

penings now taking place. There is no hope in any other way. I would love to have had a shot at the banks but in the circumstances I cannot support the motion. I cannot ask the taxpayers to carry any further burden, or ask those individuals who may be very old and depending on these investments for a livelihood, being denied other avenues of support, to do so. I cannot support the motion as it is at present worded.

On motion by Mr. Boyle, debate adjourned.

BILL—BUSINESS NAMES.

Council's Amendments.

Schedule of two amendments made by the Council now considered.

In Committee.

Mr. Marshall in the Chair; the Minister for Justice in charge of the Bill.

No. 1. Clause 14, Subclause (2)—Insert the words "or any cancellation under Subsection (3) of this section" after the word "cancellation" in line 30, page 9.

The MINISTER FOR JUSTICE: This is a small amendment which will give additional protection to firms being cancelled. I have discussed the matter with the Registrar, who thinks the amendment should be accepted. It provides that if the Registrar cancels the registration of a firm and finds it justifiable to annul the cancellation later he may do so, thereby saving firms the necessity of going direct to the court. I move—

That the amendment be agreed to.

Question put and passed; the Council's amendment agreed to.

No. 2. Clause 14, Subclause (4)—Insert "or (3)" after "Subsection (2)" in line 13, page 10.

The MINISTER FOR JUSTICE: I move—

That the amendment be agreed to.

Question put and passed; the Council's amendment agreed to.

Resolutions reported, the report adopted and a message accordingly returned to the Council.

House adjourned at 5.31 p.m.

Legislative Assembly.

Thursday, 25th February, 1943.

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The SPEAKER took the Chair at 2.15 p.m., and read prayers.

QUESTIONS (4).

APPLE AND PEAR ACQUISITION BOARD.

As to Price, etc.

Mr. SAMPSON asked the Minister for Agriculture: 1, Is he aware that the almost complete absence on the local market of early eating apples such as Red Astrachan, Beauty of Bath, Lord Wolesley, Lady Cannington, and others, is because present conditions and payments make marketing of them a non-paying proposition, and this in spite of the fact that when supplies do reach the market the Apple and Pear Acquisition Board receives from 10s. to 15s. per case, the price to the grower being but 5s. 7¾d., which includes fruit, case, packing, transport, and agents' selling charges? 2, Further, in view of the heavy loss entailed to the Commonwealth Government by acquisition, undue cost to purchasers (when apples are available), and poor returns to the growers, will he take up the matter of the operations of the Apple and Pear Acquisition Board with the Federal Minister for Commerce, and urge that the acquisition scheme be abandoned subject to the payment of a subsidy of, say, 2s. per case to the growers, to enable them to make their own marketing arrangements, thus insuring for themselves a measure of equity and a living return?

The MINISTER FOR THE NORTH-WEST (for the Minister for Agriculture) replied: 1, According to market records there has been no diminution of the quantity of early varieties of apples marketed. Actually they have increased: 1942—712 cases were marketed and 1943—833 cases marketed. The price to the growers on the basis indicated is not 5s. 7¾d. but 7s. 1d. 2, The majority of fruitgrowers in this State favour retention of the Acquisition Scheme.

RAILWAYS.

Perth-Fremantle Track and Service.

Mr. NORTH asked the Minister for Railways: 1, When was a regrading of the track between Perth and Fremantle last undertaken? 2, What is the ruling grade now? 3, Does the opportunity present itself after the war for further regrading on this route? 4, Approximately what ruling grade is feasible on this route? 5, Has the department any other plans for improving the time table and average speed on the route? 6, Are Diesel electric carriages with trailers suitable to increase the service during slack periods by more frequent trips instead of trains? 7, Are freight trains hampered by any of the present grades, as for instance on the pull from Cottesloe to Swanbourne? 8, What comments or information has he to make available to the House on the present performance on this service in comparison with similar ones elsewhere in Australia?

The MINISTER replied: 1, 1925. 2, One in 80. 3, Nothing can be done in the Fremantle-Perth direction until a new bridge is provided over the Swan River at Fremantle. Regrading to 1 in 100 in the Perth-Fremantle direction is feasible. 4, One in 100. 5, Not at present. 6, When Diesel electric coaches are available it is proposed to consider the question. 7, No, except under unfavourable weather or other conditions, when some trouble is experienced between West Perth and Subiaco. 8, It is difficult to make comparisons with Eastern States broad gauge systems, but speeds on the Western Australian railways compare favourably with those on other narrow gauge railways elsewhere.

PERTH TRAMWAYS.

As to Inglewood Service.

Mr. J. HEGNEY asked the Minister for Railways: 1, Is he aware that the people served by the No. 18 tram beyond Salisbury-street, Inglewood, are indignant at the service given by certain employees in not taking the tram to the terminus at Grand-promenade, but requiring passengers to leave the tram at Salisbury street, although they paid the through fare of 4d.? 2, Is he aware that less than 50 per cent. of the No. 18 trams are taken to the terminus? 3, On whose instructions are they so acting? 4, Will he give instructions to have this matter rectified immediately?

The MINISTER replied: 1, No. 2, Certain cars are tabled to turn at Salisbury-street, and this applies particularly during peak periods. This is done to obtain the maximum number of trips from the city at peak periods and the same condition applies on other tramway routes. Of 190 cars tabled on the Inglewood route, 39 turn short of Grand-promenade, equivalent to approximately 20 per cent., not 50 per cent. These trips are shown in the time table and the destination number shown on the cars is 17. 3, Answered by No. 2. 4, It is not proposed to run all cars to Grand-promenade for the reasons stated in No. 2.

COMMONWEALTH POWERS BILL.

As to Select Committee's Report.

Hon. N. KEENAN (without notice) asked the Premier: 1, Is it intended to afford Parliament an opportunity to consider the report of the Select Committee on the Commonwealth Powers Bill, 1942? 2, If so, when?

The PREMIER replied: The usual procedure will take place. Generally when a Select Committee is appointed to deal with a Bill it brings in a report and suggests amendments which are, as a rule, printed and then dealt with in Committee of the House. I do not know that there is anything in the Select Committee's report that the House would wish to debate, except the different clauses of the Bill which will be discussed in due course as the Committee stage progresses. The principle contained in the Bill has been affirmed on the second reading, and there is nothing in the Select Committee's report dealing with the principle. The Select Committee dealt only with the various clauses, particularly Clause 2. The hon. member himself gave evidence before that committee. I wish to inform the House that, if the amendments suggested by the Select Committee are agreed to, the passing of the Bill will then have faithfully carried out the agreement made at the Convention. The Select Committee thought that some of the provisions contained in the measure did not do what they purported to do and could be made more effective and stringent in their application, and so, on the advice of the member for Nedlands and the Solicitor General, it framed the amendments appearing on the notice paper. The remainder of the report deals with what the committee thought about some of the subclauses of

Clause 2, each one of which will be discussed as the Bill proceeds through Committee. I do not know whether the member for Nedlands desires to discuss the report.

Hon. N. Keenan: Of course I do.

The PREMIER: The hon. member will have an opportunity.

Hon. N. Keenan: I will have no opportunity at all.

The PREMIER: Whatever is the usual procedure at the Committee stage in regard to Bills that have been referred to a Select Committee will be adopted on this occasion. That is my intention.

BILL—COMMONWEALTH POWERS.

In Committee.

Mr. Marshall in the Chair; the Premier in charge of the Bill.

Clause 1—Short title:

The CHAIRMAN: I draw the attention of the Premier to the fact that the clause sets out that the measure will be cited as an Act of 1942.

The Premier: The Bill was introduced in 1942.

The CHAIRMAN: It is just a question whether "1942" should not be altered to "1943," because the measure will not become an Act till 1943.

The PREMIER: The Bill was introduced in 1942, and if the discussion proceeds into 1943 I presume that is a matter for the officials of the House to rectify in the revision of the Bill. If it is necessary to amend the short title clause, I will move at the appropriate stage to alter "1942" to "1943."

The CHAIRMAN: The Bill will have to be re-committed to give effect to what the Premier suggests. The measure is merely a Bill until it becomes an Act, and it cannot be cited as an Act until it is finally passed and assented to. That cannot take place until 1943.

The PREMIER: In view of your remarks, Mr. Chairman, and seeing that the Bill was introduced in 1942, but is still being discussed in 1943, I move an amendment—

That in line 2 the figure "2" be struck out and the figure "3" inserted in lieu.

Hon. W. D. JOHNSON: I question whether the proposed procedure is correct. The Bill is a Bill of 1942, as the Premier has already pointed out. If later on, because of Parliamentary practice or of some other reason, it is deemed necessary to alter "1942"

to "1943," because the discussion on the measure has extended into the latter year, that is a different matter. The Bill as introduced is a Bill of 1942 and as such it should stand.

The CHAIRMAN: I desire to inform the member for Guildford-Midland that the citation of a measure does not refer to the Bill, but to the Act. Take, for instance, the Companies Bill which was introduced in 1940. Will that be cited as an Act of 1940? I suggest it will not be, but it will be cited as an Act of the year in which it is passed.

Amendment put and passed; the clause, as amended, agreed to.

Clause 2—Reference of matters to Parliament of Commonwealth:

The PREMIER: I wish to inform the Committee as to the procedure I hope will be agreed to regarding the consideration of the Bill. I have already given some indication in my reply to the question put to me by the member for Nedlands. Regarding the clause and the Bill itself, members possibly wish to be reassured as to the agreement reached at the recent Convention being faithfully carried out. The Select Committee gave much consideration to that aspect, and I think members would like to be reassured on that point first and foremost. With the leave of the Committee I propose that the consideration of Clause 2, so far as it concerns the various powers mentioned in the paragraphs, should proceed along the lines of the amendments agreed to by the Select Committee in its recommendations, but only after the time limitation and other phases are considered. For that reason I desire that members shall be reassured on the point so that they will be able to record their votes on the various paragraphs in the light of the knowledge they will then have that the Bill has been securely tied up regarding the time limitation, and other matters. With the permission of the Committee, I propose later on to move the first amendment on the notice paper, which was agreed to by the Select Committee, namely—

That in line 1 the words "the following matters" be struck out, and the words "subject to the limitations and conditions in this Act contained in the following matters" inserted in lieu.

Hon. N. Keenan: Does that amendment appear on the notice paper?

The PREMIER: Yes, that is a definite recommendation of the Select Committee. I suggest that we deal with that matter first

and postpone consideration of the other paragraphs, and then, after we have tied up the powers with the time limit, return to a consideration of the paragraphs containing the reference of powers to the Commonwealth.

The CHAIRMAN: Does the Premier propose the postponement of consideration of Clause 2?

The PREMIER: No; postpone consideration of the remainder, after the first amendment on the notice paper.

The CHAIRMAN: Consideration of a clause cannot be postponed while there is an amendment before the Chair.

The PREMIER: I suggest that the first amendment be dealt with, and that further consideration of the clause then be postponed.

The CHAIRMAN: It is not possible within our Standing Orders to permit of the postponement of a clause after an amendment has been accepted. Standing Order 285 reads—

Any clause may be postponed unless the same has already been considered and amended. The only way will be to move for the postponement of consideration of Clause 2.

The PREMIER: I move—

That consideration of Clause 2 be postponed.

Motion put and passed.

Clause 3—Act not to be repealed or amended without approval of electors:

Hon. N. KEENAN: I move an amendment—

That in line 1 of Subclause (1) all the words after "This Act" be struck out, and the following inserted in lieu:—"and the reference of matters by the Parliament of the State to the Parliament of the Commonwealth under Section 2 hereof may be repealed or amended at any time after the passing thereof by the Parliament of the State in the same way and subject to the same provisions and conditions as apply to an amendment of the Constitution of the State under the Constitution Acts, 1889, 1899 and amending Acts, and no law made by the Parliament of the Commonwealth with respect to matters referred to it by this Act shall continue to have any force or effect by virtue of this Act or the reference made by this Act after the date of the passing by both Houses of the Parliament of the State of such repealing Act, or in the case of an amending Act after the date of the passing of such amending Act by both Houses of the Parliament of the State to any extent outside the scope of such amending Act."

I regret that I had not an opportunity to put the amendment on the notice paper. The amendment is necessary in order to re-

tain to the State the powers purposed to be given to it by Clause 3. This purports to treat as a fact the possession by the State of power to repeal the measure after it has become an Act, and to carry out that repeal in a certain way. But Clause 3 does not confer on the State Parliament the power to repeal or amend the Act; it merely prescribes the method that must be observed if that repeal or amendment takes place. It is certain that the State would be left with no power to repeal a reference of a matter under Section 51 (xxxvii) of the Commonwealth Constitution. If it is desired that we have the power of repeal, it must be expressed in definite and distinct terms. The only alteration I propose is that, instead of making the matter one to be referred by way of referendum before it can be submitted to the Governor, it shall be subject to the conditions of our Constitution. This means that it will have to be carried by an absolute majority in both Houses. If we do that, we shall be going as far as we have any right to do. We are a time-expired Parliament—our term has been extended for two years—and we must be careful in giving away these extreme powers to the Commonwealth. That, surely, is going an extreme way to provide that if we are to take back the powers we are giving we shall do so only in accordance with the rules applicable to an alteration of our Constitution. I do not think it necessary to elaborate on that proposal.

The PREMIER: I do not propose to give my approval to any amendment. I do not wish to treat the member for Nedlands discourteously, but Clause 3 represents an undertaking that I gave to the Convention, and I propose to live up to it. In my opinion, the hon. member's objection as regards this Parliament being either moribund or time-expired cuts no ice in respect of our attitude on the Bill. We are now in just as good a position or bad a position relatively to this matter as we should be if the case were otherwise, since the matter could not have been dealt with prior to the last election. Therefore it makes no difference to the objection of this being a moribund or time-expired Parliament, since the question could not have occurred in the interim, thus giving the people an opportunity to consider it. The matter was not alive at that time, and nobody could have given notice of a proposal of this kind at all. The member for Nedlands says that as

regards Clause 3 he desires the statutory method of altering the Constitution to apply. That is a good, sound and valid reason. But the feeling was that this matter was so important that the measure should not be amended or repealed without a referendum. To the contrary attitude there is the reply that we have Parliament to give these powers.

That would not have been the position in ordinary circumstances, and it was only because the various Parliaments, and especially this Parliament, expressed the opinion, by resolution, that a referendum should not be taken at this highly critical period of our history that a referendum was not provided for. Resolutions of both Houses of this Parliament affirmed definitely that a referendum should not be held. Therefore I felt quite justified at the Convention in supporting a motion to that effect, seeing that the motion gave effect to the will of both Houses of the Western Australian Parliament, expressed by resolution, in order that the powers referred should not be capriciously repealed under this Bill. Seeing that the term was only five years, and it was expected that the full-time limit proposed by the Bill after cessation of hostilities—but not after declaration of peace—would be needed, and, further, as this Bill has only one purpose, adequately to deal with the problem of post-war reconstruction, and it was considered that the policy of post-war reconstruction would be dealt with immediately after declaration of an armistice, the proposed duration of the measure was not regarded as excessive.

If this Parliament should consider, for some reason, that under the terms of the Bill the interests and welfare of Western Australia were vitally prejudiced, though I hold that we should not in any circumstances repeal the measure, I agree that the procedure in regard to alterations in our State Constitution should at least apply to this Bill. However, seeing that the operation of the measure will be for only five years, it should be given at least that length of time. The opinion was expressed that the measure might possibly be used in a manner highly detrimental to the interests of this State—in which case we could repeal the measure. But if what is done for post-war reconstruction is for the benefit of the State, we should be prepared to permit the measure to remain on the statute-book for

five years, after the lapse of which the people can express their opinion and do what they please. I have no hesitation in saying that if powers are to be granted, they should be granted not by referendum but by reference. I am not prepared to accept the amendment of the member for Nedlands.

Mr. McDONALD: The Premier, of course, has given an undertaking to the Convention that he will do his best to have this Bill passed in the form in which it has been introduced. That is quite in order; in fact, the Premier can hardly do less than endeavour in this Chamber to carry out the assurance which he gave to the Convention. But so far as the Chamber itself is concerned, we of course are in quite a different position. Neither the Premier nor the Leader of the Opposition went to the Convention as a plenipotentiary of this Parliament.

The Premier: We were fortified by a resolution passed by both Houses of Parliament.

Hon. N. Keenan: Carte blanche?

The Premier: Yes.

Hon. N. Keenan: To hand over everything?

The Premier: Yes.

Mr. McDONALD: A resolution was passed by this House, by the casting vote of the Speaker, that if any powers were granted to the Commonwealth Parliament they should be granted by means of a reference.

The Premier: For a term.

Mr. McDONALD: Yes. That resolution was carried by a casting vote.

The Premier: That is not right. It was not carried by a casting vote.

Members: Yes.

Mr. McDONALD: The casting vote of the Speaker determined the matter. Apart from that, this House is able, and it is its bounden duty, to scrutinise every letter and every part of this Bill, under which certain powers are proposed to be referred to the Commonwealth Parliament. If we may accept the Convention's proceedings as any guide at all, we find that the Convention decided upon certain things. First of all, it said, "The time is inappropriate to have a referendum." Having said that, the Convention then said, "As we cannot consult the people, it would be quite wrong to vary permanently their constitutional rights. Therefore, pending a reference to the people, all we can do is to transfer powers

temporarily, subject to certain conditions, to the Commonwealth Parliament." That is what this Bill proposes to do, or should do. After it was decided to transfer powers temporarily so as not to take away permanently the rights of the people, the committee which drew up the Bill decided to protect the rights of the people in two ways.

Firstly, the committee said the powers should terminate at the end of five years after the cessation of hostilities. Secondly, the committee said—and this was agreed to by all the members of the committee—that even before the expiration of the period of five years, any State Parliament may repeal or amend the Act of reference, but added that such repeal or amendment will be subject to a referendum of the people. The member for Nedlands by his amendment is explicitly safeguarding the right of appeal and amendment. He is doing no more than carrying out the agreement arrived at by the members of the drafting committee. The only variation from the drafting committee's recommendation is that, by the amendment now under consideration, the repeal or amendment may be made by the State Parliament by a constitutional majority, and there is no need to have a referendum before the repeal or the amendment becomes law. I have an amendment on the notice paper by which I propose to strike out Clause 3 altogether. I had the view that Clause 3 only operated to provide that the repealing or amending Act must be supported by a referendum of the people before it became law. I thought that by striking out Clause 3 this Parliament would retain its inherent right to repeal or amend any law it made.

The member for Nedlands has drawn my attention and the attention of the Committee to this aspect, that if we strike out Clause 3 then it would not be clear that we would have the right to repeal or amend the Act of reference. By striking out Clause 3 we might take away a right which the drafting committee considered should be retained by the States. Therefore, to safeguard the State's right to withdraw or amend the references, the member for Nedlands desires to have this right on the part of the State expressed in no uncertain terms. His amendment is designed to express the declared intention that every State should have the right—even before the expiration of the prescribed period—to repeal or amend the Act of reference.

The only difference is that by this amendment we do away with the referendum, and that was the reason why I was going to attack Clause 3, because, why a referendum? The Commonwealth Parliament says to the States, "A referendum is undesirable at the present time. We recognise you, the State Parliament, as having all the power to take, and as being justified in taking, the responsibility of transferring these powers to us."

Mr. Hughes: The Commonwealth Parliament did not say that. The States said it to the Commonwealth Parliament.

The Premier: But that referred only to wartime.

Mr. McDONALD: If there is one thing on which the Convention was unanimous—including the Prime Minister, Mr. Curtin, and Dr. Evatt, who were representing the Commonwealth Government—it was that, on consideration, a referendum in wartime was undesirable. They agreed to it in the end, they were converted, they saw the light! The real point in this clause is this: Shall we have power to repeal or amend by a constitutional majority of this House, or must that repeal or amendment be approved by referendum of the people?

Hon. W. D. Johnson: Naturally, by a referendum.

Mr. McDONALD: A referendum of the people of Australia?

Hon. W. D. Johnson: Yes.

Mr. McDONALD: The Commonwealth Government says to us in one breath, "When it comes to giving us powers which you now possess you, the State Parliament, have all the power and are justified in taking the responsibility of giving away—for a period, if you like—part of the sovereign rights of the people of Western Australia," and in the next breath, "But if you, the State Parliament, want at any time to take back on behalf of the people of the State the portion of their sovereign rights which you have lent to us, then you should have neither the power nor the discretion to do so." In other words, the Commonwealth Government, when the traffic is one-way and things are going to it, says, "You are 21 years of age and of full capacity;" but when the traffic is the other way and we ask the Commonwealth Government to give back what belongs to the people of the State, then of course we are subject to limitations.

Hon. W. D. Johnson: Better do it once than not at all.

Mr. McDONALD: I suggest that is a humiliating condition to place on this sovereign Legislature of Western Australia. It is an attempt to reduce the status and power of this Parliament and we should not accept it. If we take the responsibility of transferring away from the people of this State a portion of their self-governing rights, then it is incredible to me that we should not have the power and be prepared to take the responsibility of claiming back on behalf of the people what has been lent for a term to the Commonwealth Parliament.

I have the strongest objection in every way to this clause; it is a humiliating condition to impose on the State Legislature. It is one more blow to reduce the status of the State Legislature in the eyes of the people of Australia. I support the amendment of the member for Nedlands because it will retain to this Parliament the power and the responsibility and the discretion which it should exercise if it is not to abdicate its position as a responsible legislature; and at the same time it will do no more than confirm the intention of everybody, including the promise of the Commonwealth Government, that in the intervening period every State should have the right to withdraw the whole or any part of the powers which it had temporarily transferred to the Federal Legislature. I hope the Committee will accept the amendment.

The PREMIER: I am wondering whether the member for West Perth was right about what happened when the resolution was moved last November. In the first place an amendment was moved to the motion of the member for West Perth which was carried on the casting vote of the Speaker. Subsequently an amendment was moved by the member for Greenough. I think the wording was "for a limited period only." Subsequently the resolution which I referred to was carried on the voices without a division.

Mr. Watts: The main thing was that the amendment of the member for West Perth was lost only on the Speaker's casting vote.

The PREMIER: The main thing was the resolution. However, that is not very important. My objection was on the right lines because I have a distinct recollection that the resolution as finally amended and adopted was carried on the voices without amendment. I do not want to dwell on that; it is a question of fact.

Mr. Watts: It was a case of half a loaf being better than no bread.

The PREMIER: The member for West Perth says that what we do in giving away powers we should be able to do in regard to taking them back, but there is a very important difference in regard to the time in which those two operations would be effective. One would take place in a time of war. That is when the powers would be referred and those referred powers will not operate until peacetime.

Mr. McDonald: They will operate straight away.

The PREMIER: No.

Mr. McDonald: Yes, immediately the Bill is assented to.

The PREMIER: No.

Hon. N. Keenan: It says so!

The PREMIER: Almost every member of this House when speaking about these proposals has expressed the opinion that the Commonwealth has sufficient power under the Defence Act to do in time of war everything that is proposed in this Bill.

Mr. McDonald: I take it you would be agreeable to this Act coming into force on the day hostilities cease.

The PREMIER: I do not want to hamper the Commonwealth Government in making plans to deal with post-war problems. I am anxious, and every member is anxious and we have expressed the idea by resolution, that this House should immediately take into consideration steps towards rehabilitation and post-war reconstruction and not wait until the armistice. We want to know what powers we have to deal with problems of post-war reconstruction.

Mr. McDonald: The Commonwealth will know that, even though the Act does not come into force until hostilities cease.

Hon. N. Keenan: You told us that the Commonwealth has all that power under the Defence Act.

The PREMIER: If it has the power under the Defence Act there should be no question of anybody desiring to repeal this measure, because the Commonwealth can do under the Defence Act whatever it wishes to do by means of that measure. Consequently, the provisions of this Bill will not be utilised during the war period.

Hon. N. Keenan: Why are we giving it to the Commonwealth?

The PREMIER: Every member has expressed the opinion that there will be grave problems of reconstruction in post-war times. It will take a tremendous amount of plan-

ning, and many things will have to be done in regard to various aspects of powers contained in the Constitution of the Commonwealth. We want one authority to be able to undertake the solution of the problems of post-war reconstruction, and for that purpose we are proposing to confer these powers on the Commonwealth Parliament. I am sure they will not be used until the post-war period. I do not think anybody in Australia believes that at this moment during a time of war the Commonwealth Government cannot do almost anything under its defence powers that it wants to do and that this particular Bill would empower it to do. I notice from today's Press that Dr. Evatt is going to the United States, probably to England and possibly to Russia. When he is in those countries, speaking as a representative of Australia, he will be asked for his opinion in regard to some problem of trade and post-war reconstruction. Is he going to be put into the position of having to say, "I do not know what I will be able to do; it all depends on what the State Parliaments"?

Mr. Patrick: I do not think Mr. Roosevelt knows where he stands.

The PREMIER: I do not think anybody knows, but I think everybody knows that there must be a lot of planning and consideration and thought devoted to what conditions will apply in post-war times; and the time to be considering post-war problems is now. The time to give the statutory authority to the body it is proposed shall exercise these powers is also now. But those powers will not be exercised until after the armistice. During peacetime a lot of the powers that the Commonwealth Government could exercise in wartime under the Defence Act will fall away from it and something is needed to take their place. The provisions of this Bill will take the place of the Commonwealth defence powers in a period of five years succeeding the signing of the armistice. The member for West Perth made a big point of the fact that the reference of the powers is to be made in a certain way, and wanted to know why we could not take them back in the same way if we wanted to do so. I want to stress the difference. The very important distinction between the two sets of circumstances is that the relinquishing of the powers will take place in wartime when it is very undesirable for a referendum to be held, whereas the repeal of

those powers, if deemed to be necessary, can take place in peacetime when there would be no objection to a referendum.

Hon. N. Keenan: And in wartime. We can take them back tomorrow.

The PREMIER: The hon. member has agreed that there is no necessity for the powers to be taken back at a time when the Commonwealth has power under the Defence Act to do certain things in the interests of the defence of the Commonwealth. It will not be necessary to take back these powers during wartime because the Commonwealth can exercise them under the Defence Act, but we might want to take back the powers in peacetime, and, if so, the people should have an opportunity to express an opinion. A totally different set of circumstances prevails in wartime from that which prevails in peacetime. In peacetime we can say to the people, "This is a thing you have a right to be consulted about." There would be no war and it would not be inconvenient to hold a referendum. The argument could not be raised that the people were engaged in an all-in war effort and that that effort should not be thrown out by the taking of a referendum.

In peacetime the same arguments do not apply as in wartime, and the right of the people to be consulted in regard to a constitutional change should be safeguarded to them. I see no objection to a referendum being held in peacetime. If I were asked about a referendum being held in regard to a constitutional change during wartime, I would say as I said at the Convention and as I have said in this House, that I do not think this is the time to disturb the people or to destroy their unanimity of effort in regard to the war by engaging in such a highly controversial subject as the effecting of an important constitutional change. In these circumstances I submit that the conditions are entirely different. It is right in wartime that we should do this thing. The proper way to do it is by referendum, but not in wartime. In peacetime it should be carried out by a referendum of the people. That puts quite a different light on what the member for West Perth referred to as an ordinary circumstance. Because of the present extraordinary circumstances and the difference between war and peace, the hon. member's remarks do not apply in this instance.

Hon. W. D. JOHNSON: It is not fair of the member for Nedlands, without notice, to

bring an amendment of this kind forward on such an important measure. When the printed report of the Select Committee had been circulated to every member, it could be clearly read and understood, and a good deal of it had already appeared in the Press. The hon. member stated that he had not time to consider it, and wanted it postponed. Now he submits to us an amendment that he has not even circulated. We do not even know the wording of it! It is true that it has been read, but it is definitely unfair to ask this Committee to consider, on an important Bill of this description, something that has not been placed on the notice paper. I realise that what is really desired is the amendment suggested by the member for West Perth for the deletion of the clause. Though Clause 3 is objectionable to the member for Nedlands and the member for West Perth the objectionable feature about it is the referendum. I want those two members to realise that a referendum is made possible at the end of the Bill.

Many people say that this measure will not pass another place. That is not the end of it. It is true that this Parliament can deal with it, but if Parliament deals with it in a manner objectionable to the people of Western Australia, then those people have a voice, and there is no doubt that they will demand the right to express their opinion, as distinct from the opinions expressed by property qualifications. Therefore this clause is submitted to this Parliament, which is composed of two Chambers. If the measure fails to pass any one Chamber, it is for the National Parliament to review the situation. It had to be reviewed in Tasmania, and it is quite within the province of possibility that if the Legislative Council of Tasmania defeats the desire of the people, as expressed in the people's Chamber, then the people would be invited to express their opinion by ballot.

Mr. Thorn: The people never had the opportunity to express their opinion.

Mr. McDonald: The Tasmanian Legislative Council objected to the Bill because it said the Bill should go to the people.

Hon. W. D. JOHNSON: If that is what that Council wants, the Premier of Tasmania will accommodate it. But that is giving the Council an opportunity to reconsider its attitude. I am not afraid of what a property

Chamber will do on a question of this description. This is a Bill affecting the people.

The CHAIRMAN: I draw the hon. member's attention to the fact that there is an amendment before the Chamber dealing with a clause only, and not the Bill generally. The hon. member is getting a little wide of the mark when he discusses Tasmania, unless it is for the purpose of making a comparison.

Hon. W. D. JOHNSON: I was showing that there is a Legislative Council in this State, and that the Legislative Council in Tasmania took action. This Bill reads—

The CHAIRMAN: Will the hon. member realise that we are dealing with an amendment, and not the Bill?

Hon. W. D. JOHNSON: The clause proposed to be amended deals with a referendum, and the amendment deals with the deletion of the referendum provision. If in the final consideration the States will not do the fair thing, the people rejoice in the fact that they have the power to do it themselves, and that the National Parliament can submit this Bill, if rejected by the State Parliaments, to a referendum of the people of Australia.

Hon. P. Collier: The majority of the people of Australia will not decide that.

Hon. W. D. JOHNSON: We do not want to go into that. The referendum has suited the member for Boulder when he was interested, and it will suit me when I am interested. We have to accept it as it stands. The referendum today is not exactly as I would like it, but it is the referendum possible under the Commonwealth Constitution. Under this clause it is possible for us to take a referendum. Why is provision made for a referendum in the State? The member for West Perth and the member for Nedlands realise the weakness of it. They say that if Parliament gives the power, then Parliament should have the power to take it away. But they forget to complete their suggestion and say that if another place decides to give it, and if it does not give it, the Commonwealth Parliament can take a referendum, and, once the power is given, the Legislative Council can do nothing because the power can only be repealed by a referendum of the people of Western Australia. I realise what is in the air! I am an old politician, and old in the political game.

The member for Nedlands and the member for West Perth have thought, "After a war

there is generally a change of Government. Wars create unrest and misunderstandings, and it has been customary for a change of Government to be brought about, so we will get ready for it. As long as we have the referendum provision here, the people have protection, but if we can change this and we get a change of Government with a Legislative Council of the same political faith, then the people's will will be silenced." That is the position we have to face from this side.

The Premier: Why contemplate such a horrible prospect?

Hon. W. D. JOHNSON: I trust the people every time, but I am not going to trust another place. Therefore I have said, in all fairness to this Chamber, that no member of this Committee understands this amendment, apart from what has been stated by the member for Nedlands, the Premier, and the member for West Perth. We have not read it; we have not had an opportunity to analyse it. It is unfair to have launched it! From the people's point of view, from a democratic point of view, and from a stability point of view, the only way we can do anything, once we give the power, is to say that it shall not be repealed by the will of a property Chamber, but as a result of a referendum submitted to the people of the State.

Hon. N. KEENAN: I feel that I owe an apology to the Committee for not having placed my amendment on the notice paper. There were certain considerations, which I have already mentioned, which may perhaps not be sufficient to absolve me entirely from all blame, but I trust will be regarded as sufficient to absolve me from some part of the blame. Personally, I would have preferred the amendment to appear on the notice paper, but for the reasons I stated it does not. The most important point regarding my amendment is the fact that it makes clear that this Parliament does have reserved to it the right to appeal or amend this legislation. It has been agreed by the Premier that power should be carefully preserved to the Parliament of the State, but, as expressed in the Bill, that power is not so preserved. Subclause (1) reads—

This Act shall not be repealed or amended except in the manner provided in this section. That does not confer any power whatever on the Parliament of the State.

The Premier: In infers that we have the power.

Hon. N. KEENAN: The Premier is only too well aware that that is not sufficient. Surely he realises it is not sufficient to infer that this Parliament has the power! We must have it set out in expressed words that the Parliament of the State has the power to amend or repeal. We can go on to prescribe the manner in which that can be done.

The Premier: It is an inherent part of our Constitution that we have power to amend or reject legislation.

Hon. N. KEENAN: Yes, if we exercise our right under the Constitution, but here we are passing on, by virtue of power in another Constitution, certain matters that are being referred to another Government by virtue of that other Constitution.

The Premier: As that Constitution affects our Constitution.

Hon. N. KEENAN: The power in the Commonwealth Constitution is the only one under which such references may take place.

The Premier: And this is the only Parliament that can make such references.

Hon. N. KEENAN: That is so, but we cannot expand the Commonwealth Constitution or make it more wide except by the provisions contained in certain paragraphs. Of course I am not dealing with the general powers that can be exercised by Australian citizens under Section 128 of the Constitution.

The Premier: The Commonwealth cannot take such powers without our consent.

Hon. N. KEENAN: It is clear that there was a distinct agreement that this Parliament should have powers reserved to it to amend or repeal this legislation at any time—not after the armistice but at any time after it became operative. Under another part of the Bill we provide that the Act shall become operative immediately it is passed. Therefore, immediately it is passed it was intended that this Parliament should have the power to amend or repeal its provisions. That is all that my amendment deals with, and it is not provided for otherwise. I am merely asking the Committee to agree that we shall expressly state in the Bill that this Parliament may repeal or amend the Act.

The Premier: But that power to amend or repeal an Act is already contained in our Constitution.

Hon. N. KEENAN: With all due deference to the Premier, for whom I have very considerable respect, he does not convince

himself when he makes that statement. He knows that the powers in our Constitution relate to what we ourselves can exercise—not what some other independent Parliament can exercise—and that other independent Parliament will exercise these powers when we refer them.

The Premier: You know this Parliament is the only section of the people in the world that can refer these matters to the Commonwealth.

Hon. N. KEENAN: With one exception. They can be amended, of course, at any time by the Imperial Parliament altering the original Constitutions of the State and the Commonwealth.

The Premier: I do not think that is quite so.

Hon. N. KEENAN: There can be no question that our powers, apart from what we find expressed in our statutes, rest entirely on the Colonial Acts Validity Act.

The Premier: As it is affected by the passing of another Act.

Hon. W. D. Johnson: What has this to do with the referendum?

Hon. N. KEENAN: I see that we are talking over the head of the member for Guildford-Midland, so we had better return to bedrock!

Hon. W. D. Johnson: I was kept to the amendment.

Hon. N. KEENAN: I am endeavouring in my amendment to express clearly that these powers can be exercised by the Parliament of the State. At the very best what can be urged from the provision of the Bill is that we have inferentially the power to repeal or amend the Act in the manner prescribed. It is merely a matter of inference, and that is not nearly sufficient in regard to a matter of this importance. Therefore I seek in my amendment to make the position quite clear. In doing so we are merely giving effect to what is said to have been the agreement reached at the Convention.

Hon. W. D. Johnson: You are by-passing the referendum.

Hon. N. KEENAN: That is an entirely different matter. The first consideration is to secure these powers and place it beyond all question that we have those powers. Then the question arises as to how we shall exercise those powers, which is where the referendum enters into the consideration of this matter. My amendment seeks to make it clear that full power is vested in the Par-

liament of this State to amend or repeal this Act at any time.

The Premier: No one questions whether the State has that power. It has always been assumed that we do have that power.

Hon. N. KEENAN: That is the difference between myself and the Premier. He assumes; I want to place the issue clearly beyond all doubt. He assumes that we have the power because of the reverse meaning of the words appearing in Clause 3 relating to the power to repeal or amend in the manner provided. From that the Premier assumes that this Parliament has the right to repeal or amend this Bill if certain formalities are complied with. That is not the proper reading to apply in a matter of law. Rather should the required power be set out in expressed terms. That is what I have sought to attain in my amendment, and it cannot be challenged as contrary to what was agreed to at the Convention. As it is in accordance with the agreement arrived at on that occasion, why object to it? Then there is the other phase. The clause as drafted does undoubtedly prescribe for the taking of the opinion of the electors by way of a referendum. The State Parliament may pass an Act, but it would not be operative until the Act had been validated by referendum of the people of this State. In place of that I suggest an absolute majority of both Chambers. The transfer of these powers may be agreed to in this Chamber by a majority out of only 30 members voting, and it is surely moderate to suggest that the powers shall not be taken back by a bare majority but shall be taken back only under the conditions on which our own Constitution may be amended, namely, by an absolute majority voting in favour of the proposal.

The only real objection the Premier has to the amendment is the promise he gave at the Convention. I am afraid that whatever we give away under this measure will be gone forever and that there will be no return of the powers. Surely then we should examine carefully what we propose to give and, if there is any right of repeal or amendment reserved to the State, let us express it clearly and beyond all doubt. Then we shall have done a little to safeguard the position. We have been reminded that none of these powers will be exercised by the Commonwealth until after the cessation of hostilities. The reason is that the defence power is so wide that the Commonwealth is able to do anything, including a very great

deal that it should not do. The other day the Commonwealth went too far and the High Court set a limit. The limit is that the Commonwealth may not use its powers for the invasion of civilian liberties. To sum up, the amendment deals with only two points. Firstly, it makes perfectly clear that the State Parliament shall have power at any time to repeal or amend the Act and, secondly, it prescribes the procedure for doing so—the procedure under which we are entitled to alter our own Constitution.

Mr. HUGHES: In my opinion under Section 34 of the Constitution Act Amendment Act, 1899, and Standing Order 196, this Parliament came to an end on the 31st January last, and therefore we are not the Legislative Assembly of Western Australia and the State at present is without such a body.

Hon. W. D. Johnson: Is there authority to pay out salaries?

Mr. HUGHES: In my opinion the salaries should not be paid after the 31st January last. In view of the serious matters we are discussing we should be satisfied that we are legally entitled to hand over the powers of the people. I agree there is some doubt as to whether this Parliament came to an end on the 31st January, 1942, but I do not think there is any doubt that it came to an end on the 31st January, 1943. Should I in another capacity challenge the validity of this legislation at a later stage, I would not like it to be said that I was present when the Bill was passed and did not mention the point.

The CHAIRMAN: I draw attention to the fact that we are dealing with Clause 3 of the Bill and an amendment, which matters have no relationship to the existence of this institution. I ask the hon. member to confine his remarks to the question before the Committee.

Mr. HUGHES: I wish to conform to your ruling, but this clause has a direct association with the subject-matter. It may be the writing on the wall.

The CHAIRMAN: I am concerned with the writing in the clause and the subject-matter contained therein. I ask the hon. member to confine his remarks to the clause and the amendment.

Mr. HUGHES: I agree with the member for Guildford-Midland that the voice of the people is the voice of God, and that the people should have the right, by referendum,

to deal with major problems of vital importance to them. The member for Guildford-Midland uttered a warning to any member who might get in the path of the passage of the Bill, that the Commonwealth Government may hold a referendum over the head of this Parliament, that the Commonwealth Government may use the big stick that was threatened in the first instance should the Bill not be carried here. It was suggested that the voice of the people would then decide what powers should be referred to the Commonwealth Parliament. I wonder whether the member for Guildford-Midland has considered how the voice of the people will be given. As has been pointed out here, it will not be the voice of the people of Australia and may not be the voice of the people of Western Australia. It will probably be the voice of the people of New South Wales and Victoria. I cannot agree to the people of New South Wales, Victoria, Queensland and South Australia giving away powers of the Western Australian people to the Commonwealth Government.

The Premier: You can do nothing to stop them from doing so unless you go over there and use your persuasive powers!

Mr. HUGHES: We do not want to encourage those people to do as suggested. That is the last kind of appeal we ought to make to the populations of the big States. I hold this matter to be of such importance that notwithstanding the existence of a war we should, before parting with these powers, have a referendum of the people of Western Australia. Let us have the referendum before we yield, and not afterwards. I propose at a later stage, if the opportunity arises, to tack on to the Bill a clause providing that it shall not become operative until it has been confirmed by a referendum of the Western Australian people. Let the member for Guildford-Midland have his referendum, and let him give the people a chance when it can be effective! Let us forestall the threat of a decision by the people of the Eastern States.

The Premier: Let this Chamber decide!

Mr. HUGHES: This Chamber?

The Premier: Yes; decide the other way!

Mr. HUGHES: How many of this Chamber would decide?

The Premier: On the voices. Nobody has protested.

Mr. HUGHES: The position has now arisen that we have to decide whether we

will prevent the taking-back of the powers by referendum. We have now had a threat from the member for Guildford-Midland, who no doubt accepts the responsibility for his utterance. If there is a danger of the four big States taking from us our powers, then whether we pass this Bill or not, let our own people have the first say. If the Western Australian people decided by referendum that they would not refer these powers, then the Prime Minister, I venture to say, would not introduce a referendum Bill into the Commonwealth Parliament. The hon. gentleman could not deny his own electors and deny the State that is responsible for his presence in the Commonwealth Parliament. If he did, our Premier would have the right to talk about consistency! If our Prime Minister will not obey a direction by referendum from his own State, we are in a bad way indeed. Therefore I am prepared to give the member for Guildford-Midland, if possible under this Bill, what he seeks. If we hold a referendum, our people can say to us, "You avoided the responsibility of taking the powers back. You took it on yourselves to give the powers away."

The Premier: In wartime.

Mr. HUGHES: "When there was something to give, you gave like good fellows. But when the obnoxious duty of revoking the gifts arose, you passed the buck to the electors." Therefore let us get the voice of the electors now. Since the introduction of the Bill a vast field of views has been explored and a great variety of legal opinions given. Some of us are now in a state of great confusion as to what is the legal position. I shall vote for the deletion of the clause.

The Minister for Labour: That is not the amendment.

Mr. HUGHES: The amendment is to strike out all the words of the clause after the word "Act." Then what is left of the clause? I am prepared to vote in favour of its deletion, and for two reasons. Firstly, this is an attempt to tie up the future; and if I know anything at all about history, it is that the world has run red with blood time and time again because somebody has tried to tie up the future after his death. We have no right to say to the Parliament and the people of this State what they shall do in five years' time. It is the right of the people and of their elected representatives to say at any time what form the Govern-

ment will take. In my view, there can be nothing more undemocratic than to attempt to tie up the future. The second objection I have to the clause is that the Parliament of Western Australia itself has the right to make laws for the peace, order and good government of the State. Section 2 of the Constitution Act, 1889, provides—

There shall be, in place of the Legislative Council now subsisting, a Legislative Council and a Legislative Assembly; and it shall be lawful for Her Majesty, by and with the advice and consent of the said Council and Assembly to make laws for the peace, order and good government of the Colony of Western Australia and its dependencies . . .

This Constitution is only limited by the Commonwealth Constitution, which is a subsequent Act of the Imperial Parliament. I do not agree that Trethowan's case has any application at all to the Constitution of Western Australia. That case was decided entirely on the interpretation of the Constitution of New South Wales—a different Constitution altogether. In my opinion, Clause 3 could be repealed by any subsequent Parliament of Western Australia. The only way to tie the matter up is by making it a constitutional amendment, and this we have the power to do. I think that would be the answer of a judicial tribunal, which would say, "You have the power, if you want to do it, but you must do it in the right way." Under our own Constitution, we can alter it in a certain way. Once we did so, Trethowan's case would apply and would be binding on us. This is essentially a constitutional measure. The Bill should be an amendment of our Constitution, because it is a derogation from the powers given to us by Section 2 of the Constitution Act of 1889. If this Bill is passed, our Constitution will be limited not only by the Commonwealth Constitution, but by this measure also. I have not observed among all the legal opinions that have been given a declaration that a future Parliament cannot repeal legislation. I suggest to the member for Nedlands, therefore, that unless this be a constitutional amendment it will be ineffective.

The Minister for Mines: Could not a constitutional majority repeal it?

Mr. HUGHES: Yes, but we can alter the Constitution.

The Minister for Mines: That could be repealed also.

Mr. HUGHES: At present the Constitution can be amended by an absolute majority

of each House; but we could place a provision in the Constitution stating that it shall not be repealed except by a hundred per cent. majority in both Houses and a hundred per cent. majority on a referendum. Any Government that will bring down a Bill providing that our Constitution shall not be altered unless the proposed alteration is submitted to a referendum of the people can rely upon my support, because the Constitution should never be altered without a referendum. That is the only right and legal way, as well as the sensible and businesslike way, of achieving our object. We should then know where we stand. I shall vote for the amendment.

THE MINISTER FOR LABOUR: I was afraid that the member for East Perth was not going to deal with the legal point raised by the member for Nedlands. When the member for East Perth commenced speaking, he said he was going to disagree with the legal opinions expressed by both the member for Nedlands and the member for West Perth. Later, he indicated his intention of supporting the amendment, but it was not until his last few words that he reached the point of dealing with the legal side of the argument presented to the Committee by the member for Nedlands.

Mr. Hughes: Better late than never!

THE MINISTER FOR LABOUR: My feeling with regard to the legal point raised by the member for Nedlands is that we have the power to repeal or amend this Bill, should it become an Act. It would not make any difference if we stated in the Bill in specific terms that we have the power. If we have not, and this Bill becomes an Act, it would not matter how many times we stated and re-stated in the Bill that we had the power to repeal or amend it. Therefore, the argument put forward by the member for Nedlands does not carry any strong appeal. If we have the power, we have it irrespective of whether we refer to it in clear and specific terms in the Bill. But it is with the other part of the amendment moved by the member for Nedlands that I am more concerned, although he laid the greater emphasis upon the legal side of the amendment. Although the voting may have been even when the vital decision was taken on this matter in November last, I think members will agree that we were unanimous in our desire to avoid a Commonwealth referendum on this

question during the war period. Had a referendum been suggested then, I am sure there would not have been a division; the motion would have been unanimously defeated.

Members should recollect, too, that when the Commonwealth first brought forward its proposals to gain additional powers for the purpose of dealing with post-war reconstruction problems, the Commonwealth proposed to gain those powers by way of a referendum. It was the States' representatives at the Convention in December last who were responsible for convincing the Commonwealth Government that a Commonwealth-wide referendum on the question should not be held during the war period. Following the Commonwealth's being convinced on that point it asked the representatives of the States to consider the whole question, and see if a way could not be found whereby the powers could be made available to the Commonwealth Government to deal with post-war reconstruction problems without the necessity of first holding a referendum for the purpose of obtaining those powers in a legal way for the Commonwealth authorities. The way set out in this Bill we are now considering is the way that was worked out by the Convention and finally agreed to by the representatives of the Commonwealth and the States. So this Parliament, the same as other State Parliaments, is being called upon at the present time to refer these powers to the Commonwealth Government so that there will be no necessity on the part of the Commonwealth Government to hold a referendum in Australia during the war period. That is why it is proposed to refer these powers to the Commonwealth without a Commonwealth-wide referendum and without a referendum in any one State or in all of the States.

That is the justification for asking the Parliament of each State to make a decision whether the powers shall be referred to the Commonwealth. There is every reason why the powers should not be amended or repealed entirely in peacetime, except by reference to the people per medium of a referendum held within the boundaries of any objecting State. The granting of these powers to the Commonwealth by way of reference will not involve any dislocation or any upset of any kind. The reference of the powers will be effected by peaceful methods. Once these powers are obtained

by the Commonwealth, the Commonwealth will immediately accept the responsibility of passing legislation in connection with them. That legislation will be followed by action on the part of the Commonwealth Government where necessary in co-operation with the State Governments for the purpose of putting into operation national works, for instance, and doing the other things provided for in this Bill. It can be realised that within a period of 12 months after the cessation of hostilities there will be in operation in each State Commonwealth plans to do some or all of the things set out in Clause 2 of the Bill. I think it would be most undesirable that any State should, overnight as it were, be in a position to throw into chaos and confusion any or the whole of the Commonwealth plans then in operation. It is desirable that any decision to amend the reference of the powers or repeal them completely should be an Act to which ample time and consideration should be given.

Clause 3 of the Bill provides that where a State Parliament considers the position to be sufficiently serious to warrant an attempt at amendment or repeal of the powers, the matter shall be referred to the people by way of referendum, and that there shall be at least three months during which the people will be able to be instructed as to the case for and the case against the amendment or repeal of the powers. In that period there would be an opportunity for the public to be fully informed on the arguments in favour and the arguments against. By that method we would be safeguarded in the post-war period from any sudden action on the part of any State Parliament to interfere in such a way with the operation of the Commonwealth plans as to cause the upset and chaos to which I referred. In view of these considerations we would be unwise to delete from this clause the power which we propose to give to the people of Western Australia by way of referendum to amend or repeal any of the powers which Parliament may within the next three or four weeks agree to refer to the Commonwealth.

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

Ayes	..	..	..	..	16
Noes	..	..	..	..	16
A tie	..	..	..	..	—

AYES.

Mr. Boyle
Mrs. Cardell-Oliver
Mr. Hughes
Mr. Keenan
Mr. Kelly
Mr. Mann
Mr. McDonald
Mr. McLarty

Mr. Sampson
Mr. Seward
Mr. Shearn
Mr. Shorn
Mr. Warner
Mr. Watts
Mr. Willmott
Mr. Doney

(Teller.)

NOES.

Mr. Collier
Mr. Coverley
Mr. Fox
Mr. Hawke
Mr. J. Hegney
Mr. W. Hegney
Mr. Johnson
Mr. Leahy

Mr. Needham
Mr. Nulsen
Mr. Panten
Mr. Tonkin
Mr. Triat
Mr. Willcock
Mr. Withers
Mr. Wilson

(Teller.)

PAIRS.

AYES.

Mr. Berry
Mr. Abbott
Mr. Stubbs
Mr. J. H. Smith
Mr. Perkins
Mr. Hill
Mr. North
Mr. Patrick

NOES.

Mr. Cross
Mr. Holman
Mr. Millington
Mr. Raphael
Mr. Rodoreda
Mr. F. C. L. Smith
Mr. Styants
Mr. Wise

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

Amendment thus negatived.

Clause put and passed.

Clause 4—Duration of Act:

The CHAIRMAN: I call upon the Leader of the Opposition kindly to state when he is moving the amendments recommended by the Select Committee. I point out to the Committee that two lots of amendments appear under the name of the Leader of the Opposition. One lot, I assume, embraces his personal amendments, and the other the recommendations of the committee. If he will make it plain which he is moving the Committee will understand.

Mr. WATTS: It was my intention so to inform the Committee. Some of the amendments have been unanimously recommended by the Select Committee, and indeed the notice paper discloses that fact. I move an amendment—

That at the beginning of the clause the following figure and words, “(1) Subject in all respects to the earlier repeal of this Act and to any amendments thereof” be inserted.

This amendment is necessary to carry out one of the unanimous recommendations of the Select Committee. It is aimed to ensure, so far as is possible, the limitation of the duration of the period for which the powers are granted, to five years after the cessation of hostilities. The Select Committee realised that the period might not need to be for five years and that Parliament might, by referendum, decide to repeal or amend the Act, and in consequence of such repeal or amendment

it would wholly or partly cease to operate. Therefore wholly or partly, the five year period after the cessation of hostilities would not apply. In order to leave no doubt that the reference of the period up to five years after the cessation of hostilities is subject to earlier repeal or amendment of the Act I now move this amendment.

Amendment put and passed.

Mr. WATTS: The next amendment I wish to move is also one of the unanimous recommendations of the Select Committee. I move—

That in line 2 the word "it" be struck out and the words "this Act" inserted in lieu.

This is merely a machinery amendment to bring the clause into line with the remainder of the measure.

Amendment put and passed.

Hon. N. KEENAN: The amendment I propose to move relates to the date on which the Act shall become operative. At present the Bill states that, subject in all respects to its earlier repeal, and any amendment, it shall commence on the date on which it is assented to. I move an amendment—

That in line 2 the words "is assented to" be struck out and the words "Australia ceases to be engaged in hostilities in the present war" inserted in lieu.

The idea is to make this Act come into force when Australia ceases to be engaged in war-like operations as defined in this Bill. The Premier anticipated my intention when he pointed out to the Committee that so long as the war continues, and the Commonwealth can enjoy the wide and almost illimitable powers under the defence powers, it wants no additional powers. I would also like to read to the Committee the opinion of Dr. Evatt as contained in his introductory remarks to his Bill of the 1st October last—

In war-time in Australia the defence power has given the Commonwealth sufficient authority to handle the acute problems that arise. In the post-war world the problems will be no less acute, or less urgent. There will be no defence powers on which to rely, and unless the Commonwealth is given sufficient power by the people the whole social and economic life of Australia will be placed in great jeopardy. That opinion is clearly warranted because of the extent of the defence powers. Things are taking place in Australia today which a few years ago would have shocked our senses. We now willingly allow them to happen because we know that we are in the midst of a very grave and almost desperate crisis although we seem every day to be

emerging from it with greater clarity. But we are not out of the wood yet. No-one, therefore, questions the Government's right to use the defence power for any purposes. Men are compelled to leave Kalgoorlie and go to work in Queensland, while at the same time men born and bred in Queensland are brought to work in Western Australia. The other day I was on the telephone to get some information from Kalgoorlie when I was told that a convoy containing something like 500 men had arrived there for the purposes of carrying out some works for the defence of the realm.

The only qualification affects one phase that we do not desire taken away, and that is that purely civilian rights are not to be destroyed. Otherwise if the position can merely be tintured by some reference to the war from the standpoint of the needs of defence, any action taken by the Commonwealth Government becomes legal beyond all question. We know that there has been some interference, the necessity for which could not by any stretch of imagination be attributed to the demands of war, and we surely do not wish to justify such interferences by any legislation we may pass. Short of that, the defence powers exercised by the Commonwealth Government are of an illimitable character. Obviously there is no justification for giving the Commonwealth the right to exercise these powers until their defence powers cease to operate. That is in accordance with Dr. Evatt's opinion, because he pointed out that those defence powers would terminate when the war was concluded and it was necessary to provide other powers to take their place; hence his first Bill, which was to come into operation after hostilities had ceased.

The CHAIRMAN: I draw the attention of the member for Nedlands to the fact that in view of the amendment already agreed to the inclusion of the words he proposes to insert would not make sense. Because of the necessity for some clarification regarding the wording of his proposal, I cannot accept the amendment unless that phase is adjusted.

Hon. N. KEENAN: It will be necessary for me to move to delete the words that have been inserted.

The CHAIRMAN: The Committee has already decided to include those words, and the hon. member cannot move to delete them this session unless the Bill is recommitted.

Hon. N. KEENAN: I asked that I should be protected regarding the amendment I

proposed to move when the Leader of the Opposition rose to move his amendment. I am entitled to ask that my position shall not be prejudiced.

The CHAIRMAN: The Leader of the Opposition and the member for Nedlands had amendments at precisely the same portion of the clause and the Leader of the Opposition received the call. It is unfortunate for the member for Nedlands. Unless the hon. member can suggest some other wording that will achieve his objective, I cannot accept an amendment that will involve an attempt to delete the words the Committee has already decided to include.

Hon. N. KEENAN: What would have to be altered is the wording of the proposed substitution.

The CHAIRMAN: Will the hon. member indicate whether the words "on the date upon which Australia ceases to be engaged in hostilities in the present war" meet with his approval?

Hon. N. KEENAN: Those words will do, but I would prefer to have the clause re-committed at a later stage.

The PREMIER: I do not agree with the amendment to strike out those words. The Bill proposes to give the Commonwealth power to legislate before the end of the war so that it can do things immediately the war is over. Section 51 of the Commonwealth Constitution begins—

The Parliament shall, subject to this Constitution, have power to make laws.

We are merely proposing to give the Commonwealth power to make laws. No one would say that this power should be withheld from the Commonwealth until the war is over. The Commonwealth wants to make laws now for post-war reconstruction and proceed with arrangements to carry out what the laws permit. It would not be right to deny the Commonwealth power to do anything until after the war is over. The criticism has been that plans have not been made for post-war reconstruction. Yet the amendment proposes that nothing may be done in the way of passing legislation until the war ceases. If the Commonwealth is debarred from passing laws until the war is over, it will be hopelessly behindhand in the matter of undertaking post-war reconstruction.

Amendment put and negatived.

Mr. McDONALD: I move an amendment—

That after the word "war" in line 5 the words "or until the thirtieth day of June, one thousand nine hundred and fifty, whichever is the shorter period" be inserted.

The amendment would give the powers a duration of five years after Australia ceases to be engaged in hostilities in the present war, or until the 30th day of June, 1950, whichever is the shorter period. It is agreed on all hands, by the Convention and the Premiers and everybody else, that this reference cannot be made for more than a limited period, because the people have not been consulted. The Bill provides that the period shall terminate on the day hostilities cease. What that phrase means, "the day hostilities cease," nobody is at all certain. It does not mean the day when an armistice is declared with Germany, Italy and Japan, but must mean an armistice including every other country fighting on the Axis side. Thus although the war may cease to all intents and purposes as regards major hostilities, might there not be hostilities continuing with, say, a Pacific island for many years after the cessation of major operations?

If we are proposing, as the Bill proposes, to give away three-quarters of the self-governing rights the people now possess, the least we can do is to ensure that the period for which the powers are referred shall end on a perfectly certain and definite date. The carrying of the amendment will mean that we shall be certain, without any argument or lawsuits about it, that the reference of powers will terminate on the 30th June, 1950, which is rather more than seven years. If the war lasts longer than we anticipate and there is need for further time during which the Commonwealth may exercise these powers, nothing is easier than for this Parliament to pass a short Bill saying that whereas the transfer of powers expires on the 30th June, 1950, the reference of these powers is hereby extended by a further year, or a further two years, as the case may be. There is nothing to prevent even a second extension of the period of reference.

There cannot be any suggestion that by inserting a definite date of termination we shall be depriving the Commonwealth of any necessary part of the time required by it for post-war reconstruction, bearing in mind that the Commonwealth Parliament's own opinion is that five years will be neces-

sary. If we are taking the responsibility of transferring these powers for a limited time, the least we can do is to make certain, beyond any argument, that there is a specified date on which they will definitely cease. I regret that the drafting committee did not put in a definite date in the first place. In the South Australian measure a special definition has been inserted to explain what the meaning of the phrase "the day hostilities cease" shall be. Our own Select Committee's report proposes to insert another definition, differing from the South Australian one. We have tried to make the South Australian definition clearer. All this shows that there could not be a vaguer way of determining the expiration of the powers than the use of the phrase "the day on which hostilities cease."

The PREMIER: I do not feel inclined to accept the amendment. It is really in the nature of a bet whether the war will end in two years or whether it will not. Most people have agreed that there should be a period during which the Commonwealth Government should exercise the proposed powers in a reasonable way. But the exercise of the powers might, under the amendment, be limited to two or three years. The powers might just be getting into operation when, under the clause if adopted, they will cease. Originally, seven years was proposed as the time. It was put very strongly to the Commonwealth: "We do not want to give powers for a long period. We want Section 128 of the Commonwealth Constitution to be put into operation, whereby the powers could be referred through the holding of a referendum."

The drafting committee said the period originally proposed, seven years, was too long; and it was agreed that five years would be about the very shortest time adequate for the exercise of the powers in the direction of reconstruction work. I see nothing particularly meritorious in the amendment. If the war finishes before the 30th June, 1945, the amendment will be valueless. I would not like to convey the impression that we think the war will go on till the 30th June, 1945—another two and a half years. In fact, I do not think it will, though I have no great amount of information on which to base an opinion. I believe even that the insertion of the proposed words will make no difference whatever, for I hold that an armistice will be concluded before two and a half years

have elapsed. Why load up the Bill with amendments which will have no effect? As a matter of principle five years is the shortest period for which we should transfer the powers proposed to be transferred.

Mr. McDONALD: It is possible that after the 30th June, 1950, the Commonwealth may require an extension of time in which to exercise the powers; and it would then have to come to the State Parliaments to get the extension. It is equally possible that five years after the cessation of hostilities the Commonwealth may also require an extension of time and come to the State Parliaments to get it. The Premier's argument is that I have rather over-estimated the probable duration of the war, in which case my proposed amendment would be valueless. That will be a most happy eventuality. The amendment would then do no harm. But if we have under-estimated or wrongly estimated the date on which hostilities will cease—which is my claim—then my amendment is very valuable, because it preserves to the people of the State the control over their self-governing rights, which they may lease for a very limited period.

A man does not even lease a racehorse for less than one or two years; and if we lease by this Bill three-quarters of the self-governing rights of the State, then at least let us fix a date on which we are certain that the matters will come back to the control of the people of the State, even if then they decide, in the light of circumstances, to extend the terms of the lease of the powers to the Commonwealth Government. I can see every argument why the people would expect us, if we take this immense responsibility, at all events to fix some definite end to the period of the transfer of powers, instead of leaving the matter in the clouds—a sort of Kathleen Mavourneen business. "Cessation of hostilities" might mean until the last Japanese is chivied out of the Philippines, perhaps 45 years hence.

Amendment put and a division called for.

Mr. HUGHES: I ask for your ruling, Mr. Chairman, whether Mr. Speaker can cast a vote. In support of my argument—

The CHAIRMAN: The hon. member will resume his seat and address me.

Mr. HUGHES: I remember objecting to the member for Guildford-Midland, when he was occupying the Chair, addressing the House. I quoted authorities from "May" and a

ruling was given in my favour by the present Speaker.

Mr. J. Hegney: That was not when the House was in Committee.

The CHAIRMAN: Mr. Speaker is quite in order in casting a vote in Committee.

Division resulted as follows:—

Ayes	..	..	..	..	18
Noes	..	..	..	..	18
					—
A tie	..	..	..	..	—

AYES.

Mr. Berry	Mr. Patrick
Mr. Boyle	Mr. Sampson
Mrs. Cardell-Oliver	Mr. Seward
Mr. Hughes	Mr. Shearn
Mr. Keenan	Mr. Thorne
Mr. Kelly	Mr. Warner
Mr. Mann	Mr. Watts
Mr. McDonald	Mr. Willmott
Mr. McLarty	Mr. Doney

(Teller.)

NOES.

Mr. Collier	Mr. Nulsen
Mr. Coverley	Mr. Panton
Mr. Cross	Mr. Sleeman
Mr. Fox	Mr. Tonkin
Mr. Hawke	Mr. Triest
Mr. W. Hegney	Mr. Willcock
Mr. Johnson	Mr. Wilson
Mr. Leahy	Mr. Withers
Mr. Needham	Mr. J. Hegney

(Teller.)

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

Amendment thus negatived.

Mr. WATTS: I move an amendment—

That in line 5 after the word “and” the words “no longer and the reference made by this Act is subject to the limitation that” be inserted.

Pursuant to your desire, Mr. Chairman, I again ask the Committee to note that this amendment is one of those recommended unanimously by the Select Committee. It is aimed at ensuring as far as possible the limitation of the period over which the referendum shall last.

Amendment put and passed.

Mr. McDONALD: I feel almost a little concerned on your behalf, Mr. Chairman. It seems to me that the responsibility for this constitutional amendment of the self-governing rights of our State will rest entirely on your shoulders. I move an amendment—

That at the end of the clause the following words be added:—“and to the further limitation that every Act of the Commonwealth passed by virtue of a reference made by this Act shall purport to be so enacted, and shall in itself contain a limitation of its operation, force and effect in the State to the period of duration of the powers referred by the State.”

We have already imposed a number of conditions which must be observed by the Commonwealth in relation to this reference of powers, and I propose to add a further condition to the effect that every time the Commonwealth passes an Act by virtue of the reference of these powers that Act itself shall contain a section providing that its operation shall cease at the expiration of the period for which the powers are referred by our State Act. In other words, when the Commonwealth Parliament passes an Act by virtue of the reference of the powers now proposed to be referred, that Act will contain a section saying “This Commonwealth Act shall cease at the expiration of five years after the cessation of hostilities or when earlier repealed or when amended, to the extent of the amendment.”

An amendment in this form was suggested by Mr. Ligertwood, K.C., as being, in his opinion, desirable or essential to safeguard the validity of the period of reference. Without this amendment he thought there was a grave danger of an interpretation being placed on this Act by the High Court under which it would be held that the powers, instead of being referred for a limited period as this Legislature intends, might be held to be referred for all time. It has been suggested—and this amendment is not one recommended by the Select Committee—that this State Parliament would be dictating to the Commonwealth Parliament as to the form in which it passes its laws. I have no objection to that at all. It would be very pleasing to me to see this State doing a little dictation to the Commonwealth Government and Parliament. But it is no dictation. The Commonwealth Government is saying to the people of this State, “Give us three-quarters of your sovereign powers on condition that they will be returned to you automatically five years after hostilities cease.” A number of legal authorities say that the limited reference is invalid and the result of the legislation will be that the Commonwealth will take the powers for all time.

The Commonwealth, if honest about its promise that the powers will revert to the State at the end of five years, cannot have the slightest objection to putting its undertaking into its own Acts of Parliament. If it refuses to put any undertaking in its Acts of Parliament we might have good grounds for doubting its integrity and honesty of purpose, but I have no reason to doubt its

honesty of purpose in saying that the limitation of time is meant to be constitutionally valid and for that reason I feel assured in saying that the Commonwealth cannot possibly object to—but indeed should welcome—the opportunity to meet any objections on the part of the people of the State by putting in every Act it passes under the authority of this measure a provision that in accordance with the intention of the Act of reference of the people of Western Australia the legislation shall cease at the end of five years after hostilities cease. If that is done, all the argument about the validity of the time reference disappears because we know that every Act which the Commonwealth Parliament passes in pursuance of these referred powers will itself contain provision for its automatic termination at the end of five years. I think we are rather impugning the good faith of the Commonwealth Parliament and the Commonwealth Government in suggesting that they would not be prepared in every Act they pass under these powers to insert a section, which would categorically state that the legislation passed by the Commonwealth Parliament must cease to operate at the end of the agreed period of five years.

If, without a referendum, without consulting the people, we are going to do as this Bill proposes—hand over in my opinion at least three-quarters of their self-governing rights, although for a term only, or allegedly for a term only—can we possibly refuse to accept any safeguard to the Constitutional validity of that term, which has been recommended by an eminent constitutional lawyer? What objection can there be? In giving evidence before the Select Committee the Solicitor General said that this additional amendment would help to clarify the situation and make still more clear the intention of all parties, Commonwealth and State, that the powers should be limited to this period and automatically returned to the States at the end of the period. He also said that it might be a question of propriety as to how far the State House should impose any such condition on the Federal House, but with very great respect to the Solicitor General whose duty it was to mention this matter of propriety, I can see no reason why we should not state quite clearly what we intend and expect. And what we intend and expect is no more than that the Commonwealth Government will keep its promise. If it is going to keep its promise,

it cannot object to saying so in the legislation which it passes.

The MINISTER FOR LABOUR: The Select Committee, in the unanimous recommendations which it has offered to this Committee, has tied this Bill up very effectively with respect to the limitation of the period during which the powers are to be referred by the State Parliament to the Commonwealth Parliament. In those recommendations it is provided that if any part of the Bill, when it becomes an Act, is found to be inoperative, then every part of the Act shall also be inoperative. That seems to me to establish a position of safety with respect to any Commonwealth law which may be passed as a result of the powers to be referred to the Commonwealth by this Bill when it becomes an Act. I do not know that the position could be any more safeguarded or strengthened beyond what the Select Committee has recommended even if the words desired by the member for West Perth were to be included in the Commonwealth legislation.

I imagine, too, that the Commonwealth would not be inclined to draft its Bill just as we wanted it drafted. Its legislation would be drafted along the lines advised by its legal officers, just the same as we here to-day and tomorrow will be altering the wording of this Bill in respect to its legal safeguards and maybe in respect to other factors according to our own views and the advice of our own legal advisers. So it seems to me that after this Bill has been amended in accordance with the recommendations of the Select Committee—and I anticipate all those recommendations will be adopted by this Committee—the position will be adequately safeguarded for Western Australia, and the powers referred will be tied up in such a way as to make impossible their operation by the Commonwealth for a period beyond five years after the cessation of hostilities, and the last general armistice has been signed between Australia and her main enemies in this war.

Mr. McDONALD: The Select Committee's safeguards in the other parts of these amendments have gone a considerable distance in an endeavour to secure constitutional validity in regard to the time limit. I think myself, with considerable doubt, that the other amendments have succeeded in this, but the people of Western Australia are like a man who is going to jump from an aeroplane.

The Select Committee has given him a kind of constitutional parachute, and said, "Now, that will save your life." I say to him, "Here is a second parachute. If the first fails to open, then the second will certainly save your life." In these circumstances, what man would not take the second parachute? The Minister for Labour says, "You are all right if our opinion is correct." After all, when the man is dead that is no satisfaction to him. If we can have two safeguards, are we entitled to refuse them? This is an additional and important safeguard, and if we are dealing with the most vital Constitutional Act affecting the future and destinies of our people, and we are hinging the whole thing on the disputed validity of the period, then how can we justify refusing three or four more lines which would put the matter beyond doubt?

Mr. Fox: If we had not so many lawyers, it would be quite easy.

Mr. McDONALD: This cuts the Gordian knot. If the Commonwealth Government, which has to pass this legislation, puts in each Act a specific section stating, "In accordance with the understanding of the State Parliament, this Act ceases five years after hostilities have ended," then there could be no doubt. It would be like our Mortgagees' Rights Restriction Act and other such Acts, which die on the day specified. Every Act passed by the Commonwealth by virtue of these powers dies, constitutionally, on the day of the expiration of five years from the expiration of hostilities. It is not a question of whether we should put this in; it is a question of: Can the people of the State take the risk, which they have no need to take, of losing their self-governing rights?

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

Ayes	..	..	..	16
Noes	..	..	..	17
Majority against				1

AYES.

Mr. Boyle	Mr. Sampson
Mrs. Cardell-Oliver	Mr. Seward
Mr. Hughes	Mr. Shearn
Mr. Keenan	Mr. Thorn
Mr. Kelly	Mr. Warner
Mr. Mann	Mr. Wetts
Mr. McDonald	Mr. Willmott
Mr. McLarty	Mr. Doney

(Teller.)

NOES.

Mr. Collier	Mr. Nulsen
Mr. Coverley	Mr. Panton
Mr. Fox	Mr. Sleeman
Mr. Hawke	Mr. Tonkin
Mr. J. Hegney	Mr. Triat
Mr. W. Hegney	Mr. Willcock
Mr. Johnson	Mr. Withers
Mr. Leahy	Mr. Wilson
Mr. Needham	

(Teller.)

Amendment thus negatived.

Mr. WATTS: I move an amendment—

That a new subclause be added as follows:—
“(2) For the purpose of this section Australia shall be deemed to cease to be engaged in hostilities on the day on which by reason of a general armistice or other arrangement all warlike operations against Germany, Italy and Japan in the present war shall have ceased.”

This is another of the recommended amendments. Originally there was no definition in the Bill of the term “cessation of hostilities,” and it was classed by legal witnesses who appeared before the Select Committee as being vague and ambiguous. In South Australia, as the member for West Perth has mentioned, there is a definition on somewhat similar lines to this. It provides that the cessation of hostilities shall be deemed to be the time when Australia becomes a party to an armistice with the last of our enemies in the present war. So many countries are involved that it is possible that the least of them may never sign an armistice. Some minor countries, such as Hungary, might never enter into an arrangement with Australia.

The Premier: Or Finland.

Mr. WATTS: That is so. It would therefore be more satisfactory if the time were defined as in this amendment, because by that time it is obvious there will be no war worth the name.

Amendment put and passed.

Mr. HUGHES: I move an amendment—

That the following proviso be added:—“Provided that this Act shall not commence until it has been approved by the electors in the manner prescribed in Section 3 of this Act.”

The PREMIER: I oppose the amendment. As I pointed out when the member for East Perth mentioned this suggestion earlier, this House passed a resolution, which was in conformity with the general consensus of opinion, that there shall not be any referendum during the present period of war. We have acted consistently in accordance with that resolution, and have not held elections that would otherwise be conducted under the provisions of the Constitutions. It would be quite wrong for this Parliament, which

has already extended its life on those grounds, to agree to a referendum in connection with this matter.

The CHAIRMAN: Will the Premier resume his seat? I observe that Subclause (2) of Clause 3 already sets out that a Bill for repealing or amending this legislation shall not be presented to the Governor for His Majesty's assent until it has been approved by the electors in accordance with that subclause. The effect of the amendment moved by the member for East Perth will be to insist upon the taking of a referendum which will mean an appropriation of public funds, and a private member cannot move such an amendment. I therefore cannot accept his amendment.

Amendment ruled out.

Dissent from Chairman's Ruling.

Mr. Hughes: I must dissent from your ruling, Mr. Chairman.

[The Speaker resumed the Chair.]

The Chairman having stated the dissent,

Mr. Hughes: I regret it is necessary for me to disagree with the Chairman's ruling. He held that if the amendment were agreed to it would involve an appropriation of public funds. You, Mr. Speaker, know better than that. Public revenue can only be appropriated by the introduction of legislation. The amendment, if carried, would mean that the Bill would not become law until it had been endorsed by the people at a referendum. Until the Government secured from Parliament the authority to spend the money required to hold any such referendum, the Bill would remain in abeyance.

The Premier: And if the Government did not ask the House to appropriate the necessary funds?

Mr. Hughes: The Bill would remain in abeyance. It would be in a state of suspended animation. If the amendment were agreed to, the Premier, in his capacity as Treasurer, could not sign a warrant for the expenditure of funds by the Treasury on the holding of a referendum. He would acknowledge that he had no authority from Parliament to appropriate that revenue. If the Government were perverse and refused to bring down the necessary Bill thereby putting Parliament in its place, so to speak, Ministers could conduct what would amount to a sit-down strike. Parliament could not force the Premier to take action unless it had

the necessary majority to put the Government out of office. The position becomes absurd. By what stretch of imagination can the contention be upheld that if the Bill be passed it will involve the appropriation of public funds, when such public funds can only be appropriated by the passing of a special grant?

If my argument needed reinforcement, let me remind members that the Bill provides for a referendum. Speaking subject to correction, the measure was not accompanied by a Message from the Lieut.-Governor making it a money Bill. Clause 3 provides for a referendum in certain circumstances, and the holding of that referendum will involve the expenditure of public funds. I take it that a Bill would be introduced providing for a referendum, that there would be a Message from the Lieut.-Governor, and that a special appropriation would be made to cover the cost of the referendum. It is curious argument that a Bill which, by Clause 3, provides for a referendum, is not a money Bill and yet, when provision is made in the next clause for a referendum, it becomes a money Bill.

Hon. W. D. Johnson: How do you know what would be in the Bill?

Mr. Hughes: Clearly if there was to be a repeal of the powers, the Bill must contain a provision for a referendum. Clause 4 adopts in part what is provided for in Clause 3, namely, a referendum.

Hon. W. D. Johnson: The referendum provided for in Clause 3 cannot be held until a Bill is passed providing for the referendum and for the funds to pay for it.

Mr. Hughes: That is so. Therefore this is an incomplete Bill. It cannot be amended or repealed without a complementary Bill. In order that this Bill may become operative there must be a complementary Bill to give effect to Clause 3, and it would be accompanied by a Message from the Lieut.-Governor authorising the appropriation of the requisite funds. How then can we make a complete volte face and contend that when provision is made in the next clause for a referendum, the whole of the machinery is involved? Clause 3 will remain a nullity and inoperative unless the Government implements it with a second Bill, and the same applies to Clause 4. On those grounds I submit that the Chairman of Committees was in error in ruling that my amendment involves an appropriation of public money

and the imposition of a burden on the taxpayers.

Mr. Marshall: The member for East Perth fails to observe the distinction under our Constitution between himself as a private member and the Government.

Mr. Hughes: I had that brought home to me before.

Mr. Marshall: The Government has brought down a Bill providing for a referendum, knowing that if it has to be held, there is power and authority when introducing the implementing Bill to accompany it with a Message from the Lieut.-Governor recommending the necessary appropriation. The hon. member wishes to depart from the Constitution and place himself on all fours with the Government. He is seeking to introduce an amendment providing for a referendum and then wishes to put the onus for holding it on the Government. The Constitution provides that no private member may initiate legislation involving the expenditure of public money. Would the hon. member deny that his amendment would involve the appropriation of public funds? All he has said is that when provision has been made for the referendum, he will step out and place the obligation on the Government.

If a private member is allowed to adopt that attitude in defiance of the Constitution, the life of any Government might be made intolerable. Any member could initiate legislation and say, "If the House agrees to this Bill, the Government will be under an obligation to introduce an implementing measure to give effect to it." That, of course, would be an imposition on Consolidated Revenue and, by this subtle method, private members could get at Treasury funds. There is no guarantee whatever that a referendum will be taken under Clause 3, but if the hon. member's amendment is accepted, there must be a referendum. It would be impossible to give effect to the measure without holding a referendum.

Mr. Hughes: Why?

Mr. Marshall: The proviso distinctly indicates that before the legislation can be implemented, a referendum must be held. There is no doubt that if the amendment is accepted, it will involve the expenditure of public funds.

Mr. Hughes: I will take full responsibility on behalf of the people.

Mr. Marshall: That is not provided for in the Constitution. The framers of the Constitution probably had an eye to members like the member for East Perth. We have never yet in this Assembly, during my term here, allowed a private member either to bring in a Bill, or to amend a Bill, which had for its purpose an appropriation of public funds.

Mr. Speaker: I would point out that the Committee has already agreed to a clause which provides that the measure shall come into operation on the day on which it is assented to. The amendment of the member for East Perth requires that the measure shall not commence until it has been approved by the electors—which is contradictory to the provision already carried. Secondly, the carrying of the amendment would mean the expenditure of public moneys. Therefore I uphold the ruling of the Chairman of Committees.

Mr. Hughes: I very much regret, Mr. Speaker, having to disagree with your ruling.

Dissent from Speaker's Ruling.

Mr. Hughes: I move—

That the House dissent from the Speaker's ruling.

The first point raised by you, Mr. Speaker, is common to this Chamber. The first part of the clause provides that the operation of the measure shall commence on a certain date.

The Premier: When assented to!

Mr. Hughes: Yes. If my amendment were carried, the Bill could not be assented to until it has been approved by the electors. No conflict exists there. It is quite common to provide in an Act of Parliament, in the most definite and specific language, that such and such a thing shall be, and then to go on to say "Provided," and thereupon "Provided further," and again "Provided however." One of the bugbears of a legal practitioner's life is after having read a clause to be sure that he has read all the provisos to it. The taking of a referendum would not depend on this Bill. Once the Bill was passed by both Houses, there would have to be a supplementary Bill authorising the taking of a referendum, and if as the result of the referendum the main Bill was not approved of, the Lieut.-Governor could not assent to it. Therefore I consider that there is no substance in your first point, Sir.

The Minister for Labour: It is full of substance!

Mr. Hughes: That is a matter of opinion. I go further and say that this is not the first occasion on which I have availed myself of my privileges in this Chamber to protest against the oppressive use of the so-called "money clause" to prevent private members from discharging their Parliamentary functions.

Mr. Speaker: That has nothing to do with the ruling. On that I might agree with the hon. member.

Mr. Hughes: I think I can recall occasions, Mr. Speaker, on which you have felt the same way as I do. I submit that in interpreting the Standing Orders, the interpretation should be made liberally in favour of the rights of private members. I hold further, that if there are two interpretations available—one limiting the rights of the private member, and the other, equally valid, being in favour of the exercise of his powers as a private member—then the ruling of the Chair should be in favour of the maintenance of rights of private members. Otherwise the principle that a private member cannot introduce a Bill appropriating money may be carried to highly extreme lengths, and thus stifle private members' rights altogether, with the result that private members would become mere ciphers. Surely we want to uphold the tradition that a member of Parliament has responsibilities to the country! He is here to discharge those responsibilities, and should be afforded every opportunity for doing so. With great deference, Mr. Speaker, I submit that you are in error in this case. You admit that by Clause 3 of the Bill we can provide for a referendum without a Message from the Lieut.-Governor; and even you, Sir, will agree that Clause 3 of the Bill cannot be implemented without a supplementary Bill. How, Sir, can you rule that a provision is perfectly right in Clause 3 and perfectly wrong in Clause 4?

Mr. Watts: I really feel compelled to support the member for East Perth in this matter, for I agree with him that successive rulings of this character appear to have carried the principle against a private member taking any action at all in a matter of this kind so far as to debar discussion. There have been times when I have been prepared to admit, at least to myself, that the rulings given have been correct. At other times I have felt as I feel today, that it is just a case of whether there is perhaps some small doubt, and that in such a case,

if that be the position, the private member should be entitled to the benefit of the doubt in the circumstances as they exist. There is nothing whatever in the amendment of the member for East Perth to compel the Government to expend any money, and that compulsion is what underlies the practice in regard to appropriation of revenue. Appropriation of revenue means that money has been set aside for a specific purpose, and that the money thus set aside must be spent in that direction. There is nothing in the amendment, I submit—and this has been clearly pointed out by the member for East Perth—to show that there is such a setting aside or appropriation. He said very clearly that if he were to succeed with this amendment to the Bill—which appears rather unlikely—there would be no compulsion upon His Majesty's Government in this State to spend one shilling on a referendum.

Were this amendment to provide that a referendum shall be held upon a specific date then I would qualify my view, but there is nothing in the amendment to that effect. It is entirely optional on the part of His Majesty's Government, which has two alternatives. If the amendment becomes law, the one is to leave the Bill in a state of suspension, as the hon. member suggested. The other is to bring down a Bill appropriating money for a referendum. Both of those matters are entirely within the hands of His Majesty's Government. Should the member for East Perth succeed in his amendment, then the Bill will be put into cold storage if the Government takes no action. I therefore submit he is entirely justified in dissenting from your ruling, Mr. Speaker. I submit in the interests of private members—and this applies not only to members on the Opposition side but to all members of the House—that if there is a privilege worth preserving, it is worth preserving for both sides of the House. I submit this is a case where there is very grave doubt as to whether you, Mr. Speaker, are justified in your ruling and therefore I am somewhat reluctantly compelled to dissent from it.

Hon. W. D. Johnson: I submit that of the two reasons which you, Mr. Speaker, gave for your ruling the member for East Perth is attacking one. I am not prepared to agree that he is right in doing so, but I submit that if he does succeed, the other reason is correct. You have pointed out that

the Act shall commence from the date on which it is assented to, and there cannot be an amendment of something which has already been passed.

Mr. Hughes: Of course, a proviso could be inserted.

Hon. W. D. Johnson: But then there would be a contradiction of a specific provision, so I submit that if the member for East Perth succeeds on one point, he must be ruled out on the other. Time after time, when I was Speaker, I was forced to rule Bills out because, if passed, they would have imposed a liability on the Treasury. That rule has been rigidly enforced over the years. There is no question that this Bill, if passed, would impose a liability on the Treasury; but, apart from that, the dissent cannot be upheld because the House has passed the earlier provision to which I have already referred.

Mr. McDonald: Of the two grounds which have been mentioned by you, Mr. Speaker, the former is perhaps, I think, the stronger, namely, that it is a negative, as the member for Guildford-Midland maintains, to the earlier part of the clause by which the Committee agreed that the Bill should commence on the day on which it is assented to. Even on that point, however, I think there may be some element of doubt, if I correctly interpret the contention of the member for East Perth. He moved an amendment to insert a proviso to the effect that the measure should not commence until it had been approved by the electors in the manner prescribed in Clause 3. We turn to Clause 3, which says that although a Bill has been passed by the Legislature it shall not be presented for the Governor's assent until a referendum has been taken and the electors have approved.

Hon. W. D. Johnson: It does not say that.

Mr. McDonald: Yes, it does. It says, "A Bill for repealing or amending this Act ____"

Hon. W. D. Johnson: It is "A Bill to repeal."

Mr. McDonald: It says, "A Bill to repeal or amend this Act shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section." As I understand the intention of the amendment of the member for East Perth—perhaps wrongly—it is that the procedure set out in Clause 3 shall be followed before this Bill is passed,

in exactly the same way as it would be followed if the Bill were to be repealed or amended. In other words, before the assent of the Governor is given, the approval of the people must be obtained by referendum. If the amendment is in those terms, or means that, then it would not be inconsistent with the preceding provisions of the Bill, because the referendum would be taken before the assent of the Governor was given and, under the earlier part of the Bill, the Bill would then commence on the day on which the Governor assents to it, after approval by the electors.

Hon. W. D. Johnson: Would you like the Bill to go forward to the public with those two provisions in it—contrary to one another?

Mr. McDonald: I do not think it would be happy phraseology. Without delaying the House further, I desire to say that the amendment is designed to secure the assent of the electors by referendum before the Bill is assented to. In that case I do not think the amendment contradicts the earlier part of the clause. As to the other conditions, I think I may confine my remarks to this, that the matter is certainly open to doubt. With great respect for your ruling, Sir, I feel that in a matter so vital as this I should cast my vote in such a way as will enable the House to consider the matter of presenting this Bill to the people before it becomes law. I am not going to cast my vote in a matter of technical doubt in such a way as to deprive the House of the opportunity to consider whether the people should approve of this Bill before it becomes law. For that reason, I intend to cast my vote so as to enable the matter of the referendum to be discussed.

Mr. Marshall: I am surprised at the two last speakers. The member for West Perth says that, in order to give the people a vote on this matter, he would smash one of the most important parts of our Constitution. He would create a precedent which will in future permit a private member to embarrass a Government. There is a saying that government is finance and that finance is government. Those who attended the convention when our Constitution was framed—

Mr. Hughes: There was no convention for our Constitution.

Mr. Marshall: Who framed it?

Mr. Hughes: The draftsman of the Imperial Parliament.

Mr. Marshall: Whoever drafted it knew the importance of at least permitting the Government the sole right and prerogative to handle the finances of the State. Once the Government loses control of the finances, it loses control of policy and everything else, and therefore would be well advised to leave the Treasury bench. If we allow private members to take out of the hands of the Government the right to control the Treasury we allow them to take out of the Government's hands all power and authority.

Mr. Speaker: I think the hon. member is getting away from the point now.

Mr. Marshall: All I want to say is that I am supporting your ruling on that point. Whether or not the proviso is contradictory to Clause 3 is another question, but for members to say it is possible for a private member to initiate legislation of any sort imposing a financial liability on the community is for them to admit that they know nothing about the Constitution.

Mr. Speaker: Although I did not say so in giving my ruling, I am astounded that this point was ever taken, and more than astounded by the arguments put up by my learned friends on my left. I think this is the easiest and plainest case I have had to decide. The Committee has already passed Clause 4 providing that—

This Act, and the reference made by this Act, shall commence on the date upon which it is assented to.

If the member for East Perth's amendment is incorporated in this Bill as now worded, the Bill has to be assented to before it has any force of law, and after it is assented to a referendum has to be taken. I think it is as plain as a pikestaff. As regards the next point, I think that is even plainer still. The Leader of the Opposition spoke of what should be allowed, but we have to take things as we find them. I am not here to decide points on my own likes and dislikes. There may be things I dislike personally, but I have to decide the matter on the Constitution and the Standing Orders laid down for my guidance. I would like to read Section 46 of the Constitution Act. It states—

46 (1). Bills appropriating revenue or moneys or imposing taxation, shall not originate in the Legislative Council; but a Bill shall not be taken to appropriate revenue or moneys, or to impose taxation—

This is the point I want to draw attention to—

—by reason only of its containing provisions for the imposition or appropriation of

finances or other pecuniary penalties, or for the demand of payment or appropriation of fees for licenses, or fees for registration or other services under the Bill.

May I go back also to a ruling given in this House some years ago, in which the member for Guildford-Midland played a part? On that occasion Mr. Speaker said—

My attention has been drawn to the terms of a motion standing in the name of the member for Guildford. That motion invites this House to pass a resolution that in the opinion of this House the Commissioner of Railways shall agree to pay a minimum wage of 8s. per day for all adult male workers. I understand that the Commissioner is at present offering a minimum of 7s. If a resolution in this form is passed it would necessitate the Commissioner agreeing to a minimum of 8s. a day; consequently the difference between 7s. and 8s. a day would be a direct charge on the revenue of the State.

I find it laid down in "May," page 539, that motions advocating public expenditure or the imposition of a charge, if they be framed in sufficiently abstract and general terms, can be entertained and agreed to by this House; but resolutions of this nature are permissible only because they have no operative effect, and no burthen is imposed by their adoption.

In the present case it is clear that if the resolution is passed a burthen is imposed, and therefore I rule the resolution out of order.

I agree with that ruling, and rule that there would be a burden imposed if the hon. member's amendment were allowed. I therefore have to disagree with his amendment.

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

Ayes	..	..	..	..	16
Noes	..	..	..	..	18
Majority against	..	..	..	..	2

AYES.

Mr. Boyle	Mr. Sampson
Mrs. Cardell-Oliver	Mr. Seward
Mr. Hughes	Mr. Shearn
Mr. Keenan	Mr. Thorn
Mr. Mann	Mr. Warner
Mr. McDonald	Mr. Watts
Mr. McLarty	Mr. Willmott
Mr. North	Mr. Doney

(Teller.)

NOES.

Mr. Collier	Mr. Marshall
Mr. Coverley	Mr. Needham
Mr. Fox	Mr. Nulsen
Mr. Hawke	Mr. Pantin
Mr. J. Hegney	Mr. Tonkin
Mr. W. Hegney	Mr. Triat
Mr. Johnson	Mr. Willcock
Mr. Kelly	Mr. Withers
Mr. Leahy	Mr. Wilson

(Teller.)

Question thus negatived.

Committee Resumed.

Clause, as previously amended, put and passed.

Preamble:

Hon. N. KEENAN: I move an amendment—

That in line 21 after the word "reference" the words "unless prior thereto revoked under the power contained herein" be inserted.

These words were apparently inadvertently omitted when the Bill was drafted. What was resolved on was that the reference should be determined at any moment under Clause 3, and in any event was to come to an end on the expiration of five years after Australia had ceased to be engaged in hostilities. The amendment clarifies that by making it clear that if it is not some matter agreed on and not within the arrangement finally arrived at we shall have power to repeal.

Progress reported.

House adjourned at 6.10 p.m.

Legislative Council.

Tuesday, 2nd March, 1943.

Question: Swan View tunnel, as to deviation of line, etc.	PAGE
Bills: Business Names, Assembly's Message	2587
Public Authorities (Retirement of Members), Com.	2587
Coal Mine Workers (Pensions), 2A.	2587
Motion: Youthful delinquents, detention conditions, to inquire by Select Committee	2601
Adjournment, special	2613

The PRESIDENT took the Chair at 2.15 p.m., and read prayers.

QUESTION—SWAN VIEW TUNNEL.

As to Deviation of Line, Etc.

Hon. G. B. WOOD asked the Chief Secretary: 1, Has a survey for a duplication of the railway line ever been made around the Swan View tunnel? 2, What is the estimated cost of such a line? 3, In view of the shortage of manpower, has the Government considered having this work done by military engineers and personnel? 4, Has an estimate been made as to the saving in railway working costs if the bottleneck at the tunnel was done away with? 5, What is the estimated yearly saving? 6, What was the total cost to the Government incurred by the smash at Swan View last November?

The CHIEF SECRETARY replied: 1, Yes. 2, £150,000. 3, Yes. This work would require the approval of the Allied War Council. At the present time there are works of probably greater defence value which cannot be carried out owing to lack of manpower. 4, No, but a rough estimate would be an annual saving in working of approximately £5,000. This would not cover interest on cost of the deviation, estimated at £6,000 per annum. 5, Nil, when interest is taken into consideration. 6, Approximately £8,500.

BILL—BUSINESS NAMES.

Assembly's Message.

Message from the Assembly received and read notifying that it had agreed to the Council's amendments.

BILL—PUBLIC AUTHORITIES (RETIREMENT OF MEMBERS).

In Committee.

Hon. H. Seddon in the Chair; the Honorary Minister in charge of the Bill.

Clauses 1 to 3—agreed to.

Clause 4—Retirement of certain councillors:

The HONORARY MINISTER: Four consequential amendments are required in Subclause (2) to rectify omissions from the Bill as amended in Committee in another place.

On motions by the Honorary Minister, clause amended by inserting in Subclause (2) the word "mayors" before the word "councillors" in line 5; by inserting the words "and auditors" after the word "councillors" in line 5; by inserting the word "mayors" before the word "councillors" in line 16, and by inserting the words "and auditors" after the word "councillors" in line 16.

Clause, as amended, agreed to.

Title—agreed to.

Bill reported with amendments.

BILL—COAL MINE WORKERS (PENSIONS).

Second Reading.

Debate resumed from the 24th February.

HON. H. S. W. PARKER (Metropolitan-Suburban) [2.27]: Originally I had no intention of speaking on this Bill, but after hearing some of the speeches delivered I felt