Legislative Council

Tuesday, 12 May 1981

The DEPUTY PRESIDENT (the Hon. V. J. Ferry) took the Chair at 4.30 p.m., and read prayers.

PRESIDENT OF THE LEGISLATIVE COUNCIL

Absence

THE DEPUTY PRESIDENT (the Hon. V. J. Ferry): I wish to advise that the President will be absent from the State for approximately two months.

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [4.32 p.m.]: I seek leave of the House to move two motions without notice regarding the absence of the President.

Leave granted.

Leave of Absence

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [4.33 p.m.]: I move, without notice—

> That leave of absence be granted to the Hon. Clive Griffiths, President of the Legislative Council for a period of two months.

Question put and passed.

Representation on Committees

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [4.34 p.m.]: I move, without notice—

> That during the absence of the President, the Chairman of Committees be authorised to represent the President on the following Standing Committees—
>
> The Library Committee
> The House Committee
> The Printing Committee.

Question put and passed.

QUESTIONS

Questions were taken at this stage.

STANDING ORDERS COMMITTEE: REPORT

Leave to Present

THE HON. R. J. L. WILLIAMS (Metropolitan) [4.53 p.m.]: I seek leave to present the report of the Standing Orders Committee.

Leave granted.

Presentation

THE HON. R. J. L. WILLIAMS (Metropolitan) [4.54 p.m.]: I move—

> That the report be received.

Question put and passed.

Printing and Consideration

THE HON. R. J. L. WILLIAMS (Metropolitan) [4.55 p.m.]: I move—

> That the report be printed and its consideration in Committee be made an Order of the Day for the next sitting.

Question put and passed.

The report was tabled (see paper No. 173).

GENERAL INSURANCE BROKERS AND AGENTS BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. G. E. Masters (Minister for Fisheries and Wildlife), read a first time.

Second Reading

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [4.56 p.m.]: I move—

> That the Bill be now read a second time.

The purpose of this Bill is to establish an insurance brokers licensing board to control licensing of insurance brokers and registration of agents engaged in general insurance business.

The need for legislation has been established following many complaints to the Government early last year and subsequent investigations which were conducted by a working party comprising—

> the Commissioner for Consumer Affairs;
>
> the General Manager, State Government Insurance Office;
>
> and representatives of—
>
> > the Insurance Council of Australia Ltd.;
> > the Life Insurance Federation of Australia; and
> > the Insurance Brokers Council of Australia.

The working party's terms of reference were—

> to investigate and report upon the reasons for the recent failures of insurance brokers in Western Australia;
>
> to investigate the possibility of further failures occurring and to recommend measures, if any, which could be taken immediately to protect consumers and insurers; and

to investigate and report upon the desirability for the control of the operation of insurance brokers and the form it should take.

In July 1980 the working party reported to the Government outlining the main reasons for broker failures as being—

lack of relevant insurance and/or business experience on the part of the principals;

inept management;

insufficient working capital;

poor credit management by broking firms, particularly the failure to maintain adequate collection procedures for payments due from clients; and

poor credit management by insurers.

Some insurance companies and underwriters allowed broking firms very long credit terms and follow-up action, and failure to insist on remission of premium payments was, in some cases, extremely lax.

As a result of that report, and general public disquiet about continuing failures, the Government announced in August last year its intention to recommend legislation to control insurance brokers and agents.

Since that date, the Government has examined numerous submissions from the insurance industry and the report of the Commonwealth Law Reform Commission on insurance agents and brokers.

This Bill proposes to establish an insurance brokers licensing board comprising four members; that is, two independent of the insurance industry, one to represent the Insurance Council of Australia Ltd., and one licensed insurance broker elected by fellow brokers. The initial appointment of the broker member will be on the nomination of the Minister.

Brokers engaged in general insurance business, other than life insurance business, will need to be licensed under the provisions of the Bill. The penalty for carrying on business as an unlicensed broker will be $10 000.

Under the proposed law, the board may grant a licence if it is satisfied that a broker is—

a person of good character and repute and is fit to hold a licence;

a qualified person;

a person who has sufficient material and financial resources available to him to enable him to carry on business as an insurance broker; and

insured in compliance with the Act.

"Qualified person" means a person who has such qualification by way of experience or otherwise as is prescribed, or if no qualification is prescribed, such qualification by way of experience or otherwise as is approved.

Initially, no academic qualification will be prescribed. Generally, it would be expected that the board would expect an applicant to have at least some years' experience as a broker or in the general insurance broking industry.

The Bill provides that brokers must maintain insurance policies for professional indemnity and fidelity cover to the value of at least $100 000 in each category. Provision is made for the sum of $100 000 to be increased overall by proclamation, or varied by the board in individual cases.

Provision exists for firms and bodies corporate to be licensed so long as the person in bona fide control of the firm or body corporate is a qualified person within the meaning of the Bill.

Agents engaged in general insurance business will need to be registered with the board.

The definition of "insurance broker" is—

a person whose business, either alone or as part of or in connection with any other business, is to act, for or in expectation of gain, as an agent for insureds or intending insureds in the transaction of general insurance business; or an insurance agent who is a party to agency agreements with four or more insurers.

It should be understood that the essential difference between a broker and an agent is that a broker acts on behalf of and as the agent for people seeking insurance, whereas an agent is the agent of the insurance company or insurance companies which he represents.

It was considered by the working party that the great majority of agents operating in the general insurance field would be able to obtain a sufficient variety of markets for clients for all classes of general insurance business, with access to only three insurance companies. Those agents will remain exempted from the requirements of licensing under the proposed legislation, and will be required only to register with the board.

An agent acting for four or more insurers will, under the legislation, be required to obtain a licence under the Act. However, in response to a number of submissions received since the introduction of the Bill into the Legislative Assembly, the Government has determined that the insurance brokers' licensing board, when constituted, should be given discretionary power to except certain agents with four or more agency

agreements from the meaning of "insurance broker".

An amendment to the Bill, introduced by the Chief Secretary at the Committee stage, provides that the board may grant an agent, with four or more agency agreements, exception from the meaning of insurance broker if it is satisfied that—

> he is bona fide an insurance agent and has not assumed the character of an insurance broker;
>
> each agency agreement to which he is a party is in writing, is properly executed, and authorises him to collect premiums;
>
> he is able to issue each insurer's premium receipts and other documentation; and
>
> he is not a party to agency agreements with more than 10 insurers.

This amendment will exempt the genuine multi-agent who operates under written agency agreements with insurance companies, collects money in the insurance companies' names, and has no access to the use of those funds, from the financial provisions of the Bill relating to brokers.

The Bill provides a right of appeal to the District Court against decisions of the board, particularly in relation to refusals, cancellations, or suspensions of licences and in relation to exceptions. Provision is made which will enable the board to determine, in the event of termination, cancellation, or suspension of a licence, the manner in which the business may be wound up. The intention of this provision is to safeguard the interests of the insured party. The board would advise the insured party of a broker's failure and suggest alternative arrangements. The broker will be prohibited from undertaking further insurance business in those circumstances, with a penalty of $10 000 for non-compliance.

Brokers will be subject to annual licensing, and agents to triennial registration. Insurers will be required to submit to the board annually details of any new agency agreements entered into.

Life insurance business has been excluded from the Bill deliberately. The majority of life insurance business is written by the larger mutual offices operating on a sole-agency basis. Life insurance protection does not normally commence until all documentation is completed and the premium has been paid to the company. There is a limited credit risk; and this field is controlled adequately by the Life Insurance Commissioner under the Commonwealth Life Insurance Act.

Brokers will be required to maintain an insurance broking account with a bank; and the Bill defines the specific purpose for which the account may be used. Brokers will be required to pay to the credit of the account all moneys, including brokerage, received by them through any source relating to insurance transactions, and to submit annual audited statements of their insurance broking account to the board when applying for renewal of a licence. Withdrawals from the insurance broking account will be for purposes specified in the Bill, including short-term investments, brokerage, and fees.

Short-term investment is defined in the Bill by reference to the Trustees Act 1962, confining such investments to banks, building societies, the short-term money market approved by the Reserve Bank, and common trust funds of trustee corporations. Provision exists for other methods of investment to be prescribed if considered necessary. However, it is considered that the fields of investment specified in the Bill would account for approximately 90 per cent of current investments by reputable brokers.

A broker will be required to pay into the insurance broking account the difference between the amount invested and the amount realised in cases of investment losses. This action must be taken before any withdrawals may be made from capital or income surpluses which have been received.

The Government considers that legislative control of general insurance brokers and agents is essential, particularly when related to the number of recent failures of brokers in this State.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. J. M. Brown.

TRANSPORT AMENDMENT BILL

Second Reading

THE HON. D. J. WORDSWORTH (South—Minister for Lands) [5.05 p.m.]: I move—

That the Bill be now read a second time.

Members are reminded that, when introducing amending legislation to this Act in 1979 and again last year, I foreshadowed further changes which would undoubtedly become necessary from time to time as progressive implementation of the Government's land freight policy took place.

Despite the forward planning associated with the new transport policy, it is possible only in the light of experience to determine what legislative refinements are needed to ensure the orderly progress from a system of regulated road transport to a system whereby the users determined their choice of the transport mode. As

a result of the experience being gained, it is becoming readily apparent that there are some omissions and certain weaknesses in some of the provisions of the present Act which are working against the implementation procedures. This leads to the amendments currently before the House.

The first of these relates to defects in the existing Act whereby in respect of the issue of a licence for the transport of goods on a semitrailer, it is the load-bearing portion only of the combination—that is to say, the semitrailer itself—which is deemed to be operating and licensed under the Act. The forward section of the trailer—that is, the prime mover—does not require licensing. Because of this omission it is possible for a group of farmers to buy a semitrailer and use the farmers' exemption provisions of the Act to hire a haulage contractor's prime mover to haul the trailer. The whole purpose of the licensing system is to ensure that a measure of control over the movement of vehicles exists; and if the practice to which I have referred is allowed to continue and escalate, it could jeopardise seriously the new policy which seeks to encourage the transport of bulk traffics by Westrail.

The amendment will define the prime mover as part of the operating vehicle and will have the effect of requiring the prime mover to be licensed in the same manner as the trailer. However, a farmer will still qualify for the farmers' exemption for his own prime mover, but he will not be able to contract with a professional carrier for the haulage of his own trailer.

In addition to the foregoing, difficulties are being experienced with those sections of the Act which lay down the criteria which the Commissioner of Transport is obliged to consider before granting or refusing a licence in respect of the operation of a commercial goods vehicle, an omnibus, and an aircraft.

Last year the long title of the Act was amended to include the passage—

> for the progressive removal of measures which hinder the efficient and safe transport of goods.

This objective, or course, is incompatible with licensing criteria which direct the Commissioner of Transport to undertake certain procedures when considering applications for licences. It is considered essential that the commissioner be given some flexibility of action in order that he might implement State Government policy objectives in this area. The proposed amendment will give the Commissioner of Transport discretionary powers as to which of the criteria specified in the Act he should take into account when considering an application for a licence.

A further amendment, which is outside the scope of the land freight transport policy, relates to the distribution of surplus funds from the Transport Commission Fund. At present, the Act provides for a rather complicated method of distribution to statutory authorities. It is now proposed that the commissioner, after meeting the cost of various transport subsidies currently met from Treasury funds, may distribute any surplus moneys held to the credit of the Transport Commission Fund at the end of the financial year to the Main Roads Trust Account under the Main Roads Act. In the light of the current responsibilities of the Main Roads Department to distribute to local authorities funds for the provision and maintenance of roads, it is considered more appropriate that surplus moneys available from the Transport Commission Fund be allocated for use by that department.

I commend the Bill to the House.

THE HON. F. E. McKENZIE (East Metropolitan) [5.10 p.m.]: The Opposition supports the amendments in this Bill.

The first amendment, which is the one most likely to create controversy, requires the operator of a prime mover and trailer to be roped in for the purpose of granting a licence. As the Minister explained in his second reading speech, there was a requirement only in respect of the trailer. It was possible for a group of farmers to buy a semitrailer and to hire a contractor with a prime mover to convey bulk traffics—grain, in particular—to the coast, operating under the exemption provisions of the Act applying to farmers.

As it has explained on a number of occasions, the Government intends to regulate bulk traffic to rail. That is a very sensible move. I am sure all members would agree, because bulk traffic is the heavy traffic. It is essential that we move as much heavy traffic off the roads and onto rail as possible. Bulk traffic can be handled more efficiently on rail; and it should be handled more cheaply.

The people in country areas are probably aware of the damage that heavy rigs do to the State's road system. It is essential that the bulk traffics be on rail where they can be handled more effectively, with less damage to the roads. That is particularly important at this time, as we note that the allocation of road funds from the Commonwealth is being reduced in real terms on each occasion the Government seeks them. In regulating that this heavier traffic be transported

by rail, the Government is supported by the Opposition.

Some of the farmers—and there would not be many of them—use the method outlined by the Minister in his second reading speech. Always a few people will operate outside the spirit of an Act; and amendments have to ensure that the interests of the community are protected.

Since I am talking about community interests, I should mention the damage caused by heavy vehicles to the roads. That applies particularly in respect of grain haulage. There is also the outlay by Co-operative Bulk Handling in respect of the facilities that it provides for the farming community in the way of receival bins which are constructed to receive the grain. If the farmers choose to enter into arrangements to bypass the facilities provided for them, they are doing a disservice to the rest of the farmers within a particular area, for whom CBH has provided a grain receival and storage bin. They cart to the nearest port; and this affects the viability of providing receival bins for grain. Not only are the railways affected; but Co-operative Bulk Handling also is affected when large amounts of bulk traffic are taken away from the intended area. We support the tightening of the regulations in respect of this matter.

Concerning the amendments to sections 36 and 45 of the Act, relating to the criteria for the granting of road licences and aircraft licences, we have no argument. They allow the Commissioner of Transport some flexibility in his operations. We support the changes being made to those sections.

The final amendment is to section 62, which deals with the distribution of surpluses from the Transport Commission Fund. Previously, there was a rather complicated method of distribution to statutory authorities. The amendment simplifies that procedure by ensuring that any surpluses from the Transport Commission Fund are paid to the Main Roads Department Trust Fund. That obviates the necessity to distribute them to a number of statutory authorities; and we have no argument with that.

The Opposition supports the Bill.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by the Hon. D. J. Wordsworth (Minister for Lands), and passed.

INDUSTRIAL ARBITRATION AMENDMENT BILL

Second Reading

Debate resumed from 5 May.

THE HON. D. K. DANS (South Metropolitan—Leader of the Opposition) [5.17 p.m.]: The Opposition is opposed to this legislation. What we have before us is legislation to amend section 96(1) of the Industrial Arbitration Act. The Government is taking this action against the Prison Officers' Union because it could not get its own way in the State Industrial Commission.

I say at the outset that this Bill should become a blue print showing how a Government should not operate in industrial relations. Perhaps in the fullness of time it may become a standard text.

The Government intends to amend the Act to make it clear that a person regarded as an officer under or within the meaning of the Public Service Act is a Government officer. At present the Act states—

> . . . who was eligible to become a member of the association.

I believe that refers to the Civil Service Association, and I will come back to that point later.

It is important we consider the events that led to the introduction of this legislation into the Parliament. I suppose under normal circumstances I would laud the fact the Government is making it easier for people to become Government officers and join the Civil Service Association, because history records that the Government has made it most difficult for people in certain sections of the Government service to obtain this coverage or status.

It used to be a reasonable and respectable status until only just recently when the civil servants or public servants—give them any name one likes—became the chopping block for both the State and Federal Governments.

Whichever way members vote—I am fairly sure how most members will vote—most honest people will say "Goodness gracious, how can we ever accept the rift in our community when a Government stoops to this level?" It has stooped to this level on this occasion and others; that is a glaring example of this Government's attitude.

The dispute which led to this legislation flared at Fremantle Prison on 13 August 1979 over prisoners using cardboard containers to move

personal effects around the prison. Prison officers requested the containers be withdrawn as they posed a security threat. The containers could not be searched properly, and immediately prior to the dispute contraband had been found in various sections of the prison. No doubt there will be some rebuttal of those comments, but if one considers what has happened at Canning Vale in the last couple of days despite the advice of the prison officers which was not adopted, one realises that fair-minded people probably will say that what I have stated is correct.

On Tuesday, 14 August, a conference between the parties failed to resolve the dispute. The department acknowledged the boxes posed a security threat, but was not prepared to authorise their removal for fear it would cause undue tension in the prison. Union members were not prepared to continue working under what they considered unsafe working conditions. Later that day they removed all the cardboard boxes from the prison. The principal officer who supervised the removal of the boxes was charged under prison regulations. Presumably he was charged for tryng to protect other prison officers within the prison. I say that quite sincerely because I am not one of those people who believes that all prisoners, particularly in Fremantle Prison, should not be there. Some very dangerous, brutal, and callous people are incarcerated in Fremantle Prison.

The Hon. R. Hetherington: That is true.

The Hon. D. K. DANS: On Wednesday, 15 August, the department ordered a principal officer to distribute plastic containers to prisoners throughout the prison. The principal officer refused and was charged with refusing a lawful command under the prison regulations. Two other officers were given the same order and, subsequently, charged. A meeting of prison officers was held at 8.00 a.m. on Thursday, 16 August, to discuss what action should be taken as a result of the principal officers' being charged. During the course of that meeting certain officers left on duty as part of a skeleton staff were relieved of their positions by administrative officers.

Upon making inquiries it was ascertained officers had been locked out of the prison. I emphasise that officers had been locked out. Some two hours after the lockout a further meeting of officers took place just inside Fremantle Prison. Officers were allowed into the first section of the prison, but not permitted keys.

At the meeting held the Director of the Department of Corrections (Mr Kidston) informed the officers that the Government had made a decision to transfer principal officers to the Public Service. That was two days after the original problem arose. I venture to say that if the principal officers had made representations to be members of the Civil Service Association and obtain such conditions applying prior to that date, their requests would have been flatly refused. Not only would I say that, but also most informed people in this arena would agree with me.

On Friday, 17 August, the dispute over containers virtually came to an end when officers agreed to distribute plastic bags to prisoners. The officers retreated from their original position after the administration had manoeuvred officers into a position of issuing some form of container or facing a riot amongst the prisoners.

Later that day all principal officers were informed they had been transferred to the employ of the Public Service and were eligible to become members of the Civil Service Association. Quite arbitrarily—they belonged to the Prison Officers' Union—they were told they had been transferred to the Public Service and could become members of the Civil Service Association. I will come back to that point in a moment.

I do not know anywhere in the field of union-management relations, industrial relations, or human relations, give it any name, that action of this nature has occurred—ever. In other words, there was no conscious or real effort to resolve the dispute that had arisen over an incident in Fremantle Prison.

The following week the union took out a prerogative writ against the Chief Secretary claiming that employees could not be transferred to another employer without their consent. I do not think anyone in this place would disagree with that principle. Prior to the writ being heard in the Supreme Court the original letter of appointment to the Public Service was withdrawn and principal officers were invited to apply for positions of "chief officer". So, we had the Chief Secretary with his wand producing the good fairy. The Government was finished with principal officers and instituted the new category of chief officers. They were told they could apply for positions in the Public Service. Principal officers were not forced to be chief officers although the department said it could not guarantee they would not be demoted or dismissed if they did not apply. That was a childish attitude to take. It was like holding a gun at a person's ear and saying "We are not forcing you to do that, but if you don't you may not be here next week. It is in your best interests to move over."

Finally, principal officers were informed that unless they accepted the positions of chief officers within 24 hours the positions would be advertised throughout the service and may not be given to the incumbent principal officers. They did not have one threat; they had two. Needless to say, the majority of principal officers accepted the chief officer positions. I do not criticise them for that; it was a perfectly normal human reaction. Those people had worked with the Department of Corrections for some time and almost overnight were to be thrown out. Most of them were career officers; they had no alternative but to accept the directive.

Some principal officers refused to be bludgeoned into accepting chief officer positions and, as a result, conferences were held between the parties and later before a commissioner of the State Industrial Commission it was agreed that principal officers who at that stage had not elected to become chief officers should not be required to make a decision until the commission had considered the dispute.

It would seem to me that in the first instance if the Government or the Chief Secretary felt so hot about this issue, he could have taken it to the commission long before rather than threaten and bludgeon the officers. A better position to have adopted would have been to negotiate with the union.

Following the dispute numerous conferences were held before the commission. In those conferences the union sought to argue it was not the province of any employer, including the Government, to dictate to which union a group of employees should belong. The union argued the commission had been established to prevent and settle industrial disputes, and one of the matters falling under its discretion was the question of constitutional and industrial coverage.

It is quite an interesting situation. From day to day State unions make applications to belong to the Federal bodies representing their members and to get out of the clutches of the Western Australian State Industrial Commission.

The applications have been opposed heartily by employers and the Government on a number of occasions when there have been disputes and demarcation disputes about some unions claiming members from other unions. I do not want to remind members of the attitude of the Government freely expressed on those occasions, but this is a completely different attitude to that stated previously by the Government on this very important issue.

The Public Service advocates, representing the Government, advocated the right of the Government to create positions under the Public Service Act and remove others from ministerial control. After nearly three days in conference it was agreed the commission should have the opportunity to recommend whether principal officers should remain as principal officers under ministerial employment or as chief officers in the Public Service.

The Public Service advocates indicated that the Government would place argument before the commission, but would not necessarily be bound by any recommendations the commission might make. It was agreed that as a vehicle for testing the argument the Government would apply to delete the classification of principal officer from the award.

Already the Government is saying that it will go along to the umpire—it does not mind that—but if it does not like the decision, it will not be bound by it. I can well imagine the situation if any union official or advocate was to stand up and publicly make that comment. I can imagine the broadside he would get here, and from the Press. It is not a bad situation to have. The Government is saying "We will go along; we may win, and if so we will be happy. However, if we lose, perhaps we will not accept it".

A great principle is involved here and I am suggesting to the Chamber that it goes well beyond this particular dispute which, for all intents and purposes, is now over because of the action of the Government. However, it will not be forgotten, and that is one of the aspects we sometimes overlook. As in any other walk of life or endeavour, for every action there is a reaction, and that reaction will be felt not only in the Prison Officers' Union, but over the whole spectrum of industrial relations in Western Australia. It is a situation which never should have occurred, given the proper handling.

I must continue my resume, because it is important that it is incorporated in *Hansard*. An application was duly made to the Chief Secretary to delete the principal officer classification from the award. Unfortunately, due to the Industrial Appeal Court decision in the academic staff's case, the commission was stripped of its jurisdiction—I do not want to go back on that, because all members are aware of that jurisdiction—to register and entertain applications of, or relating to service unions. Although the Government promised, and did finally introduce, amending legislation to rectify the appeal court decision, it refused to go ahead

with the application until the legislation was amended.

On 27 March 1980, the application finally came on for hearing before the then Senior Commissioner Kelly. The Public Service Board representing the Minister indicated the department had given consideration to transferring principal officers over to the Public Service well before the August 1979 dispute.

That might well be so, but if it did have that in mind, it kept it well hidden, because I can find no record of it and know of no-one who had any knowledge of it. I believe that if the idea came up some time in the last couple of years to transfer them over to the CSA for a number of reasons then it could have received favourable consideration.

It could be done in an atmosphere of industrial calm where some logic would have prevailed. However, I am not disputing it, but I certainly cannot find any public announcement in respect of this particular issue.

If the department favoured this idea, it had not acted upon it until the dispute arose. Essentially the argument put to the commission was that the Government, not the commission, had power to create positions under the Public Service Act and remove like positions from ministerial employment. The Government advocated that as this was legally permissible, the commission should not become involved. The Government also indicated that it was prepared to argue that chief officers were "Government officers", as defined in the Industrial Arbitration Act.

The union rebutted the Government's submission by maintaining it was the province of the commission to determine the organisation to cover any group of workers. It was not for the employer. The union called evidence and clearly demonstrated that the position of chief officer was really the position of principal officer under another name.

I do not think you need to be any great advocate to adequately demonstrate and prove that.

Some weeks after the hearing concluded the senior commissioner asked both parties to make further submissions to him on the question of whether chief officers were Government officers. The parties appeared before him on 27 May 1980, and made submissions on that point.

On 11 July 1980—by now the time is passing rapidly—the then senior commissioner handed down a lengthy decision in which he concluded that chief officers were Government officers. The senior commissioner made no decision or recommendation on whether the chief officer or principal officer position should continue. He did however, refuse to delete the classification of principal officer from the gaol officers' award.

On 22 September 1980, the union filed an application for an award to cover chief officers. The board filed its answers on 14 October 1980. On 16 October the union contacted the board to inquire whether the board had any objections to an award issuing for chief officers. The advocate received the call, and indicated that he would check the position with his superior officers and advise the union in due course. When no answer was received from the board, further inquiries were made, but to no avail. After receiving continual inquiries the board finally agreed to arrange a conference to discuss the application. That conference took place at the board's offices on Monday, 10 November. Each clause of the award was examined in detail by the parties.

Following the conference the union sought some indication from the board as to when an answer might be received. On each occasion the union inquired some feeble excuse was given as to why an answer had not been forthcoming.

This is one of the old push-me-pull-me exercises which sometimes take place in industrial relations, particularly when unions are trying to reach a settlement. This activity does not hit the Press, but it is well known and extends and extends until, in many cases, another dispute situation is reached.

Still nothing came forward. After waiting just a little over two months for a reply, the union wrote to the board on 14 January—now we have reached 1981—indicating that unless an answer was received within 14 days of that date, the union would be applying to the commission to request the application be called on for hearing.

On 28 January, a hand-delivered letter from the board indicated that the application would be opposed on jurisdictional grounds. That was the first indication the union had received that the application would be opposed on such grounds.

On being advised by the board of its intention, the union requested the commission set a date of hearing as soon as practicable. Once a date of hearing had been set, the board advised the union of its intention to argue that the jurisdictional questions should be referred to the full bench.

The application came on for hearing before the then senior commissioner on 3 March 1981. Counsel representing the Government, indicated the employer was committed to making chief officers Government officers. He indicated the Government believed chief officers were

Government officers under the existing legislation and wished the Government's view to be tested by the full bench. The commission was urged to refer two questions to the full bench for consideration, those questions relating to the interpretation of section 96 and a section of the CSA's rules.

I will pause there because events moved fairly rapidly and now we have this legislation before Parliament. This should give members a fairly clear thumb-nail sketch of the present situation.

I have been told via the grapevine that the Government did not stop there. It is in the process of standing over the Civil Service Association, indicating that it does not want any funny business from the association. It is indicating that if the CSA refuses to accept these people as members, its monopoly of membership of people who are employed within the Civil Service will be removed.

I notice that the Minister is making some notes. No doubt in a moment he will be on his feet saying "That is not true". I have no way to prove what I have said, but the big stick has been used, and used effectively.

I do not want to go into the situation under which the CSA covers members. I will indicate briefly the end result.

By amending the legislation the Government has effectively overruled a decision of the commission—just like that. The independence of the commission is threatened, as clearly each time the commission makes a decision not compatible with Government thinking, legislation will be changed or introduced to nullify and control the commission to make it little more than a Government agency.

We have seen this happen before. Then the Government belly-aches when unions go outside the commission and take direct action.

The Government has made an absolute mockery of the dispute-settling procedure envisaged in the Industrial Arbitration Act; it has deliberately frustrated proceedings before the commission. The Government should know that frustrating the smooth settlement of industrial matters is not conducive to good industrial relations.

This Government makes the mistake all the time. It believes that by solving the problem this way it has solved all matters. It does not realise that in eroding the power of the commission, it is making it much easier for unions also to thumb their noses at the commission, as well they should. What is the good of unions going to the commission and obtaining a decision if the Government comes back to Parliament almost immediately and destroys any decision the commission has made or is likely to make? Is that conducive to good industrial relations? I say it is not.

The Hon. Peter Dowding: This Government does it all the time. It is disgraceful.

The Hon. D. K. DANS: The Government has made a mockery of the commission by using the provisions contained in the Act and regulations to stifle a resolution of the dispute. Of course it has. Also it is showing a contemptuous attitude towards the commission by overruling its decision. What is the good of the unions going to the commission on this or any other matter? It invites the use of industrial muscle, wherever it can be applied.

Let us go back to the intention of the commission; and this sometimes is not understood by members of the Government. The purpose of the commission involves one desire, and one desire only; that is, the prevention and settlement of industrial disputes. The Government's intention is to implement Government policy by coersion or manoeuvre, simply to prevent any settlement of industrial disputes. However, when the commission reaches a decision, whichever way it goes, the Government should not interfere, by way of legislation, to nullify that decision; and I repeat that that policy should apply, no matter what the decision.

The arrogance with which the Government acts has been highlighted by this dispute. To ensure its own way, the Government threatened principal officers with dismissal unless they became chief officers in the Public Service.

I wish to refer to another little incident. It is almost laughable, considering some of the utterances the Government has been making in respect of the question of State finances, the need to tighten our belts, and the need to be more judicious in the use of the people's money.

As an inducement to principal officers to join the Public Service, they have been offered additional annual leave, a shorter working week, an additional four public holidays per annum, and additional wages.

Given the Government's track record with employment conditions, it is rather amazing it would create a new standard of annual leave of five weeks for Monday-to-Friday workers and six weeks for shift workers. That is the annual leave provided for chief officers. Now that the Government has voluntarily offered these conditions to some prison officers, it will no doubt castigate other officers for seeking the same conditions, if they do.

Here we have the blueprint concerning how not to conduct industrial relations! The Government has tried every card in the pack. It has tried to coerce, to bludgeon—in fact, in any way at all—to upset the decisions of the Industrial Commission. Last but not least, it has tried to bribe the principal officers.

I wonder what the reaction of the Chief Secretary would have been to the particular people of whom we are speaking, if they had remained in the Prison Officers' Union and submitted a log of claims asking for those very conditions. Here the Government wants to give them these conditions without any fight or tussle whatever.

Is that not a glaring example of duplicity and a failure to understand what life is all about? I would like to refer members to the article I found in yesterday's Press. I would like to quote from page 4 of *The West Australian* of 11 May, and I would like members to think for a moment about the headline "Hassell: Leave could mean cuts". The article commences—

> The proposed amenities block for prison officers at the new Canning Vale prison complex might have to face cuts if prison officers decided to accept an extra week's leave, the Chief Secretary, Mr Hassell, warned yesterday.

That is the extra week's leave the Chief Secretary is just giving away to some officers! The Chief Secretary is saying "I am the omega; I will tell you what is good for you". To continue—

> Other prison development programmes could also be in jeopardy if the officers accepted an extra week's leave awarded by the Industrial Commission last month, Mr Hassell said.
>
> He urged prison officers to act responsibly—

Incidentally, he might have set a better example himself, might he not? The article continues—

> —and to give up the leave, which could cost the Government more than $530,000.
>
> Mr Hassell said that although about 35 additional prison officers would be needed to cover the extra week's leave there was no possibility of employing more officers.
>
> He said: "The economies will be made in other areas to the overall detriment of the prison service and prison officers.
>
> "The extra annual leave claim is only one of many quite extensive, far-reaching and costly wages and conditions claims applied for and granted by the commission.
>
> "The Prison Officers' Union would be wise, in the interests of its members, to withdraw this leave."
>
> Mr Hassell said that if the extra leave was not put aside the Government would have to look again at the building and development programme and at the number of prison officers recruited.
>
> He said: "There must inevitably be some slowing down of these programmes and probably some economies made in other areas.
>
> "There is the Canning Vale complex being developed at present with work on the medium-security section.

The Hon. F. E. McKenzie: Is that the same Minister who needed more members of Parliament?

The Hon. D. K. DANS: How can members of the Government reconcile themselves to that statement? Here is the Chief Secretary asking the members of the union, to whom he has just done all the things I have recited, to give him some co-operation. He has taken members out of their union forcibly, and without any application from any source whatever, granted them an extra week's leave plus other conditions. How naive is this Minister? These officers, who were doing the same job less than 12 months ago at a certain level of leave, simply by the change of their title and the enactment of this legislation before the Parliament, will get, not only an extra week's leave, but also other favourable conditions.

Simply by changing the designation of these officers, the Chief Secretary is granting them conditions that he will not grant to the men working alongside them before last August when this dispute erupted.

We hear so often from the Government the statements "Let us get together; let us solve the problems of industrial relations; let us talk", but that is all so much hogwash. We hear the Premier say this almost daily, and then he tells us that most unions are very good; it is only the militant unions that cause the trouble. Once it used to be the Communist unions or the left-wing unions which caused the trouble, but now it is the militant unions.

The Hon. R. Hetherington: It is the ones that don't agree with the Government!

The Hon. D. K. DANS: That is quite right. No-one could suggest to me that the Prison Officers' Union, which has been around for a very long time, is a militant left-wing union. Can anyone argue that it is not the responsibility of

the union officials to protect the working conditions and the remuneration of its members?

We could take the matter even further in relation to the Prison Officers' Union and say it is working also to protect its members' lives and to help prevent unnecessary injury. That is all the union did, and yet consider the Government's reaction.

The Government forced a group of workers out of one union and it stood over another union to accept them. As a final inducement, it gave the workers a set of conditions that they never had before for doing the same job. When the union to which they belonged originally applied to the Industrial Commission for the same set of conditions, and when that same set of conditions was granted by the commission, the Minister told the workers "Do not take this extra week's leave. We are asking for your co-operation." The Industrial Commission is the umpire set up by the State Government to conciliate and mediate when an industrial dispute arises, but then the State Government tells the workers not to accept the decision of the commission.

I have not checked out the log of claims with the Prison Officers' Union, but I understand that the claims may include the conditions that were forced on the new chief officers! How can we believe that a Government which takes such action is sincere? How can we believe that the statement attributed to the Chief Secretary in yesterday's Press is to be taken seriously?

What the Government is saying is "There are to be no more decisions of the Industrial Commission unless we agree with them. If we do not agree with a decision, we will introduce legislation into the Parliament to ensure that we prune effectively the power of the commission."

Federally and in other places an attempt has been made to destroy the concept of a minimum wage, and at the same time to set in motion a multi-tiered wage-and-condition situation. That same attempt is being made here. The Chief Secretary is saying "It is too bad if you work for the Government; we cannot pay you. Bully for you if you work for Hamersley Iron Pty. Ltd. because that company can pay you." If this principle is extended, wages and conditions will come down in steps and stairs. Some members of this House have been around long enough to know that is how things used to be, and the younger members would be aware of the history of industrial conditions.

If the Minister is acting on his own behalf, we can say only that it is the worst type of legislation that can be introduced here. It is thoroughly unprincipled and it uses under-the-counter tactics. However, the legislation has the blessing of the Government, so one can assume only that the Government is unprincipled on this issue. If I ever again hear Government members ask for the co-operation of the trade union movement, I will have to laugh in their faces.

It is an amazing thing that there is more consensus on the question of industrial relations than is ever recognised. Every single person in Australia is aware of our economic problems—every farmer, every person working a lathe, and every girl working in an office. However, it is extremely dangerous when the Government goes stumbling into the area of Government service. What would happen if another group of people who held positions comparable with those of the men now designated chief officers said that they had been trying for years to gain the status to make it possible for them to become members of the Civil Service Association and enjoy the conditions bestowed on those members? Would they be granted the same conditions?

Taken to its logical conclusion, this decision of the Government opens up Pandora's box.

For those and other reasons to which other Opposition speakers will refer, the Opposition opposes this legislation.

Sitting suspended from 5.58 to 7.30 p.m.

THE HON. H. W. OLNEY (South Metropolitan) [7.30 p.m.]: I rise to support the comments made by the Leader of the Opposition against the Bill. Mr Dans very ably dealt with the background to the prison officers' dispute which led to the need—or the perceived need on the part of the Government—to introduce this legislation. He did touch on a point on which perhaps he did not expand as much as I will—a point with vital significance in the context of industrial relations in this State. I am referring to the fact that the Government expects or invites two sides of industry—management and labour—to co-operate with it.

The Government talks a great deal about settling disputes in a spirit of conciliation rather than arbitration, and that was the thrust behind the Government's support for its 1979 industrial arbitration legislation. That is all very well and I can assure the House that an enormous amount of conciliation goes on in the settlement of disputes outside the tribunals, and I know this from personal experience and involvement. Indeed, it is only when one of the parties adopts an unreasonable attitude that it becomes necessary for the parties to resort to the more stringent

provisions of arbitration. On many occasions when parties cannot agree, they agree to differ and allow the umpire to determine a dispute, and this goes on in a reasoned and sensible atmosphere in the Industrial Commission. In the vast majority of cases, the employer and employee organisations and those they represent accept the decisions of the Industrial Commission.

But a concept that has grown into industrial relations in recent times is that it is a tripartite operation where we have management, labour, and the Government. I suppose in these days of controlled economies and Government intervention in practically every aspect of human affairs, it is not unreasonable to say—certainly it is superficially attractive to say—that the Government has a role in industrial relations.

Certainly the Government does have a role in ensuring that employer-employee relationships are conducted in an atmosphere most conducive to the welfare of the community at large, including the consumers and others who are not directly involved in any individual dispute. But the trouble with the tripartite approach is that the Government is also a major employer. So the tripartite approach to industrial relations is a lopsided approach where we have two representatives of management on one side and only one representative of labour on the other.

However, it goes even further than that. Not only is the Government a major employer of labour, whether it be in the State or the Commonwealth sphere, but also it has an added advantage that not even the Confederation of Western Australian Industry has, which is the advantage of being able to change the rules when the umpire does not come down with a decision in its favour.

We have had that spectacle demonstrated in a number of different contexts in recent years and this Bill is yet another example. After all, in this matter the Government is just an employer; its relationship with the prison officers concerned was one of the Government being the master and the prison officers being the servants. But we have the spectacle of a particular employer being able to resort to the authority of Parliament to get things settled unilaterally in the way the employer wants it settled. That is a negation of all the high-sounding principles the Government mouthed in 1979 when it brought forward its industrial relations legislation.

That is not the only aspect on which the Government was speaking with a forked tongue. The other matter was the emotionally-charged argument put forward—an argument put forward from time to time over the years—that there ought not be compulsory unionism. The Labor Party is well known for its support of a system of union preference and, indeed, Australian industrial relations have developed on the basis that the negotiation and settlement of industrial disputes is, and as always has been, conducted by representative groups of employers on one side and representative groups of employees on the other. It stands to reason that under that system the unions as representatives of the employees ought to have, and do have, a special role and a privileged position.

If we consider the Commonwealth Conciliation and Arbitration Act of 1904 under which we still operate—lurching from one major amendment to the next—we will see that the unions—or as they are called "organisations of employees"—have a major role to play in the making of industrial awards. The same applied, with one very minor exception, under our own Industrial Arbitration Act of 1912, and with another minor exception, under the 1979 Industrial Arbitration Act.

Our system of conciliation and arbitration cannot work without properly organised and properly representative organisations of employees. Indeed, on the other side it is desirable, although not necessary, that employers be similarly organised. The Labor Party support for a system of union preference—which was accepted in 1948 by the late Sir Albert Wolff who was then Deputy President of the then Arbitration Court—involved a system which was necessary for the functioning of our industrial relations system.

No less a body than the State Government itself recognises that with respect to its own employees. This can be borne out if we turn to the Public Service Act which was re-enacted in 1978. It is also true if we turn to the Public Service Arbitration Act of 1966, a measure put through the Parliament by a Liberal-National Country Party Government at the time. In that legislation there is provision that the only body with access to the Public Service arbitrator in industrial matters relating to Government officers is the Civil Service Association. In our view that is proper, and although I know there are other unions—particularly professional unions—which would also like access to the Public Service arbitrator, it has been established by legislation introduced and supported by Liberal Governments that the means of Government officers obtaining their industrial coverage via the Public Service arbitrator is through a representative body—the Civil Service

Association, which is registered under the Act as a union.

If we turn to section 11 of the Public Service Arbitration Act we will find the matters in which the Public Service arbitrator has jurisdiction. Subsection (1) of this section indicates that subject to this Act, the arbitrator is empowered to determine all matters submitted to him relating to various matters. Subsection (1)(a) refers to a claim by the association on behalf of occupational groups concerning salaries and related matters; subsection (1)(b) refers to other claims by the association on behalf of certain occupational groups; subsection (1)(c) refers to a claim not affecting the Public Service Board that is made by the association on behalf of various people concerning salaries, etc; and subsection (1)(d) to (i) relates to claims by the association in relation to matters affecting members of the Public Service.

So in the Public Service we have a situation, effectively, of compulsory unionism. That is something which the Government apparently finds acceptable. It does not grant to individual workers in its service access to the arbitration tribunal. It is necessary to understand that position to get the full effect of this legislation.

The proposal is to amend section 96 of the Industrial Arbitration Act to vary the definition of "Government officer" so as to include effectively the chief prison officers, as they are now designated, in the concept of "Government officer". As Mr Dans said, the Act previously provided a definition of "Government officer" which included various categories of employees, one of which was persons employed under the Public Service Act. But this was subject to an overriding qualification that to be a Government officer, not only did a person have to fall into one of those special subcategories, but also he had to be a member or eligible to be a member of the Civil Service Association.

So that in determining whether a person was a Government officer for the purposes of industrial legislation, it was necessary to look not only at the Act, but also at the constitution and rules of the Civil Service Association.

Every employee who is in Government service has to apply his mind to those two different considerations to determine whether he is a Government officer. The consequence of a person being a Government officer is that the Industrial Commission has no jurisdiction over him. The Public Service Arbitrator does have jurisdiction over Government officers and has jurisdiction over Government officers only.

What the Public Service Board sought to do in August 1980, by the stroke of a pen, by writing a letter to various people and making them Government officers, was to remove the jurisdiction of the Industrial Commission from the control of the working conditions of that group of officers. The Government's intention was a blatant vote of no confidence in the ability of the Industrial Commission to deal with the industrial conditions created within the prison service.

There could be no other explanation than that the Government wanted the control out of the Industrial Commission's jurisdiction and into that of the Public Service Arbitrator's jurisdiction. Mr Dans said that this was an exercise in how not to go about industrial relations and I could not agree with him more.

If one were able to put the question to the then Senior Industrial Commissioner who had the responsibility of deciding this matter last year, one would receive the same answer from him.

What has occured has been outlined to the House so I do not want to go into any great detail. However, the fact of the matter is that in about the middle of last year the then Senior Industrial Commissioner (Mr Kelly) was in receipt of an application made to the Industrial Commission by the Chief Secretary and in which the Prison Officers' Union was the respondent.

The application sought to delete from the Gaol Officers' Award the classification of "principal officers". The purpose of this proceeding was, as the commissioner said in his decision, to determine, in open proceedings, the propriety of the action taken at that time; that is, when this dispute had arisen in the prison the result of which was the decision not to employ persons as principal prison officers.

I shall refer to the comments of the then senior Commissioner Kelly on that occasion. When he gave his decision on 11 July 1980 he said—

> The classification "Principal Officer" is the highest classification in the Gaol Officers Award and on August 16, 1979 all officers employed in that classification were members of the respondent union and covered by the award. More senior officers employed in prisons were classified as public servants in the Department of Corrections and were members of the Civil Service Association of Western Australia.

On 17 August 1975, which, as members will recall, was the day after this industrial action came to a head, the Chairman of the Public

Service Board forwarded a letter to each principal prison officer. The letter read in part, as follows—

> The Board is pleased to advise that you have been appointed as a permanent officer to the following office in the Department of Corrections which was created under the provisions of the Public Service Act, 1978, with effect from August 16, 1979.

The letter sets out details of the office, the rate of salary, the classification, and other details. It then went on at some length to set out the terms and conditions of employment which were to apply to these new offices to which the individual prison officers were appointed. In another part the letter states—

> At a meeting at Fremantle Prison on August 16, 1979 Mr W. Coleman, a Senior Industrial Officer of this Board conferred with nine of the Chief Officers who were previously employed by the Chief Secretary as Principal Officers. Mr Coleman gave an outline of your conditions of employment under the Public Service Act.

Later on in the same letter it states—

> —as far as industrial coverage is concerned—

And that of course refers to the wages and conditions which are applicable to the employee—

> —the board is of the opinion that as officers under the Public Service Act chief officers are "Government officers" subject to the Public Service Arbitration Act and are in the same position as Superintendents of Prisons who are eligible to join the Civil Service Association.

It was obvious from the outset that the purpose of this exercise was to create the circumstances in which these officers were to be members of the Civil Service Association; thereby no longer being subject to the jurisdiction of the Industrial Commission.

The then Senior Commissioner Kelly said the following about the letter which was sent by the Public Service Board—

> The action outlined in that letter was somewhat presumptuous and certainly ineffective. Even if the Board had been a party to the principal officers' contracts of service it could not unilaterally have done what it purported to have done, but as a total stranger to those contracts it had no capacity whatever to alter the status of employees of another employer.

That is strong stuff addressed to the Public Service Board, the organisation charged with conducting the industrial relations on behalf of the employees of the State Government. The then Senior Commissioner Kelly said its action was presumptuous and ineffective. I would have thought that even blind Freddy would realise what Senior Commissioner Kelly was saying was right. Apparently, the board must have taken blind Freddy on to the staff, because a week later on 23 August it realised the defects in its earlier approach and wrote another letter to the officers in the following terms—

> The Board refers to its letter of August 17, 1979, regarding your appointment as a permanent officer under the provisions of the Public Service Act; 1978 and the telegram sent to you earlier today.
>
> The Board has reviewed its decision of August 16, 1979 to appoint you to the permanent staff of the Public Service and has decided that the process of appointment should be dealt with by a different method. The Board would be pleased if you would completely disregard its letter of August 17, 1979, as this letter entirely supplants the previous one.

What sort of confidence can we have in the Public Service Board when it writes a letter and then six days' later says that it should be disregarded because it has made a mistake? The second letter stated—

> The Board is pleased to offer you an appointment as a permanent officer to the following office in the Department of Corrections which was created under the provisions of the Public Service Act, 1978.

The board realised that it was not for the Public Service Board to terminate a contract of service between individual officers and the Chief Secretary, under the Prisons Act. It had no right or role in that. So the board invited the officers to become public servants and to accept appointments to new positions which they had created.

We have heard from Mr Dans about the bait that was held out in order to get them to agree and how that was rued by the people concerned—particularly by the Minister.

The board said much the same about industrial coverage in the second letter in that it expressed the opinion. that these people were now Government officers and subject to the Public Service Arbitration Act and eligible to be members of the Civil Service Association. After dealing with the correspondence the then Senior Commissioner Kelly said—

> As may be noted from the foregoing correspondence, the essential difference between the two approaches was the substitution of an offer of permanent appointment to the Public Service for the earlier attempt at compulsory appointment. Nevertheless, although a degree of freedom of choice appeared to be preserved by attaching to the offer the condition that the Principal Officers resign from that position and although the Principal Officers accepted the offer with varying degrees of alacrity, it is, I think, true to say that the offer was seen as one which was not really open to refusal. Despite that, the final acceptance was not made until February 25, 1980 and then only with reluctance.

So as far as joining the Public Service was concerned the officers were given Hobson's choice.

When this matter was before the Industrial Commission the Public Service Board, through its advocate, outlined what it felt were the reasons for this change—this overwhelming desire to have these former principal officers, now chief officers, in the Public Service. The board said—

> For some months prior to the 16th of August 1979 the PSB and the Director of the Department of Corrections were examining the question of re-organising and restructuring the department to achieve a more effective administration. In this respect the PSB was exercising statutory responsibilities under the Public Service Act 1978.

It then went into detail and further on it said—

> On August the 16th the PSB considered and agreed with a proposal from the Director to immediately implement the change in relation to principal officers. It must be emphasised at this point that the move was not in response to any direction from the Hon. Chief Secretary or the Government, nor was it part of any overall policy to be applied elsewhere. It was purely a move agreed between the PSB and the Director to improve the administration of the department to allow the Director to exercise to the fullest extent his responsibilities under the Prisons Act.

Now it seems odd indeed that in outlining the case the advocate should go to the lengths of emphasising that the Chief Secretary did not direct it as to what it should do. If, in fact, what the advocate said in his first paragraph was so and it was simply an exercise under the Public Service Act, the board did not need to say that the Chief Secretary was not able to say what it should do. One views with great suspicion the accuracy of the statement.

I do not think that statement would carry any weight with the industrial commissioner. The ploy put by the Public Service Board was that these officers, as chief officers, would be carrying out significantly different work from that done by the principal officers. Therefore, there was some justification for changing their status.

The commissioner had the following to say with regard to further evidence which was put forward—

> From the evidence of those witnesses it is clear that any difference between their duties as Chief Officers and their duties as Principal Officers, was a paper difference only and was, in any event, insignificant. Indeed, on the case as a whole, the only conclusion which one could reasonably draw is that the way in which the Public Service Board and the Director of the Department saw the administration of the Department being strengthened by the Principal Officers being appointed Chief Officers under the Public Service Act was that they would thereby be removed from the Prison Officers Union and would be subject to direction and control under the Public Service Act.
>
> It is consistent with the foregoing view that the Board should have held the opinion expressed in its letters to the Principal Officers that "as officers under the Public Service Act, Chief Officers are 'Government Officers' subject to the Public Service Arbitration Act and are in the same position as Superintendents of Prisons who are eligible to join the Civil Service Association."

The industrial commissioner was not fooled; he is a man of the world. He would not need to be very smart, anyhow, to work that out; and, indeed, this commissioner is a man of extreme perception. Even if he were not a man of extreme perception it would have been simple for him to realise that what the Government was trying to do through the Public Service Board was to remove these officers from membership of the Prison Officers' Union and to put them into the Civil Service Association and so have some other tribunal deal with them.

So much for the role of a Government committed to freedom of choice as far as union membership is concerned. It is saying to the principal officers "You are not to be in the union of your choice, but you are to be in the union of our choice; and if you are not in the union of our

choice—the Civil Service Association—then you have absolutely no say and no role to play in the determination of your industrial conditions before the Public Service Board." That is a fact. That is obviously what was intended, and it has never been denied.

The commissioner then went on to consider the provisions of the Industrial Arbitration Act. Strangely enough—although once one has had dealings in these matters as I have had, one does not regard it as so strange—it turned out that the view of the Public Service Board that the officers in question were eligible to be members of the Civil Service Association was wrong. The Government could not get even that right. So it was that the industrial commissioner rejected the application of the Government and it became necessary, after all that, to come to Parliament to change the Act in order to ensure that the Government had its will.

Of course, the will of the Government as I have just said is to deny those officers the right to select their own union. Not only that, but whereas the Industrial Arbitration Act now has a provision that outlaws preference clauses in awards, the Act which controls Government employment effectively requires membership of the Civil Service Association. It does not require that in so many words, but it is so in practice. If one is not a member of the CSA, except in some very rare circumstances, one has virtually no access to the tribunal which fixes the salaries and conditions of one's employment. So it is that this Government, in one piece of legislation, adopts a particular approach when it suits it, but when it comes to the crunch and when it, as an employer, is unable to control its employees and to conduct its operations in a manner that is efficient and conducive to the operations of the prison services, it goes above everyone.

The Government tries the Industrial Commission first. It makes an assessment of the legal position which in just about every case is wrong, and when it loses it comes to Parliament and says "We don't care; we will change the Act so that every member of the Public Service is eligible to become a member of the Civil Service Association. That is something for which the Civil Service Association has not asked and something which will indeed cause the association great embarrassment in its relationship with other reputable unions. I am thinking mainly of what are called white-collar unions—unions which the Civil Service Association has got along with very comfortably over the years.

It will cause the CSA considerable embarrassment to have this provisions foisted on it. It is something for which it has not asked and indeed something which overrules another decision of the Industrial Commission in 1967 which set the constitution of the Civil Service Association in its present form.

I refer to a decision of the full bench arrived at pursuant to amendments made in 1966 to the Industrial Arbitration Act, which gave the Industrial Commission the role of determining the constitution of the CSA. That is the situation which has operated since 1967, but this Government, to suit its own purposes, has decided it does not like the rules that have been determined by the binding process of Industrial Commission proceedings, so it will foist its will upon the parties. We are absolutely opposed to that approach of the Government, and we oppose its general approach to industrial relations.

While sitting here listening to the Leader of the Opposition I was reminded of a situation that developed in 1966. Having been a student of this branch of affairs over the years—and being personally connected with one of the main actors in the incident—I am aware that in 1966 we had a situation in which the court of arbitration was operating under the 1912 Industrial Arbitration Act. That court had as its president a judge of the Supreme Court, the late Mr Justice Nevile. The court was composed also of representatives of the then Employers' Federation and of the Trades and Labor Council.

The fact of the matter is that Mr Justice Nevile accepted the appointment on the basis that he would remain in office for 10 years. He was appointed by a Labor Government some years earlier, and after an election a new Liberal Government was appointed, and it invited Mr Justice Neville to move over to work full time on the Supreme Court bench. He declined the offer on the basis that he enjoyed working in the Arbitration Court. Any member who had dealings with him will recall that he was one of the most outstanding men to ever serve in that jurisdiction.

Anyhow, Mr Justice Nevile said he would not move over and allow the Liberal Government to appoint its own man; so the Liberal Government did the next best thing and abolished the court. The best way to get rid of a judge is to abolish his court, so the Liberal Government abolished the Arbitration Court and established the Industrial Commission.

Since then we have had the Industrial Commission, which has worked very well. It is strange that in 1979 the Government saw the

need to put a judge back on the Industrial Commission. However, that is another story.

The moral of the story is that it demonstrates the capacity of Liberal Governments to change the rules of industrial relations in order to suit their own convenience. They lurch from one crisis to another and resort to expediency rather than to principle. For those reasons, we oppose the Bill.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [8.08 p.m.]: I listened with interest to the speech of the Leader of the Opposition, who went into some detail of the background of the events at Fremantle Prison and the prison officers' dispute; and I listened with interest also to the even greater detail of the Hon. Howard Olney.

I must say I enjoyed Mr Dans' speech. He followed his normal method and produced a very good speech in this place, even though I disagree with what he said. I do not think he was serious at all times in what he said, and certainly I do not think he has lost his touch as an industrial advocate. However, we must get to the realities of the situation and understand what we are trying to do.

The Hon. Peter Dowding: You are trying to screw up the population.

The Hon. G. E. MASTERS: That is the sort of remark I would expect from Mr Dowding, and I will treat it with the contempt it deserves. What we are talking about is the fact that it is reasonable for the Government to have made this move.

The Hon. D. K. Dans: Of course it is.

The Hon. G. E. MASTERS: In any event, we would have taken the action we are now taking whether or not an industrial dispute occurred.

The Hon. D. K. Dans: Would it not be better to do it by—

The Hon. G. E. MASTERS: I was trying to conduct this debate quietly so that we do not have to shout at each other. I listened with great interest to what Mr Dans had to say. I would like to put my point of view, and then we will vote on the matter and see where the numbers are.

As I listened to the Leader of the Opposition I was sorry to hear him talking of bribery, because as far as the prison officers are concerned, that is complete rubbish. We are looking to the future and taking steps in what we believe is a reasonable action which any reasonable Government would take.

The events outlined by Mr Dans go back over a period of time, and I was particularly interested to hear him speaking about the issues involved in the Fremantle Prison dispute. Mr Dans talked about cardboard containers and all sorts of things, but really that is not the true issue.

The Hon. D. K. Dans: That is how it started.

The Hon. G. E. MASTERS: We as a Government regard the true issue as being one of discipline, public safety, and public protection.

The Hon. D. K. Dans: What about protecting the prison officers?

The Hon. G. E. MASTERS: Of course we are protecting the prison officers; but they have a responsibility to the public also.

The Hon. D. K. Dans: And they discharged it.

The Hon. G. E. MASTERS: In most cases they did, yes; but they have a responsibility and they did not necessarily discharge it properly in the events about which we are talking.

The Hon. D. K. Dans: In your opinion.

The Hon. G. E. MASTERS: My opinion is probably as good as that of the Leader of the Opposition, and hopefully better.

Mr Dans said the prison has a very dangerous criminal element who would be a danger to the public if they escaped.

The Hon. D. K. Dans: And I said also they are a danger to the prison officers.

The Hon. G. E. MASTERS: I am saying that the prison officers had a duty to perform, and the actions they took endangered the safety of the public. That is what we are talking about, and that is what the argument is about. When a dispute occurs which endangers the public, prison officers have a responsibility to maintain law and order. Surely to goodness we have to look at the situation in that manner, and not argue about cardboard boxes and who is right and who is wrong.

The administration were concerned, and they said so, and eventually they had to take some action. The action they took was correct. I believe the public were sickened by the dispute. They are sickened by this type of dispute which seems to occur every so often, although thankfully not too often. I believe in the situation to which we are referring the public were upset and concerned, and the Government had a responsibility to take some action.

Mr Dans talked about the principles involved. The principle is that it is the responsibility of any good Government to take this action. Mr Dans suggested that threats were made to the Civil Service Association by the Government. He was quite wrong, because we did not do anything of the sort. He himself said there is no proof of that

at all and, of course, there is not. No threats were made, and it is wrong for him to produce that sort of argument, which is purely guesswork.

The Hon. D. K. Dans: If the CSA refuses to accept them as members, what is their democratic right?

The Hon. G. E. MASTERS: We are talking about Government responsibility; we are talking about law and order.

The Hon. D. K. Dans: You are running away from it.

The Hon. G. E. MASTERS: I will come back to that. The Government is fed up with people thumbing their noses at it. I say again it is only a small group which is involved in that sort of activity; but, of course, the Government is concerned about it.

Senior prison officers were not placed under any compulsion. Certainly it was suggested they should join the Public Service, and as I understand the situation—and I know some of them—they were happy to make the move. It was not a matter of bribery; the officers recognised it was the right move to make. I believe in that respect their reaction totally vindicated the action of the Government.

I listened to the remarks of the Hon. Howard Olney, who went into great detail as he generally does; and it is commendable that he does so. He mentioned conciliation and negotiation. Most certainly the Government is as concerned with conciliation and negotiation as is the Labor Party, and the Government has proved its concern in many, many areas.

The honourable member referred to compulsory unionism, which is something about which I feel strongly. I firmly believe no-one should have to belong to an association, union, or any other group.

The Hon. D. K. Dans: How do you reconcile that with the new chief officer situation?

The Hon. G. E. MASTERS: There is no compulsion at all.

The Hon. H. W. Olney: They cannot appeal. They cannot do anything.

The Hon. G. E. MASTERS: They have the choice of belonging to an association or union if they wish. That is the point.

The Hon. H. W. Olney: But you do not give them access to the arbitrator as individuals.

The Hon. G. E. MASTERS: It is the same as any person who wishes to join a union or not join a union. He can do it if he wishes. Such people can have the benefits, if they wish to take the action.

Over many years, consistently we have adopted this attitude; and we will continue to do so. We just do not believe there should be compulsion for an employer to belong to an association or organisation, or compulsion on an employee to belong to a union.

The Hon. D. K. Dans: Do you know what you are saying?

The Hon. G. E. MASTERS: Yes, I do.

The Hon. D. K. Dans: Goodness me!

The Hon. G. E. MASTERS: We have always stood by this principle; and we stand by it now. Section 23 of the Industrial Arbitration Act—

The Hon. D. K. Dans: It is absolutely stupid.

The Hon. G. E. MASTERS: —sets out the general jurisdiction which gives powers to the Industrial Commission. Those powers are set out very clearly.

The Hon. D. K. Dans: Would you like to quote the section to me?

The Hon. G. E. MASTERS: I will read the section to Mr Dans.

The Hon. D. K. Dans: I thought you might have it off the top of your head, seeing you are so expert.

The Hon. G. E. MASTERS: The section commences "23.(1) Subject to this Act", and then it goes on to (2)(a) and (b), (3)(a) (i) to (iii), (2)(b), and so on. If Mr Dans would like to read it for himself, I will pass it over.

The Hon. J. M. Berinson: That is a very good exposition!

The Hon. G. E. MASTERS: Mr Dans knows it very well. He has a copy of the Act in front of him.

Opposition members interjected.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order!

The Hon. G. E. MASTERS: I am sorry that Mr Dans—

The Hon. D. K. Dans interjected.

The DEPUTY PRESIDENT: Order!

The Hon. G. E. MASTERS: What I am trying to say—

Opposition members interjected.

The DEPUTY PRESIDENT: Order! The contributions during the second reading debate were easy to listen to. The speakers had ample opportunity to expound their points of view.

Members should now extend the same courtesy to the Minister in closing the debate.

The Hon. G. E. MASTERS: If the Hon. Des Dans wishes to have a copy of the Industrial Arbitration Act, I will willingly have one delivered to him.

Section 23 of the Act sets out the general jurisdiction and the powers of the Industrial Commission. In section 96, the Act deals with exclusions such as Government officers as defined in that section. The Hon. Howard Olney pointed out that the Public Service Arbitration Act allows the Public Service Arbitrator to determine salaries for Government officers as defined. We have been talking about that for a long time.

We are saying that section 96 of the Industrial Arbitration Act states that every officer who is entitled to be a member of the Civil Service Association of Western Australia is a Government officer. We say also that if we have our way with this amendment to the Act, they will not have to be members of that association. They do not necessarily have to be members of the Civil Service Association to qualify as Government officers. That is what we have been talking about all along.

At present, certain officers cannot apply to become members of the Civil Service Association as the rules of the association exclude them from membership. I suggest that the Hon. Des Dans would have read the constitution, rules and standing orders of that association. If there needs to be a change, the association can alter its rules. We do not have a responsibility in that field.

We have a responsibility to set the laws of this State. It is not our job to amend the rules of any union or association.

The Hon. Peter Dowding: That is not the point.

The Hon. G. E. MASTERS: Mr Olney mentioned that. If Mr Dowding had been here, he would have heard him.

The Hon. Peter Dowding: Your responsibility is to make sure you do not interfere with the process.

The Hon. G. E. MASTERS: Our responsibility is to make sure that the laws of this State are applied.

The Hon. R. Hetherington: And if you do not like the laws, you change them.

The Hon. G. E. MASTERS: It is not our job to amend the rules or regulations set down by an association or trade union. That is the job of the organisation; and we are not proposing to do it.

The Hon. Peter Dowding: You interfere with the commission's activities in that area.

The Hon. G. E. MASTERS: It is reasonable for the senior prison officers to be regarded as Government officers. They have a specific task to perform. They are in the top echelon. They are involved in administration. It must be difficult for those who have to give orders to give them to people in the same union.

The Hon. R. Hetherington: Your hierarchical attitudes are coming out there.

Opposition members interjected.

The Hon. G. E. MASTERS: There is no argument. This is the right thing to do. The result will be that any person employed as a public servant under the Public Service Act will be regarded as a Government officer, irrespective of whether he is a member of an association.

Opposition members interjected.

The Hon. G. E. MASTERS: It is not the iron fist at all. The Government is taking the correct action. It has been considering this sort of action for a long time.

The senior prison officers should be in a position where they can be members of the association, and if the association wishes to amend its rules, it can do so. In taking this step, we are acting responsibly in the interests of the people of this State, and for the safety of the public of this State.

The Hon. Peter Dowding: Could you tell us why?

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. G. E. Masters (Minister for Fisheries and Wildlife) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Section 96(1) amended—

The Hon. H. W. OLNEY: The Minister has not answered any of the substantive points put to him during the second reading debate. Although it is enjoyable to indulge in a little background briefing in these debates, and perhaps stray away from the Bill itself, as we are dealing with the Bill it is appropriate in the Committee stage to consider its provisions. The effect of the amendment is to remove from the definition of "Government officer" the qualifying requirement that the specified persons must be eligible to be or are members of the Civil Service Association. The Bill overrules directly the decision of Senior Commissioner Kelly on 11 July 1980. Apparently the Public Service Board thought that decision

was wrong. Indeed, in all its dealings with the prison officers, the board expressed the contrary view. The dispute went back to August 1979; and it was July 1980 before the matter was resolved finally, unfavourably to the Public Service Board.

So it is that the Public Service Board, through the Government and the Parliament, now will be the winner, to the extent that these prison officers will become, with the passing of this legislation, Government officers. Therefore, they will be removed from the operation of the Industrial Arbitration Act.

However, it is not a fact that they will thereby come under the jurisdiction of the Public Service Arbitrator. They will not come under the Public Service Arbitrator unless and until they become members of or are eligible to be members of the Civil Service Association. At this stage, unless and until the Civil Service Association changes its rules—rules which are not affected by the Act or the amendment, and rules which the Industrial Commission has already said do not entitle the officers to be members of the CSA—the officers have no resort to the industrial tribunals of this State. By the amendment, they will be taken out of the Industrial Commission. They have not been made eligible to be members of the CSA; and therefore it is now necessary for the CSA to amend its rules to let them in.

Whilst at this stage the Government is opposed to compulsory unionism—and we understand the Government's arguments on that, as we have heard them before—the fact is that the Government has denied them any union representation; and unless and until something is done to give them eligibility to join the CSA, they have virtually no industrial rights at all.

The Hon. Peter Dowding: Do you think the Minister cares?

The Hon. H. W. OLNEY: I am sure the Minister and the Government do not care. This is the point of view being mooted by the officers who stood up for what seems to me to be a very fundamental, simple principle of industrial conduct; that is, the question of safety which is paramount and is even more important than the payment of wages. Indeed, it has always been accepted in industrial relations practice that even where there is a no-strike agreement, questions of safety will always prevail. If the safety of a worker is in jeopardy, the right to strike or take appropriate industrial action is recognised in practice.

The Leader of the Opposition said he had heard it said—and he was not making any accusations—that the CSA was being leaned on to change its constitution to allow the prison officers to join the association. I do not know whether the CSA has been leaned on; but what I heard was that it had been leaned on, and that the leaning was in the form of saying "If you don't do it, we'll take away your exclusive rights before the Public Service Arbitrator."

The Hon. G. E. Masters: You have no proof of that.

The Hon. Peter Dowding interjected.

The DEPUTY CHAIRMAN (the Hon. R. J. L. Williams): Order! The Hon. Howard Olney makes good speeches: and I would like to hear him without interjections by anybody.

The Hon. H. W. OLNEY: I suggest to the Minister that some of us have our ears closer to the industrial ground than have Ministers in this Government. In any event, I want to know what the Government has planned so far as the chief prison officers are concerned. Are they to be given the right, in some way or other, to have union representation; or will the Government sit back and await some action on the part of the CSA?

The Hon. G. E. MASTERS: I do not think we should take too much notice of what the Hon. Howard Olney says when he starts accusing the Government of leaning on people. He has no proof at all. That is just a comment that he thinks should be made because it will have some effect in this Chamber. He would have done better if he had not made such a wild statement with absolutely no proof at all.

The accusation by the Hon. Howard Olney that it was a punishment for the chief prison officers was just as wild a statement as the other one to which I have referred.

The chief prison officers willingly made the move. It suited them very well and they were happy to do it. The Hon. Howard Olney talked about the safety of the officers. Let me say this: When we refer to the safety of the officers, we refer also to the safety of the public of this State. It is about time members opposite recognised that fact.

The Hon. D. K. Dans: How does this change the position?

The Hon. G. E. MASTERS: We are simply saying we need discipline, public safety, and responsibility. That is what it is all about.

Several members interjected.

The Hon. G. E. MASTERS: As far as the chief prison officers are concerned, under this Bill we make them Government officers. If the association wishes to amend its rules and regulations to admit these officers, it is fine with

us. We do not intend to put pressure on the association or to pursue the matter any further. However, I understand there is a motion on the books of the association at the present time, suggesting that senior prison officers should be able to become members of it. Mr Dans and Mr Olney are aware of that and I suggest the rest of the Opposition knows that also.

The Hon. D. K. DANS: I do not think the Minister has addressed himself seriously to the question, because the only operative amendment made in the Bill is that which relates to section 96(1) of the Act. During the second reading debate I posed a number of questions to the Minister in the hope that he would answer them either by accident or design, but he did not do so.

Let us assume the chief prison officers will be accommodated within the CSA. These men were previously known as "principal officers". Their jobs will remain the same; all that has been changed is their designation.

No-one has ever charged the prison officers with acting irresponsibly. However, by changing their designation and including them either voluntarily or involuntarily in another organisation, it is difficult to see how the safety of prison officers and the general public will be increased.

Everyone in this Chamber is aware of the rather delicate situation which exists between this Government and other Governments and between the Commonwealth Public Service and the Civil Service Association. Bearing that situation in mind, I should like the Minister to comment on the position which would arise if the CSA decided to call a stoppage tomorrow, without excluding any workers? Would the chief prison officers remain on the job or would they be true to their union and stop work, for whatever reason? We would then have to rely on members of the Prison Officers' Union to carry out their duties.

I make the point that, by changing the designation from principal officer to chief officer and by offering them membership of the CSA, the situation has not really been changed at all. Therefore, I refute the suggestion of the Minister that, by changing the name of the officers involved and putting them into another "industrial organisation", the security of the prison and, in turn, the security of the public is increased. That argument is specious and cannot be sustained.

It is not realistic to believe in this day and age that civil servants do not stop work. There was a stoppage the other day in South Australia. There was also one in New South Wales, which is hard to understand, bearing in mind the sympathetic Government there.

I do not think the Minister should pursue that line, because it is ridiculous to say that, by changing the name of the officers and allowing them to become members of another organisation, everything else is changed also.

Clause put and a division taken with the following result—

Ayes 19

Hon. H. W. Gayfer	Hon. Neil Oliver
Hon. Tom Knight	Hon. P. G. Pendal
Hon. A. A. Lewis	Hon. W. M. Piesse
Hon. P. H. Lockyer	Hon. R. G. Pike
Hon. G. C. MacKinnon	Hon. I. G. Pratt
Hon. G. E. Masters	Hon. P. H. Wells
Hon. Tom McNeil	Hon. W. R. Withers
Hon. Neil McNeill	Hon. D. J. Wordsworth
Hon. I. G. Medcalf	Hon. Margaret McAleer
Hon. N. F. Moore	*(Teller)*

Noes 8

Hon. J. M. Berinson	Hon. Lyla Elliott
Hon. J. M. Brown	Hon. R. Hetherington
Hon. D. K. Dans	Hon. H. W. Olney
Hon. Peter Dowding	Hon. F. E. McKenzie
	(Teller)

Pair

Aye	No
Hon. N. E. Baxter	Hon. R. T. Leeson

Clause thus passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

SUPERANNUATION AND FAMILY BENEFITS AMENDMENT BILL

Second Reading

Debate resumed from 7 May.

THE HON. D. K. DANS (South Metropolitan—Leader of the Opposition) [8.40 p.m.]: The Opposition supports the Bill. Firstly, I should like to point out we are indebted to the Government for making known the contents of the file on this measure. Secondly, I desire to read a letter from the Grand Council of Government Salaried Officers' Industrial Organisations of Western Australia, dated 6 May 1981 and addressed to the Leader of the Opposition. The letter is signed by T. K. Lloyd, secretary of the organisation, and reads as follows—

> Your letter to Mr R. W. Clohessy, Acting President of the Grand Council of Government Salaried Officers' Industrial Organisations of W.A., of the 30th April 1981, concerning amendments to the Superannuation and Family Benefits Act was

discussed at a meeting of the Grand Council on Friday, 1st May, 1981.

The Government Employee Organisations contribute to what is known as a Joint Superannuation Committee. This Committee met within the last fortnight to consider the Government's proposals. The Committee had the advantage of having present the Contributor's representative to the Superannuation Board. The net result of the considerations was that no objection be raised to the proposed amendments.

On behalf of the Grand Council, I wish to sincerely thank you for your interest in this and other matters relating to workers' welfare.

That is what I call co-operation.

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [8.42 p.m.]: I thank the Opposition for its support of the Bill.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by the Hon. I. G. Medcalf (Leader of the House), and passed.

WESTERN AUSTRALIAN GREYHOUND RACING ASSOCIATION BILL

Second Reading

Debate resumed from 7 May.

THE HON. R. T. LEESON (South-East) [8.44 p.m.]: The Opposition supports this Bill. The greyhound racing industry has been in considerable financial difficulty for some time, as a result of which this Bill has been introduced.

I expect many people feel it is a shame the greyhound industry did not get off the ground as well as they hoped. I have heard people say—probably they are right—that had the industry started 20 years or more ago it would have been in circumstances different from those in which it finds itself today. That is not anybody's fault. Because of the large costs of the infrastructure, the building of a new track as carried out by the organisers, and the high interest rates applying at present, it has been found that the organisation has a fairly large debt to attempt to pay. The organisers have used all sorts of means to try to attract people to the track, and I understand that at present the attendances certainly are not the best.

When greyhound racing started in Perth I attended practically every Saturday night. Certainly it was enjoyed by many families.

In the main the Bill reconstitutes the Greyhound Racing Control Board. It is hoped that something can be done to straighten out the problems in the industry. While the Minister outlined the proposal in his second reading speech he did not give us much detail as to why he believes a reconstituted board will save money. I would be interested to hear his remarks in that regard.

Certainly I am concerned about the situation. In Western Australia Perth is the city large enough to afford greyhound racing as it is afforded in other cities of Australia. For that reason I would like it to continue. The present situation might be a warning to the industry which races quarter horses. I am not sure of the precise term.

The Hon. I. G. Pratt: Sprint horses.

The Hon. R. T. LEESON: It is referred to as sprint horse racing or quarter horse racing. It seems to me that dog racing enthusiasts and the followers of other sports are in competition with each other and at present just too many of these sports are attempting to attract the public. I understand the TAB will conduct a trifecta for all races at Cannington. It is hoped some revenue will be derived from that move. It appears people like to bet on a trifecta basis which offers many more chances of a return rather than, one might say, getting the good oil and betting money straightout. That type of betting does not seem to have paid off for the industry. Trifecta betting may not be the answer, or for that matter, quinellas, or whatever else is intended, so that the industry can get back on its feet.

The Opposition supports the Bill, but I would like the Minister, if he could, to outline his views in relation to the reconstituted board. I know that with it the greyhound industry will be in a situation similar to that of racing and trotting clubs, and I know much has been said over a number of years for and against their particular set-up. Members in both Houses of this Parliament from time to time have criticised their operations. One wonders whether it is a good idea to upset the board in the manner intended by this Bill. If it does the greyhound racing industry some good, then I certainly wish it the very best.

THE HON. TOM McNEIL (Upper West) [8.50 p.m.]: I noticed with interest some of the comments made in the Minister's second reading

speech. I would like to highlight some which I believe cause some concern. Whilst we recognise this legislation as a rescue operation for the greyhound industry, we have some matters to raise. I noted with interest the comments made by the Hon. Ron Leeson to the effect that he felt the second reading speech did not really outline what improvements will flow to the industry as a result of the establishment of this new board. We have done everything in our power to rescue the greyhound racing industry. I do not want to be the voice of doom and say that it cannot stand on its own feet. However, it seems to me that horse racing and gambling carried on through the TAB in this State will prop up this industry. It is stated in the second reading speech—

> This arrangement by the Totalisator Agency Board does not affect returns to the Government in any way. It does cause a reduction in payments made by the Totalisator Agency Board to the Western Australian Turf Club and the Western Australian Trotting Association.

One does not need to be a Rhodes scholar to understand that these days the trotting and turf clubs are undergoing tremendous changes. The increase of sponsorship funds is something about which we all know. It has been commented on in recent years. We must consider that the Government has been living off the racing industry. In a recent newspaper article it is stated that the Government returns everything to TAB investors except for 14.5 per cent of the amount invested. That 14.5 per cent is broken up into a multitude of expenses and comes out of the pockets of punters. They are the people who attend dog meetings, the trots, or horse races and who in the end result fund those industries. Of every dollar bet at the TAB 83.5c is returned to the investor in the form of winnings. Of the same dollar bet 6c is returned to the Government. That share amounted to $113 490 754 in the past 20 years. It was paid to the Government to assist in many areas of State expenditure, and that was stated in the newspaper article.

It is further stated in regard to 5c of every $1—

> Contributed to racing industry
>
> This money is divided between the racing bodies to assist them in the provision of racing stakes, which when distributed, helps to support more than 10,000 Western Australian families.

In regard to 4.25c it is stated—

> Running expenses of T.A.B.
>
> This portion of the dollar is used by the T.A.B. to cover administration and running costs.

In regard to 1.25c the article reads—

> Capital Expenditure
>
> This amount is allocated to the building of new T.A.B. agencies and developing facilities for improved customer services.

In the second reading speech the Minister said—

> The basis of the investment with the society is that it will be interest free for five years, and then attract 5 per cent per annum for the remaining 10 years.
>
> The association will lease the premises for a rental based on the arrangement between the TAB and the society and will also be exempted from paying the $5 000 per annum ground rent presently payable for the first five years, and pay a fixed $5 000 per annum ground rent for the remaining 10 years.

Under this basis the $1.65 million which has been decided should be lent to the greyhound association is all very commendable, but it is money that could have been utilised—or, certainly, the interest from it could have been—to promote country racing, country trotting, or for the benefit of the Richmond Raceway, Gloucester Park, Ascot, and Belmont racetracks.

The two representatives from the racing and trotting fraternity did not oppose the allocation of the money in this form, and I think that was most commendable. In another place I believe the trotting fraternity came under attack because in the past it was proposed that greyhound facilities would be provided by existing trotting facilities in order to promote the greyhound industry. To be perfectly frank, and not wanting to be a voice of doom, I do not believe we are ready for greyhound racing in country areas. At the moment we can see the problems perpetuated in the metropolitan area.

The Hon. I. G. Pratt: What about Mandurah?

The Hon. TOM McNEIL: It has been suggested that in Mandurah and other places the greyhound industry is standing on its own feet. Certainly as late as this afternoon I had it intimated to me by people in the industry that the racing in those areas is not now as favourable as it was three months ago. The remark was passed on to me. This is of concern to me.

Last Saturday night at the greyhound racing track $63 000 was invested by way of the TAB tote. If we work on the principle of approximately 15 per cent of the amount invested going into Government coffers we might come to the realisation that not much is left for the man who goes to greyhound racing for a night out.

However, I must say it is a most enjoyable night out; I found it most interesting. The one thing against it is that the races take such a short time to complete and at the end of the night one realises that one has seen about only six minutes of greyhound racing.

The Hon. W. M. Piesse: You can't see yourself losing the money?

The Hon. TOM McNEIL: In that regard it is not the same as the enjoyment attained at a horse racing or trotting meeting. To support my contentions on this matter I will refer to the 1980 annual report of the Totalisator Agency Board of Western Australia. First of all I would like to say that I hope the legislation is successful because I do not want to see part-time and full-time employees out of a job.

One must remember that the costs of owning a horse these days are considerable when training fees and feed are taken into consideration. One must compare those with the costs of racing a dog; they are vastly different. I believe that about 75 per cent of the revenue received by the State from racing is derived from horse racing. I think it is 74.74 per cent. That money is received through the TAB. At all times I am not referring to bookmakers—only to the TAB. It is shown in that annual report that in the Eastern States in 1978-79 277 race meetings were held on which the Western Australian punters were able to bet through the TAB. In 1979-80 the number of meetings was 313; in other words, there were another 36 race meetings. If we refer to the 1978-79 and 1979-80 figures for the amount of money invested through the TAB we see just for Eastern States racing a decrease of $15 654 at each meeting. In 1978-79 there were 163 race meetings in Western Australia and during 1979-80 there were 169. Again on a comparison a decrease of $13 735 is shown. In total race meetings held in the Eastern States and Western Australia the average of the amount invested through the TAB was $18 276 less than in the previous year. In Western Australia 178 trotting meetings were conducted and 19 in New South Wales on which bets could be placed through the TAB. Between 1978-79 and 1979-80 there was an increase of 16 meetings. Again on the basis of working on the turnover which prevailed during 1978-79 against that in 1979-80 we see a decrease of $21 000 in the average.

Getting down as far as greyhound racing, in 1979-80, 85 meetings were held in Western Australia and in 1979-80, 114 meetings were held. A decrease in the amount bet each evening through the TAB on an average was $7 184 less than the previous year. These figures tend to prove that there is a limit to the amount of money gambled within this State. Certainly greyhound racing is in a favourable position by being granted access to the "favourite numbers". I believe that is something which trotting and racing handed over. However, the greyhound racing industry has had $160 000 made available to it from the fund.

This was operating on a perfectly sound and happy basis with the two major racing clubs before the advent of dog racing.

The figures I have quoted indicate we are about $3.6 million down on what we should expect to have gained through the Totalisator Agency Board over a 12-month period. I do not want to take up too much time of the House tonight, especially as I do not intend to oppose this legislation.

The Government has stated this is the last time it intends to come to the rescue of the dog racing industry. It has to stand on its own feet, and it has every opportunity to do that now.

I emphasise that the money is not Government money; it is money that has been put in by the punters. I hope that the industry succeeds. However, I would like to draw the attention of members to the sprint horse venture which is presently trying to get off the ground. Members will recall all the attention which this matter attracted in the media, as well as the controversy suggesting that the Premier had instigated it by saying "You will race or else!" That venture has been a complete disaster. About $8 000 has been spent on trials at Katanning, but only 52 horses have raced at four meetings. Admittedly, the first meeting was cancelled because of insufficient horses, but the three subsequent meetings drew a total of 52 entries only. I am not able to say whether or not they were 52 different horses! However, members will recall that one of these was a 14-year-old pregnant mare.

The Hon. Neil Oliver: With a race meeting there are set periods for closure of entries. At that trial at Katanning, did it follow the normal procedure of advertising and calling for entries associated with any other type of race meeting?

The Hon. J. M. Berinson: A very good speech!

The Hon. TOM McNEIL: I am not sure about that. Certainly advertisements were placed where they would attract the people interested. Obviously, the meetings did not attract much support.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): I would like to remind the honourable

member that this Bill deals with greyhound racing.

The Hon. TOM McNEIL: Yes, although I believe my remarks are pertinent to it, Sir, in so far as we have one disastrous situation with the greyhound racing industry, we must be careful not to embark on another one with the sprint racing. I do not think that the expenditure of $8 000 for 52 horses to race could be called successful.

The Hon. I. G. Pratt: Do you know why they got that number only?

The Hon. TOM McNEIL: I would say because there was insufficient enthusiasm.

The Hon. I. G. Pratt: You haven't researched it. You do not know the registration problems, do you?

The Hon. TOM McNEIL: They have been a very long time trying to get the thing going in this State.

The Hon. I. G. Pratt: I take it you don't know.

The Hon. TOM McNEIL: I know how many horses raced! I hope that we do not see the situation that occurred with the greyhound racing happening again in regard to sprint horse racing. The $8 000 that the Western Australian Turf Club expended on these trials did not include payments to stewards. In fact, the only sums expended were for the fees for the jockeys and for the use of the Katanning track.

I do not propose to oppose this Bill, but I wanted to sound a note of warning regarding sports which may not be able to make their own way.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [9.05 p.m.]: I thank members for their support of the Bill. I was interested to hear the Hon. R. T. Leeson's comments. I imagine he knows very well that the Hon. Claude Stubbs supported the advent of greyhound racing. I think he introduced the legislation to commence greyhound racing in this State.

It is fair to say that the industry has run into serious financial and management problems over a period of time, and it is fair to say, also, that the cost of running the facilities is enormous. The drop in spectator support has been an added burden.

When any industry gets into financial trouble, nothing else seems to go right. As members said, we are seeking to effect a rescue operation. We hope that those involved in the industry and the public generally will take a greater interest in it by assisting in this way.

The Hon. R. T. Leeson asked about the new board. This will be established at the Cannington Central greyhound track. At the moment I believe the management set-up is in Perth, so it is hoped that there will be a saving in that way, although I suppose it will be a minor one only.

Perhaps a new board will give a new look to the industry. I am not suggesting that the orginal management was bad, but just that it had so many problems to face, some action was necessary. The new board may enable the industry to get going in a slightly different direction. Certainly, the board will be managing greyhound racing throughout the State. Basically, there will be a new financial structure and a new look to the whole operation.

The two speakers before me mentioned the Totalisator Agency Board. We should express our thanks to the TAB, to the Western Australian Trotting Association, and to the Western Australian Turf Club for being prepared to support this project to give the industry another chance. That is a good move in the interests of the public and of the large number of people involved in it.

The Hon. Tom McNeil said this is a rescue operation, and, perhaps, to this end the TAB has demonstrated its faith in the success of the venture.

It is not disputed that the $1.65 million could be spent elsewhere. I suppose a value judgment was made about this matter. It is realised that there is a chance of failure, but the belief is that the new look could help the industry and put it on its feet.

We must bear in mind that our population is increasing quite rapidly with some large projects getting off the ground, and, also, we hope that these will generate more money in the community generally.

The Hon. Tom McNeil referred to the TAB statistics and I wrote down his figures; I am sure they are accurate. He said that the TAB takes 4.25c in the dollar. My understanding is that the TAB in this State is better and more efficient than any other similar operation in Australia, and indeed, in most other parts of the world. We realise its management is excellent.

I would like to congratulate the TAB for the way it has come forward to assist the greyhound racing industry, and also on its very efficient operation.

My understanding is that the Mandurah greyhound track stands on its own feet. The takings there are as good as the takings at Cannington Central, but with far lower payouts.

The facility at Mandurah is much cheaper to run and the initial construction cost was nothing like the construction cost at Cannington Central.

I trust I have answered some of the Hon. R. T. Leeson's queries about the change of management. We hope the new operation is for the benefit of the State and those involved in the industry. More particularly, we hope the public will now take the opportunity to use this sporting facility and support greyhound racing.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by the Hon. G. E. Masters (Minister for Fisheries and Wildlife), and passed.

SETTLEMENT AGENTS BILL

Second Reading

Debate resumed from 7 May.

THE HON. J. M. BERINSON (North-East Metropolitan) [9.12 p.m.]: I always recommend caution when lawyers argue the public interest in support of a measure which will benefit them also. I do not say that with any sense of disrespect to my colleagues in the legal profession. It is a comment that would apply in equal force to almost all the special interest groups—the pressure groups—which are spread throughout the community. It applies to doctors when they purport to argue solely for the benefit of their patients. It applies to teachers when they purport to argue solely for the benefit of their students. It applies to public servants when they purport to argue solely for the benefit of better administration. Who is better than we are to know that it applies in full measure to politicians when they purport to argue solely for the benefit of everyone else but themselves.

Having said that, I believe it is important to look also at the other side of the coin. By that I mean we should not be so cynical about pleas of public interest that we ignore them altogether, even when they might well be valid. This Settlement Agents Bill is an example of the risks which lie in taking an attitude of that sort. The Bill suffers in the first place from the pressure-cooker procedures that have been followed in this Parliament.

For four full weeks at the outset we virtually did nothing in this House but look for something to do! We meandered through that abortive Address-in-Reply, following it through its long and pointless path; we ended up using four full weeks in that quite useless exercise, devoting no time at all to Government proposals for legislation.

So, first we had the drought and following that the flood. In the last couple of weeks, legislation has poured into the Parliament, some of it very complex, such as the Workers' Compensation Bill, other parts of it highly contentious, like that electoral monstrosity which is now under debate in another place, and too many parts of it subject to the insistence of the Government that it pass all stages by the end of this week. I am very concerned that adequate consideration of legislation by members has been difficult, and proper consultation with interested bodies outside the Parliament almost impossible.

Again, this Bill highlights the problem to which I am referring. Although a lawyer myself, I think it will be evident I hold no brief for the Law Society in particular, or for that matter, the legal profession in general. At the same time, knowing of the Law Society's special interest in this area; of its members' professional expertise in the relevant law; of its detailed submissions on similar earlier draft legislation over a period of some five or six years; it is both striking and regrettable the Law Society was given no opportunity to discuss the Bill with the responsible Minister until the Bill had actually passed through all stages in the Legislative Assembly, and been introduced here. That is not a procedure which is appropriate to an area which contains significant technical problems and involves matters which interest the public deeply and have great potential effect on them, given the fact that the purchase of land or of a home usually is the major single financial transaction for most of the electors we represent.

There is no doubt that the objective of this Bill—namely, to regulate the activities of settlement agents—is desirable. Settlement agents should be licensed; they should be required to keep trust accounts; those trust accounts should be subject to annual audit; the agents should be required to have professional and fidelity insurance; and their charges should be subject to a maximum scale, especially where people doing similar work already are subject to fee regulation. So, there really is no argument about the basic scheme of the Bill.

However, there does seem substantial room for argument on the details of the scheme: in my submission, the details are highly significant. The

most significant effect of the Bill, if enacted, will be to extend substantially the area of conveyancing in which settlement agents can engage. This I should say at the outset is in marked contrast to the impression given by the Minister in his second reading speech, when he made the following statement—

> It is important to stress that the functions of a settlement agent as detailed in the schedule to the Bill are those actually being carried out now and which have for some years been carried out by the settlement agents.

The Hon. Peter Dowding: That is just a lie.

The Hon. J. M. BERINSON: To use rather more muted language, that is simply not so. At least, it is not so if by that comment the Minister was referring to work now being carried out legally by settlement agents. In the present state of the law, as I understand it, settlement agents are entitled to search titles, prepare transfers, prepare settlement statements, arrange payment of stamp duty, and attend to settlement. There can be no reasonable objections to those activities continuing and they are in fact included in clauses 1 (1) (a) to (g) and (2)(a) of the second schedule to the Bill.

As against that, settlement agents are not now entitled to draw contracts of sale, powers of attorney, applications to register a strata plan, statutory declarations, or the many other items listed in the same second schedule. If settlement agents are acting legally and not doing such work, the Bill will not, as the Minister assured us, simply confirm them in their present activities. Alternatively, if they are not acting legally, this Bill will operate so as to reward them for their past illegal activities.

It is a mistake to regard this Bill as covering simply run-of-the-mill transactions involving, say, a fee simple title, with unconditional cash purchase and no trauma attached. Its scope is much more extensive than that. It opens the way to participation in quite complex transactions by people with literally no appropriate training.

For example, although the Bill envisages some sort of qualifying examination, that requirement will not necessarily apply to any settlement agent who has been in business for five years. I think the number of agents in that category now would be quite large. It sounds trite to say—but it remains true—that a little knowledge is a dangerous thing and that ignorance can be bliss. The great risk is that, after settlement agents have blissfully applied their limited knowledge, it will be the consumer, as always, who will pay.

I draw attention to only one other aspect of the Bill; namely, its failure to avoid effectively conflict-of-interest situations. The Bill in its present form applies no restriction on estate agents being involved in settlement agencies and there is nothing to prevent a settlement agency which is related to the vendor agent from purporting to act independently for the purchaser in a transaction. The effect of this could be that a group of interrelated interests could quite readily end up representing both parties to the transaction.

True, an attempt has been made in clause 46 (3) and clause 47 (3) to prevent a settlement agent acting for both the purchaser and vendor. This restriction does not apply, however, where there is an acknowledgment and consent in writing by all affected parties. This combination of provisions in itself gives little or no protection for the consumer. The practical realities of the situation are that such an acknowledgment and consent will be incorporated in documents as standard practice by estate agents, and members of the public will be induced to sign these documents in precisely the same way as purchasers now quite happily sign contracts appointing the vendors' settlement agent as their agent as well for settlement.

The Hon. Neil Oliver: That is a pretty good practice, provided conflict of interest does not arise, because it makes it easier to arrange settlement.

The Hon. J. M. BERINSON: It may make it easier, but the situation may well arise where it is too easy, and where purchasers who should be put on notice of difficulties in transactions by their independent advisers in fact are encouraged or persuaded to proceed simply because their agent for the purposes of settlement in effect is the same party as is looking for his commission on the sale in the first place.

The Hon. Neil Oliver: Isn't that what this Bill is all about—the regulation of settlement agents?

The Hon. J. M. BERINSON: Of course the Bill is for the regulation of settlement agents; however, I am saying the proposed regulation is insufficient in this particular area of potential conflict of interest. I am not arguing with the regulation of settlement agents; I am saying the regulation provided by this Bill, so far as it purports to attend to potential conflicts of interest, is ineffective.

Similar proposals to those embodied in this Bill have been the subject of a Select Committee in Victoria and a Royal Commission in Britain; they have also led to much stronger protective

legislation in South Australia than is proposed by the present Bill. I put it to the House that we should take advantage of that experience in those other jurisdictions before making a final commitment ourselves.

In addition to those comments, I should like to make at least one further point clear: It has been suggested in some quarters that what the Law Society really is after is the abolition of the settlement agency system altogether and thereby the avoidance of ordinary commercial competition with conveyancing practitioners.

The Hon. Neil Oliver: Are you suggesting instead exchanges of contracts between solicitors as is provided for under the Victorian legislation?

The Hon. J. M. BERINSON: No, I am not suggesting that at all. My only reference to the Victorian situation was to the effect that a Select Committee had been appointed in Victoria to consider the various problems associated with settlement of land transactions. I am saying it would be advisable for this House to look at the experience in that State, as well as the experience in Britain and South Australia, before making a determination on this Bill, given the defects of its present form.

The Hon. Neil Oliver: I can assure you the Victorian review was taken into account.

The Hon. J. M. BERINSON: If that is the case, I would say it was not taken into account very well.

The Hon. Neil Oliver: It was.

The Hon. J. M. BERINSON: I do not pretend to be an expert on the Victorian legislation. However, I have come across it to the extent of understanding that, under the Victorian system, purchasers certainly are secured by requirements upon estate agents to provide them with much more advance information than is required to be provided in this State. I do not take that any further because, for the moment, I am not concerned with the Victorian legislation; I am concerned with the possibilities of legislation in Western Australia, and I would prefer to concentrate on that.

I think I was at the stage of saying that some people are looking at the Law Society's statements, and its arguments over the years as a reflection of the fact that what it is really after—in spite of what it says—is the abolition of the settlement agency system. I doubt whether that is true, if only because it would be completely impractical.

I make it clear that the Opposition does not seek to abolish settlement agents or to restrict them from any area in which they now legitimately operate. It is the extension of their present limits which occurs to us as presenting a potential problem which, given its widespread implications, should receive more careful consideration by the Parliament than is the case at the moment.

It would be easy for the cynics to say the Law Society is seeking only to protect the income of its conveyancer members.

My great fear is that any loss of income by the conveyancers will be more than balanced by the common lawyers as they deal with mess after mess in the courts.

The law reports are filled with examples of legal difficulties which have resulted from poorly-drawn documents by qualified legal practitioners. How much greater is the risk with virtually unqualified laymen? It is a risk to be more carefully examined than the Parliament has so far done, and a Select Committee with an early date for report is a sensible and practical way to proceed. With that in mind I give notice that if the Bill passes through the second reading stage the Opposition will move that it then be referred to a Select Committee of this House.

THE HON. TOM KNIGHT (South) [9.31 p.m.]: I rise to oppose the Bill in principle. I oppose only the situation the Bill will create which will perpetuate a practice which has been going on for many years; that is, the practice of real estate agents using settlement agents to settle on behalf of their clients when they really do not have any right to expect that.

The real estate agent is expected not to get his commission until the settlement has been fully effected. Most people approaching a real estate agent for the purpose of buying a property believe that man will guide them on the proper track concerning what they wish to achieve.

Usually the practice has been that at the time of the settlement of the deal the young people—and it is mainly the young people involved—are asked who they wish to settle on their behalf. Obviously not wishing to show that they are unaware of the situation in the real estate world they say they do not care and ask who the real estate agent uses. I know this occurs because it has been brought to my attention on a number of occasions. The agent has indicated that he uses ABC settlement agent and so the young people say that that will do for them. They sign on the dotted line and the settlement agent settles on their behalf. The young people receive an account from that settlement agent for settling

something that has been already allowed for in the real estate agent's original commission.

I was involved in an incident last year which caused me to ring the President of the Albany Real Estate Agents Board. He indicated that all the older local agents had settled on behalf of their clients for some years. I then contacted a real estate agent in Esperance and he indicated the situation was the same there.

It was indicated to me that a practice has been established in Perth which is used for the benefit of saving the real estate agents doing what they should be doing. It has created another profession in this State so that people wishing to buy land, houses, and property are subject to an additional charge over and above that of the estate agent's commission.

It is a situation with which I do not agree. It places a further burden on young people in particular when buying their first home; young people who are scraping for money, because at the time they decide to buy a home they usually have to approach a building society. They have to meet the fee for a title search and other similar costs imposed by building societies which amount to hundreds of dollars. We find that settlement agents charge for settlement of transactions that should be carried out by estate agents. That cost could have been used to buy the living room carpet or furniture. That is a practice we should not perpetuate or support.

The Hon. F. E. McKenzie: Do I understand you to say that estate agents include that charge in their commission?

The Hon. TOM. KNIGHT: It is included in their transaction.

The Hon. J. M. Berinson: It is covered by their selling commission.

The Hon. TOM. KNIGHT: About five years ago in Albany I sold a block of land and when I received the cheque back, $83 had been deducted from the amount I had expected to receive. I rang the agent who was new to the town. The agent said that from then, all estate agents would be using settlement agents to do settlements for vendors. I then rang the President of the Real Estate Institute and he assured me this was not the case. He said that all I had to say was that I did not want anyone else but the estate agent to settle. He was getting the commission and he was obliged to do that work.

Last year I bought a home unit in Perth and the estate agent asked me who I would like to have settle on my behalf. I said "You". He said "We don't do that". I said "Why should I pay an additional fee to a settlement agent when I am paying your commission?" He said he would not do it and I said that if that was the case I would cancel the contract. He finally said that his company, on behalf of the vendor's company, would guarantee the settlement because he did not want to lose the deal.

This year I made arrangements for my daughter to buy a home unit. At the time of settlement the agent rang and asked who she wanted to arrange the settlement. She said she did not want anyone but him to do the work and he replied that he did not do that. When he approached me I said I wanted him to settle on behalf of my daughter. I explained that it was a simple transaction and that he should arrange for the transfer of the title and then pick up my cheque. He said the deal had to go through a settlement agent. I said that if he did that I would refuse to pay the money. He then said he would scrap the deal. I said I wanted that in writing because a contract had been signed and witnessed for my daughter to buy the unit. Several hours later his wife rang and said "Mr Knight, the company has met and has agreed that in this particular instance, so as not to cause any alarm or problem, it will guarantee the cost of the settlement". I said "Big deal".

This is the sort of thing which is happening. I will not say it is illegal, but we have allowed a practice to start and carry on in this State for the last 10 or 15 years. The people who are losing out the most are the young people. They are our sons and daughters who can ill-afford to be paying out amounts they should not be subject to. The real estate agents are taking the money without doing the necessary work. They are banking the money which should be in the pockets of the young people.

We are taking away the privilege and standard we have enjoyed in Australia for a long time; we are taking away the ideal of personal home ownership. We have increasing interest and building rates. Young people are having to pay hundreds of dollars to building societies for their various fees. If they try to pull out of a contract with a building society they have to pay three months' payments in advance which may make it impossible for them to move into a better standard of home. This is helping to destroy the ideal of home ownership in Australia.

If we agree to legalise this situation, people in the community will be disadvantaged.

The Hon. F. E. McKenzie: You can overcome this by refusing to pay the commission to the estate agent.

The Hon. TOM KNIGHT: There are two answers to this problem. One is that estate agents should pay settlement agents out of their commissions if they wish to use settlement agents. The other answer is that if we assume that an estate agent is getting 10 per cent of the price of a house being sold we could work out that the cost of settlement is 1.5 per cent. We could cut down the real estate agent's commission to 8.5 per cent and allow the 1.5 per cent to go to a settlement agent as a separate entity.

If we go along with this legislation we can possibly give the matter all the publicity it needs; we can tell everyone through the Press and by radio and by television what is happening. However, in 18 months' time the next group of the buying public would have forgotten this situation. The Government has to come out and hammer the fact that there is no obligation on the part of a home buyer to pay for a settlement agent to settle a deal.

The Government should extend this Bill to cover the points I have raised. It should bring about a reduction in the real estate agent's commission if settlement agents are to be used. I have given this matter a great deal of thought. Many people are confronted with this predicament. As I said, country real estate agents still settle for their clients. This whole thing is a Perth-based concept.

The Hon. F. E. McKenzie: It will spread to the country.

The Hon. TOM KNIGHT: The new estate agents moving into Albany are doing the same thing, yet the old companies, such as Arthur Johnson Snowball Pty. Ltd., R. B. Merrifield & Son, and Wellington and Reeves settle for their clients. Over the years it has been the big business transactions on a company-to-company basis with mortgages, caveats, and liens which need the expertise of solicitors. It has always been accepted that a solicitor would move into these complicated deals.

As the Hon. Joe Berinson said, people have never had problems with deals worked out by solicitors, so why should we make people pay out money which is already part of a contract with a real estate agent?

Looking through the Minister's second reading speech I find that the Minister said—

> The functions allowed to be carried out by a real estate agent and a business settlement agent are detailed in schedules 2 and 3 of the Bill.

There is no schedule 3 for the Bill. Is that an oversight which no-one has picked up?

The Hon. F. E. McKenzie: The Minister will answer that.

The Hon. TOM KNIGHT: I am not opposed to the Bill because I believe settlement agents should be registered. They should be registered and accountable to someone. They should also be able to obtain a position in the community, but I do not want them to be an additional cost, which will be the case if we accept this Bill without ensuring that their fees are taken from estate agents' commissions. I am against the idea of the estate agents being able to find another way such as is now happening to make money. We should give this matter all the publicity in the world so that it will help people this year and perhaps next year. Some members in the House might remember the situation when a member of their family or a relative is dealing with an estate agent. But who will look after the rest of the public?

This Bill does not go far enough. It should go further so the public will not be inconvenienced. It is said that ignorance is no excuse for a lack of knowledge of the law, but we are supposed to be looking after people who cannot be expected to know all the laws of the land. We have to protect those people and we can do so by registering settlement agents. However, I would like the Minister to say "Yes, we will add the provision for which you ask". I am not prepared to go along with the Bill in total unless that provision is added so that the Bill is more embracing. I oppose the principle of the Bill, but what it tries to achieve has my support. I do not believe members should support it while it remains as it is because it does not go far enough. I do not know whether to sit down saying I oppose the Bill because I would like the House to consider the points I have put before it. I will make up my mind how I will vote when the question is put.

THE HON. H. W. OLNEY (South Metropolitan) [9.44 p.m.]: Lest it be thought I hold a brief for the Law Society, I will issue an even stronger disclaimer than my deputy leader did and indicate that I am not a member of the Law Society.

The Hon. D. K. Dans: Shame on you.

The Hon. H. W. OLNEY: I have done what is so dear to the heart of Mr Masters—I have opted for voluntary non-unionism.

The Hon. D. J. Wordsworth: Scab.

The Hon. H. W. OLNEY: If the Minister wishes me to discuss the reasons for my decision I will do so later.

The Hon. G. E. Masters: I will speak to you afterwards.

The Hon. H. W. OLNEY: The fact of the matter is that, at the present time, due to circumstances, I am not a member of the Law Society, although I was. For many years I was involved in conveyancing and some years ago I conducted a very busy conveyancing practice. In fact, I was conducting conveyancing rather extensively in 1970 and that was the time when settlement agents had their birth.

The Minister was correct—it was one of the few correct statements he has made—that although settlement agents have operated in Western Australia for some years now, the major growth in their operations has taken place since 1970 at which time changes in the operations of the Land Titles Office placed greater responsibility for settlement of property transactions outside the Titles Office.

I think it would be useful if I filled in some of the background on this particular matter because it is something about which I know a little because I was involved in this field.

Prior to 1970 the practice adopted in Western Australia for the settlement of real estate transactions was that, first of all, if the sale was initiated by a land agent, the land agent would prepare the transfer of land and he would normally have it executed and stamped.

The facility for the land agent to do that—that is, to prepare the transfer of land—was provided by an amendment to the Legal Practitioners Act which I believe was passed in 1926. That amendment had the effect of rendering lawful what would otherwise have been unlawful. I refer to section 77 of the Legal Practitioners Act 1893, as amended. It reads—

> No person other than a certificated practitioner shall directly or indirectly perform or carry out or be engaged in any work in connection with the administration of law, or draw or prepare any deed, instrument, or writing relating to or in any manner dealing with or affecting real or personal estate . . .

Other matters are provided for and, towards the end of that section it states—

> Provided that nothing herein contained shall be construed to affect public officers acting in discharge of their official duty, or the paid or articled clerks of certificated practitioners, or any person drawing or preparing any transfer under the Transfer of Land Act, 1893.

So, the situation arose that it was possible, under the Legal Practitioners Act, to do what otherwise would have been illegal; that is, to prepare the transfer of land.

The Hon. I. G. Medcalf: I think it was amended a long time before that.

The Hon. H. W. OLNEY: It certainly goes back before my experience. My first experience in practice was in the late 1940s—and no doubt this method was adopted before that time—when the real estate agent prepared the transfer and normally had it stamped. He collected the stamp duty from the purchaser and had the transfer signed. As Mr Knight said, he did that as part of his commission.

If the transfer was straightforward and involved a cash consideration—that is, a payment in full—the real estate agent normally attended at the settlement received the money, and accounted for it to the vendor.

If the matter involved the vendor in carrying the finance by contract of sale or by way of mortgage registered against the title, the transfer was dealt with by the vendor's solicitors. The practice on settlement was that all the interested parties—and there could be quite a host of them—attended the transaction. The interested parties could include the first or second mortgagee or whoever held the title, or the representatives of those people and they would attend for the discharge of the mortgage. The vendor, through his representative, would attend, usually with the transfer, the new first mortgagee, and the second mortgagee if there was one, with their documents, and through his representative the purchaser might well be there for the purpose of paying any balance which was not covered by the finance raised on the mortgage.

These people would all attend at the Office of Titles; there might be six or more people in a very crowded strong room. The documents would be checked against the original title and in the strong room by an Office of Titles clerk and it would be initialled by him. The documents would then be taken to the receiving room where another clerk called an assessor—usually highly-trained and most efficient—would check through the documents and vet every detail.

Having done all that, and having been satisfied, he would assess the fees to be paid on each document, the parties would come together and at the stage the assessor stated the transaction was in order the fees would be paid to the cashier and cheques would be exchanged. Registration would take effect at that point.

It was a good system for a small town and it was rarely that an Office of Titles clerk made a mistake.

Once a title is registered it is virtually sacrosanct. Therefore, it is important that when registration takes place the documents are in order, because on the strength of that registration, the money changes hands. As this city and State progressed it was obvious that the facilities at the Titles Office were inadequate in every respect. We were fortunate, at the time, to have some outstanding public servants at the Titles Office and as a result a number of modifications were made to the system of registering titles. This new system was introduced in 1970.

This system was instituted when the Law Chambers building in Cathedral Square was complete. At the time it was the most efficient and up-to-date system in any Titles Office in this country.

One of the changes that was made—it was not a matter of law or decree, but rather a matter of administration—was that it was decided that it was undesirable to have crowds of people in the Titles Office. I can tell members that on the last day before Christmas or a public holiday one could not move in the Titles Office. Such a situation was not acceptable to the new system of registration.

The Hon. I. G. Medcalf: You are not thinking of the Christmas party?

The Hon. H. W. OLNEY: No, just in the morning. The Titles Office administration requested that, in the future, the exchange of documents should take place elsewhere. For this to occur it was necessary to seek the co-operation of the people involved. The people involved at the time were solicitors and real estate agents, as well as banks and, to a lesser extent, building societies.

The arrangement was this: In future all transactions would take place in the office of the solicitor or the representative of one of the parties; usually it would be at the office of the mortgagee who was providing the finance on the first mortgage. After all, it was the interest of the mortgagee which demanded most protection and he was the person who would take the certificate of title after registration.

The arrangement was that at the meeting of interested parties, each one would examine the document for accuracy and if each one was satisfied, the documents would be handed to the person who was to effect registration.

This system did not have a fail-safe mechanism which was offered under the previous system when registration took place at the counter of the Titles Office.

The need for a new system meant that there was a point in time where the money was transferred and cheques were exchanged and one person held all the documents. Of course the efficacy of the transaction is not realised until registration takes place, and there is a possibility that something may occur in the interim period between settlement and the passage of the documents to the Titles Office.

The Titles Office may find some flaw in the documentation and reject it. There may even be some irreparable flaw in the documents which those who have examined them have missed. The prospect of this contingency arising—that is, the total rejection of the documents after settlement has taken place—is unlikely, but nevertheless it does occur.

I can assure members that on the few occasions it has occurred the problem of getting back the money and giving back the documents to everyone is a very great one indeed.

As I have said, this new system of land registration which came into effect, I think, on 3 March 1970, was accompanied by the new system of settlement. Also, at the same time the Law Society promulgated a schedule of fees appropriate to the particular aspect of conveyancing which it previously did not have. Remember that I have indicated that hitherto the estate agents had done the preparation of transfer, the stamping of it, and usually the adjustment of rates and taxes; but the Real Estate Institute said that its members were prepared and willing to opt out of this responsibility.

After all, the members of the institute had in effect been doing it for nothing, although Mr Knight takes the view that they should do it as part of their commission. However, I think legally that was not the case. They were very interested in doing conveyancing to ensure that the transaction proceeded, because if it did not proceed their commission could be in jeopardy.

In any event the arrangement entered into between the Law Society and the Real Estate Institute was that in future the selling agent would obtain an executed contract and pass it to the vendor's solicitor for the purposes of settlement. As I indicated earlier, this caused the introduction of a new scale of fees which some people thought was too high. Certainly I think one must be fair and say it was higher than people were paying previously, because they were not paying the real estate agent for doing work which now would be done by a solicitor.

As a result of this change a few people who worked in real estate agencies which no longer needed their conveyancing staff became redundant, and some thought that with all they

knew from what they had done for many years, they could do it much cheaper than lawyers were claiming should be the fee, so at that time we had grow up a number of settlement agencies. Settlement agencies are a fact of life in this age and we as a party are not opposing their continued existence. However, I suggest it is an outrage that for some 11 years substantial amounts of money have been handled by unqualified, unregistered, unsupervised, unbonded settlement agents, and it is surprising many more defalcations have not occurred.

I am not saying that real estate agents in the past did not default nor, for that matter, that solicitors on occasions do not default with trust moneys, but for many years we have had protection against that event in the case of both land agents and solicitors. However, we have had no protection against default on the part of settlement agents for at least 11 years, and it is high time something was done about it. That seems to be what is now contemplated, and we wholeheartedly support it.

The Hon. W. M. Piesse: Has there ever been any proven default on the part of a settlement agent?

The Hon. H. W. OLNEY: Yes, indeed there has. However, the fact of the matter is that whether or not default has occurred, large amounts of trust funds have been handled by people who are faced with the possibility of temptation, and that should never have occurred. Of course, we support the move to provide some protection to the community with respect to settlement agents. I think—but I am not sure—that these days the actual fee differential between settlement agents and solicitors has virtually disappeared, but I stand to be corrected if that is not the case. In any case, it is probably an irrelevant factor so far as my argument is concerned.

Settlement agents have become an established fact of life and, of course, some people have seen the advantage in them. The fact of the matter is that many settlement agencies are associated with real estate agents or solicitors. Some real estate agents have realised that there is now a general acceptance in the community—except for Mr Knight—of settlement agents and that something extra has to be paid when people buy or sell a property, and particularly when they buy it. So it is not surprising that those with an eye to the main chance have got themselves into the act and we have had real estate agencies with their puppet settlement agencies and solicitors doing the same. I will not name any of the firms involved, but the fact of the matter is that it has been a good little lurk in some ways.

The Hon. Peter Dowding: The President of the Liberal Party has one.

The Hon. H. W. OLNEY: Yes, they have theirs, too. It provides the means of diverting a solicitor's professional income through a non-professional organisation as an adjunct to a solicitor's normal work. The non-professional organisation may be owned by one's wife or nominee company—I am not sure, because I have never had one; I mean, I have a wife, but I have never had a nominee company. This has been the means of syphoning off a lucrative part of their income as a means to reduce taxation. It also provides facilities—and I do not suggest it is done generally—for settlement agents to go around touting for work which solicitors cannot do.

Settlement agents can go around knocking on the doors of real estate agents looking for work. I know some have done this in the suburbs. I am not saying they are connected with solicitors, but I know they have gone around suburban real estate agents who really are not qualified to do settlement work and have offered to do the work for them.

We have got to the situation where this is regarded as a fairly lucrative business and it is a reasonable adjunct to conveyancing work; and it is an area which needs control. If this Bill simply did what the Minister said it would do we would raise no queries about it at all. I repeat—and it bears repeating—the following, which the Minister said at page 8 of his second reading speech—

> It is important to stress that the functions of a settlement agent, as detailed in the schedules to the Bill, are those actually being carried out now, and which have for some years been carried out, by settlement agents.

I have already referred to section 77 of the Legal Practitioners Act which makes it an offence against that Act for any person to be engaged in the preparation of documents other than a transfer of land under the Transfer of Land Act, unless he is a certified legal practitioner. So if in fact settlement agents have been doing those things which are set out in the second schedule to the Bill, they have been breaching the law. There have been occasions when settlement agents who have carried on some of these activities which apparently are to be legalised now have been taken before the Barristers' Board and prosecuted for breaches of the Legal Practitioners Act.

The Hon. Peter Dowding: Successfully, too.

The Hon. H. W. OLNEY: Yes, successfully. Other occasions have occurred when settlement agents have performed other functions in breach of the Act without their being prosecuted. But the Government cannot have it both ways. It can either legitimise the settlement agent in the form in which he has existed to the extent that it has been lawful for him to have carried on business in the past, or else say quite honestly "We will now authorise the expansion of your activities by allowing you to go into areas which you have been prevented from entering since 1893." There is no explanation as to why there should be an expansion of the role of settlement agents into this field, which has not been their role for the past 80 or 90 years.

I think the Government must look carefully at what it is doing and it must consider whether those who have been advising it have in fact been giving the Government the full story, or whether it has had the wool pulled over its eyes.

I wish to indicate some aspects of the role of settlement agents which are envisaged as part of the second schedule in the Bill, but which previously have not been activities conducted by them. I refer to page 93 of the Bill and clause 1(1)(h) of the second schedule which states—

> completing powers of attorney in the form of the Nineteenth Schedule to the Transfer of Land Act 1893:

That may seem fairly simple. There is a form of power of attorney in the Transfer of Land Act; and in order to appoint an attorney one needs only to fill in the name of the grantor of the power and the name of the grantee of the power, and then sign it. However, the executing of power of attorney is a very important step which imposes the transfer of extremely important legal rights to the grantee of the power. I suggest that on no occasion should any person be induced to sign a power of attorney without the full effect of the document being adequately explained to him.

I suggest that a settlement agent who satisfies the qualifications of being over the age of 18 years, being a fit and proper person with plenty of money, and of being resident in Western Australia—those are the only requirements—would not necessarily be able adequately to explain to a person granting a power of attorney the effect of signing such a document. Certainly we could not guarantee that in every case; nor could he explain a person's rights as to revocation and that sort of thing. That involves legal advice which an ordinary settlement agent is not qualified to give.

The next head of activity to which I refer is paragraph (i) on page 94, which states—

> subject to any conditions imposed by the code of conduct, drawing or preparing and arranging the execution of the documents set forth in subclause (2) of this clause;

In clause (2) we have a list of 10 documents which the settlement agent will be able to draw up. The first is a transfer under the Transfer of Land Act 1893 which, as I have indicated, is already within the province of anyone to draw up without breaching the provisions of the Legal Practitioners Act. However, the drawing, preparing, or arranging of the execution of every one of the other documents listed is, I suggest, a breach of the Legal Practitioners Act. If these items are not, why are they in this Bill? There is to be an enormous expansion in the role of settlement agents into a field which they have not occupied previously.

If the Bill is passed, settlement agents will be authorised to draw or prepare an offer and acceptance in a prescribed form. Again that may sound quite straightforward. They just have to fill in the names and the price. However, we know that is not the case. Very few real estate transactions would not involve some factor special to that particular transaction, whether it be by way of arranging finance, arranging possession before settlement, or a myriad of other circumstances that could arise. Of course, the standard form of offer and acceptance does cater already for special conditions. These special conditions provide a great deal of work for lawyers later, in sorting them out. The "subject to finance" condition has been litigated in courts time and again. Sometimes it can be responsible for aborting a sale when someone has second thoughts. All these things require technical knowledge of the law and of the effect of legal documents.

Another document that the agents will be authorised to prepare is a caveat to protect the interests of a purchaser and mortgagee for whom a settlement agent is acting. That may sound fair enough; but there are different forms of caveat. The caveat may be absolute, or subject to other claims. Unless one understands the significance of the different forms of caveat—

The Hon. Peter Dowding: And the basis of the claim.

The Hon. H. W. OLNEY: Unless one knows the legal basis for the claim the caveat is supporting, and provides the proper evidence to support it, the interests of the person one is seeking to protect can be jeopardised. It is no

answer to say that the preparation of the vast majority of cases is straightforward. The vast majority of cases are simple enough; but if we are passing protective legislation we want to protect the cases in which there is difficulty or doubt. There is nothing in this Bill which requires the proper consideration of the legal interests of the client of the settlement agency in the preparation of caveats, or indeed in the preparation of any other documents.

Another item of concern relates to requisitions on title in such form and subject to such conditions as are prescribed. Requisitions on title go to the real basis of the real estate transaction. A person buying a piece of property needs to know far more about it than the real estate agent tells him. In fact, he needs to know all the things that the real estate agent has not told him. Not only that, but also he needs to know whether the estate agent has told him the truth. There have been occasions in my experience when that has not been the case. The drafting of requisitions on title is most important. The requisitions to be delivered to the vendor depend upon the situation of the land and many other factors.

Members may appreciate that the purchaser, under his contract, normally has the right to deliver requisitions to the vendor. If they are not answered satisfactorily, the purchaser has the opportunity to get out of the sale within a limited period. There is no point in our saying that we will prescribe a standard form of requisition so that all the settlement agent need do is to set up the standard form.

That is all right in the standard case; but it is the non-standard case about which I am concerned. Some additional consideration should be given in order that the interests of the purchasers might be protected. That being so, once we recognise that there are cases which do not fit into the normal situation, we realise every case has to be examined to ascertain whether it is normal or abnormal.

I do not propose to go any further on that point, but it is sufficient to say that what the Minister said in his speech is simply not true.

The Hon. Peter Dowding: He will not admit it.

The Hon. H. W. OLNEY: He may admit it when he takes further advice.

The Hon. J. M. Berinson: Now it has been pointed out to him, he is bound to admit it, surely.

The Hon. D. K. Dans: Not unless you take him outside and explain it word by word.

The Hon. H. W. OLNEY: We will wait and see.

It is a little unfair to say anything against the Minister, because obviously he has not been the Minister responsible—

The Hon. G. E. Masters: I am responsible here.

The Hon. H. W. OLNEY: —for the drafting of the legislation. However, he should be responsible in his response to our response to the Bill. He has indicated that the draft Bill was distributed widely; and that numerous submissions were received from various people and parties including the Law Society of Western Australia. I am informed that the Law Society received an advance copy of the proposed Bill in July or August last year. The society prepared a submission to the Minister; and I have been supplied with a copy of it. It was dated August 1980, and forwarded to the Chief Secretary. It contains some 20 pages of type.

The Hon. G. E. Masters: You are not going to read all that?

The Hon. H. W. OLNEY: No. I will let the Minister have my copy, if he wishes.

In August last year there was talk that the Bill would be introduced then. It was not introduced; and it came into the Parliament more recently. The Law Society sent its submission to the Chief Secretary in August 1980; and it indicated its desire to discuss the submission with him. The Law Society was given the opportunity to discuss its submission with the Minister last Friday, 8 May. By that time, the Bill certainly had been read a second time, if it had not gone through the Legislative Assembly.

The Hon. J. M. Berinson: Gone through. It was already here.

The Hon. H. W. OLNEY: The Law Society has indicated its disappointment that, although it had been given the opportunity to comment, and it availed itself of the opportunity to comment and to make submissions regarding the draft Bill, it was not afforded any opportunity to make submissions on the current Bill until after it had gone through the Assembly.

There is nothing in the Minister's second reading speech to indicate that the Bill before the House is the same as the draft Bill that was circulated. I must say that recently I have come across a piece of legislation shortly to come before the House which is in the same sort of position. When advance copies of a Bill are circulated, it is assumed that it is only a draft, and a few amendments may be made. However, we find that significant amendments have been made, but they have not been referred to in the second reading speech.

I believe some changes have been made to the original draft Bill circulated; but I cannot see anything in the second reading speech alerting us to those changes. The Government ought to alert the Parliament to the changes that were made in the draft Bill circulated last year, and which are included in the final form now before the House. We should be advised of the reasons for those changes.

When the members of the delegation from the Law Society saw the Minister on 8 May, they were informed that the Bill had passed the Assembly. After the Minister heard their submissions, he said that there was no chance of the Government's accepting any of them. This is a pretty shabby way of dealing with a professional body of high standing.

The Hon. Peter Dowding: To which you do not belong.

The Hon. H. W. OLNEY: To which I do not belong, so I can take an objective view.

The Hon. P. H. Wells: But you will renew your subscription shortly.

The Hon. H. W. OLNEY: I hope to have an honorary subscription soon.

I have outlined a few of the reasons that we on this side feel that this Bill in its present form could do with closer examination. There are some provisions which to me—and I am speaking now as an individual—are positively objectionable. There are provisions which are quite commendable—indeed, eminently commendable.

This question of settlement agents has gone on for a long time. A Bill was introduced in this Parliament in 1976. It went to the second reading stage elsewhere, and then it was abandoned. I will not comment on the reasons, because most members know them. The fact is that it was abandoned.

The Hon. Neil McNeill: I would be interested to know what your story is.

The Hon. H. W. OLNEY: Mr McNeill knows the reasons. The fact is that some provisions in that Bill were more acceptable than are some of the provisions in this Bill.

For at least 11 years settlement agents have been active. A Bill was introduced in 1976—five years ago. Now we have a Bill before the House. Surely there is no reason that this Bill must become law before Friday of this week.

I put it most earnestly to the Government that when the motion for the referral of this Bill to a Select Committee is moved, it give it favourable consideration. It should be referred to a Select Committee with a view to ascertaining what is in the Bill; what changes in the law are contemplated; and whether they are adequate to protect not only the settlement agents, who now have a vested interest as they have established businesses, and not only the public, which pays over its money and needs to be protected, but also those people who will now be going to settlement agents to have work done in the conveyancing field. The agents will not be restricted to real estate transactions, as in the past; but it will now be possible for them to practise as conveyancers, doing certain things in a direct relationship with the public, rather than via the real estate industry, which has been the position in the past. Under this Bill, settlement agents will be able to effect contracts of sale; they will be able to do conveyancing; and they will be able to prepare requisitions on title. In fact, they will become a subbranch of the conveyancing industry.

Let it be remembered that the Bill does not provide for any basic qualifications. Indeed, the "grandfather" clause will allow many people who do not have any qualifications, apart from some experience, to become registered.

As a matter of interest, I will relate to the House a particular situation that arose with a settlement agent. I make no apology for taking more time. This was a case before the Supreme Court in 1978. The facts briefly were that an elderly lady, who was then a terminally-ill patient in hospital, wanted to sell her property in Wembley. She engaged an estate agent—a man named Smyth—who found a purchaser, a man named Rackham. That name may ring a bell in the minds of some members.

Rackham made an offer to purchase. That offer was conveyed to the owner of the property who rejected it and said she would accept $45 000. The agent returned with a signed offer for that amount. The lady accepted it on the basis that she would be paid $20 000 cash and $25 000 would be carried on mortgage. That was quite a simple transaction.

Mr Smyth also conducted a settlement agency business called Transfer Settlement Service, or some similar name. He conducted that agency in conjunction with his real estate business. In the course of his dealings with the vendor, he procured her authority to act for her as the settlement agent, and to carry through the settlement of the transaction.

It was obvious a mortgage had to be prepared by a solicitor. The vendor was adamant that it be prepared by a solicitor. She did not insist on any particular solicitor, but she wanted it done by a solicitor. She was one of the few people who have

confidence in the legal profession and her words were "Solicitors know what they are doing".

What happened was that the agent told her Mr Rackham was a mortgage broker and he had asked whether it would be all right for his solicitor to draw up the mortgage. The vendor said that would be all right, as long as it was done by a solicitor. What did the settlement agent do? He handed over the documents to the purchaser and said "Get a mortgage prepared. Instruct a solicitor." He did that, but the instructions he gave the solicitor were not to prepare a first mortgage. He told the solicitor to prepare a second mortgage.

Mr Rackham then went elsewhere and raised $30 000 on a first mortgage and that mortgage was prepared by a different solicitor. The settlement agent took very little part in this whole transaction, except to tell the lady everything was going all right. He held the title deed and he thought he knew everything was all right.

Finally, the settlement agent turned up at settlement. A group of people was gathered together and he did not really know who they were. He knew he had to obtain the difference between the deposit and $25 000. He saw the document of mortgage which he did not understand. It had an encumbrance endorsed on it, whereas, in the case of a first mortgage, the words "encumbrances nil" should appear. This mortgage document had "encumbrances mortgage" and a blank and then the word "to" and another blank which would be completed later.

The settlement agent did not understand the significance of the endorsement on the mortgage, but he thought he knew everything. He had the title and came out of the office with $20 000 and thought he had done his job.

The Hon. Peter Dowding: He had been done.

The Hon. H. W. OLNEY: He had not been done then; he was done later on. Mr Rackham disappeared from Western Australia without paying anything and leaving behind a property in his name which he bought for $45 000, which was then mortgaged for $55 000, and was worth something considerably less than $45 000. When the first mortgagee, to whose interest the vendor, who thought she was getting a first mortgage, was subordinate, finally sold, he got back his money; but not all the second mortgage money was recovered, which was understandable, so the vendor's estate—the lady had unfortunately died in the meantime—was left with a shortfall and her trustees sued. The Supreme Court held that the settlement agent was negligent and liable for damages in the form of the loss of mortgage money and the interest which had not been paid. A judgment was given against him for approximately $21 000.

That is an example of what happens when someone dabbles in something he does not understand. I am not saying Mr Smyth is typical of all settlement agents—far be it from me to suggest that. I know many settlement agents who are highly competent and probably the majority of them are, and they have nothing to fear. We are not regulating the industry to protect the public against competent people. The regulation is designed to protect us from incompetent people. This Bill leaves open the problem of providing for competent people and if we are going to expand the activities of these people into areas they have not previously entered, we will compound the difficulties which even now are very substantial.

I urge the Government to accept the suggestion that we have another look at the matter. It would seem to me eminently suitable that a Select Committee of this House be appointed for the purpose of ascertaining what this legislation contains and what needs to be included in it.

We can draw from the experience in South Australia. For a long time land brokers have worked there and, indeed, South Australia and Western Australia are the only two States which have lay people in this field of conveyancing.

In 1973 the South Australian Government, after very strident criticism from the South Australian Supreme Court concerning the activities of land brokers, legislated to write in suitable protection in cases where land brokers had been involved in conveyancing.

A great deal can be said about this Bill; but we are anxious to ensure the public are protected. However, the public will not be protected if in fact they are only half protected. Providing adequate guarantees is one thing, but providing a competent professional service is another, and this Bill does not guarantee that.

THE HON. PETER DOWDING (North) [10.38 p.m.]: I should like to repeat, so that the Minister who we are aware is not responsible ultimately for putting up these pieces of legislation—

The Hon. G. E. Masters: I am, in this House.

The Hon. PETER DOWDING: It is fairly clear that the present Minister in the other place who is giving instructions to the Minister in this place, is setting about to introduce legislation without fully acquainting the Minister here with the true situation or he is encouraging the Minister in this place to mislead the House. The

Minister cannot have it both ways—either he is setting out to mislead the House or he is not being briefed properly.

As I think has been pointed out very properly by the Hon. Howard Olney and the Hon. Joe Berinson, obviously some members on the other side have read the legislation and the second reading speech of the Minister. It is clear that, in particular, on page 7 of that speech the Minister is either poorly briefed or is attempting to mislead the House. Not coming from the paranoid left, I am prepared to discount the theory that the Minister across the table is setting about deliberately to mislead members in this House. I am prepared to accept his briefing is bad, but with all due respect, he cannot have it both ways.

If, as I have remarked previously and I believe it to be so, some members opposite have read this Bill, they should be aware the remarks made by the Hon. Tom Knight are quite correct. The Opposition does not say that settlement agents should be abolished or disbanded, or that their operations should not be subject to an Act of Parliament. It is not the case of the Opposition that all conveyancing ought to be handled by solicitors. In answer to an interjection by the Hon. Neil Oliver, I should like to say I certainly would not—neither, I am sure, would the Hon. Howard Olney or the Hon. Joe Berinson—agree the conveyancing system in New South Wales and Victoria, which places so much emphasis on the delivery of legal services and such a heavy burden of cost on the purchasers, is a good system.

We are all very proud that the TLA and the Torrens system works to the advantage of the ordinary home owner. However, once again as we have seen in this session of Parliament, frequently the Minister does not introduce legislation directed at the area he maintains it is intended to cover. This legislation does not refer to an ordinary home owner's purchase of a home. It is far wider than that and extends into areas of real estate transactions which are not limited simply to the purchase of domestic residences.

The Minister can talk until he is blue in the face, but he does not always address his remarks to the Bill. He certainly did not do so in respect of a previous debate tonight, and it is doubtful whether he will do so on this occasion. The reality is this Bill is not limited to those matters and in that area lies a very grave concern in the minds of members on this side of the House. That is one of the reasons we think the legislation should be looked at in its proper context.

Historically what has happened is that in 1976 when this Government introduced legislation to control settlement agencies, it seemed to be in the pockets of some of the law societies or the general overview of the law societies. It obviously got the screw from some sectional interest in the community and I would not mind betting it was the Real Estate Institute of Western Australia and the agents associated with it who put the screw on the Government in 1976, bearing in mind an election was to be held the following year.

The Minister was not in charge of a portfolio at that time; therefore he may not be aware of the contents of the 1976 legislation. As I say, his briefing is grossly inadequate as can be seen from the Minister's second reading speech. It is quite obvious when one compares the legislation passed in 1976 with that which we are debating today that there has been an enormous change in the attitude of the Government.

The second reading speech which was made in respect of the legislation in 1976 is a different story from that which was delivered in respect of this legislation. In fact, what has happened is that instead of realising it was being manipulated by one sectional interest whilst the other sectional interest screamed, and drawing a fair line down the middle, the Government has leapt holus-bolus into the other camp. It is not now in the camp of the small settlement agents, but lock, stock, and barrel in the camp of the big combines of settlement agents who realise enormous profits in this industry, because in effect they are doing little more than real estate agents were obliged to do or did do previously.

As the Hon. Tom Knight has pointed out quite properly, real estate agents today are obliged to perform the adjustments of rates and taxes. This Government and the Minister sitting opposite, or the people who have given him his brief, have just ignored that. If that is not true, why is it the case that, in the second schedule, clause 11(b) a settlement agency performs the adjustment of rates and taxes for a fee?

I ask the Minister to answer this specifically: If that is provided as part of the service for which a fee is charged, what does he say about the provisions of section 65(1) of the Real Estate and Business Agents Act 1978, which says that, subject to two subsections, where a real estate transaction has been negotiated by an agent, it is the agent's duty to the purchaser to assure that all rates and taxes, etc. are paid by him and that such rates and taxes and other outgoings are duly apportioned between the vendor and purchaser?

This is precisely the point the Hon. Tom Knight made. The Minister just cannot wave his

arms and say "It has all been thought about. The Bill is terrific. My second reading speech is accurate. The Minister is quite spot on." The Government cannot dispute that provision is made in the Real Estate and Business Agents Act for a statutory imposition on real estate agents to do that for which the Government will permit settlement agents to charge. I agree with the Hon. Tom Knight that that is a disgrace.

A number of aspects of this legislation are questionable. If the Minister can give us only these bland statements that the legislation is all right and that all matters are covered by the Bill—

The Hon. G. E. Masters: You haven't given me a chance to speak.

The Hon. PETER DOWDING: The Minister has made a bland statement in every second reading debate to which he has responded.

The Hon. G. E. Masters: Why do you get so upset?

The Hon. PETER DOWDING: I am not trying to make a political point; I am not scoring political points. As a legislator I am urging the Government to open its eyes and read what it is passing. Any clot could see that these issues are live issues in our Statutes.

Let us look firstly at this aspect relating to conflicts of interest because it was not dealt with by the Minister in his second reading speech or in any of the responses made in the other place. The purchase of real estate is regarded by people in the income group in which their home is their only real estate, as the largest financial transaction into which they will ever enter. In my view it is essential they be represented by somebody. I am content if it is a domestic house that they be represented by an estate agent, settlement agent, or a solicitor. I certainly know I would not have anybody but a professional to represent me; but I do not say everyone must follow that course.

In my view it is also essential that the person representing them should be under an obligation not to act for adverse interests. A person acting for adverse interests is not someone acting for the vendor and purchaser together; he is someone involved with the real estate agent who may well be the *bete noire* of the transaction. This is so with many domestic transactions which go bad. The purchaser says to the vendor "But the agent told me such-and-such"; the vendor says "Well, I never told the agent to say that"; and the agent will not say anything or co-operate in anything. It is in his interest to ram the transaction through as soon as possible. If either the purchaser or vendor believes himself to be represented by somebody with some sort of professional ability and responsibility he ought to know whether that person is the husband, cousin, wife, uncle, or lover of the real estate agent handling the transaction. The vendor or purchaser would not know the real situation.

I invite the Minister to explain why it is that such provisions contained in the Real Estate and Business Agents Act were not thought necessary to be included in this legislation. I think the Hon. Tom Knight and some other members opposite simply want to know why these provisions have been dropped.

Firstly, under the legislation a person shall be regarded as carrying on a prescribed business if he carries on that business in his own right or in his capacity as trustee, either solely or with one or more trustees. That is fine. A person is in a prescribed relationship to another person if he is an employee, or a partner, remunerated by a firm which carries on a prescribed business; and the other person is in the position of control to conduct all the affairs or take part, or is concerned, in the management of the firm. Where is such a provision in this Bill?

I believe such a provision to be important, but the Government simply has dropped it out of this legislation. I hope in due course the Hon. Robert Pike will be able to give us the benefit of his experience in this matter. The Act continues to refer to persons with specific interests and refers to a person who is an employee or director with specific interests, with shares, or beneficial holdings of shares. The Act goes on and on. It specifies a legal practitioner or land agent or financial broker, or the spouse of either, holding a licence under the Act.

What is the policy which justifies the dropping of the provisions to which I have referred in part? How can the Government swing from its position of 1976 when it said it ought to be unlawful for these people to operate when really they are people who have interests that are at times conflicting with those of settlement agents and who ought not to be in a position of having sweetheart deals or of being able to mislead people into believing they are professional people? The Government has swung from that position of 1976 to the present position as outlined in this legislation in which it is shown the Government does not care.

It seems to me compelling arguments can be submitted for all these conflicting interest clauses to remain in the Statute. I am concerned, as is the Hon. Tom Knight, about the cost to purchasers

involved in these transactions. I believe the cost for a simple domestic transaction should be lower and handled by a real estate agent, part of which transaction he is by Statute obliged to carry out unless there is a contracting out.

I am equally concerned about consumers in a position where they can be manipulated by land agents with a direct financial interest in the result of that manipulation. If it is good enough for consumers to have seven days to avoid the clutches of door-to-door salesmen selling encyclopaedias or other sets of books because consumers may become enthused and sign anything, why is it not good enough to apply a similar provision in this legislation?

We believe that if the purchaser of a house signs a contract then as far as this Government is concerned that should bind him to be charged by a broker or settlement agent for fees which ought to be met by somebody else. If the contract is signed, that is the end of the matter.

I do not understand how the Government can say somebody who invests in a couple of hundred dollars' worth of a set of books offered by a door-to-door salesman after having been sweet-talked into the deal is not worthy of the same protection when he is involved in the one transaction of his life that involves thousands of dollars. That can mean only that the Government does not care.

Either these things have not been thought about or the people who have been urging the Government into this position—they represent sectional interests—have glossed over these points or not indicated them to the Minister.

I hope the Minister in this place has a mind open enough to receive my suggestions. After having associated at university with the Minister in another place I know there is no way in the wide world that he would adopt common sense, but I do not say the same of the Minister in this place. I hope he will answer these specific propositions; in particular, the question about why it is that real estate agents do not need to tell the purchaser "My wife is earning a bit of crust around here doing settlements. I could either do it myself for free or we can get her to do it and she will charge you." That is not the type of chat that goes on at the time of the signing of a contract.

As anybody who has had dealings with real estate—again I defer to experience such as that held by the Hon. Robert Pike—would well know, people will sign anything when they have made a decision to buy a house. It does not matter what is put in front of them. If it is put in front of them they will sign it. They will not understand the implications or understand that the obligation may rest upon them to incur an expense. As the Hon. Tom Knight has properly put the situation, it may well be that the expense may deprive them of some necessity.

I can understand that sectional interests are involved. We know it was said before by way of interjection that a member of the Liberal Party is involved in one of these settlement agent firms to split his income.

I do not approve of the sweetheart deals. When real estate agents are involved in the transaction of domestic houses they do not inform the purchasers of (a) the implications, and (b) the alternatives. I simply say there ought not be that sort of arrangement in a transaction of such magnitude. A cooling-off period should be provided and people should be given the opportunity to rescind an authority up to a period of, say, seven or 14 days without incurring any debt to the settlement agency. That ought to be a prerequisite in this situation.

As I said in my opening remarks, and as previous speakers have said, the nature of the work involved in the proposed settlement agents' work load is not the same as their work load has been to date. Simply, it is false to try to put the proposition that they will be doing the same things. It is equally false, as the Minister unfortunately has had to explain to the House in his second reading speech, that the legislation largely is directed towards home-buying transactions. It is not. One has only to read the Bill to see that. No cost limits are imposed or constraints made on the level at which these paralegal conveyancing offices will be allowed to operate.

The Hon. Howard Olney asked members who have not yet been able to do so to have a look at the second schedule to see the range of matters there. Despite the remarks of the Hon. Neil Oliver, I indicate that my experience was with a firm which carried out these sorts of transactions.

The Hon. Neil Oliver: In the previous debate you said you didn't have the experience.

The Hon. PETER DOWDING: The Hon. Neil Oliver may not understand that—

The Hon. Neil Oliver: I understood you perfectly.

The Hon. PETER DOWDING: The honourable member cannot understand until I have told him what he does not understand. He may not understand there is a branch of law called "conveyancing" which is a very technical branch involving the preparation of complex documents, but that section of a legal practitioner's practice dealing with legal

settlements is not what I would describe as a significant conveyancing practice. Obviously a significant amount of conveyancing is involved in any practice, and I have supervised a practice in which operated a reasonably modest conveyancing section.

Despite the criticisms that many people make of lawyers, I certainly made it my business to ensure that transactions went through as smoothly as they would in any other area. However, one cannot simply sit down and draw up requisitions on titles and be sure one is right unless one knows the principles of the TAL and the law of indefeasibility, and has access to a law library to look at updates on the law. The *Australian Encyclopaedia* is a useful starting point for forms and precedents, but one cannot simply read textbooks and draw requisitions on titles. Complex drafting is involved, and these things are very important. In my practice we made requisitions on titles, and quite often land and settlement agents would start off by refusing to answer them because they did not understand them. These are the people who are to be given the right to practise under the grandfather clause, and they have neither experience in conveyancing nor any ability in the field.

How can the Minister justify giving these people the power to draw up these documents? The interesting thing is that the Bill says "in or from and subject to such conditions as are prescribed", but how does one draw and engross the conditions if they are not prescribed? If a printed form is used, obviously some alterations have to be made. The printed form may not fit the moment, and an agent may not understand that the form does not fit the moment. It would be a case of fools rushing in without understanding the details of the transaction, and without knowing the form to follow. It is not just a case of obtaining a few Butterworths' and REIWA forms and filling them in; many lawyers are constantly litigating in these fields.

It seems to me to be a bit of a confidence trick to let loose on the public people who do not understand the work, and to gloss over it as some continuation of a current practice. I can assure the Minister I have had sufficient personal experience, without listening to representations from anyone else, to know that the second schedule does not list the current activities of settlement agents. The vast majority do no more than conduct a search, have a transfer executed, register a title, and ensure that the settlement goes through without any parallel encumbrances to be lodged. I blame the REIWA and the Law Society for a disastrous situation which developed because of a form those organisations prepared. I do not know about the latest form because I have not been involved in this field for the last 12 months, but the earlier form gave a purchaser no protection if the Metropolitan Region Planning Authority decided to put a major highway through his bathroom. If the proposal was not notified prior to the offer and acceptance, then carrying out a search at the MRPA was a waste of time because the purchaser was bound by the contract. In fact, any solicitor or settlement agent worth his salt did it so that at least it would not come as a complete surprise to a purchaser to discover a highway was to go through his bathroom.

The Hon. D. J. Wordsworth: Did you say a form put out by the Law Society?

The Hon. PETER DOWDING: A joint form put out by REIWA and the Law Society. It gave people in that situation no protection. It shows, with great respect to those august institutions, that printed forms have their dangers if one is not alert to their realities.

Many solicitors were very alarmed by such transactions. If members look at schedule 1.1.(b), they will be half the work relating to the adjustment of rates and taxes must be completed by the real estate agent before the form is signed.

The Hon. Neil Oliver: I will stand to be corrected on this, but say the MRPA is possibly widening the highway; I have seen this on a caveat.

The Hon. PETER DOWDING: Not if it is a proposed amendment, or even if it is just part of a town plan. The Hon. Neil Oliver stands quite correct, except that the transaction is not registered as a caveat against the title.

The Hon. Neil Oliver: Because the remuneration has not passed, if there was remuneration involved.

The Hon. PETER DOWDING: Not because there is any remuneration, but because the resumption has not gone ahead; it may just be part of the scheme. Under the principle of indefeasibility, one buys with the encumbrances on the title, and it is not "E & O E"

The Hon. D. J. Wordsworth: Lawyers put that on the bottom.

The Hon. PETER DOWDING: The Minister may notice we always put that on the bottom of our accounts, but not on anything else. Lawyers may be sued!

The point is that one can complain about any professional body. The standard of care is not simply the standard of care of a reasonable man;

it is the standard of care that a professional man should properly observe, and of course, that does not apply to settlement agents.

The Hon. Neil Oliver: Just taking it one step further, during this very simple explanation by the previous speaker about the first approach—

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order! I think that matter should be raised during the Committee debate.

The Hon. Neil Oliver: You could explain that—when you get to the Office of Titles.

The Hon. PETER DOWDING: I must confess the relevance of that remark is not really with me at 11.06 p.m.! Through you, Mr Deputy President, I say that the risk is that between the time the cheques and documents are passed around and the time the person registering the transfer gets to the Office of Titles, some likely lad may have lodged something. Then there is nothing anyone can do about it. As the Hon. H. W. Olney said, there was a wonderful bustling atmosphere in the Office of Titles previously, but everyone was protected because the documents were not handed over until the solicitor said "right". Then there was a time clock and the principle of indefeasibility worked in the purchaser's favour.

Except in the most unlikely circumstances of transactions happening at both ends of the counter at the same time, everything was all right.

There is a clause in the Transfer of Land Act which enables one to put a 48-hour caveat on a deal, but the Office of Titles says it knows nothing about it.

Nothing has happened yet, as far as I know, but it may happen and there is no protection. The problem arises if settlement agents become involved in deals which are more complex than simple domestic transactions. We do not have the expectations that they have the professional qualifications to undertake such work or the legal liability on the basis of the proper standards of professional responsibility that attach to lawyers. That is the problem, and whatever the Minister says, in due course this Bill will not be limited to those simple domestic transactions. Nor incidentally is there a cost limit on the legislation. When we are dealing with people involved in paralegal work or paramedical work, at least there should be a ceiling on the work they can do, a ceiling defined either in terms of difficulty or in terms of cost.

To define the ceiling in terms of cost in this case would make sense except that there are low-cost transactions which might be very difficult. To define it in terms of matter may be very difficult, because some domestic transactions, for instance, can be very complex. However, I would urge the view that domestic transactions would be the sort of transactions that settlement agents could handle. I would urge also that settlement agents be not permitted to enter into sweetheart deals with real estate agents. Such an area becomes murky. Unfortunately, it is difficult to maintain that sort of dispassionate professional approach that people are bound to hold under the Real Estate and Business Agents Act.

I do not know whether the responsible Minister has even told the Minister handling this Bill here about the very serious problems in regard to solicitors' trust accounts. There is a time period during which the funds which form part of a settlement are paid into a solicitor's trust account, and most solicitors who have a conveyancing practice of any size, even a domestic house transfer practice, would have trust accounts in the order of $200 000 to $400 000 at any one time. Under the Legal Contribution Trust Act a fund is set up into which income is generated from a calculated portion of those trust accounts. It is in fact half the annual lowest balance. A good portion of that goes into providing legal aid in this State, and that is one way in which the State Government has been able to fund the legal aid scheme at a relatively small cost to the taxpayer.

Under the new legislation, the same source of money will not be available to the legal aid scheme. I am not talking about a small sum of money. From June 1978 to December 1981 a total of $1 920 103 and some cents was received into the legal aid funds from this source. It did not cost the taxpayers anything; it did not cost the Government anything. In fact, it was being paid by the banks which were paying interest on a portion of those trust accounts.

Under this legislation, a sizable swag of the money generating that income will be paid into a similar fidelity trust system, but it will not generate any money for this purpose. I do not understand how the Minister could seriously propose legislation which will have that long-range impact without at least mentioning the reason for it in his second reading speech. Whether or not members want a legal aid scheme, I believe it is very important for the people of Western Australia. Certainly now is not the time to be diminishing this income which is not costing the taxpayers anything.

We have not heard the land settlement agents or the REIWA representatives leaping to their feet to urge that this should happen, and yet this money no longer will go towards the altruistic aim

of assisting the legal aid scheme. The Government seems to ignore that fact.

The settlement agents look like they will now get their bonding and respectability. The range of their functions will be increased. It is quite wrong to call them settlement agents; really they are legal conveyancers without qualifications. Apparently some of them will need to have qualifications, but we are not told what those qualifications will be. That is a secret which the Government intends to keep. The Minister shakes his head. Is the information in the second reading speech? Can he tell us what the qualifications are to be?

The Hon. G. E. Masters: I am shaking my head at you.

The Hon. PETER DOWDING: I see, the Minister is not saying I am wrong; he is just shaking his head at me. That would be typical.

We are told that perhaps the settlement agents can advertise, and of course, most professional people cannot do that. Settlement agents will be able to enter into sweetheart deals with local real estate agents, or perhaps most of them will be real estate agents in disguise. They will attract a sizable portion of these trust moneys, and they will be in their trust accounts for as long as funds are in the solicitors' trust accounts. They will reduce the funds available for interest to be computed and paid into the legal aid scheme with nary a word from the Government.

The Hon. H. W. Olney: It was in the 1976 Bill.

The Hon. PETER DOWDING: It was, and that is the absurd thing. It is not as though it is some sort of new proposition. As my learned friend reminds me, it was contained in clause 96 of the 1976 Bill. What is the explanation for its deletion? What has happened between 1976 and now for the Minister to be urging Parliament to vote for this provision which was contained in clause 96 of the 1976 Bill, and which has been deleted without any explanation or reference by the Minister? I do not understand why; perhaps the Minister can tell us.

THE HON. R. HETHERINGTON (East Metropolitan) [11.16 p.m.]: I have listened with considerable interest to the speakers who preceded me on a subject about which I know very little. I am not entering the debate so much because I understand the detail, but rather because I felt I should appeal to the Minister as in view of what has been said tonight, there is considerable cause for worry about this Bill. The Opposition is quite sympathetic towards the basic principles of the Bill, so much so that in another place our colleagues allowed the Bill to go through.

It is only since then that we have had a closer look at the legislation and found the deficiencies which have been outlined by my learned colleagues who surround me.

It seems to me the Minister has two choices, and I would suggest these to him in all seriousness. The first is that the Minister can adjourn the debate so that a further look may be taken at the legislation to ascertain whether amendments need to be moved; the Bill could be left to lie on the notice paper until we resume in August. The second and, I think, the better proposition would be that the Minister take this House seriously as a House of Review as he has claimed to do in the past, and allow the Bill to be referred to a Select Committee and take advantage of the considerable expertise which is in the House to enable a sympathetic and constructive review to be made of the Bill so that it may emerge as a better piece of legislation.

The Minister may have noticed no great attempt has been made tonight to score political points. The whole discussion has been concerned and constructive. I think there is a chance for the Government to have the Bill considerably improved if it either went away and reconsidered it or had it referred to a Select Committee where it would have the useful and expert advice of my colleagues written into the Bill, to its great improvement.

I am certainly one of those people who is not unduly desirous of giving lawyers any greater income than they necessarily need. It seems to me what we are doing by proceeding with the Bill as it stands perhaps is increasing the possibility of litigation in the future, and I know the Government does not desire that.

So, I appeal to the Minister to listen to all that has been said, and either adjourn the debate or refer the Bill to a Select Committee, where it could receive some very expert examination, to the benefit of the Government and its intentions.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [11.19 p.m.]: I have listened to the lengthy debate with considerable interest and I appreciate the comments made by members of the Opposition in their professional, legal capacity; that is that they have no axe to grind as far as the legal profession is concerned.

The Bill has been very carefully considered over a long period; an expert committee has been studying the matter. We believe what has been

put forward to the public can be accepted as a genuinely good document.

The Hon. R. Hetherington: It is not good enough.

The Hon. G. E. MASTERS: It is good enough.

The Hon. Peter Dowding: Can you tell us who were the experts?

The Hon. G. E. MASTERS: I am pleased the Opposition supports the basic scheme of the Bill. It is a fact that settlement agents are a part of our system and our way of life today. They have been accepted for a number of years.

Some members of the Opposition referred to the following statement in my second reading speech—

> It is important to stress that the functions of a settlement agent as detailed in the schedule to the Bill are those actually being carried out now and which have for some years been carried out by settlement agents.

I understand that in many cases, actions taken by settlement agents have been in contravention of the law. It was pointed out by the Hon. Howard Olney that some settlement agents were prosecuted for infringements in that area. Apparently some practices have become accepted quite wrongly. My second reading speech continued with the following statement—

> In a sense the Bill is a recognition of the reality that a new type of business operation has grown up in this State...the Bill strikes a reasonable balance.

That is what we are endeavouring to do.

The Hon. Peter Dowding: Which activities do you say were carried on?

The Hon. G. E. MASTERS: Mr Dowding has made his speech; he should let me make mine.

The Hon. Peter Dowding: You interjected on me.

The Hon. G. E. MASTERS: I was very kind to Mr Dowding. It is obvious that the purpose of the legislation is to control settlement agents and to protect the public. The Bill contains a basic recognition of the existence of settlement agents. There is little point in settlement agents being told to carry on with certain actions if it is not appropriate for them to carry out the job we think they should be carrying out to the benefit of their clients, and we must take that into account.

I agree there have been some legislative changes which will enable them to do things they have not been able to do in the past. We as a Government believe these are acceptable and proper, in the circumstances. There has already been an erosion of the functions of the legal profession. All this Bill seeks to do is to protect the public in this area.

The Bill provides that the board will monitor the operations of settlement agents. Agents will be required to operate within clearly defined boundaries. The Bill will achieve its objective of protecting the public because the board will be there to carry out that objective.

The Hon. Peter Dowding: That is just a fond hope, not legislation.

The Hon. G. E. MASTERS: I should like to give members the composition of the working party which studied the legislation because it is important we recognise the work it has done. I think Mr Dowding referred to this point. The working party was composed of the following—

> the Chairman of the Real Estate and Business Agents' Supervisory Board;
> a representative of the Settlement Agents' Association;
> a solicitor;—

The Hon. J. M. Berinson: What sort of solicitor—a Crown Law solicitor, a private practitioner, a conveyancer?

The Hon. G. E. MASTERS: He is a solicitor—a man legally qualified. The composition of the working party continues—

> a licensed real estate agent;
> and a representative of the Chief Secretary's Department.

That is a fine body of well-qualified people.

The Hon. J. M. Berinson: It is a body overwhelmingly weighted with estate agent interests.

The Hon. G. E. MASTERS: We believe that in view of the type of operations of the settlement agents, the composition of the working party was adequate to cover the situation. Indeed, I suggest that given the same circumstances, the Opposition would have picked almost an identical committee. I have told members the bodies which those people represented; Mr Dowding has already been told the Minister is not prepared to give him the actual names of the people involved.

The Hon. Peter Dowding: He would not tell me even their interests this afternoon.

The Hon. G. E. MASTERS: If Mr Dowding cares to pursue the matter, he can ask another question.

The Hon. Peter Dowding: He would not tell me even their interests this afternoon; that is how devious the Minister was being.

The Hon. G. E. MASTERS: I am not being devious; I am simply endeavouring to answer questions. If Mr Dowding would keep quiet for a moment, perhaps I could satisfy the queries of other members.

The Government believes the indemnity and fidelity insurance policies, which offer cover of $250 000, are adequate, when taken in conjunction with the other funds put aside to protect the public; certainly, it is much more than exists at present.

The question of conflict of interests was raised. Again, I would point out the board is required to draw up a code of conduct. I mentioned this before, and it is very important. The whole success of the legislation will depend on this code of conduct; the code may be changed at the discretion of the Minister after the board has recommended changes, and this will mean the Act itself will not need to be amended. If problems are experienced in the operations of settlement agents, clause 113 of the Bill gives the board the authority to approach the Minister with recommended changes to the code of conduct, and those changes almost certainly will be effected.

The Hon. Peter Dowding: So, Parliament cannot legislate in that area.

The Hon. G. E. MASTERS: Parliament is legislating now and a code of conduct will be set up by a competent group of people; they will be as competent as all the solicitors opposite, and they will be there to protect the public. If Mr Dowding does not trust people of that calibre, I am sorry.

The Hon. J. M. Berinson: The Bill itself sets out to avoid conflict of interests to some extent. If it is important enough to be in the Bill itself, why should it not be wholly in the Bill?

The Hon. G. E. MASTERS: The code of conduct will be very carefully written so that it can be changed at certain times to deal with problems as they arise. Obviously, problems will occur as settlement agents increase in number.

The Hon. G. C. MacKinnon: If I buy a house, will it cost me more?

The Hon. G. E. MASTERS: Despite what the Hon. Tom Knight said to the contrary, the answer to that is "No".

The Hon. G. C. MacKinnon: I reckon the Hon. Tom Knight was spot on.

The Hon. G. E. MASTERS: I tell the honourable member the Hon. Tom Knight was wrong.

The matter of a settlement agent representing both vendor and purchaser was raised. The Bill provides that in certain circumstances this is possible, as long as all parties involved are aware of the fact.

I have been involved in one or two real estate deals over a number of years and have used settlement agents very successfully. I have been very satisfied with what has been done; they were reasonably cheap.

The Hon. H. W. Olney: Some 99 per cent of the people are satisfied; it is the 1 per cent who get caught who worry us.

The Hon. G. E. MASTERS: There is undue worry in this area; the legislation will cater for that eventuality.

The Opposition suggested we examine the United Kingdom system, which supports the views of the Law Society.

The Hon. J. M. Berinson: I didn't say their conclusions should be taken account of, but their inquiries.

The Hon. G. E. MASTERS: I am saying the system in the United Kingdom is different; it goes back many, many years. Whilst we are talking about operations which go back to 1898, let me remind members that the United Kingdom inquiries dealt with land ownership going back hundreds and hundreds of years.

We talked about the Victorian legislation. The settlement agents' matter is still under review there and Professor Brunt, the Chairman of that State's Consumer Affairs Bureau, is following the events in this State with great interest. He is seeking a copy of our Bill.

The Hon. J. M. Berinson: They will learn from our mistakes.

The Hon. G. E. MASTERS: I do not believe that and I do not believe the Hon. Joe Berinson believes it. We also referred to the South Australian Land Brokers Act, which has more extensive powers than are provided in our legislation.

The Hon. Peter Dowding: And more controls.

The Hon. G. E. MASTERS: We considered that State's Act when we reviewed our legislation. We gave the matter careful consideration and we studied the legislation in other States.

The Hon. Peter Dowding: You have not learned anything.

The Hon. G. E. MASTERS: That is a matter of opinion, but it is a long time since the honourable member learned anything. Settlement agents have operated very successfully in this State for many years. I noted the Hon. Howard Olney's comments when he said it was high time

we took action, and that is certainly what the Government is all about.

The Hon. Tom Knight said that a real estate agent was required to carry out the settlement, but that is not really true.

The Hon. J. M. Berinson: But he is required to prepare the settlement statement.

The Hon. G. E. MASTERS: I shall quote as follows from a legal opinion I have with me—

> There is nothing in the Real Estate Act which refers to a fee for settlement. The Act does provide that an Agent cannot collect his selling/purchase fee until settlement takes place but this cannot be inferred as "settlement by him".

In many cases in country towns, estate agents carry out this work. The Hon. Tom Knight obviously has had experience of this. However, that is not provided for in the legislation.

The Hon. Tom Knight: Who did it before settlement agents appeared?

The Hon. G. E. MASTERS: Legal people often did, although they did not have to. Section 61(4) of the Real Estate and Business Agents Act reads as follows—

> The remuneration of an agent for services rendered by him in his capacity as agent in respect of a transaction he has negotiated is payable only on settlement of the transaction unless there is a failure to settle the transaction and that failure is due to the fault of the agent's principle.

What I am saying is that a real estate agent is not required legally to carry out the settlement.

The Hon. J. M. Berinson: But he is required to prepare the settlement statement.

The Hon. G. E. MASTERS: He is not required to carry out the full settlement.

The Hon. J. M. Berinson: But what about his obligations under section 65?

The Hon. G. E. MASTERS: A settlement agent can be used. I accept that in many cases real estate agents have done this work themselves.

The Hon. Peter Dowding: It was the tradition.

The Hon. G. E. MASTERS: But they did not need to do it. I shall continue quoting from my legal opinion as follows—

> The Real Estate Board in setting Maximum Fees did not allow for a fee for settlement, the Board was very conscious that except in isolated cases Agents did not do settlements.

That is the legal advice I have received and I accept it as being true.

I would like to answer the Hon. Tom Knight because I will not make any impression on Mr Dowding. Real estate agents have not been required by law to carry out a full settlement, although in many cases they have done this and still do it.

The Hon. Tom Knight: There are many things covered by law, but a precedent has been set. Who said the estate agents didn't do it?

The Hon. G. E. MASTERS: I am saying they are not legally required to complete a settlement and that settlement agents have been used more and more. This is a practice which gradually has evolved over a number of years.

The Hon. Tom Knight: A position we are trying to legalise.

The Hon. G. E. MASTERS: I want to make it clear that under the real estate agents legislation they are not required to carry out the full settlement, although many do.

The Hon. Peter Dowding: You have said that.

The Hon. G. E. MASTERS: I am trying to reassure Mr Knight that for this reason it is not necessary for there to be any increase in charges of settlement agent fees. If a real estate agent wishes to do the work he can.

The Hon. Peter Dowding: What about the settlement statement? That will cost more.

The Hon. G. E. MASTERS: I am talking about the full settlement. If Mr Hetherington has never been involved in a real estate deal I can certainly inform him that I have been from time to time.

The Hon. R. Hetherington: I have bought a few houses in my time. Some of us move into our electorates.

The Hon. G. E. MASTERS: Some people should move into their electorates.

I am sure there are some real estate agents who will continue to carry out settlements free of charge, and there is nothing to stop them.

I thank Mr Olney for the history lesson, because I did not know all the background on this subject. He covered the matter with his usual great care and patience. I am indeed encouraged that he has shown independence by deciding not to join the Law Society, although he does not seem to think this should not be the case with people in other areas.

The Hon. H. W. Olney: Public servants have no choice.

The Hon. G. E. MASTERS: Settlement agents have come into being as a result of popular demand. One of the reasons for their popularity is the speed with which they deal with settlements. Furthermore, they are a lot cheaper to deal with than are legal people.

The Hon. Peter Dowding: Not a lot cheaper—somewhat cheaper.

The Hon. G. E. MASTERS: Cheaper than Mr Dowding.

The Hon. Peter Dowding: How do you know?

The Hon. G. E. MASTERS: I have a fair idea. There is at least a 30 per cent to 50 per cent difference between prices charged by settlement agents and those charged by lawyers.

The Hon. Peter Dowding: Are you saying the prescribed fees will be 50 per cent below legal fees?

The Hon. G. E. MASTERS: Let me say that for a house valued at $75 000, a settlement through a settlement agent would mean a vendor would pay $120 and a purchaser $180. Through a solicitor—and these are average charges—a vendor would pay $185 and a purchaser $270. In a deal involving $30 000 being handled by a settlement agent, the vendor would pay $75 and the purchaser $118. Through a solicitor the vendor would pay $105 and the purchaser $160. That works out to be a difference of around 30 per cent or 50 per cent. The fees would be a darned sight cheaper if a person went to a settlement agent rather than to Mr Dowding.

The Hon. Peter Dowding: You do not know what his fees will be.

The Hon. G. E. MASTERS: I have a fair idea. Quite obviously there is a saving, and the public have responded by using settlement agents with great confidence.

The Hon. H. W. Olney: Because real estate agents filled them in.

The Hon. G. E. MASTERS: People are not easily fooled.

The Hon. D. K. Dans: He did not say "fooled" but "filled".

Several members interjected.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order!

The Hon. G. E. MASTERS: From the screams I am getting it is obvious I am correct. I was quite pleased to hear the flowery words used by the quiet republican earlier.

The Hon. J. M. Berinson: What flowery words?

The Hon. G. E. MASTERS: I will tell the member what they were. Mr Olney said he was outraged.

The Hon. D. K. Dans: That is not flowery.

The Hon. G. E. MASTERS: It is for Mr Olney, although it would not be for Mr Dans. Mr Olney said he was outraged to think this sort of matter had not been taken up before so that settlement agents were controlled. The situation has prevailed for a long time, but action is now being taken.

The Hon. H. W. Olney: Why did you pull out five years ago?

The Hon. G. E. MASTERS: We have been taking it very carefully and cautiously. One moment members opposite say we do not consider a matter properly and then they ask why it has taken us five years to introduce a Bill. The Opposition is asking why we want to get the legislation through by Friday. The outrage which Mr Olney is suffering surely would justify our taking five years to carefully study the problem.

The Hon. Peter Dowding: You are not dealing with the issue sensibly.

The Hon. G. E. MASTERS: Again I point out the importance of the fact that there will be a code of conduct for settlement agents. This should be brought to the attention of people everywhere time and time again.

The Hon. Peter Dowding: When will we see it?

The Hon. G. E. MASTERS: The member should have faith in the expert committee.

The Hon. D. K. Dans: Put your faith in the Lord, but keep your powder dry.

The Hon. G. E. MASTERS: I put my faith in my fellow man.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order! If the Minister addressed the Chair he would conclude his remarks more speedily.

The Hon. G. E. MASTERS: As usual, the Hon. Peter Dowding has sounded off and made all sorts of extravagant comments.

The Hon. Peter Dowding: Which ones were extravagant?

The Hon. G. E. MASTERS: He asked why the Law Society submission had not been studied.

The Hon. J. M. Berinson: He did not say that.

The Hon. Peter Dowding: I did not mention its submission.

The Hon. G. E. MASTERS: The matter was raised in debate, most certainly.

The Hon. Peter Dowding: Withdraw your comment.

The Hon. G. E. MASTERS: The member must be joking. The Law Society met with the Minister last Friday.

The Hon. J. M. Berinson: After the Bill had gone through the House!

The Hon. Peter Dowding: A very good time for consultation.

The Hon. G. E. MASTERS: The society met with the Minister, and its representatives said how pleased they were that some of their recommendations had been accepted. Its submission has been considered.

The Hon. J. M. Berinson: You are marvellous. How did they get on without you before?

The Hon. G. E. MASTERS: The Hon. Peter Dowding talked about housing as though it were an inferior matter to larger deals.

The Hon. Peter Dowding: Simpler deals.

The Hon. G. E. MASTERS: As I understand it, he did not consider those transactions as important as larger deals. If we thought they would be affected we would have been even more careful, but we believe the legislation is quite acceptable. We believe housing matters can be dealt with quite happily just as can the larger deals.

The Hon. Peter Dowding: I said that you knew nothing about conveyancing because if you did you would know it is true.

The Hon. G. E. MASTERS: There was some suggestion made by Mr Dowding that there would be manipulation. Mr Dowding always uses such extravagent comments. There certainly would not be any manipulation by settlement agents. The work of settlement agents is carried out by people with high standards and they are careful with what they do. I was also surprised by his comment when he said that settlement agents came into being because of the enormous profit they could receive; yet they charge only 70 per cent of what the legal profession charges.

The Hon. Peter Dowding: They do not have to maintain the same sort of facilities. It is disgraceful.

The Hon. G. E. MASTERS: It is not disgraceful. It is true and that is even more reason that settlement agents should be encouraged to operate, provided they are properly controlled.

The Hon. Peter Dowding: At the expense of the consumer; that is my concern.

The Hon. G. E. MASTERS: The Bill, as we see it, has much to commend it.

The Hon. Peter Dowding: We do not see it in that way.

The Hon. G. E. MASTERS: We believe that the situation where settlement agents must have a licence, or a triennial licence, is sensible and it is quite obvious disciplinary action can be taken at all times.

The Hon. J. M. Berinson: We agree with that.

The Hon. G. E. MASTERS: Even Mr Dowding could set up a settlement agency if he so wished. There are indemnity and fidelity funds provided—$250 000—and those funds can be used for the protection of the public.

There is the guarantee of the fund and that settlement agents must deposit money into a trust which is held as a guarantee of interest and operation.

We have set up this wide range of funds which we feel will quite amply protect the public. Settlement agents as such have been operating for many years and have demonstrated that they are well able to deal with the public. They are able to carry out their duties quickly and at reasonable cost and a Bill such as this provides ample insurance cover and protection for the public. I ask members to support the Bill.

Question put and passed.

Bill read a second time.

Reference to Select Committee

THE HON. J. M. BERINSON (North-East Metropolitan) [11.48 p.m.]: Pursuant to Standing Order No. 255, I move—

> That the Bill be referred to a Select Committee.

I am never at my best at midnight and especially after listening to the Hon. Gordon Masters I suspect I am very close to my worst.

The Minister's response to the second reading debate was disappointing and, I am afraid, disappointingly typical. His speech was not directed to the merits of the substantive arguments raised in the second reading debate; it was as misleading as the Minister's second reading speech itself. In that respect, I offer just one example which the Minister took up in his reply, and that was his statement in the second reading introduction that it is important to stress that the functions of a settlement agency, as detailed in the schedule to the Bill, are those actually being carried out now, and which have for some years been carried out, by settlement agents.

In my second reading contribution I pointed out that if that statement were to be taken literally

then the Minister must be referring not only to practices traditionally carried out by settlement agents legally, but also to practices traditionally carried out by them illegally.

When it came to the point, the Minister in fact conceded that the Government does recognise the extent of current illegal practice by settlement agents. As a recognition of what he is pleased to call "the reality of the situation", he agrees that the Government is now proceeding to legalise those illegal practices.

I suggest, expectative of a lack of response from the other side—except from Mr Knight—that there is another reality which ought to be recognised within this context and which deserves higher priority by this House. That other reality is the reason for the present restrictions on the extent to which settlement agents can legally engage in conveyancing work.

The reason for the earlier restrictions was not some sensitivity for the income of members of the Law Society. It was out of concern for the protection of consumers, the purchasers and vendors who ought not be left in a situation of relying on people—who by virtue of the recognition of an Act such as this and on a standing which now is to be granted to them—who may carry on quite complex transactions despite training or expertise.

We have said again and again and it ought to be apparent by now to Government members that we are not disputing the basic aim of this legislation. There is really no difference between the views of the Government and those of the Opposition in any ideological sense; there is no difference on the fundamental basis of the Bill. The difference can be said to relate solely to the proper implementation of a scheme on which we are in fact basically agreed.

Given the length of discussion on the second reading speech, I do not propose to delay the House any longer at this point of the proceedings. My motion calls for the appointment of a Select Committee. After the Government waited for 10 or 11 years since the emergence of the settlement agents in this State and after it waited for five years, after withdrawing its earlier proposed legislation when it had already substantially gone through the Parliament, a delay of a further two months is not so harmful as to counterbalance in any way the potential harm of provisions which have not been fully considered and which have been in fact ill-considered.

I regret to say that there is nothing in the reply of the Minister which could convince anybody with a concern for the purchaser and vendors of property that their interests will be as fully protected—as the Government says it is setting out to do—as those interests ought to be protected.

I commend the motion to the House.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [11.55 p.m.]: I urge members of the House to reject the motion because it is quite wrong to say that the Government is not concerned. The very reason for this legislation being presented in this House is that we are concerned and do believe that the operations of settlement agents should be controlled.

The legislation provides for protection and it is possible to take firm action on the evidence of any wrongdoing. I believe that expresses the Government's concern. I do not believe I was misleading, in any shape or form, in my reply to the second reading debate; in fact, I tried to cover as many points as I could because I do not believe we should rush legislation through the House. We should take some time.

By Mr Olney's own admission, we have spent five years or more studying this area and considering the best way to bring legislation to this Parliament.

The draft Bill was assembled after submissions were received from the Law Society of Western Australia, the Settlement Agents Association, the Real Estate Institute of Western Australia, the Associated Banks of Western Australia, the Real Estate and Business Agents Supervisory Board, and the Finace Brokers Supervisory Board.

As a result of those submissions a working party was set up—

The Hon. J. M. Berinson: You are referring to a working party which had a preponderance of estate agents.

The Hon. G. E. MASTERS: I was referring to the submissions received. I believe the working party would have been a realistic one and comprised people with the highest integrity and sensitivity for the interests of the public.

The Hon. J. M. Berinson: With a preponderance of real estate agents that would not be so.

The Hon. G. E. MASTERS: I believe that the people on the working party would have been competent and carefully chosen by the Minister of the day, that they would have done their job very well, and that we have a responsibility to support the legislation. I ask members to oppose the motion.

THE HON. PETER DOWDING (North) [11.57 p.m.]: I urge members opposite to support the Opposition on this motion because I think it is clear from what has been said tonight that there are areas where this matter has not been resolved, despite the expression used by the Minister in pretending—

The Hon. G. E. Masters: There is no pretending about it.

The Hon. PETER DOWDING: —or the honest misguidance of people—that these things are all hunky dory. With great respect to the Minister, it is patently absurd to say that it does not matter what the situation of the working party was; there was a preponderance of estate agents on it. Despite the fact that there was a preponderance of real estate agents on that committee, the Minister will not tell us the name of the solicitor who was on the committee. He may have been a Crown Law officer with no experience in private practice. It may have been Mr Berinson, but I know it was not Mr Berinson because he told me so. He is the man with the highest integrity—the sort of man one would choose for such a committee.

The absurdity of the Minister's comments might be brought into their full splendour—

Several members interjected.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order!

The Hon. PETER DOWDING: —when we realise that the majority of the committee were real estate agents. The Minister says and wishes us to believe that they represented a fair proportion of the community. We are drawing an issue, if only he would listen to what we are saying. We are not representing the views of the Law Society. I have some marked disagreement with the legislation, but I agree with the principle that the settlement agents ought to be able to do simple transactions, because it has been proved that they are able to do so.

I have no objection to that, provided safeguards are included. Firstly, there are not sufficient safeguards, and, secondly, there is clearly no coverage for this conflict of interest; and then the Minister went off into a flight of fantasy which really could be explained by the time or his lack of knowledge of the issue. We are not told what the code of conduct is. Why should we pass legislation which is dependent on the code of conduct when the Minister will not tell us what the code of conduct is? I do not think he knows. He has not the slightest inkling of what it will be.

The Minister has told us of the wonderful benefit this will be to the pocket of the consumer, but he does not have the slightest idea of the scale of fees which will be promulgated under the legislation. Is he seriously saying the consumer's interest will be carefully protected by this Government; that it is quite happy to promulgate one set of fees which are the minimum fees solicitors can charge; and that the same Government will rush off and promulgate another set of fees which are the maximum that settlement agents can charge? That is either a case of the Government being absurd or a case of the Minister being absurd or else his just not knowing. The Minister does not know what the scale of fees will be. He has demonstrated that. If he does not know, how can he say the fees will be cheaper?

The Hon. G. E. Masters: I said it is cheaper at this time.

The Hon. PETER DOWDING: What has that to do with the price of eggs?

The Hon. G. E. Masters: That is one reason that people use settlement agents.

The Hon. PETER DOWDING: Is the Minister suggesting he will promulgate a list of fees which will be less than the minimum that solicitors are allowed to charge for exactly the same conveyancing? For once the Minister will not reply, and I do not blame him. As the Hon. Joe Berinson has pointed out, the solicitors' scale of fees is a minimum and a maximum.

The Hon. A. A. Lewis: So you made a bit of a mistake.

The Hon. PETER DOWDING: I would not put it that way; I would simply say that anybody with the slightest brain in his head who knew anything about the subject would have understood that. I assume members opposite would fall into that category and would understand that the point I was making was for emphasis.

The Hon. P. H. Wells: I gather you received wrong advice from your counsel.

The Hon. A. A. Lewis: Obviously Mr Berinson knows something about it, but you know very little.

The Hon. PETER DOWDING: I am doing very well.

The Hon. A. A. Lewis interjected.

The Hon. PETER DOWDING: We have seen the mirth of one of the honourable twins opposite—Mr Wells. What about his Gemini, with his intimate knowledge of how settlement agents operate, telling this House a little about his point of view?

In my view the Minister has not answered a major point about the legal aid scheme. He

cannot pretend that the loss of up to $1 million is a small matter. He did not answer that at all; and perhaps the people in the corner who are sending him notes do not have a clue, either.

The Hon. G. E. Masters: What a silly statement that is.

The Hon PETER DOWDING: Let the Minister answer the question. Where is the money to come from under this Bill? If Mr Lewis had read clause 96 of the 1976 Bill which was introduced with full enthusiasm from the appropriate Minister, he would know it was specifically written into that Bill. Has the Minister got a copy of that Bill?

The Hon. G. E. Masters: I am dealing with the Bill before the House.

The Hon. PETER DOWDING: The Minister buries his head in the sand and ignores the fact that this measure will cost the taxpayers money, because it will have to come from some source.

It is thoroughly obvious the Minister is dealing with the Bill and he does not know that the clause in point has been omitted from it. He cannot explain why the Bill does not contain that provision, nor can he explain from where the money will come for the legal aid scheme. I am sure people such as the Hon. Tom Knight, who has a genuine interest in the consumer, are equally concerned about that aspect of the measure. The Hon. Tom Knight put forward his opinion in this House of Review, and he put forward a genuine case for the consumer. But the Hon. Sandy Lewis, the Hon. Phil Pendal, and the Minister thought it was a giggle and took not the slightest note of the various points he made. The Minister should take note of the fact that this Bill will not save the consumer money at all, and it is the consumer and the taxpayer who will be out of pocket because the Minister does not know why clause 96 of the old Bill has not been included in this one.

I say we all ought to know the reason for that. If members opposite have the slightest pretence of this being a House of Review, they will want to know the reason for that before the Bill is passed through all stages. Therefore I hope they will support the proposal for the appointment of a Select Committee.

THE HON. I. G. PRATT (Lower West) [12.06 a.m.]: I rise to make one comment. Members of the Opposition have been criticising the Minister because he has not been able to tell them what will be the code of ethics for this industry. The Minister earlier said this would be one of the responsibilities of the board; that is, to set up the code of ethics. We see that clause 5 establishes the board, and clause 8 deals with its responsibilities, one of which is to advise the Minister. How on earth can we possibly expect a board, which cannot be set up until the Bill is passed, to tell the Minister at this stage what will be the code of ethics it will draw up after the Bill is passed? That is absolute, complete, and utter nonsense.

THE HON. TOM KNIGHT (South) [12.07 a.m.]: I cannot support the motion. However, I point out that I voted against the second reading, and I believe my vote was audible. I did so because I am disappointed with the fact that the Government and the Minister are not prepared to consider an amendment to this Bill by adding one or other of the two clauses I suggested. Let us go back to the 1976 Bill, which has been bandied about tonight so much. Let us turn to page 1851 of *Hansard* of Tuesday, 17 August 1976, and read the second reading speech of the then Minister for Works, in which he said—

> The Bill has provisions to ensure that settlement agents are completely independent of land agents, legal practitioners, and finance brokers. For example, a land agent, land salesman, legal practitioner or finance broker who stands in a "prescribed relationship" to a settlement agent must not receive any reward or fee for referring any business to that agent. If such a relationship exists, he must not procure the execution of any document by which a person authorises a settlement agent to act. If a prescribed relationship exists between a land agent or land salesman and a settlement agent, the settlement agent is not entitled to receive any fee for his services in respect of a land transaction negotiated by the land agent or land salesman.

Further on, he said—

> One point of interest in this connection in the Bill is that, if the land transaction has been negotiated by a land agent, the functions of the settlement agent must not include adjusting the rates and taxes unless that function is delegated to him by the land agent, and paid for by the land agent. This is because the Land Agents Act places this responsibility on the land agent, and the REIWA fixes the commission to take this into account.
>
> I believe that a seller of property should not be obliged to pay twice for this service.

That is the point I have been trying to make all night. We are a House of Review, and I have

made a suggestion that could eliminate the possibility of the appointment of a Select Committee. The Minister should consider adding one of the two proposed clauses. That would satisfy me completely, and I am sure it would satisfy the public.

I support the institution of settlement agents; I know them to be doing a good job. The only thing I want to ensure is that the public we are supposed to protect do not pay twice for a service. The then Minister for Works, in moving the second reading of the original Bill in the lower House in 1976 pointed out the facts and the reasons that at that stage the Government felt the provision was necessary. Why should there be a change now? We are still here to protect the public, and all I am saying is that people should not pay twice for a service. I cannot support Mr Berinson's motion, but I do believe the Government should reconsider the matter and introduce an amendment to the Bill.

THE HON. H. W. OLNEY (South Metropolitan) [12.10 a.m.]: I can assure the Minister that the proposed Select Committee is not designed to overthrow the monarchy, nor to advance the republican cause. Having got that little aspect out of the way, I want to deal with two points which I feel justify the motion and will justify the House agreeing to it.

Much has been made of the fact that a draft Bill was circulated to interested organisations and members of the public back in June or July of 1980; and we now have brought before the Parliament a Bill which apparently has taken into consideration the representations made in response to the invitation extended to the various bodies concerned. I would suggest that the Government should tell us to what extent it has taken account of the representations, because, after all, a Bill was circulated which purported to be the Bill the Government was going to produce and yet when it introduced the Bill it was in a different form. That has not been denied. In fact the Bill may not be different in many particulars, but I understand it is different in significant particulars in respect of clauses 46 and 47.

I was not privy to the circulation of the Bill back in June or July, but I suppose I could have seen it had I sought it out. However, the fact of the matter is that we have not been told what process of change occurred after the circulation of the draft Bill, and I suggest that is a very proper thing for a Select Committee to investigate, to ascertain why it was that the Bill produced in mid-1980 needed to be changed.

The other matter which has been commented on on a number of occasions by the Minister was the fact that I raised earlier this evening; that is, that it is now five years since a Bill was introduced to regulate settlement agents. The Minister seemed to draw some strength from the fact that it has taken five years for the Government to come back with another Bill and he has tried to extrapolate that to the extent of saying "We have worked on it for another five years."

If it took the Government five years to come up with this Bill, its members must be slow learners or something. The Government had a Bill in 1976 which was withdrawn without any real explanation.

The Hon. Peter Dowding: It was better than this one in many ways.

The Hon. H. W. OLNEY: Indeed it was. In any event, it had a Bill which was withdrawn after some debate. We now have a Bill which in many respects is fundamentally different from the previous Bill and we have been told nothing as to why it should be different. All we have been told is that it has taken five years to get it to this form. That is no explanation. I would have thought the Government would be ashamed of having left the matter stand over for so long, if it was so important as to warrant the introduction of a Bill in 1976. It is still important now that we have a decent sort of law rather than something which is half-baked.

I support the move for a Select Committee.

THE HON. R. G. PIKE (North Metropolitan) [12.15 a.m.]: Mr Deputy President—

The Hon. Peter Dowding: Now we will hear something!

The Hon. R. G. PIKE: We hear these comments from the Hon. Peter Dowding and the so-called legal eagles; but I rise to point out to the Hon. Peter Dowding and to the Hon. Howard Olney, with a degree of trepidation since I am a non-legal eagle talking to legal eagles, that clause 82 on page 65 provides—

> 82. The Board may, with the approval of the Minister, make rules prescribing a code of conduct for settlement agents.

If that clause is read in the light of the Interpretation Act, it means that the code of conduct, and the rules and regulations to be prescribed, about which members opposite are becoming so concerned, are not a ministerial *fiat*, as it appears to be, and as the Opposition has said it is; but in fact they must lie on the Table of the House for 12 sitting days, as regulations do; and

the detailed regulations and the detailed code of conduct will be subject to review or alteration by this House. That is precisely what the Government set out to do in the first place. Therefore, I oppose the motion by the Hon. Joe Berinson.

I suggest that the legal eagles reread the Bill, and go back to their law books.

The Hon. Peter Dowding: That is just rubbish.

Question put and a division taken with the following result—

Ayes 7

Hon. J. M. Berinson	Hon. R. Hetherington
Hon. J. M. Brown	Hon. H. W. Olney
Hon. D. K. Dans	Hon. F. E. McKenzie
Hon. Peter Dowding	*(Teller)*

Noes 19

Hon. H. W. Gayfer	Hon. Neil Oliver
Hon. Tom Knight	Hon. P. G. Pendal
Hon. A. A. Lewis	Hon. W. M. Piesse
Hon. P. H. Lockyer	Hon. R. G. Pike
Hon. G. C. MacKinnon	Hon. I. G. Pratt
Hon. G. E. Masters	Hon. P. H. Wells
Hon. Tom McNeil	Hon. R. J. L. Williams
Hon. Neil McNeill	Hon. D. J. Wordsworth
Hon. I. G. Medcalf	Hon. Margaret McAleer
Hon. N. F. Moore	*(Teller)*

Pairs

Ayes	Noes
Hon. R. T. Leeson	Hon. N. E. Baxter
Hon. Lyla Elliott	Hon. W. R. Withers

Question thus negatived.

In Committee

The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. G. E. Masters (Minister for Fisheries and Wildlife) in charge of the Bill.

Clauses 1 to 26 put and passed.

Clause 27: Grant of licence to a natural person—

The Hon. H. W. OLNEY: This is the clause that sets out the qualifications for the licensing of a settlement agent. It will be seen that under subclause (1) the applicant must be of or over the age of 18 years; a person of good character and repute; and a fit and proper person to hold a licence; he must have sufficient material and financial resources to enable him to comply with the requirements of the Act; he must be ordinarily resident in this State; and he must understand fully the duties and obligations imposed by the legislation on settlement agents. There is nothing in the subclause to indicate any academic or other qualifications.

Subclause (2) provides that the term "fit and proper" includes—

> . . . being qualified in accordance with Schedule 1 to this Act subject to the savings and exceptions provided therein and elsewhere in this Act, but nothing in that Schedule shall derogate from the discretion conferred on the Board by subsection (1) in the granting of a licence.

Notwithstanding what may appear in schedule 1 about qualifications, the board will have an absolute right to license anyone it considers is over 18, of good character, has sufficient finance, is ordinarily resident, and understands the duties imposed by the Bill. The board will have no obligation to ensure that an applicant has knowledge of the practice of settlement agents. It will have no obligation to ensure that the licensed person has any knowledge of the operations of the Transfer of Land Act or the other Statues that apply. It will have no obligation to ensure that the applicant understands anything, apart from understanding fully the duties and obligations imposed by the Act. That relates, amongst other things, to account keeping, auditing, and other requirements in the proposed Act.

This Bill is very thin indeed as far as it will permit the board to allow the licensing of settlement agents. Over a long period of time, a process has developed under the Real Estate and Business Agents Act whereby registered agents are required to have a prescribed form of academic qualification. They take a course; and to a large extent their registration is dependent upon that academic qualification. There is no such requirement here.

In the last five years, if the Government had been thinking about this, it might have established a course at Perth Technical College to qualify settlement agents, or to provide an academic basis for their qualifications from the start.

The Institute of Legal Executives is another paralegal profession or occupation. It has been active in recent years; and it has organised a diploma in legal studies which is available to the community now. I know that a number of settlement agents already hold a diploma in legal studies. Some of the things covered in that course would be appropriate for a settlement agent.

It is all very well for the Government to say "Well, we will see how this operates. The board has not been set up yet so it cannot do anything." If the Government has been seized of this problem for five years, surely it could have done something about prescribing an academic qualification so that the people already in business could have gained their qualifications over the last five years, particularly since 1976.

This is an indication of the attitude of the Government. It has produced 96 pages of legislation: but in the most crucial clause of them all it has not managed to provide any real guarantee that the public will be served by people who are adequately qualified.

The Hon. G. E. MASTERS: The clause indicates quite clearly that the board needs to be satisfied. Schedule 1 provides for a person who has had two years' experience and undertakes a written examination and an oral examination, or who has had five years' experience. Five years' experience in the settlement agency business would be adequate to enable a person to carry out the conditions imposed by the Bill.

The Hon. Peter Dowding: That is just silly.

The Hon. J. M. Berinson: Not if he has been conducting his business illegally.

The Hon. G. E. MASTERS: After three years, there will be a prescribed examination, or five years' experience. That would be adequate to enable a person to carry out the duties under this Bill. That would protect the public.

The Hon. J. M. BERINSON: The Minister's answer is predicated on settlement agents with five years' experience of having engaged in illegal practices. Otherwise, they would have had no experience during those five years in the specific areas of conveyancing work which are listed in schedule 2. They go beyond the ordinary conveyancing aspects that settlement agents can attend to legally now. That is the short answer. It is apparent to me that the Minister still evades the conclusion to be drawn from that.

The Hon. H. W. OLNEY: The Minister has missed the point of my earlier comments. If he looks at line 25 and those following, he will find it is stated—

> ... but nothing in that Schedule shall derogate from the discretion conferred on the Board by subsection (1) in the granting of a licence.

What the Minister is saying is that, notwithstanding what is in the schedule, the board may grant a licence, if it decides to grant a licence. That is the objection I raised. If I have misunderstood those words, either I am stupid—which could be right—or the words are not sufficiently clear.

It could also mean the Minister is wrong. If the words are not clear to members reading them in Parliament, I suggest they will not be clear to citizens out in the street. Is it intended that the last four lines of subclause (2) really confirm the absolute discretion of the board to grant a licence on any occasion it is satisfied that paragraphs (a) to (e) in subclause (1) have been complied with?

The Hon. G. E. MASTERS: I believe schedule 1 sets out what will be required. That is how it is intended to be read and that is what it means. When we are talking about the board looking at the qualifications which will be required, we must realise they will also take into account fit and proper persons.

In exceptional circumstances the board will have discretion, but schedule 1 sets out clearly to the board what is required of it and the settlement agents will need to conform with those requirements before they obtain their licences.

The Hon. PETER DOWDING: The Minister keeps saying this over and over again and it is just not on. If the last words of that clause are not necessary and the Minister does not believe—on what basis he does not tell us—they will ever be operated on, why are they included? If the words mean anything, they give the board the discretion to ignore any professional qualifications. A bloke who has served for five years and who has been honest in obeying the law will not have any experience in the areas in which the Minister is saying his five year's experience fit him to perform.

Clause put and passed.

Clause 28 put and passed.

Clause 29: Grant of licence to body corporate—

The Hon. PETER DOWDING: I am concerned about this clause and I draw the attention of members to clause 65(2). It strikes me that, in drawing the analogy with solicitors, one of the major reasons there has been a criticism of the move to incorporate solicitors is that it changes the obligation structure that members of the public have with a solicitor—the reliability of a solicitor and his obligation to perform his duty professionally rests on his shoulders and properly so.

The amendment provides for incorporated bodies to hold licences, but does not give the directors, managers, and secretaries the responsibility, except in clause 65. In all other respects, apart from the provision which deals with trust accounts, who does the ordinary man in the street sue? Does he sue the $1 company which the agent has formed? If he has run away with a trust account and there are deals in which he has been negligent, a person can sue only the licensee, which is the body corporate and is quite different in its obligations from those of the individuals who are responsible.

I am disappointed the Minister thinks it is fit that clause 65 should refer to only one portion of those professional obligations. A sectional interest is pouring advice into the Minister's ears and he has neglected what ought to be an ongoing professional obligation of the people involved.

The Hon. NEIL OLIVER: I assume this legislation will be comparable with the situation in regard to real estate agents' licences and builders' registration licences. In those cases, according to the regulations, when an application is lodged on behalf of the individual as a representative of a body corporate, that person takes on complete responsibility.

The Hon. Peter Dowding: Where does it say that in the Bill? This is the one we are debating.

The Hon. NEIL OLIVER: It is covered in the regulations governing the registration of builders.

The Hon. Peter Dowding: It is not in this Bill.

The Hon. NEIL OLIVER: Neither is it in the Builders' Registration Act or the Real Estate and Business Agents Act.

The Hon. Peter Dowding: Why then is it in clause 65?

The Hon. NEIL OLIVER: I will turn to that when we debate it. As far as I am aware, the intention of the Government in this Bill is similar to that in the two Acts to which I have just referred. There is power to make regulations, and irrespective of the body corporate, the nominee is responsible all the way down the line.

The Hon. G. E. MASTERS: It is quite clear in the Bill before the Committee that a body corporate is made up of people who have to hold a triennial licence and they have to be licensed for the purpose of settlements. The person who is in bona fide control of that particular company needs to be a licensed settlement agent and must hold a triennial certificate. If a person is aggrieved he can go to the bona fide controller of the business.

The Hon. Peter Dowding: And sue him for negligence?

The Hon. G. E. MASTERS: That is where their complaints lie.

The Hon. Peter Dowding: Where does it say that?

The Hon. G. E. MASTERS: It is quite obvious this is included in the Bill.

The Hon. NEIL OLIVER: Is it the intention of the Government that, under the regulations, the nominee or nominees of the body corporate must indemnify the body corporate under any claims? That is the position under the regulations of the Builders' Registration Act and the Real Estate and Business Agents Act.

The Hon. PETER DOWDING: In eight days' time it will be 12 months since I was elected to this place. It does not take long to learn that one should not be interested in the intention of the Bill or what the Minister believes the man around the corner thinks; the important aspect is what is contained in the Bill.

I challenge the Minister to point to the liability imposed on the individual entrepreneur sheltering behind the corporate veil other than in respect of trust accounts.

The Hon. G. E. MASTERS: I was not quite sure exactly what the Hon. Neil Oliver meant. If he was talking about the person in bona fide control, it is obvious he needs a triennial certificate to operate. He needs to carry fidelity and indemnity insurance so the public are protected.

The Hon. NEIL OLIVER: Just to take that one step further, under the regulations there is a requirement that a contract be drawn up between the nominee or nominees and lodged with the board and approved by it. That contract indemnifies the company. Those provisions are contained in the regulations which relate to the Builders' Registration Act and the Real Estate and Business Agents Act. Is that the intention behind this legislation?

The Hon. G. E. MASTERS: The requirements in regard to indemnity and fidelity insurance are contained in the Bill. Whatever the regulations say, it will be required that anyone who operates as a real estate agent must comply with these provisions.

In reply to the comments made by the Hon. Peter Dowding, I point out he would know that a person in bona fide control of a branch operation or company operation can be sued in a court of law.

The Hon. Peter Dowding: For negligence in the company?

The Hon. G. E. MASTERS: He can be sued if he behaves improperly. A person can sue a company in a court of law.

The Hon. PETER DOWDING: The Minister either does not have a clue about the situation or he is being advised badly. If the corporation is the licensee and its servants are negligent, who does one sue? One can sue the servants, but they may not be worth powder and shot. One can sue the corporation for negligence and it may not be worth powder and shot; but one cannot get to the principals.

The Hon. Neil Oliver: You are wrong.

The Hon. PETER DOWDING: The Hon. Neil Oliver can continue to say I am wrong, but no-one will take the slightest notice of him, because he does not know what he is talking about.

The Hon. Neil Oliver: You are wrong.

Several members interjected.

The DEPUTY CHAIRMAN (the Hon. R. J. L. Williams): Order! This debate will be conducted on traditional lines. There is not going to be running conversations across the Chamber. I have warned the Chamber on previous occasions when I have been in this position and I will warn it again: A proper debate will take place whilst I am in the Chair and I regard all interjections as disorderly.

The Hon. PETER DOWDING: Some interjections are just plain stupid and that one from the Hon. Neil Oliver falls into that category.

The member may go on saying I am wrong, but I happen to know a little about the law. I may not be a mastermind, but I would say I know marginally more about the matter than does the Hon. Neil Oliver. I have a view which he does not share. I say someone can hide behind the corporate veil. In this clause there is no obligation on the principal. If the Minister says there is an obligation on the principal, would he please terminate this debate by pointing that out in the Bill?

The Hon. G. E. MASTERS: The person in bona fide control of the corporate body is the holder of the certificate. If the company does not hold a current triennial certificate it cannot operate. If the person in control of the company—the principal of the company—does not hold that certificate then obviously he or she can be sued for a misdemeanor.

The Hon. Peter Dowding: Or negligence.

The Hon. G. E. MASTERS: That is correct. If a person was hard done by because of defalcation or improper conduct the insurance would cover the situation. That is what it is all about.

The Hon. Peter Dowding: You don't understand it.

Clause put and passed.

Clauses 30 to 33 put and passed.

Clause 34: Conditions on licences and triennial certificates—

The Hon J. M. BERINSON: Again I will join the debate briefly to ask a question for information only. It relates to the nature of the requirement for professional indemnity and fidelity insurance. I think a general understanding is that these insurances are to be mandatory, but the way that is arrived at appears to me to be circuitous and, at worst, uncertain.

Clause 34 (2) indicates the board "may grant a licence . . . subject to such special conditions as it thinks fit, and without limiting the generality of the foregoing any of those conditions may . . . relate to the holding of a policy of indemnity . . . or fidelity insurance in a specified amount . . ." I stress the word "may" and wonder whether it should not be, given the desire for mandatory cover, "shall".

The only way one can arrive at a mandatory requirement so far as I can see in view of the reading of clause 34 is by calling in the aid of clause 35 which empowers the board to arrange a master policy agreement. If it proceeds to arrange such a master agreement clause 35(3) provides that the indemnity shall extend to $250 000 for each claim and subclause (6) requires that each licensee shall at all times remain insured under the master policy agreement. However, looking to the beginning of clause 35 I find there seems to be no mandatory requirement on the board itself to provide such a master policy.

Indeed, the clause starts with the words "The board may, from time to time, make arrangements" for these types of insurance. I therefore simply put to the Minister the question: Should not the word "may" either in the preamble to clause 34(2) or clause 35 read "shall" in order that there is no doubt these policies one way or another will be obligatory upon licensees?

The Hon. G. E. MASTERS: My definite understanding of the Bill is that there will be a requirement for professional indemnity and fidelity insurance. Certainly a discretionary power will be held by the board. It is stated in clause 34(2) that the board may grant a licence or renew a triennial certificate subject to such special conditions as it thinks fit. The clause then goes on to say that those conditions refer to the holding of a policy. What I believe is intended is that when a person and company are regarded as one entity there would not need to be a separate policy.

A person with a triennial certificate is required to take out the insurance, or a company operating under a triennial certificate is required to take out the insurance, not both. This is where the discretion would lie.

The Hon. J. M. BERINSON: With respect, that cannot be right. Once there is a master policy, clause 35(6) (b) requires that each licensee shall at all times remain insured under the master policy agreement, and the term

"licensee" if I understand the position correctly, includes personal and corporate licensees. The result of that is that both types of licensee would in fact require to be insured provided this master policy came into existence. The question I raised before really rests on the difficulty that the Bill does not seem to require positively that the master policy agreement come into existence, and clause 34 expresses the point that it is a matter for the board's discretion.

The Hon. G. E. MASTERS: Clause 35 states "The board may, from time to time, make arrangements for or in respect of a master policy." It may be at one time or another that the board cannot do that, and operators would be required to take out the insurance singularly. The board, however, may from time to time take out block insurance. If that occurred then those people in the industry would be covered, and, if not, they would have to be covered separately.

The Hon. J. M. BERINSON: The Minister must be wrong again because if a master policy agreement does not come into existence as he suggests there is no obligation on the licensee to take out any insurance policy. That arises directly from the words in clause 34(2) which mean what they say; and that is, the board "may" require the holding of an insurance policy, not "shall". We have really gone round a complete circle and returned to my starting point which was that in neither clause 34 nor clause 35 is there any combination of provisions which mean insurance of both these kinds will be mandatory on all licensees.

At both crucial points it is left to the board's discretion. That was my starting point and it seems I have returned to it. Perhaps the Minister will clarify these issues or agree that one or other of these words "may" should be replaced by the word "shall". I ask him to consider that simple proposition.

The Hon. G. E. MASTERS: As I understand the situation—it seems fairly clear upon consideration—the board may take out a fidelity or indemnity insurance policy on behalf of settlement agents and, if they do not cover themselves, the board can revert to clause 34(2).

The Hon. J. M. Berinson: How do you know it would?

The Hon. G. E. MASTERS: It is obvious.

The Hon. J. M. Berinson: It is necessary obviously to put it in the Bill.

The Hon. G. E. MASTERS: Throughout the second reading speech and the Bill it is quite clear the intention of the legislation is that it is incumbent upon the board to take out indemnity and fidelity insurance. The member must understand the board has that responsibility. However, it can take out that insurance policy as block coverage for agents, or agents will carry it singularly.

The Hon. J. M. BERINSON: I move an amendment—

> Page 30, line 24—Delete the word "may" and substitute the word "shall".

The Hon. H. W. OLNEY: I support the amendment. It seems quite clear in clauses 34 and 35 that the Bill provides alternative discretions which the board may exercise. It may do one thing and it may do another; it is not required to do either. As the Minister said in the second reading speech, it is the Government's intention that there be compulsory insurance as to professional indemnity and fidelity. Nothing in this Bill will ensure that that event will happen necessarily. If the Minister says that of course the board will take out the insurance because he said so in his second reading speech then I believe he is failing this Parliament in bringing forward a Statute in this form.

I am not sure whether the Minister has said some power is vested in the Minister to direct the board to ensure insurance coverage is taken out, but even so if there were such a power I have not noticed it. We have no guarantee that the very justification for this legislation—that insurance against professional negligence to the sum of $250 000 for each claim—will be applied. The whole basis of the Bill is dependent upon these clauses. We have no guarantee that either discretion will be exercised.

The Hon. PETER DOWDING: This matter comes back to the point I made earlier that we have no guarantee that a corporate licensee will have anything worth suing for negligence because neither clause 34 nor clause 35 requires there to be professional indemnity and fidelity insurance. The indemnity scheme refers only to defalcations and not negligence, and defalcations relate to people running away with the loot. I ask members to refer to the definition in the Bill.

It is complete and utter nonsense to say the board will do the right thing. Unpalatable as it may be, the Minister must realise that in a corporate situation no individual would be in the firing line; no individual would have his reputation at risk. The board would not be able to assist consumers. The board may not do that which the Minister who thinks he knows what he is talking about believes it should do.

The Hon. G. E. MASTERS: We must recognise this Bill is a new piece of legislation

being established. Certainly the board has a discretion, and I believe it must consider methods of carrying insurance, and the methods of obtaining insurance and making sure people will be insured. I believe the discretionary power is necessary at this stage.

I say again, that quite obviously the operation of the board will be such that there will be adequate insurance cover, but there must be some sort of discretion. We cannot tie it down more than that. I urge members to support the clause as it stands.

The Hon. G. C. MacKINNON: Could I ask the Minister a question, because I am getting a little confused myself? Would there be any substance in my idea about subclause (6) which appears on page 32? It reads as follows—

> (6) Where the provisions of this section apply—
>
> (a) the Board shall not grant or renew a triennial certificate unless the applicant is insured in accordance with this section;

The Hon. Peter Dowding: But it does not have to be a master policy, you see.

The Hon. G. C. MacKINNON: But if it does not, he does not have to advertise the policy.

The Hon. Peter Dowding: If it does not operate, clause 35 may not operate either.

The DEPUTY CHAIRMAN (the Hon. R. J. L. Williams): When these little discussions have quite finished, we will proceed.

The Hon. G. C. MacKINNON: I must say, Sir, as far as I am concerned, it is the most helpful discussion of the evening.

The DEPUTY CHAIRMAN: Would you prefer that I leave the Chair?

The Hon. G. C. MacKINNON: I was just pointing out from where the help was coming. I will sit down and see whether I receive more helpful comments from the proper source.

The Hon. G. E. MASTERS: Clause 35(6) would apply only where there is a master policy.

The Hon. J. M. Berinson: Hear hear! Dead right.

The Hon. G. E. MASTERS: So again I say there has to be some sort of discretion in the other area, but that is where it happens.

Amendment put and a division taken with the following result—

Ayes 8

Hon. J. M. Brown	Hon. F. E. McKenzie
Hon. D. K. Dans	Hon. Tom McNeil
Hon. Peter Dowding	Hon. H. W. Olney
Hon. R. Hetherington	Hon. J. M. Berinson *(Teller)*

Noes 17

Hon. H. W. Gayfer	Hon. Neil Oliver
Hon. Tom Knight	Hon. P. G. Pendal
Hon. A. A. Lewis	Hon. W. M. Piesse
Hon. P. H. Lockyer	Hon. R. G. Pike
Hon. G. C. MacKinnon	Hon. I. G. Pratt
Hon. G. E. Masters	Hon. P. H. Wells
Hon. Neil McNeill	Hon. D. J. Wordsworth
Hon. I. G. Medcalf	Hon. Margaret McAleer
Hon. N. F. Moore	*(Teller)*

Pairs

Ayes	Noes
Hon. R. T. Leeson	Hon. N. E. Baxter
Hon. Lyla Elliott	Hon. W. R. Withers

Amendment thus negatived.

Clause put and passed.

Clause 35: Fidelity insurance and professional indemnity insurance in respect of triennial certificate—

The Hon. J. M. BERINSON: I draw attention to subclause (3) which provides that minimum insurance cover for each agent under a policy effected in accordance with subsection (1) for fidelity insurance and professional indemnity insurance shall be the sum of $250 000 for each claim.

Again for clarification, I ask the Minister a question in relation to the requirement for fidelity insurance. If I understand the position correctly, and on the assumption that a master policy agreement has been effected, subclause (3) will require that there be fidelity insurance in the sum of $250 000 for each claim. I link that with the provisions of clause 95(1) which deal with claims against the fidelity guarantee fund, and provide that the board may receive and settle any claim against the fund at any time after the defalcation in respect of which the claim arose has occurred, etc.

I am left wondering whether the fidelity insurance is meant to cover any area different from defalcation; that is, fraudulent or wrongful dealings apart from negligent dealings. If, in fact, the fidelity insurance does not go beyond clause 95(1), one wonders what the proposed application will be of the considerable funds which will accumulate in the fidelity guarantee fund.

It seems to me that claims against the fund either would be restricted to fraudulent dealings involving more than $250 000, or it is intended to cover different sorts of wrong-doings altogether. I would imagine there would be relatively few claims for more than $250 000 in spite of the

extent of the cover given to settlement agents. I imagine that most people involved in transactions of more than $250 000 still seek the services of a solicitor. As a result of that, it seems we will have a large fund with a substantial income, and nowhere to spend it.

The Hon. Peter Dowding: Except for administering the fund.

The Hon. J. M. BERINSON: Yes, and that brings me to an earlier comment of the Hon. Peter Dowding that it might be appropriate to use some of these funds for legal aid, when the accumulation is in excess of that required for the stated purpose.

The Hon. G. E. MASTERS: Fidelity insurance for $250 000 will be for the normal operation of settlement agents, and when there is a problem, that fund will be claimed on. Clause 95 deals particularly with the fidelity guarantee fund. It may happen that a settlement agent goes out of business or perhaps disappears and although there is a claim against him, he has no insurance cover. This is an extra guarantee.

The Hon. J. M. Berinson: Are you saying there could be claims against the fund where insurance had not been taken out?

The Hon. G. E. MASTERS: I am saying that a person may have left the business, has no insurance cover, and then a claim is made against him. The fund could be used for that purpose.

The Hon. Peter Dowding: What sort of claim?

The Hon. G. E. MASTERS: A claim involving that person.

The Hon. J. M. Berinson: Not negligence or fraud?

The Hon. G. E. MASTERS: Yes. It would take a long time for that fund to build up into a substantial amount like $250 000.

The Hon. J. M. Berinson: The solicitors' fund built up quite quickly.

The Hon. G. E. MASTERS: I think it would take some time. If it does, the matter will be looked at. It is an added insurance to the public—we could put it that way.

The Hon. PETER DOWDING: What about the legal aid question? It was written into the legislation last time that it would not detract from the fidelity fund because the fidelity fund had been fully topped up. The excess money is not taken off until the fidelity fund is topped up. What is the answer?

The Hon. G. E. MASTERS: We are setting up a fund to protect the settlement agents. I do not know why anyone should be talking about legal aid. It is quite clear there will be fidelity insurance, and this trust fund will be covering people who cannot recover from other sources.

The Hon. PETER DOWDING: That is not a satisfactory answer. It was in the legislation before; the same sort of provisions apply to other trust accounts in other circumstances. Obviously the Government thought it appropriate in 1976. It is not a question of the Minister just saying that the land agents would get the money. Unless the Minister is predicting an enormous range of defalcations with settlement agents, he cannot have it both ways. Either the Minister believes the fund will be so bereft of money because of constant claims of defalcation, or he has to concede it will be constantly far and away in excess of reasonable need. Obviously the Government thought that in 1976. What has changed?

The Hon. G. E. MASTERS: The fact it was in the last Bill is not the subject of debate on this occasion. A committee was established to study the matter and to make recommendations, which are reflected in this Bill. To talk about legal aid being covered by the legislation of three or four years ago is not relevant.

The Hon. PETER DOWDING: I know the Minister is devoted to this committee and that he does not think there is any reason the Government should depart from its recommendations. It is notable the committee did not have anyone on it who knew anything about legal aid. However, the Minister knows something about legal aid and his instructing Minister knows something about legal aid, although he may not agree with it.

What I am asking the Minister is, firstly, since obviously very early on in the life of this fund there is going to be a vast surplus, and since the legal contribution trust fund has generated over $1 million in a short space of time—

The Hon. I. G. Medcalf: Not necessarily.

The Hon. PETER DOWDING: That is a silly statement. The Attorney General knows it will generate a lot of money quickly . Surely he is not going to say "We will suck it and see in two years". The Attorney General surely knows it now; he knew it five years ago.

The Hon. I. G. Medcalf: I did not know it five years ago, and I do not know it now. It is pure speculation.

The Hon. PETER DOWDING: If the Attorney General reads clause 96 of the 1976 Bill he would know it is a perfectly sensible proposition which relates to syphoning off excess funds. It does not take away the security of the fidelity fund.

The Hon. I. G. Medcalf: All you are putting is a perfectly sensible speculation.

The Hon. PETER DOWDING: We want to know why it has been removed from the legislation. All the Minister can mouth is that the committee has recommended it, and all the Attorney General can say is it is speculation. We are entitled to know why it has been taken out.

The Hon. G. E. MASTERS: This Committee is entitled to talk about the Bill before us now.

Clause put and passed.

Clauses 36 to 45 put and passed.

Clause 46: Functions of a real estate settlement agent—

The Hon. PETER DOWDING: This is another example where the Minister cannot simply say "The committee told me it was a good idea." He surely must use his own knowledge of the frailties of human behaviour. If he has not had any experience of that in his political life, he can have a peep at the Door to Door (Sales) Act and see the sort of frailties from which the State has decided to protect people.

Clause 46 (3)(a) and (b) contains no protection because, as anybody knows, when somebody is buying a house he will sign all the authorities he thinks necessary to complete the transaction. If we are going to have that sort of unsavoury arrangement, surely the people ought to have the right to opt out after a period of, say, seven days when they have had a chance to give better consideration and thought to their position.

I am not interested in political polemics or in what the committee thought. I am using my own intelligence and knowledge of human affairs and my knowledge of other Statutes to suggest we apply some sort of holiday period.

The Hon. G. E. MASTERS: I am personally interested in the recommendations of the committee. These people have put in a lot of work on the Bill, and their advice has been most valuable. Despite what Mr Dowding may say to the contrary, I think it is perfectly reasonable that I should accept the advice of the committee.

I believe this provision will work quite well; in fact, I have had personal experience of how well it has worked. It saves the public money, generally, and the public is fully protected at all times. We must bear in mind that agents who are carrying out dual transactions on behalf of both the purchaser and vendor must operate under the conditions set out in the Bill. That has proved to be successful in the past and, provided all care is taken, it will prove successful in the future.

The Hon. PETER DOWDING: The difference between the Minister's mental exercises and what we are doing tonight is that this legislation is being considered by a Committee of this House of Parliament. I would have thought the Minister would bring to bear some sort of objective reality to the situation, instead of telling us he is quite content to go along with the committee. If we are all supposed to go along with the committee, why should we sit here at enormous expense to the taxpayer? Why not let the committee formulate all the legislation? On analysis, that is as fatuous a comment as the Minister's comment.

Subclause (4) is patently impossible of performance. If someone is drawing requisitions on title, drawing offer and acceptance forms, or is acting for a purchaser and a vendor in relation to those documents, how on earth can subclause (4) be genuinely handled? It can be if we accept the realities of the situation and the limitation on the obligations of settlement agents; it cannot if we step into this quasi paralegal conveyancing-clerk activity.

The Hon. G. E. MASTERS: I believe this is a reasonable subclause. At this time, where a matter becomes a matter of law, the settlement agents are required to refer the matter to a person of legal training and background. It is working now, and I believe it will continue to work.

The Hon. Peter Dowding: It will not, because you are giving them more powers.

The Hon. G. E. MASTERS: The same reasons will apply.

The Hon. Peter Dowding: Why?

The Hon. G. E. MASTERS: It is a matter of interpretation and discretion. I am sorry the Hon. Peter Dowding has such a poor opinion of those involved in the industry; all he has done tonight is denigrate them.

The Hon. H. W. OLNEY: I cannot help but agree with the Hon. Peter Dowding that subclause (4) makes nonsense of the whole Bill. It states—

> (4) In arranging or effecting a settlement referred to in subsection (1) a licensee may perform the functions set forth in clause 1 (1) of Schedule 2 to this Act but in performing any or all of those functions a licensee shall not give or attempt to give advice on a matter of law.

If we look at the functions contained in the second schedule, we see that clause 1 provides for all those functions. We could have the situation of a member of the public going along to a person who is a licensed, registered, bonded settlement agent,

who has insurance, and who has been declared to be fit and proper, and the public thinks that here is a person who is qualified and competent to effect a settlement.

Indeed, he searches a title, draws a transfer, prepares requisitions on title, and all that sort of thing, but he cannot say to his client "Everything is right. The title is clear and the rest of the details are okay. The transfer is in order. You can safely pay out." He cannot give any legal advice at all. That being so under the legislation, the public have no security; there is no guarantee that a settlement agent performing the duties he is required to perform, and observing the strictures of subclause (4) will provide his clients with any protection at all.

When things go bad, the settlement agent would simply say "The court has said the whole transaction is no good. Of course, I was not able to tell you that because I could not give you advice on law. I am not liable in negligence. I am doing only what the Act says I must do. I have no responsibility." That is what it amounts to. The Government is setting up the appearance of a legitimate professional activity where there is no real responsibility, and no protection to the public.

The Hon. PETER DOWDING: Not only are those restrictions waived in respect of the activites of settlement agents; also, they can even deal under clause 1 of the second schedule with a whole range of activities outside of Transfer of Land Act land. The position was clearly set out in the 1976 legislation and no specific reason has been advanced by the Minister for a departure from that provision. Clause 46(1) and (2) of the 1976 Bill states as follows—

> 46. (1) A licensee who holds a current annual certificate may arrange or effect a settlement of any land transaction that is the sale and purchase, for a cash consideration only—

That is very important, because we are not dealing with terms, or complex provisions as to terms. Clause 46 continues—

> and of an amount not exceeding $100 000 or such other sum as is prescribed, of land under the Transfer of Land Act, 1893 that is zoned residental land in fee simple,—

All of this makes very good sense, because they are the things which can be done in the absence of legal knowledge and advice. It goes on to say—

> not being the subject of a strata title—

That is specifically excluded by this committee which, apparently, is the font of all knowledge, the cornucopia of all that is good in the Minister's mind. Clause 46 continues—

> —and not being an undivided share in land, but only if the whole of the land being sold and purchased is a lot or lots within the meaning of the Town Planning and Development Act, 1928.
>
> (2) A licensee who holds a current annual certificate may act for either the vendor or purchaser in a settlement referred to in subsection (1) but may not act for both vendor and purchaser in that settlement.

That to me is eminently sensible. If the Minister cannot give us a better reason for taking it out of this Bill than that the committee has recommended in that direction, he is not performing his duty.

Clause put and passed.

Clauses 47 to 64 put and passed.

Clause 65: Penalty for breach—

The Hon. PETER DOWDING: Clause 65 seems to me to be a very good clause. However, it is noticeable that it is restricted to only one portion of the Act. I refer members to the wording of the clause. It is good common sense, and is well drafted legislation. I have no criticism of the clause except to ask: Why does it relate only to that division?

The Hon. G. E. MASTERS: I believe I answered this earlier. The person responsible or in bona fide control of a corporate company would be liable. It is quite obvious that is what is intended, and that is what will happen.

The Hon. PETER DOWDING: It is distressing that the Minister cannot think of anything useful to say. This is a clause which should run through the whole Bill. As I sought to point out to the Minister—perhaps even the committee did not think of this—the fidelity fund deals only with fraud or criminal acts; it does not deal with negligence. The Government has not insisted that every settlement agent take out an insurance policy, nor will the board be given authority to insist in that direction. Therefore the public are not protected.

Clause put and passed.

Clauses 66 to 106 put and passed.

Clause 107: Investment of moneys deposited with Trust—

The Hon. PETER DOWDING: Because the Minister is so obdurate in his refusal to explain to the Committee why costly draftsmanship should be thrown away as if the Bill comprised mere pieces of paper, the work that went into the 1976

Bill involving 81 pages must have cost the taxpayer a packet. The Minister is not prepared to tell us why some changes were made. There is need for an explanation. Perhaps I am naive, but I would have thought the Minister would be open and frank with this Chamber, and with the public—since we still have the Press here—but that apparently is not to be so. The old clause 96 reads—

> 96. (1) The Board shall pay all moneys resulting from investments made pursuant to section 95 to the credit of an account called the "Trust Interest Account"; and moneys in that account shall, from time to time, as may be prescribed, be applied—
>
> (a) firstly in payment of the costs and expenses of administering the Trust, including the cost of every audit pursuant to section 97;
>
> (b) as to fifty per centum of the balance to the Fidelity Reserve Fund; and
>
> (c) as to the other fifty per centum of the balance to the Law Society.
>
> (2) All moneys paid to the Law Society pursuant to subsection (1) shall be applied to the Legal Assistance Fund established pursuant to Part V of the Legal Contribution Trust Act, 1967 for the purposes of that Part, but in the application of those moneys through that fund, the Law Society shall, if and when it is practicable to do so, and subject to proper provision for the proportionate costs of administering that fund, give preference to the provision of legal aid to persons who are in the class of persons prescribed by subsection (3) for the purposes of this subsection.
>
> (3) A person is in the class of persons prescribed for the purposes of subsection (2) if—
>
> (a) he, having appointed a licensee to arrange or effect settlement, is seeking relief against the licensee in respect of matters arising out of the acts and defaults of the licensee in the performance of his functions; and—

In other words, for those people who are still interested in the consumer and after the Minister has insisted he will not discuss the matter with us, this is to be directed towards people who have had the raw prawn from the settlement agency. That seems to be an eminently suitable purpose for this fund, but apparently those people will not be assisted by this Minister, the ogre of the Minister for Community Welfare, or this Government. Paragraph (b) goes on to state—

> he is otherwise eligible to receive legal aid in accordance with Part V of the Legal Contribution Trust Act, 1967.

Surely the Minister can tell us why it was not thought appropriate to include that in the Bill. I want the Minister to explain honestly why it is that this money will not be used to help people who have had a raw deal from the settlement agent.

The point I make is that the sectional interests, who seem to have got the Minister by something or other and persuaded him to run this Bill through the Chamber anyway in the way he is doing, are the very people who do not want the ordinary man in the street to have the wherewithal to challenge them in court.

I do occasionally subscribe to the conspiracy theory of life. It seems to be the only explanation as to why the Minister has dropped this provision.

The Hon. G. E. MASTERS: The insurance coverage—the fidelity and indemnity cover—is adequate. If we are going to debate the other Bill, perhaps we should stay back. But the legislation does cover what we were intending it should cover. We have the board's fidelity guarantee fund which we think is adequate. The situation is adequately covered and the Hon. Peter Dowding is just playing games.

The Hon. PETER DOWDING: This proves to me that the Minister does not know what he is talking about. Why does the Minister think that solicitors and doctors who are sued have their cases go through court? It is not because they want their names mentioned in the court, but because the insurance companies take over the defence of the claims, and they will not settle the claims. If they settle them they will run the litigant through the full gamut of the court proceedings and perhaps settle half-way through. This is the experience of the ordinary man in the street, time and time again. The Minister cannot assume that because the man in the street has a good claim it will be met from any sort of insurance policy, whether it be an indemnity fund or a private insurance policy. I am sure that is the experience of all members.

I am suggesting legal aid ought to get some of these funds and that the man in the street who is affected by these provisions ought to get that assistance. The Minister is either naive or silly if he believes that because a person has a good claim he will have success. Insurance companies will run a case through a court and the litigant can have no say in the matter. I am sure the Hon. Howard

Olney, who has had wide experience in these matters, will confirm what I say, and confirm that in workers' compensation cases where there are compulsory schemes, the insurance companies always run the case through the courts.

It is precisely for that reason that this sort of clause ought to be included in this legislation. I do not care whether this was in the earlier legislation; I ask the Minister why is it the case that litigants who wish to claim will not get assistance from the indemnity fund set up by clauses 107 and 108?

Clause put and passed.

Clause 108: Application of moneys resulting from investments—

The Hon. PETER DOWDING: I do not see why the Committee should not have an answer to my question: Why is it the case that people who have claims against settlement agents, whether or not they be insured, and whether or not they are in difficult pecuniary circumstances and are eligible for legal aid, are not to be assisted by this fund?

The Hon. G. E. MASTERS: Because it was not considered necessary.

Clause put and passed.

Clauses 109 to 126 put and passed.

Schedule 1—

The Hon. G. E. MASTERS: There are some matters I wish to refer to the Minister in another place touching on this schedule.

Progress

Progress reported and leave given to sit again, on motion by the Hon. G. E. Masters (Minister for Fisheries and Wildlife).

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [1.41 a.m.]: I move—

That the House at its rising adjourn until 2.30 p.m. today (Wednesday).

Question put and passed.

ADJOURNMENT OF THE HOUSE: ORDINARY

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [1.42 a.m.]: I move—

That the House do now adjourn.

The Hon. H. W. Gayfer: Litigation

THE HON. H. W. OLNEY (South Metropolitan) [1.43 a.m.]: I rise with some reluctance at this hour, but nevertheless there is a matter of considerable importance to this House which ought to be raised. Along with many other members of this House, I was alarmed this morning to read a report in the Press of a certain litigation which reflected upon a member of this House. It reflected upon him in a way which in my opinion was quite unjustified.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order! I believe the Hon. Howard Olney is referring to a matter which is being determined by a judicial court, and that being the case I believe the matter is *sub judice* and therefore not appropriate for discussion at this time.

The Hon. H. W. OLNEY: I am referring to a matter reported in the Press and which arose in the Full Court of the Supreme Court. However, I do not wish to make any comments which would reflect upon the decision or in any way be relevant to the decision, but rather to the reported conduct of a Crown official who is reported to have said things in those proceedings reflecting upon a member of this House. I do not wish to dispute your ruling, Mr Deputy President, and if you feel I am out of order I will bow to your ruling.

The DEPUTY PRESIDENT: I believe this matter is yet to be determined and that a judgment has yet to be handed down. That being the case I believe it is not appropriate at this moment to raise the issue.

Question put and passed.

House adjourned at 1.44 a.m. (Wednesday).

QUESTIONS ON NOTICE

HOSPITAL

Boyup Brook

258. The Hon. W. M. PIESSE, to the Minister representing the Minister for Health:

(1) Has the documentation been completed for the repairs and renovations to the Boyup Brook Hospital?
(2) Have tenders been called?
(3) If so, what is the closing date for submission of tenders?

The Hon. D. J. WORDSWORTH replied:

(1) and (2) Yes.
(3) 19 May, 1981.

R. TRAVERS MORGAN PTY. LTD.

Work in Western Australia

263. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Transport:

(1) Has any work been done by R. Travers Morgan Pty. Ltd., or by any of its associates or by others recommended by it, for—
  (a) the Western Australian Government;
  (b) its statutory authorities;
  (c) its instumentalities; and
  (d) any other source in the interests of WA?
(2) If so—
  (a) in what years was the work done;
  (b) is the work still in progress; and
  (c) what was the nature of the work?
(3) How much money has been paid to those involved—
  (a) in each year;
  (b) still to be paid;
  (c) when will payment be completed; and
  (d) what is the total amount involved?
(4) Who made the recommendation for the employment of the firms or persons involved?

The Hon. D. J. WORDSWORTH replied:

(1) (a) Not to the Minister's knowledge;
  (b) yes;
  (c) not to the Minister's knowledge;
  (d) work has been done on behalf of organisations such as Railways of Australia and the Australian Railways Research and Development Organisation, but the Minister cannot give details as these projects are matters between the consultant and the client.
(2) (a) to (c) Assistance in the development of a computer model for the Southern Western Australia Transport Study, jointly undertaken by the Commissioner for Railways and the Director General of Transport—1975-76 and 1976-77. The work is complete.

  Assistance in the development of a computer model for the Director General of Transport's "Perth Transport 2000" study—1979-80 and 1980-81. The work is complete.
(3) (a) 1975-76 $ 6 774.19
  1976-77 $34 122.58
  1979-80 $20 827.55
  1980-81 $36 639.15;
  (b) nil;
  (c) not relevant;
  (d) $98 363.47.
(4) In both cases R. Travers Morgan was recommended by the study team leader, to be the permanent head responsible for the studies.

EDUCATION: HIGH SCHOOL

Willetton

264. The Hon. P. G. PENDAL, to the Minister representing the Minister for Education:

I refer to proposals involving stage four of the Willetton Senior High School, and ask—

(1) Why is it necessary to wait until mid-September before this work is put out to tender?
(2) As stage four involves two distinct components, will the Minister consider giving immediate priority in the 1981-82 capital works programme to the classroom component?

(3) Would this not then allow the classroom component to be completed well before the 33-week time span intended for stage four as a whole?

The Hon. D. J. WORDSWORTH replied:

(1) Stage four at the Willetton Senior High School will be financed from the States grants (schools assistance) funds for 1982. As commitments against these funds cannot be made until October 1981 no part of the building can be commenced before that time.

(2) and (3) A special effort will be made to have the classroom component finished as early as possible within limitations which might be imposed by building design and contractural obligations. So that classwork is not interrupted, sufficient transportable classrooms will be placed on site to enable usual timetabling arrangements to be made.

FUEL AND ENERGY: ELECTRICITY

Power Station: Pilbara

265. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Fuel and Energy:

(1) Does the estimate of $310 million for a 240 MW coal-fired power station in the Pilbara area include the estimate of $200 million for coal unloading facilities?

(2) How much of the estimate represents interest during construction, and how much represents staff housing construction?

(3) What examples can the Minister quote of HVDC transmission lines delivering similar power over similar distances at equivalent costs?

(4) What construction costs of additional power generating and transmission line capacity in the south-west were taken into account by the Government when it endorsed the HVDC transmission line proposal?

The Hon. I. G. MEDCALF replied:

(1) to (4) It is not possible to give a precise answer to the member's question as its purport and origin is not clear. If the member will be more specific as to the background and reasons for his question, the Minister for Fuel and Energy will try to assist him.

ELECTORAL: ENROLMENTS

Gascoyne, Kimberley, and Pilbara

266. The Hon. J. M. BERINSON, to the Minister representing the Chief Secretary:

(1) In what year were the present boundaries of the electorate of Gascoyne established?

(2) What was the enrolment of that electorate in that year, and what percentage did that enrolment constitute of the enrolment in the seats of—

(a) Pilbara; and

(b) Kimberley;

in the same year?

The Hon. G. E. MASTERS replied:

(1) The Chief Secretary advises that the boundaries of the north-west-Murchison-Eyre area were prescribed by Act No. 48 of 1965 and the electorates contained therein established in the report of the electoral commissioners published on 21 July 1966.

(2) The enrolment of the Gascoyne district was 2055.

This electoral population represented 109.25 per cent of the Pilbara electorate and 74.97 per cent of the Kimberley electorate.

HONEY

Price

267. The Hon. P. G. PENDAL, to the Minister representing the Minister for Agriculture:

(1) Has the Honey Board recently offered beekeepers 48c a kilo for their product?

(2) Is this figure substantially below that which the keepers were formerly receiving?

(3) Upon what basis was the new figure struck?

(4) Is the Minister aware of the feeling among some beekeepers and packers that the industry would do better without the existence of the board?

The Hon. D. J. WORDSWORTH replied:

(1) to (3) The role of the Australian Honey Board is to set the minimum export price of honey.

As of 10 April 1981 the export price of all grades of Australian honey was reduced by $100 per tonne because of a glut of honey on the world market caused by a major release supplied by China.

On 10 April 1981 the price of top-grade honey was set at $840 per tonne and the lowest grade at $700 per tonne.

Prior to the drop in price Australian honey exceeded that of—

Mexico by $180 per tonne
Argentina by $192 per tonne
China by $351 per tonne.

(4) No. I have not received any official complaints regarding the activities of the board.

ELECTORAL: ENROLMENTS

Murchison-Eyre, Kimberley, and Pilbara

268. The Hon. J. M. BERINSON, to the Minister representing the Chief Secretary:

(1) In what year were the present boundaries of the electorate of Murchison-Eyre established?

(2) What was the enrolment of that electorate in that year and what percentage did that enrolment constitute of the enrolment in the seats of—

(a) Pilbara; and
(b) Kimberley;

in the same year?

The Hon. G. E. MASTERS replied:

(1) The Chief Secretary advises that the boundaries of the north-west-Murchison-Eyre area were prescribed by Act No. 48 of 1965 and the electorates contained therein established in the report of the electoral commissioners published on 21 July 1966.

(2) (a) and (b) The enrolment of Murchison-Eyre was 2078.

This electoral population represented 110.47 per cent of the Pilbara electorate and 75.81 per cent of the Kimberley electorate.

QUESTIONS WITHOUT NOTICE

SETTLEMENT AGENTS BILL

Drafting

102. The Hon. PETER DOWDING, to the Minister for Fisheries and Wildlife:

I refer to the committee which was involved in the drafting of the proposed settlement agents Act. Who were the people involved with the committee and what were their occupations and interests?

The Hon. G. E. MASTERS replied:

I thank the member for some notice of the question, the answer to which is as follows—

The legislation was drafted in the usual way by Parliamentary Counsel on instructions from the Government through the Minister and the departmental head. On an informal basis various issues have been discussed with a small group of qualified persons the names of whom will not be disclosed.

POLICE

Foreign Servicemen: Arrest

103. The Hon. H. W. OLNEY, to the Attorney General:

(1) Did he notice in this morning's paper a report of a United States serviceman apparently having been arrested on a charge and held in custody elsewhere than in the normal facility?

(2) Could he say whether there are any special arrangements which apply to foreign servicemen whilst in this State?

(3) If "Yes", what are they?

The Hon. I. G. MEDCALF replied:

(1) I regret to say I did not see that particular notice in the Press.

(2) and (3) I am not aware of any special arrangements, but I shall make some inquiries and let the member know.