upon which the amendment was based nor for any practical reasons or reasons of principle is the amendment proper. Therefore I oppose it.

Mr T. D. EVANS: I support the amendment for the reasons I outlined earlier. The Minister is being given much wider powers than he has now—the Minister may dispute this, but I will stand my ground—and in addition he is to be given the right to delegate those powers as and when he thinks fit to whoever he thinks fit upon the state of mind of the officer who receives the delegation of powers.

The intention of the amendment is to provide for the right of appeal of an aggrieved person to the Supreme Court against the decision of the Minister and particularly when a decision has

been made by an officer who has received the delegation of power.

I take the opportunity to comment on the speech made by the member for Cottesloe who referred to the Commonwealth broadcasting legislation and tried to demonstrate a degree of similarity between the power of delegation under that Act and the power of delegation under the Bill. I spoke to a member about the matter during the tea suspension, and I wish he were here now. I do not say the member for Cottesloe has deliberately misled the House, but I do say that there is no similarity between the section in the Commonwealth legislation and this clause in the Bill, because the Commonwealth legislation does not refer to the state of mind of the person who receives the delegation of power.

I would not want it thought that the member for Cottesloe had punctured my argument. From recollection I cannot recall that the delegation depended upon the state of mind of the person delegating the power.

When the Minister spoke recently he referred to several Acts passed by the Tonkin Government. I have not had an opportunity to check what he said, but in at least two of these Acts referring to a delegation of power, the provisions were drawn up by some Parliamentary Counsel. I do not dispute that, and even though I was not the Minister in charge of those Bills, I will accept responsibility. If it is wrong now it was wrong then. However, I introduced the Youth, Community Recreation and National Fitness Bill, and I dispute that there is any reference in that to the state of mind of a peson delegating powers. However, in another of his sweeping statements the Minister said, "This is the sort of power instituted by the Tonkin Government."

I accept the challenge issued by the Minister when he asked me to refer to any other legislation where there is appeal from somebody to a plenary body and I would refer him to the Liquor Act. Under the provisions of that Act in certain circumstances the Licensing Court may delegate its powers to a stipendiary magistrate, and provision is made for an appeal to the Supreme Court. I hope the Minister is listening, because that answers his statement that we could not find any legislation in Western Australia providing for the delegation of power and also providing for appeal against a decision of the delegatee.

I strongly support the amendment, particularly for the reasons I outlined earlier. We should not give such strong, far-sweeping power to a Minister who can then, by a stroke of his pen, delegate that power to the officer, and the officer remains immune from any challenge even though he may have performed his duties in a manner not desired, not intended, and not even welcomed by the Minister.

Subclause (3) stipulates that the officer to whom the power is delegated will perform his duties strictly in accordance with the instrument of delegation. However, nowhere in the clause does it provide a sanction against the officer if he does not do this. It is all right for the Minister to refer to a subsection under the Public Service Act which provides for some sanction against the officer, but that is of little help to an aggrieved person against whom a decision may have been made incompetently and maliciously.

Mr Mensaros: Can you tell me any Statute where a remedy is built in?

Mr T. D. EVANS: I just told the Minister that the Liquor Act contains such a provision. Apparently he was not listening.

Mr Mensaros: I was listening.

Mr T. D. EVANS: The Liquor Act provides that the Licensing Court, under certain circumstances, may delegate its power to a stipendiary magistrate.

Mr Mensaros: That is two judicial authorities.

Mr T. D. EVANS: Under certain circumstances an aggrieved person has a right of appeal to the Supreme Court. Does that answer the Minister's question?

Mr Mensaros: All right, but I should have asked you can you tell me of any Statute where a power is delegated and there is any remedy from the point of view of the delegatee, an administrative authority, and that is the Minister?

Mr T. D. EVANS: When the Minister was speaking he asked me to name any legislation in Western Australia under which a body, receiving a delegated power—

Mr Mensaros: I should have said to an administrative body.

Mr T. D. EVANS: I oppose the clause, and I support the amendment.

Mr LAURANCE: I wish to indicate to this committee my strong opposition to this amendment which seeks to give the power of appeal to any person aggrieved by a decision of the Minister. I support the clause as it stands, giving the power of delegation to the Minister.

We have heard a great deal of debate this evening about this power of delegation, and I want to make a point to the member for Kalgoorlie who is leading the debate on this

clause for the Opposition. He has referred to a number of other clauses in the Bill, but every time he referred to the delegation of power, he referred to the delegation of power to another officer. However, these are political decisions; they rest with the Minister. For the word "Minister" we could read "the Government", and when the Minister delegates that power, the responsibility rests with him. The decisions made by that Minister are the responsibility of the Government, and if the decisions are unfair, and they are seen by the industry concerned or the community generally to be unfair, that Government will pay the political price. That is the way it should be; it is fair.

Mr T. H. Jones: It does not work that way.

Mr LAURANCE: That is the way decisions should be made, rather than giving a right of appeal against a decision of the Minister. When a Minister makes a decision, usually two parties are involved and one of them is perhaps aggrieved by his decision. In the event of subsequent litigation, the end result is that the person who can go the longest through the judicial system is the winner. With the effluxion of time the person with less money must lose because he has to give up the struggle. I find it very strange that the Opposition is supporting something which would give power to the strongest and the wealthiest in the appeal system.

Mr Grill: A simple appeal to the Supreme Court.

Mr LAURANCE: It is very strange that the Opposition is adopting this stance.

Mr T. D. Evans: It is a simple appeal to the Supreme Court.

Mr LAURANCE: The amendment says firstly to a single judge of the Supreme Court, then to the Full Court.

Mr Grill: It does not go on to the Privy Council or anywhere else.

Mr LAURANCE: The member for Yilgarn-Dundas should know more about this than I do.

Mr Pearce: And he does, too.

Mr LAURANCE: He has not done his homework very well.

Mr Pearce: You haven't done yours. If the Bill does not give the right of appeal to the Privy Council, there isn't one.

Mr LAURANCE: The member for Gosnells has jumped in with both feet, and he will pay the penalty along with his learned friend. They are both wrong.

Sir Charles Court: You don't have to write those words in.

Mr LAURANCE: I cannot understand the stance taken by the Opposition. It is supporting the strongest and the most powerful litigant. It is not supporting the small prospectors, but rather the person with the most money. This was borne out by the remarks made by the member for South Perth. I appreciate the great lengths to which he went to try to show that the situation in Canada supports his argument and this amendment, but then he went on to read out these words—

> It supports and favours those with the fortitude and financial muscle . . .

Mr Grayden: The opinion of one individual.

Mr LAURANCE: That is the opinion which the member for South Perth obtained from Canada to support his argument. This opinion was to the effect that the amendment will mean that those with the fortitude and financial muscle will win out in this system. I am opposed to the Opposition's stance, and I find it strange.

Mr Pearce: Tell us about the Privy Council appeal.

Mr LAURANCE: I would like to refer to a couple of analogies which were brought out by the Minister in his reply a moment ago.

Mr Pearce: But which were incomprehensible.

Mr LAURANCE: The Minister mentioned these also in his summing up of the second reading debate. The first analogy relates to conditional purchase land. This is a ministerial decision—

Mr Cowan: Not a ministerial decision.

Mr LAURANCE: The Land Board advises the Minister and he makes the decision.

Mr Cowan: The board makes the decision. The conditions are set down; they are rigid and they do not alter.

Mr LAURANCE: Once an application is approved, the successful applicant has to perform and the conditions are laid out under which he has to perform. If he does not perform he loses that conditional purchase land.

Mr Pearce: Argument by analogy is no argument.

Mr LAURANCE: It is up to the Government and the Minister to make fair decisions in that situation. The Government has done so in the past, and it can be done again.

Mr Pearce: Only some land contains minerals, but there is land on all land.

Mr Old: You cannot farm on all land; it is not all open to agriculture.

Mr B. T. Burke: It is not a CP block if it isn't farm land.

Mr LAURANCE: When speaking to the Budget debate, I referred to the North-West Shelf gas situation, and I came in for some criticism from people who are now opposing this clause when they tried to draw the analogy that we may give the Government the power to do in Western Australia what the British Government did in the North Sea. This brings me to the second analogy. The off-shore exploration permits once again are very similar. The Government could have given all the permits to the very large operators such as BP, Shell, Exxon and so on. These companies have the financial capacity to perform. On the other hand, the Government could have given all the permits to small local Western Australian companies who want an interest in this venture but who do not have the financial capacity and who would have to go overseas and trade with the large companies for farm-in and joint venture operations. The Government came down with a decision in the middle. It has entered into an arrangement for performance by the overseas companies and an equity for the local companies. That was a far better arrangement than would have been arrived at through the judicial system. Only a Government could make such an arrangement.

Mr Grill: What a lot of humbug. Your party still supports appeal to the Privy Council.

Mr LAURANCE: That is a red herring. Those decisions must rest with the Government, and as I say, if the Government makes the wrong decisions, it will pay the political price. For those reasons I oppose this amendment.

Mr McPHARLIN: I support the amendment moved by the member for South Perth, and I will give the reasons for my support. During my second reading speech I said I cannot recall having received so many protests from people and organisations in respect of any other legislation. Like other members I was approached by the Australasian Institute of Mining and Metallurgy and by the Amalgamated Prospectors and Leaseholders' Association which has been referred to previously.

Mr Coyne: Both fizzogs.

Mr McPHARLIN: The mining industry held a meeting in Perth, and of the 84 who attended 77 opposed the legislation.

Mr Coyne: Another fizzog.

Mr McPHARLIN: At the moment we are discussing delegation of power by the Minister. The Institute of Mining and Metallurgy made it quite clear how it felt, and I will not read out the whole statement as it has been referred to before. However, the institute did say—

> As a prerequisite to democratic and open Government there must be a means for appeal against the Minister's decision.

This matter was referred to also by the Amalgamated Prospectors and Leaseholders' Association. Just before the tea suspension I was amazed to hear the member for Cottesloe say that this Chamber was wasting its time. This is one of the most important pieces of legislation to come before us for a long time.

Mr B. T. Burke: He was wasting our time at that stage.

Mr McPHARLIN: The member for Cottesloe said we were wasting our time when we had this important clause and this very important amendment before us.

I made inquiries some months ago to ascertain whether or not a power of appeal was written into similar legislation in Canada; my information was that it was.

Mr Mensaros: Not in the country but in only four Provinces out of 11.

Mr McPHARLIN: I was informed that only last year, the Province of Quebec passed an Act to amend the Mining Act; it was assented to on the 21st May, 1977. Canada, of course, has been involved in the minerals and mining industry for a long time and if it sees fit to have an appeals provision written into its legislation, surely that indicates the necessity for such a provision must have arisen in its long years of experience. If it has been thought necessary to include an appeals provision in the Canadian legislation, surely we in Western Australia, with far less experience, should give similar consideration.

The member for Gascoyne suggested an appeals provision would cater for only the wealthy. However, Canada, with a population of some 20 million, certainly would not be looking to cater for only the wealthy. The argument put forward by the member for Gascoyne was specious and unfounded. We should trade on the long experience of Canada—another Commonwealth country—and move to insert appeals provisions in our legislation.

The Minister referred to a number of Acts which included "the opinion or state of mind of the Minister". Those Acts do not have the same application.

Mr Grill: Not at all.

Mr McPHARLIN: They cannot have the same application. In the mining industry, we are talking about an industry where one piece of land may be worth thousands of millions of dollars; we are talking about the wealth of the country. The application in this instance is totally different.

It is irresponsible of the Government not to consider including the right of appeal in this clause. Many people involved in the industry have objected to the clause. Surely to God we should listen to those people who are actually engaged in the industry. From where else are we likely to get this information? We must listen to people engaged in the industry, because the legislation directly affects their livelihood. A tremendous amount of debate, discussion and dissension has been aroused over this measure. Surely we must take cognisance of what the people in the industry have to say; that is what we are here for.

Mr George Compton, a highly regarded resident of Kalgoorlie—

Mr Coyne: You have to be joking!

Mr McPHARLIN: —has criticised the Bill. The member for South Perth referred to this matter.

Mr Coyne: Obviously you have not been to Kalgoorlie.

Mr McPHARLIN: In a letter to the *Kalgoorlie Miner* of the 4th October, 1978, Mr Compton had this to say—

> Granting of discretionary and indefinite power over the conditions of mining title, especially when hedged with such terms as the delegated "Opinion or State of Mind of the Minister," appears to be an open invitation for corruption of the department by those who might find it cheaper to gain title in the department than to gain it in the field.

Mr Coyne: Smears again.

Mr McPHARLIN: Mr Compton said just that it would be an open invitation; he did not reflect on any member of the Mines Department.

Mr Coyne: Not much he didn't. Don't be so naive!

Mr McPHARLIN: We know that officers of the Mines Department are highly creditable people; they are not the ones to whom Mr Compton was referring.

Surely it is one of the basic requisites of our modern society that any person who feels aggrieved on any matter of law shall have the opportunity to appeal to a higher authority. That person does not have to take advantage of the provision for appeal if he does not feel so inclined; nevertheless, such a provision should be written into our legislation.

Mr Coyne: Have you ever contested a traffic fine?

Mr McPHARLIN: I support the amendment moved by the member for South Perth, and I believe the Government would gain a great deal of credence and respect if it accepted the amendment. It would alleviate the fears held by many small prospectors, leaseholders and others engaged in the industry; certainly, it would comply with the wishes of many organisations which have raised protests about this legislation.

The member for South Perth told us a similar provision was operating satisfactorily in Canadian legislation, and that there was no reason not to include such a provision in our legislation. I support the amendment.

Mr GRILL: We are dealing very specifically with the right of a person aggrieved to appeal against a decision of the Minister or a decision of the person to whom the Minister has delegated his powers. Let us not make any mistake about that: We are dealing with the right to appeal.

In that regard, the Minister's speech—to use the words of the member for Gascoyne—was a fairly brilliant attempt to mislead this Committee. The Minister referred us to a number of Acts where an almost identical power of delegation was to be found. By implication he was saying that those Acts did not contain some sort of power of appeal.

Let me draw members' attention to the first Act to which the Minister referred; namely, the Environmental Protection Act. The Minister, by implication, said this Act did not contain a right of appeal.

Section 31 of the Act provides that it is the authority which has the power of delegation, with the approval of the Governor and, as distinct from the Mining Bill now before us, the powers of that authority are very succinctly spelt out and limited.

Mr Mensaros: If that is your only concern, and if you agree to conclude this part of the debate in three minutes I am quite happy to write into the legislation that it shall be with the approval of the Governor.

Mr GRILL: That is only part of it. If the Minister is going to take that sort of superficial view of what is being said, we can understand why he has written a Bill like this.

Mr Pearce: Why should it matter when he concludes? You should write it in if it is right.

Mr Harman: Legislative blackmail!

Mr GRILL: The Environmental Protection Act very succinctly and narrowly sets out the powers of the authority which are to be delegated. However, that is not the case in the Mining Bill before us tonight; those powers may be delegated without any criteria and are themselves without any criteria or guidelines.

Much more importantly, however, the Environmental Protection Act—this is the important part, and is where the Minister tried to mislead this Committee—gives two rights of appeal. It gives a right of appeal, firstly, to an appeals board, and, secondly, from that board to the Supreme Court. The Minister has wilfully tried to mislead the Committee in that regard.

The important thing to remember is that the very first Act to which the Minister referred contains two powers of appeal. Section 43 deals with appeals by person aggrieved—the very word used by the member for South Perth in his amendment—and section 44 provides for an Environmental Appeals Board to hear and determine such appeals. Section 46 goes on to set out the procedures under which appeals to the Environmental Appeals Board shall be heard. Section 48 even goes on to say what would happen where a particular board does not agree.

Section 49 goes on to state as follows—

> The President of a Board may, on his own motion or on the application of any party, state a case for the decision of the Full Court of the Supreme Court on any question of law arising on the appeal and a decision of the Full Court on a case stated binds the Board in making its determination on the appeal.

It is very clear the Minister has tried to mislead the Committee in that regard.

The main thing about this legislation is that it contains no guidelines. The powers of the Minister are open-ended and the powers of delegation are open-ended. In fact, in spite of what the Minister said, this Bill allows the Parliament to be bypassed. The member for Gascoyne tried to belittle the right to appeal on the basis that it allowed a rich person to take advantage of the system.

Mr Laurance: Never try to tell me again that you stand for the under-dog.

Mr GRILL: Just let me give the Committee a few ideas. I find there are a number of amateur lawyers opposite who proclaim they know what the law is; however, when pressed on a point of law they invariably cannot tell us just what they know about the law or where we on this side are wrong.

The thing about this particular appeal provision—if it is granted—is that it will go only to the Supreme Court of Western Australia. In the first case, it will be heard by a Supreme Court judge of Western Australia and therefrom, by the Full Court of Western Australia. However, it cannot go any further than that.

Mr Mensaros: Do not say that! If it goes to the Supreme Court and is defeated it can be taken automatically to the High Court and the Privy Council.

Mr GRILL: That is not correct.

Mr Mensaros: It is absolutely correct.

Mr GRILL: It is not correct; it will not allow an appeal to the High Court of Australia. It seems passing strange that a party which so strongly defends the right of appeal to the Privy Council should be here decrying any right of appeal whatever. I find that to be quite hypocritical.

Let us face it: This particular Bill and this particular provision are part and parcel of the bureaucratic and authoritarian grab for power of certain sections of the Cabinet.

Mr COWAN: The National Party supports the amendment moved by the member for South Perth.

Mr Coyne: Surprise, surprise!

Mr COWAN: Although it may be a surprise to some people who obviously have not listened to the debate, I am sure it will come as no surprise to those who have paid attention to the debate on this legislation. We support the amendment for several reasons.

Mr Coyne: Not very good ones, either!

Mr COWAN: I think they are extremely good.

Mr Coyne: I do not; I think you are scraping the bottom of the barrel.

Mr COWAN: The first thing I would like the Minister to explain—if he speaks again on this amendment—is exactly why this legislation should contain such sweeping powers of delegation. No such powers are contained in the original Mining Act. One power of delegation is dealt with on page 33 of the Act but is nowhere near as wide-sweeping as the provisions of the Bill before the Committee.

Most of the legislation I have seen pass through this Chamber which provides power of delegation by the Minister to somebody else—generally, a departmental officer—also provides for some

form of appeal against a decision made by a person acting on the Minister's behalf. I can think of several pieces of legislation that have this. If I stay with the industry with which I am most familiar, the agricultural industry, I could suggest the Minister look at the Wheat Delivery Quotas Act where authority has been delegated by the relevant Minister to a committee which arrives at a quota for a particular farmer. If that farmer objects to the quota allocated to him he has the right of appeal to the Minister.

In this case, in clause 12, if we are to see such wide powers of delegation by a Minister, there should be a right of appeal to the Minister in cases where the person to whom the power has been delegated has made an error of judgment.

Let us deal with an appeal against a decision by the Minister. I cannot see anything wrong with being able to appeal to the courts against decisions made by a Minister. The Minister has said we do not see these provisions in the allocation of Crown land for agricultural purposes. I think that is a very poor comparison. To begin with, Crown land is made available at times for the specific purpose of agriculture. In the case of mining, a person goes out and gets a prospecting licence. He selects a piece of land and then applies for permission to go ahead and start mining. In the case of agriculture, land is made available for farming purposes and a person then submits his name along with many other applicants. Any such person must then hope he has the credentials and the necessary qualifications to have the Land Board allocate the land to him. That is a completely different set of circumstances. In a highly speculative industry such as mining the Minister's comparison was very poor indeed.

A great deal has been stated in the Press about the term "socialistic intervention" in the mining industry, particularly in relation to certain action by the Federal Minister for Trade and Resources in regard to contracts or export licences for minerals. I know the Premier and other members of this Chamber have said this was socialism which was interfering with free enterprise in mining.

All clause 12 does is give to this industry in Western Australia socialism by ministerial direction. I cannot see anything different in that; I cannot see how members can sit in this Chamber and say socialism is practised federally, yet with this Bill and this clause say socialism is not being practised in this State.

I have a great deal of pleasure in supporting the amendment moved by the member for South Perth. I believe it is only right that if Parliament or the Government is to allocate these sorts of powers to the Minister or his delegates, there should be, in a very speculative industry such as mining, some right of appeal. As far as I am concerned, such a right of appeal is absolutely essential.

The Minister has made several rather emotive statements about opposition to this Bill from groups such as juvenile parties. As far as I am concerned that is a lot of rubbish. There is no-one in the National Party who believes members of the Mines Department are rogues or that the Government is evil as the Minister has said. The National Party is asking the Government merely to apply a little common sense.

Mr GRAYDEN: Earlier we were talking about the mining Provinces of Canada where the right of appeal is written into the mining legislation. I point out that this right of appeal exists also in respect of mining legislation in the USA. I have a document here titled *Mineral Titles and Tenure*, and I shall quote from it as follows—

> But should an adverse claim of right by another claimant arise, the mining laws provide for contest proceedings in any federal or state court of competent jurisdiction to determine which of the claimants has a superior right of possession. The Federal Land Office then merely suspends patent proceedings until the outcome is resolved and thereafter follows the court's ruling. This suspension of administrative proceedings for contested patents under the mining law is unique, as all other contested proceedings relating to dispositions of the public domain are adjudicated completely by the Department of the Interior and its subordinate bureaus, the jurisdiction of the courts being evoked only by a rejected applicant on appeal from a final administrative order.

Mr Laurance: The Minister has pointed out that it is freehold rights.

Mr GRAYDEN: What is the objection by the Western Australian Government to an appeal in a situation where a person is aggrieved? Prior to the tea suspension I quoted from a dictionary to indicate the word "aggrieved" has a meaning very different from that in common usage. The amendment I have moved does not suggest in any way that the courts substitute law and legal technicalities for a discretion of the Minister. The Minister has said otherwise, but he is not right.

We are not saying the Minister's functions should be displaced. We are saying there should

be an appeal against the Minister's decision if a prospector is aggrieved. The word "aggrieved" has particular legal connotations. A prospector will not be able to appeal simply because he does not like a decision made by the Minister. Miners will not be able to have judges replace the Minister. This must be very clearly understood. Prospectors themselves would be misled to think there would be no further problems once this amendment was adopted. The Minister's role would remain very much intact because the word "aggrieved" has a particular legal connotation.

As I said before, the word "aggrieved" means as follows—

> "The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudically affects his interests."

That means there must be some untoward happening in respect of the procedure by which an application is made. Therefore, I wonder what the objection is to an appeal provision. Canada has such a provision, and there has been mining in that country for 300 years, not just 150 years. Such a right of appeal exists also in the United States, and yet here, in legislation of this kind, the Government of Western Australia will not have it at any price.

The legislation we are dealing with contains sweeping powers in respect of the delegation of the Minister's powers. In addition, all sorts of agreements can be entered into without ratification by Parliament. The Minister has said this is not so and I draw his attention to what he said in this Chamber the other day.

He said the argument that the present legislation is good and that all development is based on that was not quite correct because if members consider all the large developments which have occurred—the member for Welshpool realised this—they would of necessity to some extent know the developments were based on enacted written agreements with large companies, because the Mining Act was not sufficient.

The Minister said that to say all mining development in Western Australia has taken place under this Act is not correct. The Minister said it was necessary to bring special agreements to Parliament, and he was referring to iron ore, bauxite, and uranium agreements. The Minister was saying that happened in the past, but that was because of a shortcoming in the Act. It is not correct, he emphasised, to say the present legislation has been responsible for all the mining development which has taken place in this State. The Minister went on to say, "The financiers were not prepared to risk investment capital in huge projects based on provisions of existing legislation. In future, it would not be necessary to bring such agreements to Parliament." The inference was that it was absolutely necessary to have this new Bill. That is what the Minister implied and that is what he meant. The member for Welshpool said, "What is wrong with doing that?" The Minister said, "Another reason we must have new mining legislation is to have more security."

The other day the Minister said that all opposition to this Bill emanated from and was paid for by Lang Hancock. Of course, that is completely untrue.

The CHAIRMAN: Order! I ask the member to relate his remarks to the clause.

Mr GRAYDEN: The intent of the Minister's statements in *Hansard* is quite clear. He said it was necessary in the past to bring agreements to Parliament, but this will not be so in future. He said another reason was that more security had to be provided. However, the Minister now denies that was his meaning. The Minister denies also that his statements in respect of the expenditure conditions on leases were as he said.

The CHAIRMAN: Order! I ask the member to relate his remarks directly to the amendment before the Chair.

Mr GRAYDEN: I am.

The CHAIRMAN: I do not find that so.

Mr GRAYDEN: We are dealing with an amendment which enables a person aggrieved by any decision of the Minister or any person appointed by the Minister, within 30 days, to appeal against the same to a senior judge of the Supreme Court of Western Australia and therefrom to the Full Court of the Supreme Court.

We have heard a lot of spurious arguments that these matters would drag from one court to another which, of course, is not so. We have heard spurious arguments that this would not help the little man because of the costs involved.

The argument was that if a small prospector had a mine worth perhaps $1 000 million he would not be able to raise funds to appeal to the Supreme Court against a decision improperly made by the Minister. The word "aggrieved"

refers to a person against whom a decision has been made improperly.

Mr Laurance interjected.

Mr GRAYDEN: I quoted a telex in which the key statement was that fortitude would be needed to take a case to the court. Anyone with a large deposit of ore would have the financial muscle to go to a bank, have the red carpet rolled out and be ushered into the manager's office. That would be the end of his financial worries.

Dr DADOUR: I support the amendment. I have listened to the debate closely and I have been consistent with my criticism of the Bill. I have been against the lack of a provision for the right of appeal of any aggrieved person. I believe this is British justice. I have been told on several occasions that nowhere else was this done. Now tonight I have heard that such a provision exists in Canada and in the United States. I was also told previously that there was a financial barrier with regard to the little man, but this is not true because money is available to enable the little man to appeal when he is aggrieved.

I believe in justice and I opposed the legislation when it was introduced in 1972. The present Bill is very little different from that one with regard to the right of appeal. The same applied in 1975 and 1978. I am against it and I will continue to vote against it.

I do not know why the Government wants the powers of martial law in regard to the legislation. It is almost as if we were at war with this totalitarian policy.

This Bill is not in accordance with Liberal policy. It never was. It was not drawn up by the Liberal Party.

Mr Coyne: Have you read our policy document?

Dr DADOUR: This is not a Bill to which the Liberal Party is committed. It is very much the same as the Bill which we opposed in 1972.

Mr Coyne: You just destroyed your own argument.

Dr DADOUR: Why is the legislation so sweeping? Why should we enable Parliament to be bypassed? Under the Bill it will be possible for any land to be given to any person no matter how large the area, without reference to Parliament and without the right of appeal. This is the total power being given so I must support the amendment which will make the Bill a little more palatable to me.

Mr JAMIESON: While I previously clearly indicated that the Opposition did not want the Bill and was prepared to vote it out, some improvement is better than no improvement, and obviously the amendment before us is an improvement and therefore we must go along with it.

The situation is very clear. When wide-sweeping powers are given, as is the case under the clause we are discussing, surely mistakes such as those we have been hearing about tonight can be made.

Mr Laurance: If the Opposition is so keen on the amendment, why did it not move it?

Mr JAMIESON: When I spoke on the second reading debate, the honourable member would have heard me say, if he had been in the Chamber, that we did not intend to move any amendments because we did not like the Bill. Also a moment ago I said that an improvement on something we do not like is better than no improvement. If that has not sunk in, I might have to repeat it again.

The situation is that the mind of the delegated person is referred to. The officer may have a bad liver one day and make a decision he should not have made. The Minister has said that there is recourse through the Public Service. However, once a decision is made, any Minister worth his salt would have to back up the officer concerned otherwise he would be mistrusted by his departmental officers. Therefore it would be far better to have a right of appeal to a court of law.

The Minister has made great play of the fact that in this way we would play into the hands of the big boys. This could be so, but that would be up to the Minister because if he wants to continue the appeal to higher and higher courts, which the Government could do because it has the Crown Law Department behind it, of course the appeal would cost a great deal of money. However, in all fairness once a decision has been made in a court of law, no matter how high the court might be, that decision should stand. If that principle were accepted by the Minister and the amendment were inserted, the clause would be a little better.

Much has been said about other Acts. We are dealing with the Bill before us. It is brand new legislation and we want to know the effect of the various provisions it contains. We do not want to know what is in other Acts or what the Tonkin Government included in its legislation, or what slipped through because the then Opposition was not observant and did not raise the matter. All these things happened in the past and have no relevance to the legislation before us. We are dealing with new legislation and we want it to be as clear as possible and to give a fair and equitable opportunity to all associated with

mining activities. If a right of appeal is provided at least this will help a little.

Mr GRAYDEN: Earlier tonight I touched on some of the bodies which wanted an appeal provision written into the legislation. I go further and say that every section of the mining industry wants the appeal provision. I have already quoted from the Amalgamated Prospectors and Leaseholders Association of Western Australia and from the Australasian Institute of Mining and Metallurgy and I have quoted the attitude of big companies as indicated by Amax. We all know what the Law Reform Committee of the Law Society has said. Perhaps the lawyers in the Chamber might find it worth while if I repeat what it said. It reads—

> The committee's attention was directed to a number of aspects of the Bill and the committee resolved to recommend to Council that the Society direct a letter to the responsible Minister bringing the following views of the Society to his attention:
>
> (a) On applications for or in connection with the grant, suspension or other dealing in respect of a mining tenement that the mining warden ought be required to grant or refuse the application. He ought not be required to recommend the grant or refusal of an application to the responsible Minister which, under the present Act, he does and under the proposed Bill he would continue to do.
>
> There should be provision enabling the responsible Minister to intervene and become a party to any proceedings in respect of a mining tenement.
>
> There should be a right to an appeal from the decision of a mining warden in respect of a mining tenement.
>
> These provisions would remove the anachronism that has previously given the responsible Minister power to administrate upon a person's proprietary rights without a judicial proceeding. The Minister should not be seen to administer upon such matters and if this proposal is adopted it will relieve the Minister of unwanted and unwarranted criticism in his administration of the Act.

That is from the Law Reform Committee of the Law Society.

Mr Coyne: A lot of egg-heads!

Mr GRAYDEN: The member for Murchison-Eyre says they are a lot of egg-heads. Would he say the same thing about his Amalgamated Prospectors and Leaseholders' Association? It agrees.

On numerous occasions the Minister has told us that the inspiration for the Bill was the Chamber of Mines. Let us see what the president of that chamber had to say in respect of the right of appeal.

Mr Mensaros: What date is that?

Mr GRAYDEN: I will give it to the Minister in a moment. It is headed, "Legislation and the Mining Industry".

Mr Mensaros: What date is it?

Mr GRAYDEN: It was presented by Mr L. C. Brodie-Hall.

Mr Mensaros: What date is that?

Several members interjected.

Mr Mensaros: To what Bill does it refer? That was in 1972. We are now on a different Bill.

Several members interjected.

The CHAIRMAN: Order!

Mr GRAYDEN: The Committee is so anxiously awaiting the date that I will give it. It is dated the 20th March, 1973.

Mr Mensaros: That is right!

Mr GRAYDEN: It was addressed to the Canberra branch of the Australasian Institute of Mining and Metallurgy on the 20th March, 1973. What is the Minister implying? Is he implying that Mr Brodie-Hall submitted views which happened to suit his convenience at the time and that now he has gone back on them? Surely he is not saying that. I will read what he said.

Mr Coyne: What did you say five years ago?

Mr GRAYDEN: I opposed the Bill when the Labor Party introduced it; I bitterly opposed it when the Liberal Party introduced a similar Bill; and I again oppose it. It is a reprehensible Bill and it will become a festering sore if it ever goes through the Parliament. The following is what Mr Brodie-Hall had to say when dealing with the principles of mining legislation—

> There are a number of important principles upon which mining legislation should be based.
>
> 1. Exploration and mining should be carried out within a framework of legislative enactment rather than discretionary powers.

> One of the most unsatisfactory features of mining legislation is the amount of discretion given to the Minister. If the Government has formulated a policy of exploration and mining it should be embodied in the legislation and few discretionary powers should be necessary. An excess of discretionary powers indicates that there is no policy and that the legislation is likely to be administered on an ad hoc basis or as political expediency requires. The mining industry is entitled to operate under rules which are known and certain. This certainly cannot exist where there are excessive discretionary powers vested in the Minister or his senior Departmental officers.

So we have against the Bill the prospectors—the little ones who get the gold and other base metals—those employed in the mining and metallurgic industry; and the Law Reform Committee of the Law Society. We know the small prospecting companies are against it as evidenced by the fact that 77 voted against the Bill the other day. They simply said they did not want the Bill, but wanted to stay with the Act. Actually, 120 voted against it because 43 made written submissions, but that fact was not recorded in the Press. So we have the small prospectors against it as is every section of the mining industry, and Mr Brodie-Hall, so prominent in the Chamber of Mines, as well as other mining organisations. No-one in the mining industry or the mineral exploration industry in Western Australia wants the Minister to have these powers of discretion.

They want the power of appeal to the Supreme Court in the case where a person is aggrieved. Why then are members on the Government side in this Chamber opposing the amendment? How will they justify their stand in their electorates and how will they be able to say that notwithstanding the fact that all sections of the mining industry requested it, they voted against it? The present system is working in Canada and in the United States, and there has been no attempt to repeal the legislation in those countries. Yet, here in Western Australia, where every single section of the mining industry considers this provision should be written into the Act, member after member has spoken against it. There is no earthly justification for that attitude. It can only be to give the Minister that additional power, the power to delegate; to do what he will with the mineral resources of Western Australia without reference to Parliament. There could be no other reason. There can be no logical objection to the amendment. It will simply give the right of appeal. Some members have talked in terms of no right of appeal, and the powers of delegation appearing in Acts relating to broadcasting. I could not care less about any appeal provisions in some other legislation. The Minister read out a list of Acts.

Mr Grill: There is the power of delegation in some of them.

Mr GRAYDEN: In some Acts, there is. However, the mineral resources of Western Australia are in a different category. It is imperative that we provide the right of appeal in our legislation.

The Minister, or the person to whom he delegates his power, could go on some sort of spree and dispose of all the highly mineralised areas in Western Australia. That would be possible within the lifetime of any Government, or within one year. This Parliament, after due and proper consideration, apparently will happily permit that possibility. Apparently the Minister will be given the power without any right of appeal. What sort of situation is that? Why is it being done? What have people to fear from the appeal provisions?

It is not intended that a person should be able to upset a decision by the Minister just because that person does not like the Minister's decision. Under the appeal provisions a person will have to establish that a wrong had been perpetrated such as that applications had been called for new ground and that the Minister had allocated the mineral tenement prior to the calling of applications. It will have to be something of that kind. Has any member a fear of an appeal as a result of a malpractice? If not, he will support this amendment. If anyone has something to fear, he will oppose it. The situation is as simple and as cut and dried as that.

Perhaps one of the most important things in respect of this amendment is the salutory effect it will have on the Minister of the day—the incumbent of the office of the Minister for Mines. The salutory effect would be that he would know that if he gave a decision which was not proper; if he did something outside the laid down procedure, then he could be taken to the Supreme Court. That is the situation.

Mr MENSAROS: During the lengthy debate I have taken every argument very seriously.

One argument raised during this debate was that the case I put forward was weak, and we need an authoritative argument. In other words, the argument put forward by the member for Mt.

Marshall, and the member for South Perth particularly, was that so many people are lobbying against the Bill. Therefore, it has been argued by the member for Mt. Marshall that he should not make up his own mind, but that he should listen to the people who lobby him. They are the vociferous people and, therefore, he makes up his mind accordingly.

May I say that some authorities which were mentioned were not quoted correctly. The Australasian Institute of Mining and Metallurgy does not oppose the Bill. It was a small section of opponents who wrote and circulated something to all members of Parliament. What they did was not according to the constitution of the institute, and what was written has been disowned by the executive. That should be known.

Equally, with regard to the Law Society—whose president wrote to me—the so-called subcommittee acted against the constitution of the society. It was not legal according to their constitution.

The third authoritative argument referring to someone who made comments on an entirely different piece of legislation in a different situation about five years ago just does not stand up. Unfortunately, I am old enough to know the well-worn argument which is that the more a verbose argument is repeated, the more people will believe it until ultimately one will believe it oneself. The argument has been repeated by people who were originally concerned—the very people who listened to the argument—that according to this Bill the Minister will be able to bypass Parliament. There is no basis whatsoever for that argument. If the member for South Perth—whom I respect—claims that I implied that the Minister will be able to bypass Parliament, as a result of something I said to him, I tell him—and I tell the public—it was never implied or intended that way.

There is no doubt that more security will be provided by this Bill. That does not mean the Government will change its policy by not writing agreements, nor does it mean that the Minister can bypass Parliament any more than he is able to do under the present Act. I want to make this very clear, and I hope it will be disseminated to the public who want to know the truth.

Mr Grill: What the Minister says is not necessarily true. Under the wide-ranging powers contained in this Bill, as compared with the existing Act, you will be able to bypass Parliament.

Mr MENSAROS: That does not mean one does bypass Parliament. One cannot bypass Parliament, in comparison with the present situation. One cannot do so any more or any less.

No Minister at present can write an agreement with any company. An agreement is written by the head of the Government—the Premier. Although I do not think there is any Statute to provide that an agreement has to be brought to Parliament, it has been the custom to bring agreements to Parliament and I do not think any Government will change that custom. In fact, I have pointed out to the Swedish delegation which is interested in Western Australia that the policy of the Government is to write its development agreements and then have them ratified by Parliament as a schedule to an Act. In that way, the rights and obligations of both parties become known.

Mr Grill: With your open-ended power to set special mining conditions, you could approve an agreement without the need to come to Parliament.

Mr MENSAROS: So has any Minister during the last 74 years. There never was an obligation to come to Parliament with regard to conditions on a mining tenement. Since 1904, there have been increased environmental requirements and other land usage requirements, and additional conditions have applied to tenements.

Any person who has been in government would have noticed that virtually every tenement has conditions applying to it which have never been brought to Parliament.

I want to reply to a novel question, and I apologise to the member for Merredin if he took offence at what I said. I simply meant to say I respected the young good-looking fellow who was the leader of the youngest party.

Mr Jamieson: You hardly said it that way.

Mr MENSAROS: I take the novel question seriously. The member asked why is it necessary for the Minister to have sweeping delegation powers, and when would he need to use them. I can give him a very simple explanation.

When the old Act was brought down, and when it functioned originally, there were very few people engaged in mining in a small part of the State. Therefore, most of the decisions with regard to the Mining Act of 1904 came from the Governor himself. The Governor, at that time, had a much higher decision-making power in the minds of the people because the State had become independent only a short while earlier. At that time there were only a few cases to be dealt with. Therefore, those cases went to the Governor or the Minister.

Since then, the whole State has been involved in mining. There are innumerable applications. The member for South Perth mentioned a figure of about 3.5 million mineral claims annually, and there are 38 other tenements. In reply to the member for Merredin, that was the reason for the delegation of power. The situation became so complex it was tremendously time consuming and was the cause of loss for everyone involved. If a file has to go to the Minister, or alternatively to the Governor, time, money, and effort are lost. Very few cases are contested; they are dealt with according to the regulations. There is no conflict of interest. Those are the cases which will be delegated.

I also said I was careful when drafting this legislation. I specified that when the Minister changes, all delegations are void. The new Minister would then decide which cases he could safely delegate.

May I say that to read into the draft of the legislation the most hideous and most impossible things is not the proper way to interpret it. I do not think the situation is as serious as has been put forward. I feel I have answered the new arguments raised.

Mr COWAN: I accept the Minister's argument in regard to the reason for the powers of delegation, but he has not given a reason for refusing any form of appeal. The Minister could accept it is possible there could be an error of judgment made by the person to whom he allocated authority. That being the case, why does he not accept that there should be some form of appeal to the Minister or the courts?

Mr GRILL: I have listened to the latest argument put forward by the Minister against the right of appeal, but I have not yet heard one positive argument against this right of appeal. If one of the persons to whom power is delegated—either incorrectly or incompetently, or mischieviously, or maliciously, or corruptly, to use a strong word—uses that power wrongly, surely there should be a right of appeal.

That is what the amendment seeks. If under those circumstances a mistake is made, whether negligently or maliciously, there should be some right of appeal. That is common, ordinary, natural justice. I do not know how anyone can argue against that.

The only real argument put up against this right of appeal is a general argument against all rights of appeal. When we analyse what members on the Government benches have said we realise their argument did not relate to the right of appeal under the Mining Bill; it was an argument against the right of appeal *per se*. I do not think any Government member sincerely thought he wanted to do away with rights of appeal in the Criminal Court, in civil courts, or in respect of other legislative bodies we have set up. Certainly members opposite do not want that. However, if we crystallise their argument it boils down to an argument against the general right of appeal on the basis that it would cost the little man too much to get justice as against the big man.

Mr Laurance: That is right; it is unfair.

Mr GRILL: However, their arguments fall down completely because if we allow the right of appeal we may be handing out imperfect justice—God Almighty, that happens every day—but at least we are giving some sort of justice to the people involved. The argument of members opposite denies the people any right to justice. I am sure all members opposite appreciate that from time to time one of the persons to whom power will be delegated will incorrectly use that power and deny these people their right to some sort of redress. To do that in these circumstances is really to deny them the basic things they expect from their members of Parliament; it is to deny them the things which have been handed down over the centuries to us which we cherish and for which we have fought for so long.

There needs to be, and there has not been, an argument distinguishing between civil and criminal rights of appeal on the one hand and rights of appeal under this Bill on the other hand. Until we hear competent argument put forward in that respect, we must, every one of us, vote for the right to appeal.

Mr T. D. EVANS: I take my third and final opportunity to support the amendment for the right of appeal in respect of the many instances in which the Minister may make a decision from which he is immune from challenge in the Parliament, and certainly from challenge within the courts. The Minister indicated he had been accused of allocating to himself powers which would override the Parliament and make him immune from the Parliament. He challenged us to show where such powers exist.

Clause 114(8) relates to the situation to which I referred earlier; that is, where a mining tenement or lease has expired by the effluxion of time or for some reason has been forfeited and tailings have been left by the former holder of the land, the Minister may determine the rent which will be levied against that person whilst the tailings remain. If the Minister delegates power under clause 114 to some officer, then the officer may determine the rent. Under normal

circumstances regulations set down what the rentals will be. We cannot expect these to be spelt out in an Act of Parliament; but at least we expect regulations to do this and the regulations must first of all be tabled within the Parliament pursuant to section 36 of the Interpretation Act, and be subject to challenge by the Parliament. Nowhere in this measure is provision made that where the Minister or an officer determines a rental, that rental may be challenged.

I hope that answers the Minister's challenge to us to show him where he can override the Parliament.

It is abundantly clear and just that there should be a right of appeal from the wide-ranging decisions capable of being made under this measure by the Minister; and much more so in cases where the Minister delegates powers.

A submission was made to the Minister by a special subcommittee of the Law Society of Western Australia. I found a copy of the submission on my desk, and I am sure other members received copies also.

Mr Mensaros: That submission was disowned by the president.

Mr T. D. EVANS: I do not want to upset the Minister, but he is not audible from my position, and it is unfair that when he interjects his interjections are recorded in *Hansard* although I cannot hear them.

Mr Mensaros: The submission was disowned by the President of the Law Society in a letter to me, and I understand a copy was sent to the Leader of the Opposition. It was unconstitutional for a small branch to do that, without taking the constitution into consideration.

Mr T. D. EVANS: I do not know why the Minister's comment was not published. However, that is completely irrelevant.

Mr Coyne: It is the most important part of it.

Mr T. D. EVANS: The member for Murchison-Eyre remained in the library last week and did not have sufficient guts to come down to the steps of Parliament House and face the people protesting about this Bill. I think he should mind his own business.

Mr Coyne: I told Laurie Wright the reason. He rang me and I told him we were poles apart, and I did not want to talk to him.

Mr T. D. EVANS: That is completely irrelevant also. Irrespective of the source of the submission which I believe came from the Law Society, it made the point that the natural resources of the ground could and should be alienated with the right of the Minister to be represented at the hearing to indicate the policies of the Government in respect thereto in a Warden's Court, from which there is a natural course of appeal.

That is where the Bill is deficient. When I was the spokesman for the Opposition in the field of mining prior to the last election, it was our policy to amend the existing Mining Act. That was part of our plan to overcome the numerous inequities. Certainly there are inequities attaching to the granting of temporary reserves under the existing Act. As the member for South Perth has pointed out, and I agree with him, the natural resources of the Crown should be applied for and be subject to open hearings in a Warden's Court, with the Minister having the right to be present to state the policy of the Government. The warden should make his decision after the normal inquiry and probing, and there should be a right of appeal to the Supreme Court against his decision. That is the present situation.

That is all the amendment seeks to do, and I fully support it.

Amendment put and a division taken with the following result—

	Ayes 21	
Mr Bertram	Mr Hodge	
Mr B. T. Burke	Mr Jamieson	
Mr Carr	Mr T. H. Jones	
Mr Cowan	Mr McPharlin	
Dr Dadour	Mr Pearce	
Mr Davies	Mr Skidmore	
Mr H. D. Evans	Mr Stephens	
Mr T. D. Evans	Mr Taylor	
Mr Grayden	Dr Troy	
Mr Grill	Mr Bateman	
Mr Harman		*(Teller)*
	Noes 22	
Mr Blaikie	Mr Nanovich	
Sir Charles Court	Mr O'Connor	
Mr Coyne	Mr Old	
Mrs Craig	Mr O'Neil	
Mr Crane	Mr Rushton	
Mr Grewar	Mr Spriggs	
Mr Hassell	Mr Thompson	
Mr Herzfeld	Mr Tubby	
Mr Laurance	Mr Williams	
Mr MacKinnon	Mr Young	
Mr Mensaros	Mr Shalders	*(Teller)*

Pairs	
Ayes	Noes
Mr Tonkin	Mr P. V. Jones
Mr Wilson	Mr Ridge
Mr Bryce	Mr Sodeman
Mr T. J. Burke	Mr Watt
Mr McIver	Mr Sibson

Amendment thus negatived.

Clause put and passed.

Clause 13: Wardens of Mines—

Mr GRILL: Subclause (1) states that any stipendiary magistrate may be appointed by the Governor to be a warden of mines. However, I

object to subclause (2) which states that without prejudice to subclause (1) the Governor may appoint other fit and proper persons to be wardens of mines, and the persons so appointed shall be paid such remuneration as the Governor determines.

The offending words in that clause, in my view, are "fit and proper persons". Nowhere does the Bill set out the persons who would be fit and proper to become wardens. This seems to give to the Governor an open-ended discretion in respect of whom he may appoint. The Bill does not lay down any criteria as to who is fit and who is proper.

The Government has already agreed or indicated that it will amend this Bill to give to wardens a jurisdiction equivalent to that of a judge of the Supreme Court. In the light of that, it is entirely wrong and improper to leave this open-ended provision in clause 13 of the Bill.

Mr Mensaros: What do you suggest instead?

Mr GRILL: I would suggest the qualification of "a lawyer of some five years' standing".

Mr Mensaros: You come along with that. The member for Kalgoorlie has entirely different views.

Mr GRILL: I doubt whether he has. If he has, he can express them.

I cannot see how such an open-ended provision can remain in legislation of this nature. If we are to appoint some person with the powers of a judge of the Supreme Court, he must have the normal qualification of a person who becomes a member of the Supreme Court, or at the minimum he should have the qualifications of a stipendiary magistrate.

I am not opposing giving these powers to the wardens. Historically, wardens have had these powers, and they should continue to enjoy them. They have not abused the powers. At times it is essential for wardens to have the powers, especially in the case where the jurisdiction of a mining plaint is such that those powers are required. I think such an open-ended provision in the Bill is probably an oversight on the part of the Government. If the Government wished to appoint someone who had the powers of a Supreme Court judge, it would not have allowed a provision like this to be placed in the Bill.

The qualifications of the wardens must be spelt out. As matters stand, there is no indication of who is fit and proper. Those words cannot be defined judicially. Do they mean a person who had no criminal offence to his name? Surely the Governor must have some better guidelines for appointing wardens, with the sweeping powers that they will have, than the guidelines in the Bill. Even if the powers of the wardens were limited, I would have thought an open-ended provision like this would have been wrong and I would have argued against it. As the powers of the wardens will be those of Supreme Court judges, I could not imagine that the President of the Law Society would be prepared to accept a provision such as this.

I refer also to subclause (3). I do not really understand that subclause, but it seems that some public servant could be appointed to be a warden. I would counsel against that sort of situation. The bureaucracy or the department has wide-ranging powers under this Bill. If the Government starts appointing members of the Mines Department to be wardens—

Mr Mensaros: It is not starting. It has done that for 74 years.

Mr GRILL: Perhaps the Minister can correct me. I do not know of any previous occasion when a warden has been appointed and has remained a member of the Mines Department.

Mr Mensaros: It is the case now, and it has been always.

Mr GRILL: Which particular warden does the Minister point to who was also a member of the Mines Department?

Mr Mensaros: There are quite a few. I do not know the names, but I will supply you with the names.

Mr GRILL: Where do they operate?

Mr Mensaros: In Perth. There are a lot of things which have to be decided in Perth.

Mr GRILL: I doubt whether that is the case. Certainly no mining warden in Kalgoorlie that I have been aware of for a considerable time has been a member of the Mines Department. In any event, it is a bad practice to have the bureaucracy so close to the administration of the law.

The wardens represent the judicial side of the operation of this Bill. A warden should not be so enmeshed in the department that he can remain a member of the department. Obviously he could be drawn from the Mines Department. If this sort of thing has been allowed under the old Act—and if it has, I was not aware of it—it is a practice which should be frowned upon and should cease immediately. In the rough and ready days of 1904 that sort of thing may have been allowed; but it should not be allowed today.

We are concerned with a multi-million dollar industry. We are dealing with the rights and privileges of persons who are dealing with the

great assets of our State. On two counts, this particular provision is an incorrect one. It is one that the Government should amend. We will not move to amend it, but we will vote against it. Certainly it is a provision that should not be passed unaltered.

Mr T. D. EVANS: I support the previous member in questioning the need for part of this clause. However, before I deal with that, I would like to take the opportunity to ask the Minister if, whilst interjecting on the previous speaker, he referred to the member for Kalgoorlie and a certain view that the member for Kalgoorlie might have had. Unfortunately I was not able to interject at the time because I was not in my seat. I would like him to answer by way of interjection so I can clear up the matter.

Mr Mensaros: I understood when we discussed this Bill at length—privately as well as officially, so to say—that you were asking for the jurisdiction of the warden to be placed on the same level as it is under the Act. To my best knowledge, you never made a suggestion or complaint that the warden should have legal qualifications. I think you accepted that the warden—as there are not enough lawyers anyhow—should be, as has been the case for the last 74 years, a proper person. You know very well that where possible we appoint a magistrate; but there could be occasions when it is not possible.

Mr T. D. EVANS: I thank the Minister for the explanation in his interjection. That nevertheless does not weaken the argument advanced by the member for Yilgarn-Dundas. In fact it strengthens it.

It is true that the member for Welshpool and myself met with the Minister and his under secretary. We made certain submissions on how we felt the Government could, without acrimony, achieve a workable and acceptable Mining Bill. With goodwill, the Opposition made certain submissions to the Minister, one of which related to safeguarding the long-established, respected, and understood jurisdiction of the Warden's Court; that is, that a warden was capable of exercising the powers of a Supreme Court judge. I am very glad to see the Minister has sought to provide an amendment which will restore this jurisdiction.

In the past, one could count on the fingers of one hand the number of persons who have been appointed—and in most instances for very short periods—and who have not been stipendiary magistrates—previously referred to as resident magistrates. However, these persons had some legal qualifications. They were not all necessarily legal practitioners, but those who were not were required to pass examinations by the Public Service Board for entry into the magistracy.

Today, the need for persons other than those who are qualified to sit as stipendiary magistrates does not exist. Why should the Bill contain a provision allowing for persons whom the Government thinks fit and proper persons, other than stipendiary magistrates, to be appointed as wardens—people who will have the full powers of a Supreme Court judge?

I agree that wardens should exercise this power. I believe that persons who are to be given the powers of wardens should at least be stipendiary magistrates or people capable of being appointed as stipendiary magistrates. In answer, the Minister should not say it is already in the old Act. He has hastened to say this on previous occasions.

The provision in this clause will be the perfect recipe for a breakdown of the role of wardens if persons without legal training are vested with the powers of a Supreme Court judge. I hope the Minister can explain why the Bill should contain a provision allowing for persons whom the Government considers are fit and proper persons, other than stipendiary magistrates, to be appointed as wardens.

Mr MENSAROS: The practicalities and the possibilities which may arise in the future dictate that one should not specify a lawyer to be a warden. The member for Kalgoorlie was quite right when he said that in most cases magistrates have been appointed to the position, and so they will be in the future. But that does not mean we should build up a barrier in the Act and say that no-one else can be appointed, because there can be occasions during mining booms and times of increased mining activity when we are unable to find sufficient lawyers to fill the position of warden. I cannot accept the argument that we are overdoing this and I ask the member for Yilgarn-Dundas how he might better define the matter. The appointor will judge who is the right and proper person.

As to Mines Department officers being appointed wardens, the member for Yilgarn-Dundas appears to be a knowledgeable lawyer and he wants people like himself to be appointed as magistrates. He is from Kalgoorlie so he is a mining man. But he overlooked that section 7 subsection (3) of the Act allows the Under Secretary for Mines to be a warden by virtue of his office. The member should not say he is more

knowledgeable than anyone else in respect of the Mining Act.

Mr T. D. Evans: How many times has the under secretary actually officiated as a warden.

Mr MENSAROS: The member for Yilgarn-Dundas has said this is irrelevant but it is not. The Act contains that provision. The under secretary does officiate as a warden; not necessarily in open court, but there are cases, such as entry to private property, which are not contested and which can be dealt with, and this provision will be used probably in exactly the same cases as it has been used in the past. Referring to an officer of the Mines Department amounts to the same thing.

I come back to the old argument which is used when convenient and forgotten when inconvenient, and that is: axe the Bill and leave the Act. Yet we are doing something here which is not different from what is in the Act; it is only a practical consideration. It is unlikely that in normal circumstances, if lawyers are available, other than magistrates will be appointed as wardens.

Mr GRILL: The Minister is quite right in that section 7 subsection (3) of the present Act states that the Under Secretary for Mines is by virtue of his office a warden; however, the member for Kalgoorlie has pointed out that is only a formal situation.

Mr Mensaros: So it will be in the future.

Mr GRILL: That warden never really officiated in court. We must get away from this argument being put forward by the Minister time and time again that if something is in the present Act it is all right and if it is in the Bill it is still all right. The Opposition does not argue that way. We say the present Act has imperfections and those imperfections should be remedied.

To bring the mining law in this State up to date it would be better if the present Act were used as the vehicle for that purpose, and this is so for many reasons. It is a better vehicle than the new Bill. We do not say the present Act is perfect, but this Bill is far from perfect. I do not think it is a proper argument for the Minister to say something is in the present Act and therefore we must all agree with it.

The crux of the argument we are putting forward in respect of clause 13 is very simple. If we are giving someone the powers of a Supreme Court judge, which are extremely wide, we must ensure that person has some legal qualification. It would be ridiculous for me to suggest we should appoint a Supreme Court judge who had no legal qualifications. It is almost as ridiculous to appoint a warden under the Mining Act and give him the powers of a Supreme Court judge without being satisfied he has some legal qualifications.

Mr Coyne: He is only sitting in a warden's situation. It is very narrowly defined. He is not dealing with all aspects of law.

Mr GRILL: He can deal with all aspects of law. He can exercise that power. He does not normally do it; but he is more likely to exercise that power when he is dealing with a fairly complicated mining matter, such as the dispute between North Kalgurli Mines Ltd. and Great Boulder Mines Limited over the Scotia and Carr Boyd leases.

Mr Coyne: Obviously he would not sit on a matter like that.

Mr GRILL: He did sit and QCs argued before him. Not only were matters involving millions of dollars being argued; but very complicated matters and far-ranging legal arguments were put forward also. These involved not only mining law, but involved also common law, contract law, estoppel, tort law, and involved equity as well. A whole range of legal problems were examined and decided before that particular magistrate who at that time was the mining warden. He handled the case very well and the decision which was handed down was a good one, but that particular warden had long experience in the Crown Law Department and was thoroughly legally trained. He had a law degree also.

This Bill proposes that a person hearing that sort of complicated case—and these cases come up from time to time probably more frequently than one would imagine—should not be legally trained in some way. That is ridiculous. I do not believe that is the intent of the Government. I think the Government probably allowed this particular provision to slip through when the position of the warden was down-graded severely; but now that the Government has acceded to the request of the Opposition to upgrade the jurisdiction of the warden, I believe it is absolutely ridiculous and very dangerous to allow this particular provision to stay in the Bill.

There is room for this sort of provision to be abused. I am not saying this Minister would abuse it; but another Minister—a corrupt Minister—could appoint a friend who would be a lackey. These sorts of provisions should not apply when dealing with a difficult matter such as law.

Clause put and a division taken with the following result—

Ayes 24	
Mr Blaikie	Mr Nanovich
Sir Charles Court	Mr O'Connor
Mr Cowan	Mr Old
Mr Coyne	Mr O'Neil
Mrs Craig	Mr Rushton
Mr Grewar	Mr Spriggs
Mr Hassell	Mr Stephens
Mr Herzfeld	Mr Thompson
Mr Laurance	Mr Tubby
Mr MacKinnon	Mr Williams
Mr McPharlin	Mr Young
Mr Mensaros	Mr Shalders *(Teller)*
Noes 18	
Mr Barnett	Mr Grill
Mr Bertram	Mr Harman
Mr B. T. Burke	Mr Hodge
Mr Carr	Mr Jamieson
Dr Dadour	Mr T. H. Jones
Mr Davies	Mr Skidmore
Mr H. D. Evans	Mr Taylor
Mr T. D. Evans	Dr Troy
Mr Grayden	Mr Pearce *(Teller)*

Pairs	
Ayes	Noes
Mr P. V. Jones	Mr Tonkin
Mr Ridge	Mr Wilson
Mr Sodeman	Mr Bryce
Mr Watt	Mr T. J. Burke
Mr Sibson	Mr McIver
Mr Crane	Mr Bateman

Clause thus passed.

Clauses 14 to 18 put and passed.

Clause 19: Power to set apart Crown land for mining or exempt it therefrom—

Mr GRAYDEN: I refer members to the wording of clause 19(1). We have an almost identical provision in clause 24, but this involves the Governor. I am referring to clause 24(2)(a) and (b) which deals with public reserves, and I refer members to the wording of it.

Here we have a clause in relation to reserves which requires the Governor by an order in council to take certain action. In the clause relating to Crown land the Minister may from time to time by instrument in writing exempt any Crown land. I cannot see why in both instances the Governor should not, by an Order in Council, do what the Minister is empowered to do.

We have the two provisions doing virtually the same thing, but in one case the Governor by order in council is involved while in the other the Minister is involved. It would be infinitely more satisfactory for the Governor, by Order in Council, to do something of this consequence—and it is a thing of consequence. I therefore move an amendment—

> Page 12—Delete subclause (1) with a view to substituting the following—
>
> (1) (a) The Governor may by order in council exempt any Crown land not being crown land that is the subject of a mining tenement, from mining, or from any specified mining purpose, or from this Act or any specified provision thereof and as from the date so specified this section shall apply to the extent and in the manner specified by the order in council.
>
> (b) The Minister shall cause an order in council made pursuant to paragraph (a) of this subsection to be laid on the table of each House of Parliament within twelve sitting days of its making and if either House does not pass a resolution disallowing such order in council within twelve sitting days of that House after the order in council has been laid before it the order in council shall have effect from the date of its making.

Mr MENSAROS: I do not think this is a matter which will create a heated argument or which involves principles to which the member for Subiaco might refer. The same provisions are in the Act under section 29, but the difference is that the Governor and not the Minister exempts the land. As I have explained often, one of the main aims of the Bill is to streamline administration and instead of having to wait for the matter to go to the Governor, the situation is left in the hands of the Minister.

Let us consider the practical applications of the provision. The situation is vastly different when a reserve is created. In those circumstances I agree that the decision should be in the hands of the Governor. The only practical application that I can recall was in connection with the Weebo stones. It was alleged that the land in question was on an Aboriginal sacred site and so a quick decision had to be made regarding the exemption from mining of that particular small piece of land.

There is another fault in the amendment which we can see if we bring it into perspective and consider the later amendment the honourable member proposes. Let us appreciate that the amendment deals not only with the exemption of Crown land, but also with the proposal being tabled in Parliament when Parliament can disallow it within 12 sitting days. Therefore either in a positive or negative way it becomes more or less a parliamentary decision. Then the member for South Perth in another amendment provides that the decision which was potentially Parliament's decision can be annulled by the Minister. I cannot see the logic of the proposal

For instance, with regard to the Weebo stones, according to this amendment parliamentary approval would have been required. The matter would have gone to the Governor who would have issued an order in council, following which Parliament would have discussed it—and we all know that when Parliament is in session 12 sitting days means four weeks while if Parliament is not sitting any period could be involved—and in that time the Weebo stones could have been destroyed as a result of mining operations.

Reference has been made to pastoral leases some parts of which, like water bores, might be exempt from Crown land subject to mining because the land is an important ingredient of the pastoral leases. If we do what the member for South Perth suggests we cannot protect these pieces of land because sometimes there is a delay of several months and then when the reason for protection ceases, the decision which was then subject to Parliament could be undone by the Minister.

I cannot understand the amendment and I oppose it.

Mr GRILL: I would like to ask the Minister a question in relation to clause 19(3).

The DEPUTY CHAIRMAN (Mr Blaikie): Order! The member for South Perth has an amendment before the Chair which is to delete subclause (1).

Mr GRILL: I understood that when dealing with clause 19 we could deal with anything.

The DEPUTY CHAIRMAN: Not when there is an amendment before the Chair.

Mr GRAYDEN: I do not accept the argument of the Minister who quoted the situation regarding the Weebo stones and said that fairly quick action was necessary. He indicated that had it been necessary for a decision of the Governor by order in council to be obtained a delay would have occurred. That is not so. If a matter is urgent enough the Minister can quickly obtain the Governor's signature in Executive Council.

Now that we have no appeal provision in the legislation the Minister at any time he pleases may exempt land from mining. He can do this for all sorts of improper reasons. We do not know what some future Minister will do. He could exempt an area from mining one day and then cancel the exemption the following day. It is a most unsatisfactory state of affairs. If my amendment were adopted the decision could be made quickly and we would avoid any capricious and *ad hoc* decisions about which we have complained. The situation would not be so serious if the right of appeal had been included, but in the present circumstances the Minister could from time to time for any improper purpose exempt any Crown land. We should adopt the amendment.

Mr COWAN: The member for South Perth has indicated clearly why the amendment should be supported. It is not satisfactory for the Committee to be told that the Minister will use his discretion carefully and judicially. As the member for South Perth said, it would be preferable for the land to be exempted only after the matter had been brought before the Parliament and this would be possible under the amendment. It would be much fairer, especially in view of the fact that the Government would not accept amendments to clause 12.

Mr MENSAROS: What is the use of bringing the matter to Parliament when the same member's amendment provides that the Minister can, with a stroke of the pen, undo Parliament's decision? That is what the honourable member provides in his amendments. He should read them.

Amendment put and a division taken with the following result—

Ayes 21

Mr Barnett	Mr Harman
Mr Bertram	Mr Hodge
Mr B. T. Burke	Mr Jamieson
Mr Carr	Mr T. H. Jones
Mr Cowan	Mr McPharlin
Dr Dadour	Mr Skidmore
Mr Davies	Mr Stephens
Mr H. D. Evans	Mr Taylor
Mr T. D. Evans	Dr Troy
Mr Grayden	Mr Pearce
Mr Grill	*(Teller)*

Noes 21

Mr Clarko	Mr Old
Sir Charles Court	Mr O'Neil
Mr Coyne	Mr Rushton
Mrs Craig	Mr Sodeman
Mr Grewar	Mr Spriggs
Mr Hassell	Mr Thompson
Mr Herzfeld	Mr Tubby
Mr Laurance	Mr Williams
Mr Mensaros	Mr Young
Mr Nanovich	Mr Shalders
Mr O'Connor	*(Teller)*

Pairs

Ayes	Noes
Mr Tonkin	Mr P. V. Jones
Mr Wilson	Mr Ridge
Mr Bryce	Mr MacKinnon
Mr T. J. Burke	Mr Watt
Mr McIver	Mr Sibson
Mr Bateman	Mr Crane

The DEPUTY CHAIRMAN (Mr Blaikie): The voting being equal, I give my casting vote with the Noes.

Amendment thus negatived.

Mr GRILL: Subclause (3) of clause 19 states—

> (3) While any land is so exempted from mining or any specified mining purpose, or from this Act or any specified provision thereof the land to the extent of the exemption, ceases to be subject to the operation of this Act.

I think I can see what the provision is getting at, but it seems a clumsy way to exempt land from mining operations. Could the Minister explain why it is necessary to make the land cease to be subject to the operation of the Act? The very next provision goes on to designate how that land will be dealt with. So, it certainly is not entirely exempt from the provisions of the Act. I suggest the Minister would not want his own power over that piece of land to cease. If the land ceases to become subject to the operations of the Act, it probably will cease to become subject to his authority at all.

My second question relates to subclause (4) (a), which states—

> (4) While any Crown land is exempted pursuant to this section, the Minister—
>
> (a) may call applications for such mining tenements in respect of the land or any part thereof on such terms and conditions as he determines;

That seems to me to be a very dangerous provision. I do not suggest the present Minister would abuse it, but it will allow any Government of the day of any political persuasion to play favours. Applications could be called for the exempted land on conditions that would fit one company or another. Applications could be called in such a way that an overseas company, perhaps, might be the only one to qualify under the conditions. I have no quarrel with overseas companies holding land in Australia as long as they abide by our conditions. However, it seems the situation will be open-ended. An unscrupulous person—and it could be the person to whom the Minister delegates power—could frame conditions which were favourable to one company.

Mr Coyne: It seems to me that there are a hell of a lot of unscrupulous people around!

Mr GRILL: No, I am not saying that, but the Act will be with us for a long time.

Mr Stephens: I doubt it.

Mr GRILL: If it goes through! We do hope that any reframing of the Mining Act will last for some time. I would not like the Act to include a provision which provides that it is open to the whim of any Minister, or his delegate, to frame conditions and call applications for land which will be exempt from the Act without the people of Western Australia or the Parliament having any say.

Mr MENSAROS: I would like to say that to some extent I will pursue the policy which has applied of answering questions. However, if questions are thought up only on the spur of the moment to delay proceedings, I will change my attitude. I think the first question asked by the member for Yilgarn-Dundas comes back to the tactic adopted when this Bill was last debated, when many members asked questions of the Minister apparently only to prolong proceedings. I think I am reasonably equipped to answer questions; I do not have anyone sitting alongside of me.

The first question was with regard to land not subject to the operation of the Act, and I do not intend to pursue it.

The second question should be explained for the benefit of those who do not understand it. It refers mainly to the exemption of what is now known, and what will be known in the future, as "ministerial reserves". Is the member saying that the Minister should not place conditions, and call tenders? If it had not been for these conditions, how on earth would we have started any development? The Mt. Goldsworthy mining company won a tender for a ministerial reserve. What is more equitable than the calling of tenders? What is fairer than that the Minister should say that land should not be granted without a tender?

The Minister may call applications. That is the fairest way it can be decided. There are and will be ministerial reserves because we need them for developing the State. If we want a processing plant—which I do not think anybody would oppose—or if we want added value to the mineral processing, we need something to give to those who are prepared to do it. Even if we were a socialistic Government, the State Treasury could not afford to build a processing plant, which would require the equivalent of a year's revenue and we would have no finance for social welfare, education, or anything else.

There must be some capital coming in from a development company, backed by bankers, which will do this development and get the mine working. Why do we have the furnace and rolling plant at Kwinana? Because the company had given to it the deposits on Koolan Island and Cockatoo Island. That is the simple reason for it. The company did not do it out of love for Western

Australia. It got the reserves and the condition was that it build a plant. At that time tenders were not called, but it was a sensible thing to do. If I have to explain everything, because everything is looked upon as being hideous or bad, I do not know where we will finish up.

Mr GRAYDEN: I reject the statement that members are indulging in delaying tactics. If that were the situation we could really take up the time of the Chamber. Members have been speaking on the various clauses, solely because they are grievously concerned at the contents of this Bill. I reject out of hand any allegations that up to date members have been engaging in delaying tactics. I do not think threats by the Minister that he will refuse to make statements in respect of the various points put forward will assist in ensuring the Bill has a speedy passage.

I share the sentiments of the member for Yilgarn-Dundas, who takes exception to subclause (4). All sorts of abuses have taken place under the system in the current Mining Act whereby temporary reserves can be granted, and without doubt all sorts of abuses will take place in the future under the provisions of this Bill whereby the Minister can grant exploration licences and other tenements on his own terms. Nothing will be spelt out anywhere along the line. It will be purely up to the Minister to determine what terms relate to any particular land.

Mr Mensaros: How would you spell it out?

Mr GRAYDEN: First of all, I would have liked to see a right of appeal in the Bill.

Mr Mensaros: Against a tender? Do you have any right of appeal against a tender?

Mr Grill: You need the appeal in relation to the setting of conditions.

Mr GRAYDEN: Subclause (4) says application may be called for such mining tenements in respect of the land or any part thereof on such terms and conditions as the Minister determines. These terms and conditions should be spelt out in the regulations. But that is not the import of this Bill. The Bill gives the Minister the right to chop and change at any time. Certainly there will be some guidelines in the regulations, but that is all. The Minister then reserves the right to make whatever alterations he likes, to allocate land and take it away at will.

All sorts of abuses have occurred in this respect. Huge temporary reserves for gold were granted to Newmont. It was an unprecedented action. I understand at the time they were granted to Newmont, and later on BHP came in on some kind of arrangement and it is operating with them. But in the first instance they were granted to Newmont.

That was an unprecedented action because Newmont is an American company and the profits are taken out of Australia without any tax being paid on them, so there is no contribution at all by that company. But the worst aspect is it could jeopardise the whole future of goldmining in Western Australia, because the Commonwealth Government is cognisant of the situation in the Paterson Range. An attempt has already been made to impose company tax on gold, because of the activities of Newmont.

Why should a wholly-owned American company, working the richest deposit in Western Australia, and alluvial ground at that, be able to take that money back to America and pay no company tax? The Commonwealth Government cannot discriminate against Newmont. It said, however, "We cannot tolerate a situation like this; we will make all goldmines in Western Australia pay tax." We know about the protest which subsequently arose.

That is the situation at the present time, but for how long will that situation obtain? All this was brought upon us because the Minister granted temporary reserves for gold to an overseas company. I share the fears of the member for Yilgarn-Dundas in respect of this clause.

I am horrified about the whole Bill and I am speaking against it for that reason—certainly not with the motive of delaying the Bill, as suggested by the Minister.

Mr GRILL: In respect of subclause (3)—my comments on which seemed to offend the Minister—I thought the question I asked was legitimate and it was put forward sincerely. I had some problems in interpreting the subclause. I do not think it should have moved the Minister so close to abuse.

Mr Mensaros: It was about the first question. I replied to the second question.

Mr GRILL: If there was a simple answer to the question I asked about subclause (3) it should have been given by the Minister.

Mr Mensaros: I did give the answer. I gave the example of Goldsworthy, which was the first iron ore mine. It was constructed on a tender which was based precisely on this condition. Ministerial reserves have been given to the company to establish an iron ore mine, port, railway, infrastructure, and the rest of it, and it employs nearly 2 000 people.

Mr GRILL: I am confused.

Mr Mensaros: That is a fact of life. Do you not want that development.

Mr GRILL: Was the Minister giving that particular explanation in respect of subclause (3)?

Mr Mensaros: That is right.

Clause put and passed.

Clause 20: General rights to prospect and protection of certain Crown land—

Mr MENSAROS: During discussions, mainly with the member for Murchison-Eyre and the member for South Perth—and despite the findings of the Adams committee which recommended that the miner's right should discontinue in the Bill as people have the same rights with or without the miner's right—the Government undertook to restore it, and that undertaking has been honoured. I move an amendment—

> Page 13—Insert the following new subclause to stand as subclause (1)—
>
> > (1) The Minister, the Under Secretary for Mines, a warden or a mining registrar may issue or cause to be issued to a person upon payment of the prescribed fee a Miner's Right which is not transferable and not limited in term and such a Miner's Right shall be in the prescribed form.

Mr GRAYDEN: The Minister has said that he reached an agreement with the Premier and myself—

Mr Coyne: So he did; I was there.

Mr GRAYDEN: —and with the member for Murchison-Eyre in respect of this and one or two other matters. As far as I am concerned that agreement was breached soon after the understanding was arrived at.

Mr Coyne: How soon afterwards?

Mr GRAYDEN: Very soon afterwards, and here is an example of it.

Mr Coyne: Say how long afterwards.

Mr GRAYDEN: Since that amendment was put on the notice paper.

Mr Coyne: As soon as you walked out the door?

The DEPUTY CHAIRMAN (Mr Blaikie): Order!

Mr GRAYDEN: What the Minister has done, of course, is to restore, the miner's right but no miners' rights.

Mr Mensaros: That is not so at all.

Mr GRAYDEN: That is the situation.

Mr Mensaros: Absolutely not.

Mr GRAYDEN: In addition, the Minister went a little further and tried to make a mockery of the whole issue. He has in effect said, "This has no meaning, but if you want it we will put it in. We will make it that you have to apply for it only once, and you have it for life." He took this action to denigrate the miner's right. He has emasculated it. Certainly he has reinstituted the miner's right, but there will be no miners' rights.

We know that under the present Act there are a multitude of provisions in respect of the miner's right, and these provisions confer all sorts of rights. I have some amendments standing in my name on the notice paper, and although I cannot move them yet I would like to refer to them. Section 31(1) of the Mining Act reads as follows—

> Any person taking up and occupying Crown land by virtue of a miner's right shall, subject to the provisions of this Act and the regulations, be deemed in law to be possessed (except as against His Majesty) of such land so taken up and occupied;

That situation is not covered in the amendment before us.

Mr Mensaros: Yes it is, in this very clause.

Mr GRAYDEN: That is what the Minister says. I have here a previous speech made by the Minister when he referred to this matter. Quite obviously he does not realise the shortcomings of the clause. The other day he had this to say—

> Briefly it was stated that the miner's right will have no teeth and that it will be different from the one already in existence. It is said that although in the amendments on the notice paper we have included a provision for it it will be merely a piece of paper. This is not so and I ask members to study section 31 of the Act, and compare it with clause 20(c) in the Bill.

Section 31 is the section I have just read out and its provisions do not apply under the amendment before us.

Mr Mensaros: Yes they do; it is in the present clause. Read (1)(a), (b), and (c)—that gives you more rights.

Mr GRAYDEN: All the amendment does is to empower anyone with a miner's right to do the following things—

(a) to pass and repass over Crown land with such employees and agents, vehicles machinery and equipment as may be necessary or expedient for the purpose of prospecting for minerals and marking out of any land open for mining;

(b) to prospect on Crown land (not being Crown land that is the subject of a mining tenement) for minerals and conduct tests for any mineral thereon for the purpose of determining which area of the land is to be marked out or applied for, or both, for the purpose of making an application for a mining tenement in respect thereof;

(c) to extract and remove samples or specimens not exceeding the prescribed quantity of rock, ore or minerals for testing purposes only, with as little damage to the surface of such land as possible and to keep as his property samples and specimens of any mineral found by him on such land;

That does not give the rights that exist under the present Act.

Mr Mensaros: It gives more.

Mr GRAYDEN: The Minister says it gives more, but I will tell him one of the shortcomings which I think he will appreciate. Under the provisions of this clause, an individual can take out a miner's right and do the things to which I have just referred. However, until such time as a prospector actually makes application for that particular area he does not have possession of it. Under the present Act he would have possession of it.

Members could envisage what happens when a prospector is looking for gold. Let us assume that a prospector is working a particular area. He may have worked on it for several weeks, but he has not taken out a tenement because he is looking for gold. If he actually finds gold traces, he may start to sink a shaft and when he gets down some distance he may suddenly strike a bonanza; a really rich lode. He has his miner's right, and so he takes a few samples. At that particular point someone else may come along and see activity taking place. This second person could look down and see that the prospector has struck gold and he may then say, "I will have a piece of this."

Mr Coyne: Oh—14 million to one!

Mr GRAYDEN: Under the present Act the original prospector would have possession.

Mr Coyne: You are in fairyland—come back to earth.

Mr GRAYDEN: Good gracious me—wait until the member tells this to his prospectors.

Mr Skidmore: You won't be in any land after the next election!

Mr GRAYDEN: Whereas under the Mining Act the prospector was in possession, under the present Bill he would not be in possession. That is a shortcoming. From the time he actually strikes a bonanza until he makes application and his application is granted he will not be covered.

Mr Coyne: Of course he has to come all the way in by camel, and that takes several days! These days they have motorcycles, motorcars, and even helicopters.

Mr GRAYDEN: What does the honourable member think the prospectors in his electorate are complaining of? He is not on speaking terms with them, of course. The Minister is saying that the amendment will give the prospectors everything, but the prospectors are insistent that the original provisions of section 31 should be inserted in the Bill before us.

To take the argument a little further, let us imagine that we neglected to provide a definition for "trespass to property" in the Criminal Code, or we neglected to define the term "possession of goods". If a criminal then stole one's truck, one would have no legal recourse because there would be no concept in the Statute in regard to the possession of goods. Anarchy would prevail because no-one would tolerate his goods being stolen.

This shortcoming in the Bill before us could lead to anarchy on the goldfields. A person who actually finds gold would not have possession of it by virtue of his miner's right until his application had been granted. If someone tried to take over his mine, obviously he would take the law into his own hands. So this is an omission of consequence.

Mr Coyne: Do you think the Mafia is operating up there?

Mr GRAYDEN: Because of this shortcoming, it is my intention to move an amendment at a later stage to correct the situation. One provision reads as follows—

> Any person occupying Crown land by virtue of a miner's right shall subject to the provisions of this Act and the regulations, be deemed in law to be possessed (except as against Her Majesty) of such land so occupied; and

Another provision I seek to add reads as follows—

> All gold and minerals found upon any land so taken up and occupied for the purpose of mining for gold, and all minerals found upon

> any land so taken up and occupied for the purpose of mining for minerals, shall be the absolute property of the holder of such miner's right in lawful occupation of such land.

We should go further and say that a miner's right and all rights and privileges conferred thereby shall, on the death or bankruptcy of the holder thereof, devolve upon his legal personal representative, or the receiver, trustee in bankruptcy, or liquidator, as the case may be. Then again we should say no right or privilege shall be acquired as against Her Majesty by virtue of a miner's right, but upon any land occupied under a miner's right being exempted from further occupation and reserved for any public purpose, the holder shall be paid the value of any substantial buildings thereon bona fide erected and used for residential or business purposes, to be assessed in a prescribed manner and time by the warden.

We should say that upon any land bona fide and lawfully held under a miner's right for the purpose of residence or business, and registered as prescribed, being included in a townsite or declared open for sale, the holding may, subject to this legislation and the regulations, continue until the land is sold, and prior to any sale the value of any substantial buildings erected thereon before such land was included in the townsite or declared open for sale, shall be assessed by the warden.

The DEPUTY CHAIRMAN (Mr Blaikie): Order! I would point out to the member that I believe the Chair has been tolerant and allowed him extreme latitude. I would like him to relate his remarks to the amendment moved by the Minister. I hope he appreciates the latitude extended to him.

Mr GRAYDEN: I appreciate that; I thought this was an opportune time to refer to the new clauses I propose to move later.

I take strong exception to the amendment moved by the Minister because I think its sole object is the denigration of the miner's right. I strongly resent that.

Mr GRILL: I would like to support the remarks of the member for South Perth. Certainly the prospectors through their association share the views he expressed. They seem to share those views after consultation with the best legal advice they could obtain.

Mr MacKinnon: Yours?

Mr GRILL: No, not in this case, although my advice would be almost as good!

Mr Coyne: Jim Mazza?

Mr GRILL: No, the advice was obtained from one of the more conservative firms. I quote as follows—

> Proposed Miners Right provision is welcomed but the fee should be specified in the Bill. However, the remainder of this Clause is seriously deficient when compared to the present Act. The present Miners Right gives the holder the right to "take possession of, mine and occupy Crown Land for mining purposes" (s.26). There are many other powers and rights enjoyed by the holder of a Miners Right today which are to be cancelled by the proposed Clause 20. e.g. to cut races dams wells, erect and remove a building, enter into a mineral claim in order to apply for a prospecting area.
>
> Prospectors want to retain all of the rights presently enjoyed by holders of Miners Rights under the present Act. The right to take possession of (occupy) and mine Crown Land is fundamental.

I do not believe the amendment or the provisions of the Bill give that fundamental right to have possession of and occupy Crown land by virtue of a miner's right. The Minister has indicated by interjection that he thinks prospectors do have that right. I was interested to hear his interjection because I cannot see that they do, nor can the member for South Perth, nor can the best legal advice the prospectors' association could obtain. I just wonder where is the right in the Bill.

Mr COWAN: I really cannot see any reason for the Minister to move this amendment. It is completely valueless unless he is prepared to allocate to the holder of a miner's right the power to take possession of land and to claim as his own whatever mineral he finds on it. If he denies the holder of a miner's right that basic principle of free enterprise or private enterprise, then he will destroy practically every prospector operating in the mineral fields of Western Australia today.

If a prospector has no security of tenure over the land he is working or over the minerals he finds, then there is not much point in his bothering to prospect. If the Minister is prepared to allow the miner's right to continue to exist he should be prepared to give the holder of such a right the capacity to claim whatever he finds as his own.

Mr MENSAROS: I will deal with the first argument of the member for South Perth, because we will have ample time to deal with the second argument he raised in respect of his proposed amendments when we reach the end of the Committee stage.

I did say and I do say the provisions of the Bill, with or without the miner's right, give more right and security to the prospector of open land than does the present Act. The Act talks about possessing land and possessing minerals, but not exclusively because anyone else can peg. The Bill instead of going into specifics describes in fairly general terms, referring to modern-day technology in respect of vehicles and machinery, which did not exist previously, what a prospector may do on the land in order to prospect. Most importantly, however, subclause (1)(c) says that minerals he finds are his property, not his possession. Surely that is stronger in law than the present position, which is possession.

It could be argued—as it has been—that under the old Act he had possession of all minerals he found, but under the Bill he has the property of only a prescribed quantity of minerals. However, let us take the very good example illustrated by the member for South Perth. Virtually we are arguing about gold because if we are talking about base metals it does not matter whether the regulations prescribe 10 tonnes, half a tonne or a wheelbarrowful; the prospector will not have any use of the mineral other than for testing purposes. However, if we are talking about gold what would happen in the example of the member for South Perth is that the person would prospect with vehicles and machinery and if he found something he would start to sink a shaft. I think the regulations would prescribe that he could take home more than a wheelbarrowful of minerals because with base metals he would need more than that for laboratory tests.

But supposing, to weaken my argument, that it prescribes only a wheelbarrowful of gold. If a person were to find a wheelbarrowful of nuggets—we are not talking about dirt, which he must take to the State Battery—they are his property and, as I said during the second reading debate, he would be a mental patient if he did not immediately run and peg this area for himself. He cannot protect it under the present Act or the Bill unless he pegs the area. However, he can take the gold as his property. That gives the miner more security.

It was suggested that prospectors were against this clause. However, the prospectors have seen me. They were not very friendly or kind and they claimed their rights were being taken away from them. The member for Murchison-Eyre was present during this meeting. I explained the situation in exactly the same way as I have just explained it to the Committee and then I asked them, "What sort of right has been taken away from you?" They admitted that no right was to be taken away from them. Was that not so?

Mr Coyne: Exactly so.

Mr MENSAROS: I cannot see why we are arguing about this; it will definitely give prospectors more rights. The member for Merredin said that they needed tenure. Where does the tenure question arise when we are talking about someone scouting on Crown land? Tenure starts when a prospector pegs land. However, we are not talking about pegging. This clause deals only with scouting on Crown land.

Mr Cowan: Even if he finds a barrowload of nuggets, the moment he leaves the area the claim is not his whereas under the present Mining Act, if he pegs the area it is his.

Mr MENSAROS: If he pegs the area it is exactly the same under this Bill as it is under the present Act. However, if he does not peg it the member for Merredin or anyone else can go to that area and peg it. The situation is no different under the new Bill.

Mr Cowan interjected.

Mr MENSAROS: I know the member for Merredin does not want to be convinced; he does not even want to listen to the argument.

Mr Cowan: We have presented an argument.

Mr MENSAROS: The honourable member does not understand.

Mr GRAYDEN: I reject the Minister's explanation out of hand. He did not cover the situation where a person actually puts down a shaft and has no possession of the area until such time as it is approved by the warden. However, under the existing Mining Act he has possession. We are not talking about a wheelbarrowful of gold which he takes away, but about the discovery of a lode.

Mr Coyne: If he puts down a shaft without pegging it there must be something wrong with his head.

Mr GRAYDEN: Section 31 of the existing Mining Act is self-explanatory. It states as follows—

> Any person taking up and occupying Crown land by virtue of a miner's right shall, subject to the provisions of this Act and the regulations, be deemed in law to be possessed (except as against His Majesty) of such land so taken up and occupied . . .

Every mining lawyer who has examined this legislation agrees it is deficient in that respect; in fact, they go further and say it is deficient in many other respects. I have moved a series of

amendments designed to rectify these areas of deficiency. The Bill is deficient, and that is all there is to it, and the situation is not assisted by the Minister standing and saying that the Bill is not deficient.

Amendment put and passed.

Mr MENSAROS: I move an amendment—

Page 13, lines 17 and 18—Delete the words "any person is by force of this subsection" and substitute the words "the holder of a Miner's Right is".

This is a consequential amendment because the Bill originally was phrased that no-one should have this right without taking out a miner's right which, in the original draft of the Bill did not exist.

Amendment put and passed.

Mr MENSAROS: I move an amendment—

Page 14—Delete paragraph (d)

Again, this is a consequential amendment.

Amendment put and passed.

Mr GRILL: I refer members to the wording of subclause (2); this is another area to which prospectors have taken objection. It contains two provisions relating to the filling of holes, one where they could be likely to endanger the safety of persons or animals and the other, where the Minister directs.

Once again, no criteria are laid down as to the circumstances in which the Minister might give his direction; it is another example where the Bill is open-ended. Most of the prospectors object to this subclause on the ground that almost every hole or trench is likely to present some danger to the safety of persons or animals. The fact is that all such holes, pits, and trenches would have to be filled in.

The whole basis of mining exploration is that experience is built up over a period of time in certain areas. Quite often it is on the third, fourth, or fifth look at an area that the results are obtained, after analysis of the previous data. Were one to fill in all the holes, all the pits, all the trenches, and so forth, one would be covering up all of the indications and all of the means by which the following people analyse whether that land is valuable or not. In that respect, the provision is deficient.

In almost every case, large ore bodies are found only after exhaustive analysis of the ground. It is rare that on a first look at the ground one comes up with the goods. It is only after thorough and exhaustive testing and examination of land that one is able properly to analyse what all the information means. If one covers up all of the information, one will mask the country and prevent people from exploring it properly. I believe that that particular paragraph (a) of subclause (2) should be deleted.

Mr GRAYDEN: I support the member for Yilgarn-Dundas. I have an amendment on the notice paper in respect of this.

I will not reiterate the arguments, because they have been put adequately by the member who just resumed his seat. Paragraph (a) presently reads—

(a) cause all holes, pits, trenches and other disturbances on the surface of the land which were made while he was so acting and which are likely to endanger the safety of any person or animal, to be filled in, together with such other holes, pits, trenches and other disturbances as the Minister directs;

The situation is that if a pit is put down, it obviates the necessity for a prospector in the future to put down a similar pit, say, in the heat of summer. The surface indicators may show the possibility of striking gold, or some metal. If the pit is filled in immediately, all the indicators are covered. A new prospector comes along; he looks at the geological indicators; and he sets about digging a pit. Later on, he has to fill in that pit. A third person could come on the scene and have to follow the same procedure. We are causing a lot of unnecessary work to a lot of people.

The shafts which have been sunk in the goldmining areas invariably indicate the geology of the country. This provision goes too far. One can imagine how costly it would be to put in a costean with a bulldozer. If that costean had to be filled in, it may require a bulldozer to be brought into the area to do so. Another person then has to go to exactly the same expense some years later.

The economic situation in respect of minerals changes. A mineral deposit may be of little economic signficance today, yet six years later it may be of immense value. In a situation like that, all excavations would have to be filled in. That is going too far.

I move an amendment—

Page 14, lines 29 to 36—Delete paragraph (a).

Mr MENSAROS: There is no amendment on the notice paper with which I feel more sympathy than with this one.

As the Minister for Mines who is charged with representing the interests of the mining fraternity and the mining industry, I have sympathy for this proposal. This is a new provision which does not

exist in the Act. However, this requirement has been applied lately by means of conditions placed on tenements.

As I said before, we have to consider other land users today. We cannot do as we did in 1904 and simply say that mining prevails over every other land use, irrespective.

The comments of the member for South Perth are significant. I cannot claim that this paragraph is perfect—not at all. I will admit that this was opposed by the prospectors, by the small companies, by the large companies, and by everyone in the industry. However, I ask the Committee—it would relate also to the Minister for Lands, to the Minister for Conservation and the Environment, to the Minister for Works, and to everyone else—would it be prepared to remove this provision which, imperfect as it is, tries to achieve to some extent the rehabilitation of the environment and to remove the danger to stock, animals, and humans? The provision does not cater for this properly. It is envisaged that we will exercise our minds on the regulations to make this provision equitable.

Obviously there would be no necessity to fill in a whole shaft. There are huge shafts in declines which would be impossible to fill. Large quantities of earth would be required.

We considered the possibility of other provisions. We considered fencing for safety, for instance; but what happens when the holder of the mining tenement, having finished his work, walks away? Who maintains the fence? Who pays for it? Who repairs the fence if it rusts away? Who takes care of the safety aspect?

All these things were taken into consideration when, as the present Minister for Mines, I reluctantly agreed to these provisions. They were discussed. I asked everyone to suggest something better, unless he was totally against the proposal. Most people were not able to make a suggestion. They realised that the State is responsible for other land users.

Nobody could suggest a better wording, a better provision which takes care of the environment, of land users, and of safety. That is the reason for this provision.

Considering the initial comments by the member for Swan, I would be interested to learn whether he holds with the omission of this paragraph or not.

Mr GRILL: The Minister says that the department will not insist on all shafts and all pits being filled in. He ignores the words of the clause. It is an imperative clause.

Mr Coyne: As the Minister directs!

Mr Mensaros: The amendment moved by the member for South Perth is what we are talking about. He wants to delete this entirely. That is what the argument is about.

Mr GRILL: As it stands, yes, and on the Minister's own argument I think we are going to need to because there is no discretion in his hands to prevent shafts from being filled in.

Mr Mensaros: Yes there is because it is named.

Mr GRILL: There could be a shaft or a deep pit—

Mr Mensaros: We could overcome this by agreement with other land users to draft regulations which would take care of the safety of the environment; it would not necessarily take care of the impossible.

Mr GRILL: I do not know how the Minister could do that with an imperative clause. The first part is imperative and the second gives the Minister a discretion. The second part states, "other disturbances as the Minister directs". Certainly the Minister has a discretion there, but this is not so in the first part. Any other agreement the Minister may enter into with landholders is not worth a bumper because there is no discretion.

I think this is very dangerous. If the Minister accepts he has no room to manoeuvre he should agree that this part must be deleted.

Mr GRAYDEN: I cannot understand how this clause will operate. We are saying that any person acting under the authority of a miner's right shall cause all holes, pits, trenches and other disturbances to be filled in. Iron ore is not included in this, but in this regard one could be faced ultimately with a hole 1 000 feet deep. A similar thing could apply to diamond excavations in the Kimberley where, eventually, there could be open-cut mines several thousand feet deep. Are we to ensure those people who engage in diamond exploration fill in those pits? And what about the Collie coalmines and the deep mines in Kalgoorlie?

Mr Mensaros: It refers only to prospectors.

Mr O'Neil: It refers only to people operating under subclause (1).

Mr GRAYDEN: Is it to apply only to the small prospector, while the large mining companies with huge excavations and deep mines are to be left alone?

It seems a rather ridiculous situation, and will certainly retard prospecting. It will make prospecting infinitely more costly if someone has to take a bulldozer a few hundred miles out to

start mining and then at the end of 12 months of mining, has to bring the bulldozer back again and fill the hole in.

Mr O'Neil: Do you think the people mining alumina should do that?

Mr GRAYDEN: Apparently they are in a different category because they are actually mining, but they quite often leave a steep face which is dangerous to human beings and animals. Is the Minister suggesting they fill in their excavations too? I believe this is a most impractical clause.

Amendment put and negatived.

Mr GRAYDEN: Before we finish with this clause, I indicated earlier there were a number of omissions as far as the miner's right is concerned. I mentioned certain omissions, but I would like to list one or two more. Earlier I said, and I quote—

> Upon any land *bona fide* and lawfully held under a miner's right for the purpose of residence or business, and registered as prescribed, being included in a townsite or declared open for sale, the holding may, subject to this Act and the regulations, continue until the land is sold, and prior to any sale the value of any substantial buildings erected thereon before such land was included in the townsite or declared open for sale, shall be assessed by the warden.

We could have a provision to this effect—

> The value so ascertained shall be added to the upset price of the land without such buildings, and shall together therewith be and constitute the actual upset price of the land, and if the registered holder shall bid such last-mentioned upset price or more, and shall be the highest bidder for the land, the value aforesaid shall be deducted from the amount of such bid, and the balance shall be the purchase money for the land; but if any other person than such holder shall become the purchaser of the land, and shall pay for the same, such holder shall be entitled to receive out of such purchase money the ascertained value of the improvements.

There is only one more because most of the other provisions I intended to move can be deleted as they relate to a miner's right expiring after having been granted. I was thinking in terms of amending the Minister's amendment in respect of the term of a miner's right. I am referring to the new clauses 27 and 28 I intended moving which are standing in my name on the notice paper. A couple of other provisions are necessary if we are to ensure the miner's right means something. One is as follows—

> Where it is proved to the satisfaction of a warden that any substantial building of the prescribed value has been made upon land held under a miner's right, and actually occupied for residence or business for a period of at least twelve months, the warden may grant to the registered holder a right of pre-emption.
>
> On such right being registered, the holder, in the event of the land being thrown open for sale, shall have the exclusive right of purchasing the land on which such improvement has been made, at the upset price to be determined by the Minister for Lands, for three months after the service upon such holder of notice that the land is intended to be thrown open for sale.

The final one is—

> No person shall commence any proceedings in a warden's court, or counter-claim:
>
> (a) to recover possession of any claim or authorised holding or any share or interest therein; or
>
> (b) to recover damages for, or to restrain the occupation of, or encroachment upon any such claim or authorised holding or any part thereof; or
>
> (c) to obtain any relief in respect of any claim or authorised holding as joint tenant, tenant in common, co-partner, or co-adventurer against his joint tenant, tenant in common, co-partner or co-adventurer;
>
> unless such person is the holder of a miner's right:
>
> Provided that this section shall not extend or apply to a beneficiary who seeks to enforce the fulfilment of a trust with respect to any such claim or authorised holding.

Those are provisions which should be inserted when we get the opportunity to move amendments to that effect after clause 151. The new clauses 27 and 28 standing in my name are now redundant for the reasons I have given.

Clause, as amended, put and passed.

Clause 21: Power to resume land—

Mr SKIDMORE: I seek clarification from the Minister of the reasons considered necessary to have the power to resume land included in a Mining Bill. I understand there is such a provision in the present Act and this is why it has probably been inserted in this Bill. I am worried that the

use of this provision might have a bad effect on some people.

I wonder what protection there is for anyone who may have been living just outside the boundaries of a goldmining town for many years, who is told he happens to be in the way of a mining development, his land is to be resumed, and he has to move on.

As far as I am concerned, it is untenable that people should have to move in order that mining can take place. I do not know whether there is any other purpose for which land would need to be resumed. I leave my objection there and ask the Minister to tell me whether there has been a need to use the power previously and, if so, why, and why does he wish still to retain it in the Bill.

Mr MENSAROS: I cannot see any objection to this provision, because subclause (1) mentions we are not dealing with land which ought to be the subject of a mining tenement. Therefore, mining people will not suffer as a result, because nothing is being taken away from them. We are dealing with Crown land which is not the subject of a mining tenement.

The normal reasons for resumption as described in the Public Works Act, or any other Act, can apply, of course, for land which is otherwise open for mining, but not the subject of a tenement.

Mr SKIDMORE: I want to take the Minister forward to clause 22. He will see there that private land can be resumed and it can then be subject to mining. Resumption can take place, the house can be removed, and the land can become a mining tenement. I object to that. That is the very objection I make. A person should not be moved to make room for a mining tenement. Why should people be forced off their land if they do not want to go, merely for the purpose of mining? The land belongs to the person, he has his residence on it, and this could take place in mining areas.

Mr Mensaros: The same thing takes place if you resume it under the Public Works Act for a public building.

Mr SKIDMORE: I would object strongly to that also. I take exception to this, particularly in regard to mining. Land can be resumed and a whole town can be devastated by mining. If one wanted to mine for mineral sands one could move the whole town of Capel by resuming the land and saying to the people, "We want to do some sand mining. You have to move your townsite." This could happen under the powers contained in the Bill. I do not believe such provisions should be in the Bill. This power should not be given. As the Minister says, it is not to be the subject of a mining tenement. I am well aware of that. I am aware also of clause 22 which gives the right for private land to be converted to a mining tenement. That is the reason the powers of resumption are contained in the Bill and I oppose such a provision.

Clause put and passed.

Clauses 22 and 23 put and passed.

Clause 24: Classification of Reserves—

Mr MENSAROS: I move an amendment—

> Page 18, line 9—Delete the word "natives" and substitute the words "persons of Aboriginal descent".

I believe the amendment will be uncontested. It is self-explanatory.

Amendment put and passed.

Mr SKIDMORE: I should like to refer to some of the peculiarities which have occurred in the drafting of this clause, referring particularly to paragraph (f) of subclause (1) which has just been amended by the Minister. I wish to refer also to subclause (1) (a) to (g) to show the stupidity of this subclause when one looks at the effect it will have and the way in which it will be administered.

Under paragraphs (a) and (b) the land referred to shall not be mined unless certain action is taken. In this regard I refer members to the wording of subclause (2) (b) on page 18. I refer members also to subclause (3) (a). That particular subclause worries me; but I am more worried by subclause (1) (f).

In order to discover how that land will be affected, I refer members to subclause (7) (a) on page 19 of the Bill. One then turns to subclause (4) which says that no mining lease or general purpose lease shall be granted on any land referred to in paragraph (a) or (b) of subclause (1).

The land referred to under paragraphs (a) and (b) of subclause (1) is defined as a Class "A" reserve or an area of land which has been set aside and used as a national park. When those provisions were drafted I imagine a good and valid reason existed, because it was considered that the Government should examine the land as it involved national parks. People would certainly have every right to complain if someone wanted to mine in Prince Regent Park. That is why I believe it is right and proper under those circumstances that national parks should be subject to the scrutiny of Parliament.

Class "A" reserves should be scrutinised by the Government, because if sand mining took place in some of the areas along our coast it would be a matter of concern to many people, because it

could cause the sand dunes to be at risk. Probably the whole environment would be changed along the length of the coast which was mined.

What is the difference between national parks and reserves which are created for people? Why is it that we allow those reserves to be the subject of ministerial decisions? Why should they not remain within the province of the Governor? Why is there a difference between these? Do not they mean as much?

I want to take the matter a step further. I wish to refer the Minister to paragraph (g) on page 18 which mentions other Acts. Paragraph (c) on page 17 refers to part III of the Land Act and so I thought I had better consult that Act. Section 29(1) of that Act, under part III, reads—

> 29. (1) The Governor may, subject to such conditions and limitations as he thinks fit, reserve to His Majesty, or dispose of in such manner as for the public interest may seem fit, any lands vested in the Crown that may be required for the following objects and purposes:—
>
> (a) For the use or benefit of the aboriginal inhabitants.

We have a peculiar situation because now we have another group of people involved; that is, the Aborigines. Under subclause (5)(a) we have a different set-up altogether. That provision reads—

> (5) (a) Mining on and land referred to in paragraph (c) of subsection (1) of this section may be carried out with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

The same wording is to be found in subclause (7)(a) which refers to paragraphs (e), (f), and (g) of subsection (1). I do not know where we are going.

Part III of the Land Act is excluded as not being applicable because reference has been made to it elsewhere. In part III Aboriginal inhabitants are mentioned.

If the Minister is as confused as I am, I do not blame him. I do not know what the draftsman is saying and I hope the Minister can explain it to me. Does it mean that there is a complete circle of events for Aboriginal people which then negates the whole purpose behind the provision which gives the Minister control which I do not believe he should have, or is there something subtle in the clause which will make it almost impossible for Aborigines to have any control at all over what will occur on their reserves? They are being treated as nobodies.

I hope the Minister can explain to me some of the ramifications of the provisions to which I have referred, and I will listen to his comments with great interest.

Mr MENSAROS: Before I reply to the member for Swan, I would like your advice Mr Deputy Chairman (Mr Blaikie). In the first line of subclause (5)(a) I have detected a printing error. The words "Mining on and land" should read "Mining on any land". Do you want me to move an amendment to correct the error, or will it be taken care of automatically?

The DEPUTY CHAIRMAN (Mr Blaikie): That will be taken care of.

Mr MENSAROS: I have already spent some time explaining precisely the query raised by the member for Swan. If I remember correctly I explained it also to the member for Maylands who referred to trees being more important than Aborigines. I recall that the same query was put to me at a certain hotel when there was a discussion about the previous Bill three or four years ago. The member for Swan was there when a lady posed the very same question.

There is nothing sinister about it. Aboriginal matters are taken care of in various other Statutes for which the Minister for Community Welfare is responsible.

Mr Harman: Which ones?

Mr MENSAROS: The Aboriginal Heritage Act, and the legislation dealing with the Aboriginal Land Trust. I do not know the title of the second Act.

Mr Harman: What was taken care of?

Mr MENSAROS: If the member for Maylands does not want to believe me he does not have to.

Mr Harman: I am only asking. You are getting nasty about it.

Mr MENSAROS: I repeat that the only difference concerns land use. If there is a difference of opinion with regard to mining and forests, the Minister for Mines must get the consent of the Minister for Forests. When it comes to a difference of opinion between Aborigines and mining, the Minister for Mines must compulsorily consult with the Minister for Community Welfare. If no agreement can be reached by the Minister for Forests and the Minister for Mines the matter is taken to Cabinet for a decision.

Mr GRAYDEN: I had better move the amendment standing in my name before it is too

late. Actually the same amendment is to be made in four places.

The DEPUTY CHAIRMAN: I suggest that the honourable member moves his first amendment on page 18, and the others will be consequential amendments.

Mr GRAYDEN: Very well. In four places reference is made to consent being given or refused by the Minister. I will do as the Deputy Chairman suggests. I therefore move an amendment—

> Page 18, line 36—Add after the word "consent" the following proviso—
>
> > Provided always that the person first to apply whether such application is made before or after the operation of subsection (2) of this section, shall be given first right of refusal to mine on land the subject of the Ministers consent under the same terms and conditions as offered to a subsequent applicant.

The amendment is self-explanatory so there is no point in my going into it in great detail.

Mr MENSAROS: I am not at all unsympathetic to the endeavour by the member for South Perth, but I will try to explain to him that the amendment is superfluous. The Bill, as it is, achieves the purpose sought by the member for South Perth.

Clause 24 refers to some areas subject to "mining" which are restricted for some reason or other. The definition of "mining" means mining operations, and includes prospecting and exploring for minerals. If the member refers to clause 43 of the Bill he will see it is quite obvious that the preference is already provided for, and is inherent in the Statute. Therefore, it is superfluous to say again that whoever applied first should get first preference.

There is another legally interpreted objection to the amendment. Supposing clause 43 and similar clauses relating to other tenements did not exist; nowhere in the Statute would there be an assurance that first come would be first served and get the tenement. The amendment refers only to the first applicant, but that could not prevail, because it has to be an application according to the regulations. The first applicant could have pegged in a faulty way, not in accordance with the regulations, but if we take the amendment strictly the warden would have to allocate the tenement to that person. To say that the first applicant should get the tenement would not be right legally. Clause 43, combined with the definition of "mining", adequately covers the situation.

Mr GRAYDEN: I do not accept the Minister's explanation. He referred to clause 43, which reads—

> 43. When more than one application for a prospecting licence is made with respect to the same land, the applicant who has first marked out the land in accordance with the regulations has, subject to this Act, the right in priority over the other applicants to have granted to him a prospecting licence in respect of the land.

That certainly applies to prospecting licences, but I do not think it applies to other tenements.

Mr Mensaros: The same provision is in other parts of the Bill, which deal with other tenements.

Mr GRAYDEN: If the Minister says so, I will accept his assurance in that respect. We are simply getting back to the situation of spelling out my amendment, which states—

> Provided always that the person first to apply whether such application is made before or after the operation of subsection (2) of this section, shall be given first right of refusal to mine on land the subject of the Minister's consent under the same terms and conditions as offered to a subsequent applicant.

The provisions of clause 43 do not go that far. The clause does not make any reference to "the same terms and conditions". It simply states that an applicant, subject to the Act, shall have right in priority over the other applicants to have granted to him a prospecting licence in respect of that land. I will accept the Minister's assurance with regard to the amendment.

Amendment put and negatived.

Mr HARMAN: Members who are interested will see that clause 24(6) provides that mining may be carried out on any land referred to in paragraph (d) of subclause (1) and then there is reference to State forests. The next subclause states that mining may be carried out with the written consent of the Minister, who may refuse his consent, or who may give his consent, subject to such terms and conditions as are specified in the consent. Subclause (6)(b) states that before giving his consent, whether conditionally or unconditionally, the Minister shall first consult with, and obtain concurrence thereto of, the Minister for Forests.

Why was it necessary to change the wording in subclause (7)? The subclause refers to paragraphs (e), (f), and (g) of subclause (1). Paragraph (e) refers to land that is a water reserve or catchment area for the purpose of the Metropolitan Water

Supply, Sewerage, and Drainage Act. Paragraph (f) refers to land proclaimed to be a reserve for natives—now amended to read "persons of Aboriginal descent"—pursuant to the Aboriginal Affairs Planning Authority Act, and paragraph (g) refers to land that is reserved under any Act other than those Acts already referred to.

It seems fairly clear that the trees—the forests—are more important than our water; more important than Aborigines—human beings—and more important than the other Acts referred to. For some reason or other the Government wants to discriminate between trees and Aborigines; that is what it will do in the Mining Bill. It cannot be denied that trees are given more prominence than Aborigines, because it will be a requirement of the Act that the Minister for Mines will have to receive the concurrence of the Minister for Forests. However, under the provisions of clause 24(7), which deals with Aboriginal reserves, water catchment areas, and so on, all the Minister for Mines has to do is to receive a recommendation from the responsible Minister.

Why cannot the Government be consistent and give the same effect to subclause (7) as it did to subclause (6)? At least there would be no objection from us to the extent that it was being consistent. But it is not being consistent, and I think the Minister for Community Welfare, who is reading the comics at the moment, might have some objection to the downgrading—

Mr Young: I have heard this story three times, and when I have been paying attention all night, it is a little bit rude to say that as soon as I pick up the paper.

Mr O'Neil: Better to be reading a comic than listening to one!

Mr Young: In fact I think it is the fourth time you have made this speech.

Mr HARMAN: All I am trying to do is impress upon the Minister—

Mr Young: Perhaps if you try tomorrow you might impress me again.

Mr HARMAN: I might need to say it four times for the Minister to understand that the Minister for Mines has more authority over him than he has over the Minister for Forests.

Mr O'Neil: It has already been explained. There are none so blind as those who will not see.

Mr HARMAN: Then the Minister for Mines argues finally that it will be a Cabinet decision.

Mr Mensaros: In both cases.

Mr HARMAN: Why is it different for the forests? That does not have to be a Cabinet decision. Under the law the Minister has no alternative, once the Minister for Forests objects.

Mr Mensaros: Yes; it goes to Cabinet.

Mr HARMAN: It does not say so in the Bill. Why do we have this distinction in the Bill? The Government does not want to answer that question; it wants to laugh it off.

Mr O'Neil: The only Bill that is likely to refer to a cabinet is the furniture manufacturers bill.

Mr Laurance: Whose interests are you serving?

Mr HARMAN: I am trying to find out how consistent the Government is. Obviously the Government is not consistent on this point if it is prepared to write into subclause (6) a provision that the Minister for Mines can give his approval to mining on a reserve only if he has the concurrence of the Minister for Forests, when in the case of the Minister for Community Welfare all he has to do is seek a recommendation from him. Surely there is some inconsistency in the attitude of the Government towards Aborigines. That is the point I want to make. I know Aborigines do not count with the Government but unfortunately we have to deal with the problem as we see it.

Mr Sodeman: As you know, that is not true. Are you not just filling in time because of all the absent members on your side of the Chamber?

Mr HARMAN: Why must there be this inconsistency between subclauses (6) and (7)? If the Minister argues that it is a Cabinet decision, why is it necessary to have this difference and discriminate between trees and Aborigines? That is all I want to know.

Mr SKIDMORE: I have no desire to be placed in the position, as suggested by some Government members, of being accused of just stalling for time. I am not. I am very concerned, and I put forward to the Minister the proposition that the classification of land for certain purposes is most important and is uppermost in the minds of all legislators. Otherwise we would not create Class "A" reserves or national parks and we would not create reserves for people of Aboriginal descent.

With that criterion before us we have to try to place a valuation upon the conditions for the granting of these reserves or national parks. A Class "A" reserve could be declared because of a specific feature on that land which demands that it be given that classification, but I suggest if it were a Class "C" reserve it would have the same importance. The classifications "A", "B", and "C" were not based on superiority, connoting that a Class "A" reserve is more significant than a Class "B" or "C" reserve. That was not the

intention in classifying reserves in that way. They were classified in that way merely to distinguish them.

I cannot see that Class "A" reserves are superior to reserves created for people of Aboriginal descent, and I believe many people would not see any difference between the trees on a Class "A" reserve and the people who sit on an Aboriginal reserve. Why is it not so important to have the Houses of Parliament determine when mining takes place on an Aboriginal reserve?

The Minister has already shown his disregard for the objection I raised to the resumption of land clause in this Bill, and we now have another resumption of land clause which is differently worded and creates a distinction between different types of reserves. Again the Minister did not bother to answer me. He said he had heard the argument before, but he did not hear it from me. The argument put forward by the member for Maylands is not the argument I am putting forward.

I believe these people have a basic right to be recognised, and that they should not be subject to the control of the Minister but should be given equality with Class "A" reserves and national parks. The Government has a callous attitude towards Aborigines. If one wanted to go further afield looking for analogies in attitudes towards the Aboriginal community, one could have listened to the debate on the Ranger project in the House of Representatives recently, and one would have been amazed at the muck that was raked up about certain people who were supposed to be doing certain things by way of using the Aboriginal community. I do not want to be placed in that category, or in the category of just wasting the time of this Chamber.

I sum it up in this way: I do not see a Class "A" reserve which has on it physical things which demand the control and attention of Parliament as having any more or less importance than a reserve which has human beings on it. It seems to be not unreasonable that we should apply the same criteria to both types of reserve. Are mountains more important than men? It appears so.

I simply challenge the Minister on this issue. I hope some dignity will be given to the people of this land of ours and that this clause will contain the same control as is given to all the matters contained in paragraphs (a) and (b); that is, that the Houses of Parliament should review these matters and not the Minister.

I hope the Minister may explain to me why there is this difference between the reserves.

Clause, as amended, put and a division called for.

Bells rung and the Committee divided.

Remarks during Division

Mr Harman: Is it a new practice to bring in the Speaker in situations like this?

Mr Young: I understand Danny Norton did it on odd occasions—about once every 15 minutes!

Mr Jamieson: Not when we had a 10 majority.

Mr Young: When did you have a 10 majority—without the Speaker?

Sir Charles Court: We have not got a 10 majority—what is this 10 majority you are talking about?

Result of Division

Division resulted as follows—

Ayes 29

Mr Blaikie	Mr O'Connor
Sir Charles Court	Mr Old
Mr Cowan	Mr O'Neil
Mr Coyne	Mr Ridge
Mrs Craig	Mr Rushton
Mr Crane	Mr Sodeman
Dr Dadour	Mr Spriggs
Mr Grayden	Mr Stephens
Mr Grewar	Mr Thompson
Mr Hassell	Mr Tubby
Mr Herzfeld	Mr Watt
Mr Laurance	Mr Williams
Mr McPharlin	Mr Young
Mr Mensaros	Mr Shalders
Mr Nanovich	*(Teller)*

Noes 18

Mr Barnett	Mr Harman
Mr Bertram	Mr Hodge
Mr B. T. Burke	Mr Jamieson
Mr T. J. Burke	Mr T. H. Jones
Mr Carr	Mr Pearce
Mr Davies	Mr Skidmore
Mr H. D. Evans	Mr Taylor
Mr T. D. Evans	Dr Troy
Mr Grill	Mr Bateman
	(Teller)

Pairs

Ayes	Noes
Mr P. V. Jones	Mr Tonkin
Mr MacKinnon	Mr Wilson
Mr Sibson	Mr Bryce

Clause, as amended, thus passed.

Clause 25: Mining on foreshore, sea bed, navigable waters and site for town—

Mr GRAYDEN: This clause, among other things, refers to any land reserved as a site for a town. It then says that mining on such land may be carried out with the written consent of the Minister who may refuse his consent, etc.

I move an amendment—

> Page 20, line 21—Insert after the word "town" the passage "prior to 1930 but not presently used for such purpose".

If we do not add these words many people in Western Australia will be affected. No doubt any problems that arise can be overcome in another way, but it would be convenient to cover any future problems by agreeing to this amendment.

Mr MENSAROS: All I can say is that I honestly do not understand the implications of the amendment. I do not know what happened in 1930. I have conferred with the ex-Minister for Urban Development and Town Planning and he does not know. I conferred with members, the Under Secretary for Mines, and other people, but nobody seems to know. I would be grateful if somebody would tell me.

Mr GRAYDEN: Quite obviously I am referring to ghost towns; they are not now towns in the correct sense of the word.

Mr Mensaros: Why 1930?

Mr GRAYDEN: No particular reason. We had to nominate a reasonable year, and it was thought proper to use 1930.

Amendment put and negatived.

Mr GRAYDEN: I move an amendment—

> Page 20, line 27—Add after the word "consent" the following proviso—
>
> > Provided always that the person first to apply, shall be given first right of refusal to mine on land the subject of Ministers consent under the same terms and conditions as offered to a subsequent applicant.

No doubt the Minister will give the same answer that this matter is already covered under clause 43. If he intends to vote against the amendment, I would like him to give us that assurance. We have already had an unequivocal assurance from him in regard to the previous amendments; on that occasion four clauses were involved. In this case two subclauses are involved. I intend to move the same amendment to line 39 of this page.

If the Minister can give us the assurance that this matter is covered by clause 43, I believe that is the equivalent to passing the amendment.

Mr MENSAROS: I certainly can give that assurance because in this clause we refer to reserve land. In such cases, a prospector cannot scout as on open Crown land, but must apply for a tenement. As I said before, under the provisions of clause 43, provided the application and pegging have been carried out in the prescribed way in other words in accordance with the regulations and not irregularly—it is assured that the first one will be given the tenement. However, when a case comes before the Warden's Court, there is always the question of whether or not an application has been made according to the regulations. It is virtually the same as before.

A miner's right does not apply in the case of reserve land. A prospector could not use a miner's right to go into a reserve under the present Act or under the Bill. So in that case a prospector must ask for a tenement, and immediately he asks for a tenement the provisions of the Bill will prevail; other things being equal and both parties having acted regularly, the first one will get the tenement.

Amendment put and negatived.

Clause put and passed.

Clause 26: Terms and conditions—

Mr GRAYDEN: Subclause (1)(a) says that any person carrying out mining operations on the land shall make good injury to the surface of the land or injury to anything on the surface thereof. I suggest we add the words, "which was made when he was so acting". When dealing with clause 20 we said that a person acting under the authority of that clause shall cause all holes, pits, trenches, and other disturbances on the surface of the land which were made while he was so acting, to be filled in.

Unless this provision is amended in the way I suggest a person could take up land on which there are pits and costeans from the past and unless the provision is amended he could be forced to make good that previous damage. I move an amendment—

> Page 21, line 14—Add after the word "thereof" the words "which was made when he was so acting".

Mr MENSAROS: The provision in the Bill attempts to achieve precisely what the member for South Perth seeks. Therefore I have no opposition to the amendment. However, the member will appreciate that I am not able to consult with the Crown Law Department at the moment. I assure him that unless there is some legal opposition to the amendment I will ask the Minister in another place to move it.

Amendment put and negatived.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Unlawful entry on private land—

Mr GRILL: This clause says no person shall enter or remain upon the surface of any private land for any of the purposes of division 3 of the Bill unless he is the owner in occupation of that private land.

I inquire of the Minister as to whether that may be a little too onerous. Surely the owner of

land should be allowed to exercise his rights under this division without actually being in occupation of the land.

Mr MENSAROS: The reason for the provision is obvious, because the owner of land can alienate it by leasehold or letting; and under such an agreement provision may be made that he may enter the land at various times, or that he may not enter it at all. We are not talking about a person knocking on the door and saying, "Good day". We are talking about a person entering the land for the purposes of this division. Obviously if the owner is not the occupier of the land there is a reason for it. Some other person is occupying the land and the owner cannot just walk in. What would happen if there was a leasehold agreement for X years and the owner said to the occupier, "Because I retained ownership and you are only leasing the land, I can mine without your permission"?

Mr GRILL: What about the situation where there is a tenant from week to week or a squatter?

Mr Mensaros: You draft a provision to cover it.

Mr GRILL: It is not up to me to do that; it is up to the Minister. The whole exercise here is to obtain decent provisions. The Minister knows as well as I do that the provision is not adequate, and yet he says I should draft a decent provision. That is not up to me; it is up to him.

Clause put and passed.

Clauses 29 to 31 put and passed.

Clause 32: Rights conferred by a permit--

Mr GRAYDEN: Subclause (2) provides for an appeal to the Minister against the refusal of a warden to grant a permit, and under subclause (3) the Minister may dismiss or uphold the appeal. I propose an amendment to add the words, "but in the event of refusing the appeal he shall give written reasons for so doing".

Mr MENSAROS: These provisions are quite unusual and were drafted at the request of certain people who realised that a judicial appeal in respect of this Bill is not practicable, for the reasons I have previously explained. Therefore, they decided in this instance people should have recourse to the Minister. I thought their argument was rather lopsided, because the same people argued that the Minister is given too much power. It was explained to them that in respect of prospecting licences the Minister has less power under the new Bill; because under the Act whatever tenement is taken up, it must be granted by the Minister on the recommendation of the warden. I was asked why there should not be the right of appeal to the Minister in this case, and that is the reason the subclause was introduced. It was not introduced reluctantly, although we were reluctant from the point of view that it will cause more administration. It is the right of appeal to an administrative officer who is a Minister of the Crown, and it is made to him in his capacity as a member of the Executive and not as a member of the Legislature.

In respect of written reasons being given, I have discussed this with the member for Kalgoorlie, who saw my point. No other legislation provides that a magistrate or a judge of any court must give a written reason for his judgment. He usually provides a written reason, but he is not compelled to do so. Therefore, I can see no reason that the administration, which has already burdened itself by agreeing to allow the right of appeal in this case, should carry the further burden of having to provide reasons in writing.

The CHAIRMAN: I point out to the member for South Perth that he has not moved his amendment. If he wishes to proceed with it, he must move it.

Mr GRAYDEN: I will, simply and solely because I believe in every instance where the Minister refuses a recommendation of a warden he should give written reasons for so doing. Therefore, I move an amendment—

> Page 27, line 35—Add after the words "to do" the words "but in the event of refusing the appeal he shall give written reasons for so doing".

Mr JAMIESON: I see no reason not to support this amendment; it seems to improve the situation somewhat. We complained earlier the Bill provides the Minister with too much power, and the amendment moved by the member for South Perth will lessen that power. Because of that, the Opposition supports the amendment.

Mr DAVIES: I am surprised the Government even has an appeal provision in the Bill following its earlier decision not to allow appeals against decisions of the Minister. We all know that once the Minister has made his decision, that is the end of it—provided, of course, no appeal provision is written into the legislation. We cannot even appeal to the Ombudsman because he cannot query a Minister's decision.

Now the Government is saying an appeal shall be provided for but that it does not want to give written decisions. What is the use of having an appeal if it is going to be refused and no reasons given for refusing? The Minister said there is no requirement on any judge in the country to give a written decision but that judges usually do give written decisions. When I ponder that statement,

I think of the amendments made earlier this year to the Town Planning and Development Act appeals provisions where the requirement that a written decision shall be given was written into the legislation.

Mr Mensaros: Are you talking about reasons or decisions?

Mr DAVIES: I am talking about giving reasons for decisions. This is something the Government itself instituted; in fact, at the time it said it was eminently fair that justice should not only be done but also appear to be done and that the appellant should be wholly satisfied that the reasons for dismissing his appeal were well known to him.

On the one hand we have a contradiction in regard to the very essence of appeals and on the other hand we have the Minister saying, "There is no need to do it because no judge is required to do it." Then again, as I have just pointed out, under town planning legislation, written decisions are required in respect of appeals.

Where is the Government going? It seems to change its tack to suit its own purpose. Whenever it feels it can argue one way to suit its purpose it does so; then, a few weeks later, it apparently argues in exactly the opposite way.

I wholeheartedly support the amendment moved by the member for South Perth for the very good reason that we must satisfy an appellant and let him know his appeal has not been dealt with capriciously, and that the reasons his appeal has been dismissed are, "A, B, C, D, E". It is a very desirable amendment, and I am happy to support it.

Mr MENSAROS: I cannot see there is any inconsistency in this matter. As I said, this right of appeal was inserted in a reverse direction, despite the criticism that the Minister has too much power. The Leader of the Opposition suggested the Minister could be capricious. Why not just do away with this appeal clause—which will cause additional administrative work—and leave it entirely to the warden?

Mr Davies: It might be more honest to do it that way.

Amendment put and a division taken with the following result—

Ayes 23

Mr Barnett	Mr Harman
Mr Bertram	Mr Hodge
Mr B. T. Burke	Mr Jamieson
Mr T. J. Burke	Mr T. H. Jones
Mr Carr	Mr McPharlin
Mr Cowan	Mr Pearce
Dr Dadour	Mr Skidmore
Mr Davies	Mr Stephens
Mr H. D. Evans	Mr Taylor
Mr T. D. Evans	Dr Troy
Mr Grayden	Mr Bateman
Mr Grill	*(Teller)*

Noes 23

Mr Blaikie	Mr Old
Sir Charles Court	Mr O'Neil
Mr Coyne	Mr Rushton
Mrs Craig	Mr Sodeman
Mr Crane	Mr Spriggs
Mr Grewar	Mr Thompson
Mr Hassell	Mr Tubby
Mr Herzfeld	Mr Watt
Mr Laurance	Mr Williams
Mr Mensaros	Mr Young
Mr Nanovich	Mr Shalders
Mr O'Connor	*(Teller)*

Pairs

Ayes	Noes
Mr Tonkin	Mr P. V. Jones
Mr Wilson	Mr Ridge
Mr Bryce	Mr MacKinnon
Mr McIver	Mr Sibson

The CHAIRMAN: The voting being equal, I give my casting vote with the Noes.

Amendment thus negatived.

Clause put and passed.

Clauses 33 to 36 put and passed.

Progress

Progress reported and leave given to sit again, on motion by Mr Shalders.

PENSIONERS (RATES REBATES AND DEFERMENTS) ACT AMENDMENT BILL

Returned

Bill returned from the Council without amendment.

House adjourned at 12.30 a.m. (Wednesday)

QUESTIONS ON NOTICE

HOUSING

Hostel Accommodation

2241. Mr WILSON, to the Minister for Community Welfare:

With reference to the answers given to question 2104 of 1978, can he say—

(a) which organisations have received financial assistance from the Community Welfare Department for assisting homeless young people;

(b) who are the members of the committee set up to research the problems of accommodation for homeless young people and which department and private organisations do they represent;

(c) who has been engaged to conduct the research and at what cost?

Mr YOUNG replied:

(a) Subsidy based on each occupied bed is paid to Anglican health and welfare services in relation to St. Bartholomews and the Salvation Army in relation to Tanderra. Some homeless young people are accommodated but they are mostly older people.

A grant was made to the Jesus People and the Merredin One Night Shelter and Welfare Association (which also takes older people).

A grant was made to the homeless youth project committee for the purpose of preparing a resource directory.

(b) Current members of the homeless youth project committee are:

Rosemary Cant, Community Welfare;

Helen Cabrera, Methodist Homes for Children;

Mark Cloudesdale, WAIT;

Tony Cook, Department of Corrections;

David Daley, Probation and Parole;

Keith Fell-Gordon, Community Welfare;

Chris Forbes, St. Bartholomews;

Jeff Hopp, Jesus People;

John Mackay, YMCA;

Ron Oackley, Royal Perth Hospital;

Judy Ramsay, Residential Social Workers Association.

(c) The homeless youth project was funded by the Department for Community Welfare to conduct research into the homeless youth population of Perth. Mr Stuart Flynn, a lecturer in social work at WAIT, was contracted by the homeless youth project to conduct the first stage of the research programme, the cost being $4 700. The second stage of the research programme is currently being considered for funding by the Community Welfare Research Advisory Committee.

POLICE

Calls for Assistance

2253. Mr TONKIN, to the Minister for Police and Traffic.

(1) Is it a fact that calls were made to the police last Thursday at—
(a) 8.00 p.m.;
(a) 8.35 p.m.;
(c) 9.30 p.m.;
requesting assistance because of the presence of a large number of youths who were acting in an offensive manner in the Morley Mall?

(2) Is it fact that no officers came to the trouble spot that night, nor did an officer contact either of the complainants the next day?

Mr O'NEIL replied:

(1) (a) A call was received by Morley police at approximately 8 p.m.;
(b) A call was received at police communications at 8.32 p.m.;
(c) A further call was received at police communications at 9.19 p.m.

(2) No. Morley police visited the location on two occasions. The complainants were not contacted the next day.

EDUCATION

Special School: Rockingham

2254. Mr TAYLOR, to the Minister for Education:

With respect to his letter to me of 2nd October—Educ. No. 1024/77—wherein he advised that his department was then

examining the need to establish a special school in the Rockingham-Kwinana area, is he now in a position to indicate either

(a) where; or

(b) whether

a special school will be open to receive students at the commencement of the 1979 school year?

Mr P. V. JONES replied:

Inquiries are still in progress. It is unlikely that a special school will be open in the Rockingham-Kwinana area to receive students at the commencement of the 1979 school year.

EDUCATION

Technical School: Spearwood

2255. Mr TAYLOR, to the Minister for Education:

With respect to that parcel of land at the south-east junction of Rockingham Road and Barrington Road, Spearwood and zoned as a technical school site, would he advise approximately when under present rates of development construction of such a school is likely to take place?

Mr P. V. JONES replied:

It is expected that the site for the Cockburn Technical College in Rockingham and Barrington Roads will not be required before the end of the next decade.

EDUCATION

High School: Canning Vale

2256. Mr BATEMAN, to the Minister for Education:

(1) Has the Education Department purchased land in Canning Vale for the purpose of building a high school?

(2) If "Yes" what is the location?

(3) If the answer to (1) and (2) is "No", will he further advise if it is the intention of his department to purchase land in the Canning Vale area?

(4) If "Yes" in what location?

Mr P. V. JONES replied:

(1) to (4) The information requested is not available as planning on the southeast corridor area, which will include Canning Vale, has not been finalised.

MINING: BAUXITE

Alcoa's ERMP: Change

2257. Mr BARNETT, to the Premier:

In view of his statements on the revised Wagerup environmental review and management programme, would he specify how the revised environmental review and management programme complies with the recommendations of both the technical review committee and the Environmental Protection Authority?

Sir CHARLES COURT replied:

As stated in my answer to a previous question by the member, the technical advisory group's recommendations were made to the EPA. The EPA considered these, together with many other submissions, in preparing its report and recommendations to the Government. If the member cares to read both the EPA report and the revised ERMP, especially the specific management commitments made by Alcoa, I am sure he will see how the ERMP complies with the recommendations made by the EPA.

MINING: BAUXITE

Alcoa's ERMP: Change

2258. Mr BARNETT, to the Minister for Conservation and the Environment:

Relative to page 24 recommendation 4.13 and page 46 recommendation 7.9 of the Environmental Protection Authority technical review committee report on the Wagerup environmental review and management programme, has Alcoa agreed to change the sequence of their mining operations so that dieback affected forest areas are mined first?

Mr O'CONNOR replied:

Alcoa has undertaken to provide mining and management programmes to the State and not to implement these until agreed with the State (or failing

agreement, decided by arbitration). The order in which mining takes place will be determined in these mining and management programmes.

MINING: BAUXITE

Alcoa's ERMP: Industrial and Energy Development

2259. Mr BARNETT, to the Minister for Industrial Development:

Relative to page 17 recommendation 4.4 of the technical review committee report to the Environmental Protection Authority on the Wagerup environmental review and management programme, does the Government intend to moderate its plans for integrating industrial and energy development to allow for the possibility that the projected 4.5% growth rate for aluminium is not maintained?

Mr MENSAROS replied:

The Government has only considered the EPA report and views or calculations expressed in any input to EPA were not subject to Government consideration.

GOVERNMENT DEPARTMENTS

Expansion to Cope with Bauxite Mining

2260. Mr BARNETT, to the Premier:

Does the Government propose to levy Alcoa to provide additional funds so that additional staff can be employed by appropriate Government departments to cope with the problems resulting from expansion of bauxite mining?

Sir CHARLES COURT replied:

No. The Wagerup refinery project will result in additional revenue to the Government from royalties, payroll tax, rail freights, and other charges payable directly by Alcoa and by others involved in the project.

The Government believes that the substantial economic benefits to the State as a whole, as a result of this project, need to be taken into account.

In addition, Alcoa has stated its willingness to make substantial contributions to research programmes over and above the large expenditure which it currently makes on rehabilitation of areas cleared for mining.

MINING: BAUXITE

Water Supplies: Protection

2261. Mr BARNETT, to the Minister for Conservation and the Environment:

Relative to recommendation 8.7 on page 57 of the technical review committee report, will the State obtain the legal means of dictating the location of all bauxite mining activity to protect the water reserves?

Mr O'CONNOR replied:

Such legal means exist in respect of the Wagerup refinery by way of an undertaking by Alcoa in its ERMP (section 3.1) to submit mining and management programmes to the State and not to implement such programmes until agreed by the State or failing agreement, determined by arbitration.

An exchange of letter has taken place between Alcoa and the State to effect similar controls on Alcoa's Kwinana and Pinjarra operations.

MINING: BAUXITE

Alcoa: Map

2262. Mr BARNETT, to the Minister for Conservation and the Environment:

(1) Has Alcoa agreed to produce a map of an area containing sufficient bauxite to maintain refineries at Kwinana, Pinjarra and Wagerup for 30 years, as recommended by the technical review committee?

(2) When will the map be available?

Mr O'CONNOR replied:

(1) and (2) A map (figure 1) contained in the ERMP tabled by the Premier on 18th October, 1978, indicates areas with sufficient bauxite reserves for—

32 years for Wagerup at 2 mt/year;

38 years for Pinjarra at 2.5 mt/year;

25 years for Kwinana at 1.5 mt/year.

Detailed mining plans will be developed in consultation with the State as required in section 3.1 of the ERMP.

MINING: BAUXITE

Alcoa's ERMP: Change

2263. Mr BARNETT, to the Minister for Conservation and the Environment:

Pertaining to recommendation 12.5 of the technical review committee to the Environmental Protection Authority on the Wagerup environmental review and management programme, was the revised environmental review and management programme produced in collaboration with State planners, and does it include a 30-year mining strategy which takes into account the technical review committee's recommendations?

Mr O'CONNOR replied:

The ERMP was prepared to the satisfaction of the EPA and an undertaking made in it by Alcoa will ensure that future mining and management programmes are acceptable to those with responsibilities in the region.

EDUCATION

Schools and High Schools: Fire-fighting Equipment

2264. Mr BARNETT, to the Minister for Education:

(1) Is it a fact that no fire extinguishers or fire hydrants are provided at Government schools?

(2) If "Yes" why?

(3) Will he investigate the possibility of providing Government schools with adequate fire fighting equipment?

Mr P. V. JONES replied:

(1) No. Fire hydrants, fire hose reels, and chemical fire extinguishers are provided in high schools and technical colleges.

(2) Primary schools generally are considered to be of a low fire risk due to the light fire loading and activities normally associated with this type of school.

It is the considered opinion of the Education Department, the Public Works Department and the Western Australian Fire Brigades Board that in primary schools the teacher's sole responsibility is to care for those children under his or her care by ensuring that a swift and safe evacuation occurs. This function would preclude teachers from fire fighting activities, leaving that task to the Fire Brigade.

Fire protection is provided to high schools and technical colleges as the fire hazard is considered greater due to the trade activities carried out and the fact that many are of two-storey construction.

(3) No, as existing facilities are considered adequate.

TOURISM

Scarborough Beach

2265. Mr BERTRAM, to the Minister representing the Minister for Tourism:

(1) Is the Scarborough Beach front and the existing development buildings and facilities adjacent thereto of a standard commensurate with possibly the best surf beach in Australia?

(2) If "No" what has he done and what does he intend to do to correct this position and amongst other things see to it that the tourist potential of Scarborough Beach is properly exploited?

Mr O'CONNOR replied:

(1) The existing beachfront facilities are considered appropriate to the beach, which is one of the finest in Australia. However, the commercial buildings are not of the same standard.

(2) The commercial section west of the coastal highway is classified in the City of Stirling's planning scheme as a special beach development zone, and its development should be by the private sector.

When a substantial grant of tourist funds was made towards the cost of public facilities at the beach, it was on the understanding that the council of the City of Stirling would do all in its power to encourage the redevelopment of the commercial section. Numerous proposals have been considered over the years, but have failed to materialise for various reasons.

It is understood that a new submission has been lodged with the city, which provides for the redevelopment of a substantial section of the area in a most attractive manner. Should the application be successful and the works proceed, the facilities could be completed by spring, 1979.

INTEREST RATES

Reduction

2266. Mr BERTRAM, to the Treasurer:

(1) Is it a fact that some months ago considerable publicity was given to the fact that certain financial institutions were then about to reduce their interest rates?

(2) If "Yes" will he state the various classifications of borrowers of money who at that time:

(a) benefited from these reductions;

(b) did not benefit from these reductions?

Sir CHARLES COURT replied:

(1) In February last, following a reduction in interest rates by savings banks, I held discussions with various other financial institutions in an effort to bring about a general reduction in interest rates.
Following these discussions, several of the institutions, including all building societies, announced that they would reduce their interest rates by 0.5 per cent.

(2) The reduced interest rates applied mainly to loans for home building.

HIGH COURT

Government's Intention

2267. Mr BERTRAM, to the Minister representing the Attorney General:

(1) Is it a fact that those people who can afford it are able to pursue litigation by way of appeal to the Privy Council?

(2) (a) If "Yes" does the Government intend to make the High Court of Australia the highest court of appeal for Western Australians;

(b) If "Yes", when;

(c) If "No" why?

Mr O'NEIL replied:

(1) There is no general right of appeal to the Privy Council. Appeals are only available on a limited number of issues.

(2) (a) to (c) Not applicable.

LAND

Settlement Agencies: Statutory Control

2268. Mr BERTRAM, to the Premier:

(1) How much longer will it be before the people will be protected by appropriate legislation in respect of settlement agencies?

(2) What is holding up this matter and causing delay?

Sir CHARLES COURT replied:

(1) and (2) The Settlement Agents Association has been working for some time on a draft Settlement Agents Bill. The draft Bill was submitted to the Chief Secretary on the 13th October of this year and is presently under consideration.

LAND

Mortgages

2269. Mr BERTRAM, to the Minister representing the Attorney General:

What statistical details, if any, are kept as to the number of mortgages which are registered under the Transfer of Land Act each year, the amount secured by those mortgages and the interest payable thereon etc.?

Mr O'NEIL replied:

Statistical records kept by the Office of Titles for mortgages registered under the Transfer of Land Act refer to numbers registered and amounts secured (considerations) only.

These figures are published in the annual report and are supplied monthly to the Australian Bureau of Statistics.

INTEREST RATES

Amount

2270. Mr BERTRAM, to the Premier:

Is it a fact that some people in this State are currently being obliged to pay in one form or another interest rates in excess of 20% per annum?

Sir CHARLES COURT replied:

Although I do not know of any specific case, I am informed that interest rates in excess of 20 per cent reducible are paid by some people, mainly in connection with hire purchase agreements.

TRAFFIC ACCIDENTS AND OFFENCES

Causes

2271. Mr BERTRAM, to the Premier:

In each of the last three years:

(1) How many people have been successfully prosecuted under the Criminal Code or the Road Traffic Act for offences of which the fact that they were influenced by liquor or drugs was an element?

(2) How many road traffic accidents have occurred wholly or in part as a result of a person driving a motor vehicle whilst physically or mentally unfit to drive but who at the material time was in no way influenced by liquor or drugs?

(3) Is it the Government's policy to have doctors report their patients who drive motor vehicles when they are physically or mentally unfit to do so?

(4) If "Yes" is it the Government's intention to have publicans and other vendors of liquor and pushers of drugs and whose customers are significantly influenced by liquor or drugs to report their customers also?

(5) If "No" why?

Sir CHARLES COURT replied:

(1) The number of convictions for driving under the influence of alcohol and driving with 0.08 per cent or more alcohol in the blood in the last three years are—

1977-78—6 844

1976-77—7 240

1975-76—6 548

Figures on whether alcohol or drugs influenced other offences are not available.

(2) Figures are not available.

(3) Doctors are occasionally faced with the dilemma that a patient has a physical or mental condition which is likely to render him unfit to drive a motor vehicle and be dangerous to both himself and the public at large. There is conflict between the doctor's duty of confidentiality to the patient and of his duty to the public. Where the doctor decides that his duty to the public is greater, the Government proposes to protect him from any legal liability thereby incurred.

(4) No.

(5) If the member believes doctors should not take any action to prevent persons driving who are medically incapable of doing so with safety, he should say so.

LOCAL GOVERNMENT: CITY OF PERTH

Smiths Lake Project

2272. Mr BERTRAM, to the Minister for Local Government:

Further to her answer to question 2201 of 1978 touching on the Smiths Lake project:

(1) (a) Did every tenderer submit a price;

(b) if "No" why?

(2) Was the tender which was accepted by the City of Perth the one which was recommended by the appropriate officer of the council whose duty it was to assess the quality of the tenders and recommend the one which should be accepted?

(3) If "No" why?

Mr Young (for Mrs CRAIG) replied:

(1) to (3) Section 266 of the Local Government Act allows a council to sell land to a person who at public tender called by the council makes what is, in the opinion of the council, the most acceptable tender. The information sought by the member is therefore not contained in departmental records.

ELECTORAL

Voting: Equality

2273. Mr BERTRAM, to the Premier:

Further to his answer to question 2202 of 1978:

(1) Will he state for the information of *Hansard* readers and others who do not possess a copy of the international covenant on civil and political rights, the reasonable restrictions on voting rights which are contained in the said covenant and which he says are universally recognised by authorities judicial and otherwise as being essential and permissible to take into account when determining electoral matters?

(2) If "No" why?

Sir CHARLES COURT replied:

(1) and (2) The member's question requests an interpretation of the covenant which is a matter of legal opinion and is therefore—if my understanding is correct—out of order. (Erskine May: Parliamentary Practice 19th edition, page 331).

ROAD

Mitchell Freeway

2274. Mr BERTRAM, to the Minister for Transport:

How much longer will it be before construction works will be commenced on the fourth stage of the Mitchell Freeway?

Mr RUSHTON replied:

No firm date has yet been set to start work on the fourth stage of the Mitchell Freeway.

RAILWAYS

Rolling Stock

2275. Mr McIVER, to the Minister for Transport:

(1) Further to my question of Wednesday, 1st November, 1978 and his reply that an additional six rolling stock will be purchased, would he advise what type of rolling stock he was referring to?

(2) If answer to (1) is rail cars, would he further advise:

(a) what type of rail car will be purchased;

(b) when were they ordered;

(c) from whom;

(d) what will the rail cars cost; and

(e) when is it anticipated they will be available?

Mr RUSHTON replied:

(1) Diesel railcars and driving trailers.

(2) (a) underfloor-engined diesel power cars and non-powered driving trailers which will operate in sets of two as the basic unit.

(b) and (c) no units have yet been ordered.

(d) the total estimate is $3.53 million.

(e) this will not be known until negotiations are complete.

RAILWAYS

Locomotives: "N" Class

2276. Mr McIVER, to the Minister for Transport:

(1) What is the current situation of the "N"-class diesel locomotive, i.e., is it yet fully operational?

(2) If not, what is now the delay?

(3) Has modification to the "N"-class increased the original cost; if so, how much?

Mr RUSHTON replied:

(1) The current situation is that five locomotives have been delivered to Westrail as fully modified units and that three locomotives previously issued to traffic on a temporary basis are undergoing modification. Of the five modified locomotives delivered, three are operating on traffic and two are undergoing acceptance trials.

(2) Three new locomotives, together with the three locomotives undergoing modification, remain to be delivered.
The current modification and new construction programme calls for the delivery of five of the remaining locomotives by mid November, 1978 and the final locomotive by mid December, 1978.
(3) Yes, but the amount is not yet known.

ROAD

Kwinana Freeway

2277. Mr McIVER, to the Minister for Transport:

Would he advise when the Main Roads Department report regarding the acoustic impact of the Kwinana Freeway extensions will be released?

Mr RUSHTON replied:

It is not intended to release these calculations which were made to assist the detailed design of the freeway.

TRAFFIC: MOTOR VEHICLES

Exhaust Emission

2278. Mr McIVER, to the Minister for Transport:

(1) (a) With regard to his statement in *The West Australian* of 17th October, re vehicle emission control devices: is Western Australia represented on the Federal Minister's committee;
(b) If so, who is on the committee;
(c) when is it anticipated that the report Hamersley Iron is carrying out on emission control will be finalised?
(2) Will he be visiting other countries of the world to examine emission controls or will he be delegating an officer of the Transport Commission?

Mr RUSHTON replied:

(1) (a) and (b) No. The committee comprises solely members of the Australian Academy of Technological Science which is an independent body. The results will be made available to all interested parties.
(c) In January, 1979.
(2) Neither, since sufficient up to date published material on what other countries are doing is readily available and has been summarised.

ENERGY: ELECTRICITY SUPPLIES

Jerramungup and Pingrup

2279. Mr DAVIES, to the Minister for Fuel and Energy:

(1) Is it proposed that the town of Jerramungup will be placed on the State Energy Commission grid system?
(2) If so, when?
(3) If not, are alternatives being considered?
(4) Is it also proposed that Pingrup will be placed on the State Energy Commission grid system?
(5) If so when?
(6) If not, are alternatives being considered?

Mr MENSAROS replied:

(1) to (6) Consideration of power supply systems in the Jerramungup and Pingrup area is part of the review of rural electrification policies currently being carried out by the State Energy Commission.
This investigation has involved detailed discussions with elements of the rural community and a final report with recommendations on action is expected to be received by the Government within the next week or so.
After the Government has had time to consider the report I will be in the position of advising the Leader of the Opposition of the answers to his questions.

LAND

Urban Lands Council

2280. Mr DAVIES, to the Minister for Urban Development and Town Planning:

(1) How much land has been purchased by the urban land council?
(2) Where is it located?
(3) For what purposes will the various areas of land be used?
(4) When is each of the various areas expected to be used for their designated purpose?

(5) How much has the urban land council incurred in debts?

(6) When is it expected to begin to repay its debt obligations?

(7) Over how long are these debt obligations spread?

(8) Will he advise the House of the current profits, losses and assets of the urban land council?

(9) Can he estimate its losses at the time it will begin to repay its debts?

Mr Young (for Mrs CRAIG) replied:

(1) and (2) A comprehensive schedule of Urban Lands Council acquisitions and land holdings in the years 1974-75, 1975-76 and 1976-77 was tabled in the House on Wednesday, 12th October, 1977 in reply to question 927. I refer the member to the schedule.

During 1977-78 and to the present, the council has purchased additional holdings at Beldon, Armadale, Mindarie and Belmont.

(3) Urban development, excepting those areas which were purchased, utilising Commonwealth Grant funds, for open space purposes.

(4) When demand so warrants.

(5) Full details of the council's financial situation are contained in the Auditor General's report.

However, to assist the member I advise that at 30th June, 1978 the council's indebtedness to the Commonwealth was estimated at $24.877 million.

(6) 15th June, 1985.

(7) Twenty years.

(8) Details are contained in the Auditor General's report.

(9) It would be an idyllic situation where any organsiation—either public or private—could estimate accurately either its profits or losses at a period some seven years in future.

Let me say that the Urban Lands Council has, is, and as long as this Government's policies remain, will continue to trade economically. To ensure this, the council has had carried out comprehensive valuation, actuarial and financial analyses.

The member is obviously basing his question on an ill informed article in a Canberra newsletter.

To allow the member to form his own judgment of the article's accuracy—and thus, hopefully lay the matter at rest—the article states that in 1984 the council's losses will be $45 million.

The council's estimated total liability at that time—which as advised is repayable over twenty years—will only be in the order of $45 million. To infer this is a "loss" is complete absurdity.

I think the member will agree that the article is about as accurate as his question's designation of myself as "he".

REEF MOTEL

Thefts, Mismanagement, and Misappropriation of Funds

2281. Mr PEARCE, to the Minister for Police and Traffic:

Are the Police Department investigating any of the circumstances listed in parts (2)-(6) of my question 2250 to the Premier on 2nd November, 1978, concerning the Mandurah Reef Motel?

Mr O'NEIL replied:

No.

QUESTIONS WITHOUT NOTICE

LOCAL GOVERNMENT

Swan Shire

1. Mr SKIDMORE, to the Minister for Local Government:

(1) Has the Minister received a statutory declaration from a person who resides in Mt. Lawley and in the statutory declaration is mention made of allegations of malpractice against two councillors of the Swan Shire Council regarding sand and gravel supplies to the shire by companies under their control and also other matters?

(2) If "Yes" to (1) what action has been taken or is proposed?

(3) Has she received a request to meet five councillors from the Shire of Swan to discuss the matter?

(4) If so, when will she receive them under deputation?

Mr Young (for Mrs CRAIG) replied:

I thank the member for some notice of this question the answer to which is as follows—

(1) Yes.
(2) The matter is currently under examination to determine what action, if any, should be taken.
(3) Yes.
(4) A decision has yet to be made whether the deputation will be received.

MINING BILL: OPPOSITION

Source: Press Statement by Minister

2. Mr GRILL, to the Minister for Mines:

(1) Is the Minister correctly reported in *The Australian* newspaper of Friday, 3rd November, 1978, when while commenting on the new Mining Bill he is purported to have said "All the opposition to this Bill comes from, and is paid for, one source—Lang Hancock"?
(2) Is the Minister aware that in making that statement he is defaming many hundreds of people who oppose the Bill but who have no connection whatsoever with Lang Hancock?
(3) Would the Minister be prepared to withdraw or modify his statement and issue a public apology to those many people that he has unjustifiably offended?

Mr MENSAROS replied:

(1) to (3) I do not have a copy in front of me of the article the member quoted; it would not be a correct report of what I said in the interview. I probably said it appeared to me that most of the opposition goes back to one source, and I hold with this. I cannot comprehend the second question and the answer to the third question is "No."

MINING BILL: OPPOSITION

Source: Press Statement by Minister

3. Mr DAVIES, to the Minister for Mines:

The Minister is quoted in *The Australian* of Friday, the 3rd November, as follows—

> All the opposition to this Bill comes from, and is paid for, one source—Lang Hancock.

Did he or did he not say that? Now that I have read the quote, if the Minister wants to confirm that he did not say those words, will he take action to have the matter put right? If he will not do that, in view of that very grave allegation, will he tell us of the evidence he has proving the opposition comes from one source? If it is Lang Hancock, what evidence does he have in that regard? If it is not Lang Hancock, where is the source from which the opposition comes and what evidence does he have to substantiate his claim?

Mr MENSAROS replied:

I think I answered the first part of the question when I said to the member for Yilgarn-Dundas that possibly I would have said most of the opposition appears to have come from one source. I do not think I said anything in as categorical a way as that quoted by the Leader of the Opposition.

Mr Davies: You are quoted.

Mr MENSAROS: Does the honourable member want the answer to the question? Regarding the query of whether or not I would put it right, I definitely will not do so because so many times in one's political career one is not quoted exactly. If one were to correct every misquote one would not have time to do anything else.

MINING BILL: OPPOSITION

Source: Press Statement by Minister

4. Mr DAVIES, to the Minister for Mines:

I ask the Minister to answer the latter part of my question as to what evidence he has that the opposition comes from mainly one source. Can the Minister substantiate what that source is and what is the basis of his evidence?

Mr MENSAROS replied:

It is the result of my considerations based on the experience of what I judge the opposition to be.

MINING BILL: OPPOSITION

Source: Press Statement by Minister

5. Mr BRYCE, to the Minister for Mines:

Just so there is absolutely no doubt in anyone's mind, does the Minister

indicate to the House that he denies saying Mr Lang Hancock financed and provided the basis of the opposition to the Mining Bill? Does he deny saying that, and if he says that is not what he said, does the Minister now say to the Parliament that he has no intention of seeking a retraction from the newspaper concerned?

Mr MENSAROS replied:

I consider I have answered this question.

ABORIGINES: HOUSING

Henley Brook

6. Mr HERZFELD, to the Minister for Community Welfare:

The Minister has had some notice of this question which is as follows—

(1) Referring to his announcement that a site had been chosen at Henley Brook to accommodate, in the words of last Friday's issue of the *Daily News*, "fringe dwelling Aborigines", would he—
  (a) describe the boundaries of the site;
  (b) indicate the type of accommodation proposed and the number of each;
  (c) the estimated number of inhabitants when the site is established;
  (d) the ultimate number of inhabitants when the site is fully developed?

(2) Would he indicate whether the site is to be used purely for residential purposes or are other uses proposed?

(3) Regarding the site—
  (a) what is its zoning;
  (b) in whom is the land vested;
  (c) is it proposed to change this vesting and, if so, in whose name will the land be vested?

(4) What other sites were considered where and what were their disadvantages in relation to the site chosen?

(5) (a) Was the shire council consulted during the evaluation of alternative sites?
  (b) If not, why not?

(6) Has the Swan Shire Council been given one month to consider the chosen site and propose an alternative site?

(7) When does the month expire?

(8) Were Aborigines consulted during the evaluation of the alternative site?

(9) Is the chosen site acceptable to them?

Mr YOUNG replied:

I thank the member for some notice of this question, the answer to which is as follows—

(1) (a) The Henley Brook site consists of lots 352, 353, 354, and 355 bounded by Murray Road, East, Woollcott Avenue, South, lots 345 and 350, West and lot 351 North.
This site can be found on Metropolitan Region Scheme map, 1963—improvement plan No. 8—areas acquired.
  (b) Final decision has not been reached on type of accommodation to be established at Camping Park. This will be done in consultation with an Aboriginal committee. It is the intention, however, to install properly constructed self-contained accommodation units.
  (c) 40 adults and 28 children.
  (d) This number unknown as number will vary with transients.

(2) The site will be mainly residential but have camping facilities and services for transient population, workers and visitors, etc.

(3) (a) Rural zoning.
  (b) Urban Lands Council.
  (c) No decision at this stage. Consultation with Aborigines will take place before a decision is made. The land will not be made freehold.

(4) Many other sites were examined and disadvantages found to be—
  (1) areas too small;
  (2) prices exorbitant (private sales and offers);
  (3) residential zoning;

(4) unacceptable to Aborigines.

Three main sites have been considered and finally recommended to the Minister—

(1) a portion of land between Victoria and Marshall Roads, Beechboro. At first thought to be owned by Urban Land Council. Further investigation proved private ownership. This rejected as the area was to be set aside as regional open space for Bennett Brook area;

(2) 20 hectares of land in improvement plan No. 8 on Marshall Road. This rejected by the Regional Open Space Committee as its use was in severe conflict with the objectives for Whiteman Park and other adjacent land uses;

(3) Henley Brook site.

(5) Yes.

(6) Yes.

(7) The 4th December, 1978.

(8) Yes.

(9) Yes.

MINING BILL: OPPOSITION

Source: Press Statement by Minister

7. Mr JAMIESON, to the Minister for Mines:

As I am not very happy with the answers given by the Minister to previous questions, I ask—

(1) Is the Minister suggesting that Lang Hancock has offered financial inducement or some other form of financial support to the members for South Perth, Murchison-Eyre, Subiaco, Mt Marshall, Merredin, and Stirling to oppose the Bill?

(2) If the Minister is suggesting this, is he aware it would possibly constitute a breach of the law in respect of offering bribes to members of Parliament?

(3) What action is he urging the Government to take to ascertain whether the law has been breached in this way?

Mr MENSAROS replied:

(1) No.

(2) and (3) Not applicable.

Mr Bryce: What complete arrogance coming from you.

Mr Grill: It is a disgrace. You say those libellous things, but you are not prepared to answer the question.