Legislative Council

Tuesday, 2 April 1985

THE PRESIDENT (Hon. Clive Griffiths) took the Chair at 4.30 p.m., and read prayers.

BILLS (2): ASSENT

Message from the Governor received and read notifying assent to the following Bills—

1. Local Courts Amendment Bill.
2. Justices Amendment Bill.

RACING AND TROTTING: BROADCASTS

Australian Broadcasting Corporation: Petition

The following petition bearing the signatures of 405 persons was presented by Hon. Tom McNeil—

> To the Honourable the President and Members of the Legislative Council in Parliament assembled.
>
> We, the undersigned request the State Government protest strongly against the decision of the ABC to reduce the coverage of metropolitan races which are broadcast to country regional stations on its Saturday evening sports programme.
>
> Your Petitioners most humbly pray that the Legislative Council in Parliament assembled request the management of the ABC to restore the original service forthwith and your Petitioners, as in duty bound, will ever pray.
>
> *(See paper No. 530).*

CLOSING DAYS OF SESSION: SECOND PART

Standing Orders Suspension

HON. D. K. DANS (South Metropolitan—Leader of the House) [4.35 p.m.]: I move—

> That commencing with today's sitting and expiring on May 31 1985 Standing Orders be suspended so far as to enable any Bill to be introduced and passed through its remaining stages in one sitting.

Question put.

The PRESIDENT: Honourable members, I point out that the motion requires the support of an absolute majority of members. Having counted the House and there being an absolute majority present and no dissentient voice, I declare the motion carried.

Question thus passed.

RACE MEETINGS (TWO-UP GAMING) BILL

Introduction and First Reading

Bill introduced, on motion by Hon. D. K. Dans (Minister for Racing and Gaming), and read a first time.

Second Reading

HON. D. K. DANS (South Metropolitan—Minister for Racing and Gaming) [4.37 p.m.]: I move—

> That the Bill be now read a second time.

On 20 August 1984, the Government established a committee to inquire into and report upon gaming in Western Australia. That report was forwarded to the Government in December 1984 and contained a series of recommendations.

One of the recommendations contained in the report related to the playing of two-up. The report said that two-up played pursuant to the traditional rules should be permitted. The Government therefore decided that, as it was still considering the major elements contained in the Mossenson report, it would, as an interim measure, introduce legislation to allow two-up to be played on a limited basis.

The purpose of this legislation is to provide for the playing of two-up in country race clubs—both galloping and trotting—after the last race of the day.

The Government endorses the proposition put forward by the Mossenson report that the practice of playing two-up after country race meetings should be legalised; firstly, to recognise a perfectly common and harmless activity and, more importantly, to assist the viability of many country race clubs.

This Bill reflects that proposition and provides for a country race club, or a person authorised in writing by the committee of that club, to apply to the Minister for a permit to play the game of two-up.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. G. E. Masters (Leader of the Opposition).

LIQUOR AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon. D. K. Dans (Minister for Racing and Gaming), and read a first time.

Second Reading

HON. D. K. DANS (South Metropolitan—Minister for Racing and Gaming) [4.39 p.m.]: I move—

That the Bill be now read a second time.

In 1983 legislation was enacted to provide that the definition of "lottery" shall not include trade promotion schemes for the disposal of property where the chance to participate in the scheme is either dependent on the purchase of goods or is given gratuitously. The Act, which amended the Criminal Code, Police Act and Lotteries (Control) Act, became operative on 22 November 1983.

It was intended that all trade promotion lotteries, irrespective of the type of premises on which they were conducted, be exempted from the definition of "lottery" in the Criminal Code. However, a recent opinion received from the Crown Law Department stated that because the section of the Liquor Act which created an offence for the conduct of lotteries on licensed premises was not amended in 1983, the common law must prevail.

The result of this interpretation of the current law is that trade promotion lotteries held on licensed premises could be illegal and the licensee subject to prosecution. It is difficult to argue that proprietors of licensed premises should be prevented from conducting trade promotion lotteries while any other business engaged in promoting the sale of goods or the use of services may do so legally.

This Bill will allow liquor licensees, if they wish, to conduct trade promotion lotteries on licensed premises.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. G. E. Masters (Leader of the Opposition).

OFFENDERS PROBATION AND PAROLE AMENDMENT BILL

Second Reading

Debate resumed from 19 March.

HON. I. G. MEDCALF (Metropolitan) [4.40 p.m.]: The Minister in his second reading speech referred to the situation which has now come about as a result of abolishing the death penalty, but failing to make provision in the Offenders Probation and Parole Act for the appropriate report of the Parole Board. The previous position was that after a period of 10 years had elapsed the Parole Board was required to report on the case of a person whose sentence had been commuted from the death penalty to life imprisonment. The Parole Board was also required to report on other life sentences—that is, those that had not been commuted—after the persons had served five years of their sentences.

In the case of what is known as strict security life imprisonment, the Parole Board was required to report after 20 years. Those were the three periods which applied prior to this Bill. They still apply at present. The award of strict security life imprisonment was formerly the prerogative of the Crown, or the Governor-in-Executive-Council. When the legislation for the abolition of the death penalty was passed last year, the opportunity to award strict security life imprisonment was conferred on the judge. Therefore, it was transferred from the Governor-in-Executive-Council to the judiciary. When the death sentence was abolished last year, no provision was made for a 10-year period before the Parole Board could make its report.

If strict security life imprisonment were awarded by the court, the Parole Board would not report for 20 years. If the alternative sentence of life imprisonment were awarded, the Parole Board would report after five years. Thus, there was a very big disparity between the periods for the two separate sentences, one of strict security life imprisonment and the other of life imprisonment, both of which under the Act could be awarded by the court.

Therefore, that situation confronted Mr Justice Smith recently in the first case in which strict security life imprisonment was awarded after the passage of that legislation. Mr Justice Smith complained in his decision that no guidelines had been laid down by Parliament which would enable him to determine when strict security life imprisonment should be awarded. Indeed, there were no existing guidelines, because the sentence had always been awarded at the behest of the Crown under the Royal prerogative. The Crown traditionally judges each case on its merits and Royal mercy can be invoked in any number of cases. It was then probably just as well that there were no specific guidelines.

So far as the court was concerned, a different situation arose. The court looked to Parliament to provide guidelines so that it would know in what cases strict security life imprisonment should be the sentence given and in what cases life imprisonment should apply. However, those guidelines were not in the Act and the judge complained. The Premier said that he had been away when the Act was passed and that it had been handled by the Deputy Premier. I do not think that was the proper answer. The proper answer simply was that nobody thought that the court would require guidelines. I wonder whether any thought is being given to that now; I hope that it is.

In the particular case in which the judge made his decision, that of Robert Barry Pearce, there were circumstances which clearly indicated that the award of strict security life imprisonment was an appropriate one. It was a double murder in which a woman was first murdered. Her 12-year-old son, who tried to defend her, was then murdered in very vicious circumstances. Indeed, the judge was appalled at the circumstances and made it quite clear in his judgment that this was an appropriate case, quite irrespective of the dilemma with which he was faced by the changes in the legislation, for the award of strict security life imprisonment. Indeed, I note that the Premier agreed with his decision in a statement in the newspaper. The case was heard in February this year and was the first to be heard under the new legislation.

The Opposition is not in any way opposed to the proposals in this legislation. However, it is unfortunate that when the legislation was changed last year as a result of abolishing the death penalty, no action was taken in relation to this aspect of the Offenders Probation and Parole Act. Nothing was done to ensure that a longer period would be required for a report when a life sentence was awarded by the court under section 282 of the Criminal Code in the case of a person convicted of wilful murder. It should have been thought of, but it was not.

For some time I have advocated changes to the cycle of reporting. It has taken this case to bring it to the Government's attention. The Government took no notice of anything that I said on this subject, for which one cannot altogether blame it. Nevertheless, for a long time it has been apparent that the entire Offenders Probation and Parole Act should be looked at. Only one matter is the subject of this Bill, that to which I have just adverted. Not only that matter, but also the whole cycle of reporting generally needs to be studied.

It may be that the Government does not agree with the views that I have put forward, but in doing so it is disagreeing with the views that have been put forward by the Solicitor General in his report in 1979, the Dixon committee report under the chairmanship of former Parliamentary Commissioner, Mr Oliver Dixon, and a report by the council of the Law Society. The views which I expressed were based on those three reports. It could well be that refinements are needed and there could be some changes, but I am concerned that such a long time has passed without any action being taken. Indeed, the case in February brought the matter to the Government's attention and virtually forced it to take some action.

A great deal more should be done. The main point which I believe could be made is that the most important factor is the public safety. It is indeed the major factor when one considers the question of parole and that, of course, goes back to the cycle of reporting. The cycle to which I am referring is the period following which the Parole Board makes its report in different cases.

It is very important that the proper factors be taken into account. The reports to which I have referred make it very clear that the proper factors which should be taken into account both by the Parole Board and by the Executive Council—and each has a responsibility—are, first, the circumstances of the crime; second, the public safety; third, the degree of risk to the community; fourth, the adequacy of the punishment which has actually been received in terms of prison service by the convicted person; and fifth, the deterrent effect on the rest of the community. I add that that is not necessarily the order in which the factors should be examined, but they are all important points which must come into consideration when deciding whether or not a prisoner should be released. They should be considered by both the Parole Board and the Executive Council. I make that statement because the Attorney General has made public statements to the Press that he normally accepts the report of the Parole Board. Indeed, I have the impression that he said he invariably accepts that advice.

Hon. J. M. Berinson: That is not correct.

Hon. I. G. MEDCALF: I caution the Attorney General against accepting that advice. I am not in any way being critical of the Parole Board, but it is naturally persuaded by the efforts which have been made to rehabilitate the prisoner. While that is very important, it is not in my view the main consideration.

I believe that public safety and the risk to the community are major factors. Of course that is a matter for judgment in each individual case and it is not possible to lay down one rule which will govern all cases. However, although the cycle of reporting exists, the Parole Board can make reports whenever it wishes and the Attorney General can call for reports. In exceptional circumstances there is nothing to stop it making a report whether or not it has the final authority to do so. It needs only to suggest to the Minister that a report should be made on a particular prisoner and inevitably the Minister would call for that report. The Minister can call for a report at any time, so that these periods are really periods of general application.

However, the Government should be quite prepared, if it considers the circumstances warrant it, to disagree with the report of the Parole Board—I say that with all due respect to the Parole Board—and the Government should suggest that the parole be deferred for a year or two so that the prisoner's further progress can be monitored.

I have in mind some cases which occurred during the period I was Attorney General when matters were deferred for a year or two and events later proved that it was very wise to do so. I do not propose to go into detail because I do not wish to cast any reflection on any particular prisoner who might thereby be affected because of reference to his case. Certainly there were cases involving serious crimes of rape and arson particularly where there was a likelihood of recurrence, and it was wise to ignore the recommendations unless the Executive Council was absolutely convinced that the prisoner was rehabilitated and the degree of risk to the community minimal. Of course, one can never be sure that there is no risk to the community from any person whether or not such person is a prisoner. However in the case of people who have proved by their actions and their convictions that they are a danger to others, caution should be exercised.

Having said that the Opposition approves of this Bill, I indicate that I have a reservation in regard to clause 2. This clause provides for retrospective application and I would like the Attorney General to advise me why the clause has retrospective application. I may have more to say about this matter during the Committee stage.

In connection with public safety, I mention two recent cases which illustrate that the Government is inclined to release people earlier than one would otherwise expect. One case involved a man named Cabalt who can be safely mentioned because he has now left the country. William Cabalt was convicted of wilful murder; the murder occurred in Collie and it was a case in which he terrorised a woman and murdered a man. For some days the whole community was in fear and terror as a result of his activities and he had very little justification for the actions he took. He was convicted of wilful murder and sentenced to death. The sentence was commuted and a few months ago he was deported after serving less than 11 years.

Another recent case involved a man by the name of Ferrara. This case was referred to during question time a week or so ago. This man was convicted of murder and at his trial the Crown endeavoured to have him convicted of wilful murder but the jury convicted him of murder. The situation was that he had killed a woman by hitting her on the head with a full bottle of vodka and he then beat her with some other instrument. He did this because he had formed a friendship with her son. She clearly had made some provocative remarks which no doubt influenced the jury in its finding of murder instead of wilful murder. He was released after serving a period of I think five years and nine months, including the period prior to sentencing. It was a short sentence for a person convicted of murder and no doubt his release was entirely in accordance with the report of the Parole Board.

In both cases I do not doubt that the Parole Board made these reports obviously and clearly in good faith, but I doubt that this is in accordance with the public's view of what should happen in these cases. I would be the first to agree that circumstances alter cases and that every case must be looked at individually, but it is quite clear that there has been consistent adherence to these reports by the Government. There are other cases, but I do not propose to go into them. I believe the Government should take a much stricter view. Indeed, it is my belief that all the periods of reporting should be increased; that is, before the first report is made.

I know that the Attorney General has said that more comprehensive legislation will be brought before the Parliament in due course. I would hope that we will see that legislation later in the year and that it will not be deferred indefinitely. A real need exists to tighten up the Offenders Probation and Parole Act, particularly in relation to the periods of reporting by the board.

Subject to those comments, we support the Bill.

[Questions taken.]

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [5.06 p.m.]: The scope of this Bill is quite narrow and the support of the Opposition is welcome. Mr Medcalf took the opportunity to introduce broader issues into the debate and I concede at once that those issues were not only relevant, but also important, and I shall deal with as many of them as I can at this stage.

In the first place, Mr Medcalf referred to comments by Mr Justice Smith as to the absence from the death penalty abolition legislation of guidelines to indicate some means by which the courts might make a judgment as to whether strict security life imprisonment or life imprisonment should be imposed.

The last thing I would want to do, either now or at any other time, is to separate myself from my respected leader, the Premier of this State, whose absence from the House during the debate in the Legislative Assembly led some members at least to

believe that that was the reason for the absence of guidelines.

The facts of the matter are rather different from that and I am quite happy to indicate in detail what they are. As the Minister responsible for the administration of the Criminal Code, I naturally had the carriage of the briefing instructions to Parliamentary Counsel and the question of guidelines was indeed addressed specifically. We did, in fact, reach the stage of having proposed guidelines drafted. The reason they were not proceeded with was that, when one came to consider them, they really did not add anything to what ordinary commonsense would suggest that a judge might consider.

The position was really the same for the court as for Executive Council before the passing of this Act. All wilful murder of its nature involves a terrible act and set of circumstances. Before the abolition of the death penalty, it was necessary for Executive Council to make a decision as to whether, having commuted the penalty itself, life imprisonment or strict life security imprisonment should be imposed.

In preparing the Bill we did proceed to draft guidelines. A reading of them indicated that they added nothing to what would be bound to be considered in the ordinary course of events, and the guidelines were thereupon not proceeded with.

I might say that, following Mr Justice Smith's comments in the case to which Mr Medcalf referred, the matter has been considered further. I discussed this question with departmental advisers and I also sought judicial advice. At the end of the day, our original conclusion was confirmed; that is, the guidelines, as drafted originally, did not add anything to the scheme of things, nor was there any proposal for amendment that could have made them more helpful.

That is the reason for the omission of guidelines from the original legislation and why we are still not proceeding with them now.

Mr Medcalf also referred to his view that the general cycle of reporting by the Parole Board needs to be reconsidered. I share that view. Only three cases come readily to mind where these reports are made—life imprisonment, strict security life imprisonment, and indeterminate sentences. In the majority of other cases a report to the Attorney General is not necessary and the Parole Board decision takes its own effect. The question is part of the further review about which I have already spoken publicly and in this House. Members will understand that in advance of Government consideration I am not in a position to suggest what direction we might take, but I can at least confirm that that subject is a matter for positive consideration in the context of the general review of the probation and parole legislation.

In regard to individual cases, it is very difficult to come down to generalised propositions which are of any assistance. Reference has been made to the release of a person convicted of murder after five years and nine months. Mr Medcalf said that sentence was inadequate. The Parole Board recommendation was to the effect that, taking public safety and all other considerations into account, this person's release at such a time was appropriate.

It is terribly difficult when dealing with matters as serious as murder, let alone wilful murder, to come up with a rule of thumb as to what is an appropriate sentence. Speaking off the cuff and without the benefit of actual statistics on hand, the average prison sentence served by persons sentenced to life imprisonment over many years now—and I go back well before the period of the present Government—is around the six-year mark. It might be six years and three months or 6½ years. I can safely say that the average over many years is not longer than that, the difference between five years and nine months and six years and six months is really a matter of degree rather than of real substance.

I am aware that the Parker report, for example, looked to a minimum period both for murder and wilful murder in excess of the five and 10-year periods, and that is one of the proposals that must be considered in the general context to which I referred earlier. All I am trying to suggest now is that whatever period one talks about, it is terribly difficult to determine that a given time period is enough, not enough, or too much.

Mr Medcalf also asked why clause 2 expressed to give the Bill retrospective effect to 5 September, which is the date of the implementation of the abolition of the death sentence. As I have made clear throughout my remarks, this Bill is intended to mirror the intention which always existed; namely, that all cases of wilful murder should be subject to a minimum period of 10 years' imprisonment, in line with the earlier situation, before parole considered.

This Bill is designed to correct an unintended effect and the intention is that it should operate from the date of the legislation. For those members who are concerned about retrospective legislation, let me stress that nothing unfair or unreasonable could arise from retrospectivity in this case because clause 2 does not increase the sentence. The sentence is life imprisonment and that is the longest sentence possible. Clause 2 does not

increase anybody's sentence, but it amends the time at which the first report of the Parole Board should be made in the ordinary course of events. To that extent we are not breaching any principles that are sometimes brought into question by retrospective legislation.

An important consideration is that this legislation will not in any event affect a particular sentence. However, I cannot be certain on that because my irrelevant inquiries were made at an earlier period. I stress, however, that this Bill does not retrospectively increase a sentence. The sentence of life imprisonment is the maximum that can be imposed. I think that, in any event, knowing the circumstances which have led to the need for this Bill, no Government would be inclined in a case of wilful murder to recommend release after five years except in the most unusual circumstances.

I commend the Bill to the House.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Hon. P. H. Lockyer) in the Chair; Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Commencement—

Hon. I. G. MEDCALF: I listened to the Attorney General's reply to the query I raised in regard to retrospectivity. The retrospective portion of the legislation is of course contained in this clause which says that the Act shall be deemed to have come into operation on 5 September 1984. The Attorney General stated that the reason for that date being taken was that it is in fact the date of operation of the other parts of the legislation which deals with the abolition of the death penalty. I can accept that, but I do not necessarily find it the complete answer.

I also appreciated the point he made that making this retrospective does not increase the penalty, so therefore no-one is prejudiced. There has only been one case of a trial for wilful murder since 5 September 1984—so far as I am aware, although there may be others—and that was the trial of Robert Barry Pearce, who was sentenced in February.

The judge based his decision on the law as it then existed. We are now retrospectively changing the law which existed on the date the judge made his decision. That would seem to create quite a problem, and I would be grateful to hear what the Attorney has to say.

It means that we are now saying that the law on which the judge based his decision has now been altered and there was a different period which could have applied. The judge specifically referred to that, but he did not have any alternative, other than 20 years or five years, in relation to the Parole Board report. Now we are saying that he did, but he did not know about it. I wonder whether the Attorney could tell me whether, while he is not increasing the sentence, he is reducing the sentence that Robert Barry Pearce is serving.

Hon. J. M. BERINSON: The answer must clearly be "No" because the person in question is sentenced to strict security life imprisonment. Provisions relating to that type of imprisonment were amended at the time we implemented the Acts Amendment (Abolition of Capital Punishment) Act 1984. Nothing in the present Bill would affect that. Indeed, if I remember Mr Medcalf's earlier comment, he quoted Mr Justice Smith to the effect that, irrespective of the gap in available penalties, there was a clear case here for strict security life imprisonment. With respect, I would agree with that and, indeed, regard it as almost self-evident. In fact, if a case of that sort with the circumstances involved did not lead to strict security life imprisonment, one is left to wonder when such a sentence would be appropriate.

The short answer now is that I can see nothing in this Bill that could possibly affect the sentence in that case since this Bill relates only to life imprisonment and not to strict security life imprisonment.

Hon. I. G. MEDCALF: While appreciating the comments made by the Attorney General, could I suggest that it may well be possible for an appeal to be brought against the sentence of strict security life imprisonment on the basis that the law which the judge had to apply has been altered and, had the law been different, a different sentence might have been awarded.

I want the Attorney's assurance that no representations have been made to the Crown Law Department in relation to the possibility of an appeal by Robert Barry Pearce and that no representations have been made which might cause the Executive Council to change the sentence from strict security life imprisonment to a life sentence.

Hon. J. M. BERINSON: Certainly I have received no representations of that kind, nor have I been informed, as I would expect to be, that any representations of that sort have been made to the Crown Law Department. I indicate, without speaking for the Government, that it is my role to make recommendations in such matters. Certainly, I would not contemplate a reduction of the

sentence in that case on account of the passage of this Bill or for any other reason.

Hon. I. G. MEDCALF: I accept the Attorney's assurances, but I want to add that I can see no reason why we should be backdating the legislation. It does not appear to me that there is any justification for it, except, possibly, to give grounds of appeal should someone be so minded on the basis that the judge might have awarded a life sentence under section 282 of the Criminal Code for wilful murder in lieu of the strict security life imprisonment had it not been for the fact that he only had a choice between reports of 20 years or five years. I do not know whether that is a valid reason at all and, indeed, that would have to be decided by a court. It seems to me that all we are doing, by backdating this legislation, is being rather strict in crossing our "t's" and dotting our "i's" without any practical result other than to open the door to something which apparently neither the Government nor the Opposition would want opened.

Hon. J. M. BERINSON: I think the position is a little more complicated than that. I have suggested before that I am not aware of any other conviction for wilful murder since 5 September 1984, but I do not have statistics on hand. However, simply on the law of averages I would say that it is virtually certain that there have been other charges in the seven months which have elapsed since 5 September 1984. Therefore, potential convictions for wilful murder would certainly have arisen. I am relying, in this case, simply on the average number of murders and wilful murders committed over many years. Just as I would not want a question to arise in the particular case that has been under discussion, so would I not want any question to arise, in respect of a charge laid but not concluded since 5 September 1984, that is, a choice between five and 10 years' minimum imprisonment.

At the risk of repetition I ought to say that this Bill, no matter from when it applies, does not increase the sentence. The sentence it deals with is a life sentence and there can be no longer sentence than that. It refers to the period after which the Parole Board can, in the ordinary course of events, make its first report. As we have already heard, it is open to the board to give earlier reports than that at the request of the Attorney General. As a matter of practical reality, it is open to the board, it is open to the Prisons Department, and it is open to other interested parties to stimulate a request for an early report. There is that degree of flexibility but the basic position remains that this Bill does not, of itself, affect the sentence. That being the case, I believe that there is really no risk involved of the sort which Mr Medcalf has been presenting to this stage.

Hon. I. G. MEDCALF: I did not hear the last part of the Attorney's comments.

The DEPUTY CHAIRMAN (Hon. P. H. Lockyer): Order! The reason the member did not hear was that members were not obeying the Standing Orders.

Hon. I. G. MEDCALF: I am still concerned that, while I conceded that this does not increase the sentence, it may still have the effect of reducing the sentence. I believe that it would be desirable to have some additional information in relation to the possibility of this opening the door for an appeal by Robert Barry Pearce. If that were the effect of it, I feel that we ought to know about it so we can decide whether we think that is proper. The Attorney has assured the Committee that he does not know anything about that and that it has not come to his attention.

I have no particular knowlege of it, but it appears to me that it may well offer the prospect of an appeal against the severity of the sentence. I may be quite wrong. I hoped, however, that the doubt I have expressed could be dispelled, but it has not been dispelled.

I do not want to hold up the Bill, but I have some difficulty that we do not have in this Bill a provision that the Act will come into effect on the day that it is assented to by the Governor, in the same way as most other Bills.

The Attorney has hinted that other cases may be pending. According to the newspaper this is the only case of wilful murder; but we cannot accept that.

Hon. J. M. Berinson: I think it may mean any case which had been determined when we announced our intention to amend the legislation.

Hon. I. G. MEDCALF: No other case has been determined. If it is determined after the Bill comes into force, the law will be different. I do express concern about this Bill, but I am prepared to accept the assurances the Attorney has given. However, I am disappointed that the Attorney has not suggested that he will obtain more information and present it to the Chamber. It is a matter about which we should receive more information.

I am afraid that I have to say that I am not satisfied that the Chamber is given all the information it wants in these cases and I say that without any malice. This Chamber is entitled to complete information on any topic which is before it. I do not know what the great hurry is in many cases.

I had hoped that perhaps the Attorney would have assured me on that point instead of leaving me with this doubt.

Hon. J. M. BERINSON: Like Mr Medcalf, I do not want to prolong this debate, but one, matter of principle arises which has not been addressed.

With due respect, what starts to emerge from the continued discussion about this point is that an appeal might be lodged against the severity of a sentence and upheld by the appeal court on the basis that life imprisonment carrying a 10-year minimum sentence is more appropriate than a strict security sentence carrying 20 years minimum sentence. If that is the situation we arrive at, a further question arises; that is, whether the position should not be open to a convicted person who should not have more than a 10-year minimum sentence in the view of the full court, to have an opportunity to argue. I do not believe for one moment that this Bill would support an appeal.

I suppose there are limits as to how far one can be certain about anything in the law, but quite frankly I could not imagine this case being held by the appeal court to be other than one justifying the more severe penalty. Indeed, the comments by Mr Justice Smith seem to indicate that in this case it was not simply a question of the contrast between the minimum term and the maximum 20-year term that caused him concern. He found this a clear case for strict security life imprisonment.

I cannot carry this part of the argument further other than to express my genuine view that there is not a risk in this, either related to the particular case that has been referred to or to other situations that might be pending.

Clause put and passed.

Clause 3: Section 34 amended—

Hon. I. G. MEDCALF: I wish to raise one or two points in connection with this clause. Firstly, I would like to draw the Attorney's attention to the inconsistency which now arises. Under paragraph (a) subparagraph (iii) of this clause we are now talking about a 10-year period for the parole report where a person has been convicted for wilful murder and sentenced to life imprisonment. That is the point of this Bill. After the 10-year report there will be a report every three years.

I draw attention to the fact that in relation to a commuted sentence, under section 34 of the Act, a report is required after 10 years and a further report after five years. Therefore, we have an inconsistency because a further report is required after five years in the case of a commuted sentence, and in the case of a wilful murder life sentence we have a 10-year report and a further report every three years.

Hon. J. M. Berinson: The inconsistency to which you are referring is between these provisions and what was in place before the abolition of the death penalty.

Hon. I. G. MEDCALF: Yes. I draw the Attorney's attention to that because it is another matter which will need to be attended to and which has not been attended to in connection with this legislation.

I draw the Attorney's attention to a further point; what happens if Royal mercy is exercised on a person who is awarded strict security life imprisonment and that sentence is reduced to a life sentence? Where there is a 20-year report and it is converted into a life sentence by Royal prerogative, what is the period of the first report?

Hon. J. M. BERINSON: I feel like some of those people I used to see on Pick-a-Box when one was never sure of what the next question would be and where one was not sure either of the answer!

In respect of the Royal prerogative, it is a possibility which is much more theoretical than real. I would regard it as most unlikely for Executive Council to consider intervening in a case where strict life security imprisonment is imposed and upheld on appeal. If there was a case, for one reason or another, to extend the Royal prerogative the much easier course to follow would be to take advantage of those provisions which were implemented when Mr Medcalf introduced this concept of strict security life imprisonment, which ensured that, despite the strictness of that sentence and the length of it, there is still a discretion in the Attorney General to seek a report earlier than 20 years if necessary.

It goes without saying that if the Royal prerogative is directed at release, that can be done at any time with or without an interim move to amend the sentence from strict security life imprisonment to life imprisonment.

My own experience is much shorter than that of Mr Medcalf, but I cannot recall a case where the Royal prerogative was exercised for the limited purpose that he now suggests; namely, to change strict security life imprisonment to life imprisonment, or even for that matter in earlier days to amend, say, life imprisonment, to a finite term of a given number of years.

In my understanding the exercise of the prerogative always occurred at the point where it was decided to release a person, irrespective of the original sentence.

As to Mr Medcalf's first point, I do not regard this as so much an inconsistency as a change of the relative period. It is true that as a result of this Bill the first review will take place after 10 years'

imprisonment and thereafter at three-year intervals, as opposed to five years as at present. Once one gets into periods of actual imprisonment of the order of 10 years, 13 years, 15 years, or 16 years, as the case may be, one is moving into a length of imprisonment where it is immaterial whether the second review is at 13 or 15 years. The fact remains that the final decision is still for the Executive Council and I do not believe that there is any really significant difference in this change from 15 to 13 years for the second regular report.

Hon. I. G. MEDCALF: I merely wish to draw attention to that point. There is an inconsistency in numbers. It is quite capable of solution, as the Attorney General suggested, in various ways; but that is one of the matters to which attention will need to be given when we have a new look at this whole subject.

One of the problems I have found most difficult in the three or four cases in which the death sentence was commuted to strict security life imprisonment was the lack of guidelines. I am not saying guidelines would necesarily have been easy to draw, but it was quite a difficult exercise, because one had to assess the degree of evil or viciousness of various murders.

This task has been transferred from the Executive Council to the judge. Indeed this Parliament approved of that last year. I am not saying there is anything wrong with that; it means that instead of the Executive Council, which might have been reasonably consistent, at least during its three-year period of office, we may have a number of different judges with different standards. It may well be that in the future consideration may have to be given to reducing a sentence by degrees from strict security life imprisonment to life imprisonment.

Hon. J. M. Berinson: Would that not be the role of the Court of Criminal Appeal?

Hon. I. G. MEDCALF: It could be done previously by the Executive Council, but since section 579 of the Code was amended last year, the power which applied in the case of commuting death sentences to strict security life imprisonment was taken away. I do not know whether or not the Executive Council now has the power; it may well have to rely on letters patent or some obscure law.

Irrespective of that, if that were to happen, the Executive Council would find another inconsistency in that it would probably be bound then to have a Parole Board report after five years instead of 10 years.

I draw attention to these matters, and I want to place them on the record because I think they should be considered when this Act is being redrawn.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. J. M. Berinson (Attorney General), and transmitted to the Assembly.

STRATA TITLES BILL

Second Reading

Debate resumed from 20 March.

HON. I. G. MEDCALF (Metropolitan) [5.47 p.m.]: I am not sure when the Law Reform Commission was asked to prepare a report on strata titles, but it was a very long time ago—certainly before my time in Cabinet. I think it went way back into the dim dark ages.

Although the report took a long time, I believe it is a very good one. It was finally issued in December 1982. At the time I put out a Press release indicating general approval by the previous Government, but it was to be commented on by various departments and members of the public who were undoubtedly concerned with the provisions.

Of course many members of the public had not only been waiting for a long time for this report, but also they were anxious to see that their problems would be ironed out by the report. I received many letters requesting me to try to expedite the report. I communicated the purport of them to the Law Reform Commission. The commission had its problems and it has carefully examined the legislation of other places

The Bill before the House largely reflects the Law Reform Commission's report. There are a few changes here and there, but by and large it follows the lines of the report. I would be the first to admit that the Opposition would have put forward a similar Bill had it been in Government.

The Bill is obviously one that the public want very badly. Although individual members may well have differences about various points, which no doubt they will air during the course of the debate, I indicate that generally speaking, in principle, the Opposition supports the legislation.

The Law Reform Commission itself issued a very excellent summary of the report which makes quite easy reading for those who do not have time

to read the report itself. It is remarkable when re-reading it, as I have done recently, to realise how closely the Bill follows the recommendations of the commission.

I will refer now to one or two matters which need to be mentioned. The question of appeals against the decisions of local government or town planning authorities is dealt with in clauses 26 and 27. This is an area which has been a bone of contention because of numerous long delays in developers getting approvals from local government and town planning bodies, and these clauses deal largely with building and development matters and set out quite comprehensively the various types of matters which can be appealed against and before whom the appeal should be taken.

The duties of strata companies are set out in clause 35, and these include the need for strata companies to maintain the common property and keep books and records of the strata company, and make these available.

Power is also given to an authorised person to make and vary contracts. Such a person may exercise this power under either express or implied authority.

I can see problems arising here. It is somewhat similar to the powers of management in a corporation, where a company, under company law, gives an implied authority to someone to execute documents and so on. I can see problems with strata companies where we have a collection of individuals who probably do not regard themselves in the same way as shareholders and members of a company do.

Members of a strata company are governed under a council and there could be problems with people disputing whether a particular person has an implied authority. I would have preferred to see a provision for an express authority only in the case of a strata company. But I can see that there is a parallel with other corporations and I can see the reason for it; but as I say, I can also see problems in this area.

Schedule 1 sets out various by-laws which may be adopted by a strata company. Part I of the schedule contains those by-laws which are deemed to be adopted and provides that they may be changed only by unanimous resolution. The other by-laws also may also be changed but do not necessarily require a unanimous resolution. The by-laws deal with, among other things, the constitution of the council of a strata company, which is equivalent to a board of directors of an ordinary company.

Part I covers some of the complicated provisions involved in insurance which one would expect. A great number of queries received over the years have related to the various kinds of insurance and as to who was responsible for the common property and the individual units, and the queries have related to such things as public risk and so on. A lot of complicated questions are involved which needed to be answered, and while the Bill might not satisfy everyone, I have no quarrel with it.

One of the most important changes, as already indicated by the Minister, is for the appointment of a referee. It is not an appointment of one person, as any number of referees can be appointed. The referees will have power to decide issues and settle arguments and disputes which arise between the unit owners and the strata company.

This is a good idea and it was suggested by the Law Reform Commission. The scheme should provide an informal, inexpensive and speedy method of resolving disputes, rather than requiring people to go to court, which is the only present recourse open to unit holders. Unit holders must presently go to court on matters which frequently should not be taken to court because the expense of doing so is out of all proportion to the dispute and the issues involved, particularly the value of the issues. These things become very important to people in strata units, such as whether they are allowed to have animals on the premises and in regard to the cost of various repairs and so on. The amounts involved are often quite small and so it would be much better for these problems to be settled by a referee. The strata titles referees will have wide powers to make orders which will be enforceable as judgments.

Clause 72 describes the people who will be eligible to be appointed as referees. These include stipendiary magistrates or legal practitioners, active or retired. An age limit of 65 years is provided, which I do not think is included in the Law Reform Commission report. I wonder why the age limit is included, and it is not because I am over 65 years myself, because I have no ambition to be appointed a referee. It may be difficult to obtain the services of suitable persons and it may be that this age limit will disqualify quite a few people who may otherwise have been available. Someone might inform me if in fact this provision does form part of the Law Reform Commission's recommendations. The powers of the referees are set out in clauses 85 to 103. I think that is all I need say about the parts of this Bill which have been taken from the commission's report.

A number of changes have been made. For example, clause 24(5) contains a provision which indicates that any conditions imposed by a local authority must relate to the particular development or parcel. In other words, the local authority

cannot impose a condition which is not relevant to the subdivisional proposal presented by the developers. For example, if someone applied for permission to develop an area as strata title units under a strata company, the local authority concerned would not be entitled to impose a condition that the developers should include a Chinese restaurant. That would be completely out of place because the restaurant would have nothing to do with the proposed development. Perhaps the Government could bear that in mind in relation to its dispute with the City of Stirling at the moment.

Hon. Graham Edwards: Is that a politically dominated council?

Hon. I. G. MEDCALF: The point about it is that it is completely irrelevant to a town planning scheme, and by analogy, the local government could not impose a condition that was irrelevant to the development. That is a very salutary provision to have.

The Bill also changes the provisions concerning rural subdivisions and provides that developments should not affect the rural character of an area. The Bill contains a provision for obtaining the transfer of contiguous land. It also has a provision that where leases are surrendered, the proprietor of the lease will not have a vote if he is also a strata title owner.

Sitting suspended from 6.00 to 7.30 p.m.

Hon. I. G. MEDCALF: Before the tea suspension I was speaking about the control of moneys which appears in clause 70. Under a proposed strata scheme, the deposit and other moneys must be paid to a solicitor or a real estate agent. That is a change that has been made from the recommendations in the commission's report. I believe it is a salutary change. It is a very sensible proposal with which I go along entirely. It applies in effect to pre-sold units; that is, to units which are sold from a plan of a proposed strata subdivision. I believe it will be a very useful provision. I agree with the Government that that was the best decision to make.

Clause 47 of the Bill contains a limit of expenditure which the council may make. It is based on a formula which I will not attempt to repeat. It seems to be a sensible provision, at least in principle. Appeals from a referee are dealt with under clauses 105 to 107. The only comment I make on this is that the referee's decisions are final. In principle, I am not happy about final decisions being made, whether by referees or by other inferior tribunals—even by superior tribunals. There are many cases in which it would be advantageous if it were possible to have an appeal. In some cases it would be advantageous for all concerned, but certainly advantageous for one of the parties. I see no reason why appeals should be cut off except the argument that is always put; that is, that this will save costs. We can have cheap justice if we want it, but cheap justice is no justice at all if it prevents people from airing their disputes properly and having an avenue of appeal against a decision of what can only be described as an administrative tribunal; that is, the referee. Generally, however, the Bill follows the Law Reform Commission recommendations which are, in my book, excellent.

I generally agree with the changes which the Government has made. With experience there will undoubtedly be a need for further changes involving further amendments. These amendments can be made in the light of any queries which may arise. We support the Bill in principle and hope it will alleviate many of the problems people have suffered under strata title schemes.

HON. G. C. MacKINNON (South-West) [7.35 p.m.]: In some ways I am grateful that the Bill dealing with disclosure of members' interests was defeated the other night, because the House might not have allowed me to speak on this legislation. I intend to speak on the Strata Titles Bill from a personal interest and a practical administrative point of view. I have been involved with strata titles for some time and I am a member of a council at present of a very large strata title company of proprietors. As you, Mr President, would be aware, under the present Act I would have to be re-elected as chairman. I notice that one of the improvements made in this Bill is that one can be re-elected for a whole year. I know that you, Mr President, understand exactly what I am talking about.

When I looked at the Bill initially I thought we should amend its title. It reads—

> An Act to facilitate the subdivision of land into cubic spaces and the disposition of titles thereto, to provide for incidental and connected purposes and to repeal the Strata Titles Act 1966.

I am quite prepared to accept that in the initial stages the facilitation of the subdivision of land into cubic spaces and that sort of thing is terribly important. But anyone who has had anything to do with the management of a strata title organisation would be aware that the real problem lies in facilitating the management of the people involved in the strata title company—the proprietors, the management of the organisation dealing with the people who form the company. In my experience, it is almost impossible to find any strata group without at least one or two people who are

Philadelphian lawyers and are automatically given the government. They do not necessarily have to be Irish; they could be any other nationality. Whatever one suggests, they seem automatically to be against. Indeed, one wonders what masochistic characteristic makes people volunteer to become councillors on the body corporate.

I watched an Australian Broadcasting Corporation television show called The Body Corporate, which was a failure. Members of the body corporate sat around drinking cups of tea and making very easy decisions. It does not work that way. The running of one of these companies is extremely difficult because people live in strata title units. In many cases that unit is a major asset. Some of those who live there should not live in that situation. Some of those who live four to a floor, two to a floor or as one of 60, one of 80 or one of five, should really live on quarter-acre blocks. Indeed, some of them ought to live on 100-acre blocks with no neighbours within cooee because letters of complaint are received for the slightest noise. These are the day-to-day problems which beset anybody having to do with a strata title company. It is not easy to get people to take their place on a council to run the company as such.

Some of the problems include day-to-day maintenance. One has to paint an ordinary house every five years. It is reasonable that a block of strata apartments also be painted every five years. We painted one of those blocks with which I am involved at the end of 15 years. We received a bill of $140 000-plus and had to deal with all the associated problems. It is very difficult to get the sort of agreement needed to get everything done.

To try to alter part of the common property which involves choosing a colour scheme that is acceptable to everyone, is almost impossible. The only way is for agreement to be reached that an interior decorator will choose a colour scheme and everyone will accept whatever he comes up with. Even a small thing like moving a letterbox from point "A" to point "B" becomes a significant event and some people will almost reach the point of resigning. These are the sorts of headaches one is faced with.

In this Bill it has been decided that the interior of the wall will be the demarcation of the common property. This could create difficulties. For example, there could be two apartments side by side, or vertically one above the other. A person could choose to buy two apartments, either side by side or vertically adjacent. The person who buys them may want to incorporate the two units into one and that would be a valid and perfectly good idea. Under the existing Act the ownership finishes at the middle of the ceiling or the middle of the wall and he has no common property through which he must transgress. I hope that is clear. It means he can burrow through his property to the middle of the wall and is still in his property as he continues through to the next apartment. It is now seen fit in the proposed legislation to make the wall the line of demarcation and it becomes common property. That is fair enough if the wall contains pipes, lines or wires. In one of the buildings of which I have some knowledge that is not the case. One could cut through the wall, provided one had engineering specifications and that sort of thing, without any risk of coming across pipes because under the old Act the ownership was from the centre of the wall. One can no longer do that under the new Bill. I am not arguing that that is good or bad, but it is a complicating factor.

If a person wants to combine an upstairs apartment with a downstairs apartment by putting a stairway between them, it will be much more complicated because ownership of the property finishes with the lower ceiling and does not start again until the top of the floor above. Therefore, the four-inch concrete structure is common property and one is bound by the rules that apply to common property; that is, a unanimous resolution must be achieved before any alterations can be made.

These are the day-to-day administrative problems to be faced by a person administering a block of strata title units. These problems must be faced whether the units are owned for business purposes or for residential purposes.

One of the greatest problems facing strata title owners, as distinct from purple title owners, is that one can buy units of one's own free will, and can buy many units in the one development. I am referring here to problems that will be faced in the future. With purple title ownership it is necessary for a meeting of all shareholders to be held before one is able to sell a property and another person is able to buy it. Therefore, it is possible to keep individual lots in the hands of individual occupiers. Under these circumstances one is not faced with properties which are purchased and let as a business proposition. I know of a property, and I am sure that you Mr President are familiar with this situation, where a person can buy two, three or more units and let them to tenants. One gradually reaches the situation where there are more tenant occupiers and fewer owner occupiers, and that is the serious problem of the Strata Titles Act.

I see no solution for this problem. Ultimately the time will come when some of these developments will be predominantly occupied by tenants. The time will come when it will be necessary to

provide facilities for either the notional or physical destruction of the building. By notional destruction I mean going before a judge in chambers who will allow one to tear up the old plans and present new plans for development. This problem must be faced sooner or later in the lifetime of a building.

One of the buildings of which I have distinct knowledge is 15 years old and is in need of some alteration. I am delighted that the Bill contains provision for that sort of improvement to be carried out by a fairly reasonable method. Unanimous resolutions, of course, are generally only possible when the building is first occupied and from then on, in my experience in several situations in which I have been involved generally in an executive capacity, they are too much to hope for. In fact, I think unanimous resolutions are almost an impossibility.

I am delighted to note that the legislation allows a referee to become involved in these situations, except that there are plusses and minuses with the referee system. I am sure that when Mr Pendal speaks he will say he is delighted with the referee system because I know the people with whom he has been corresponding and this will be a great step forward from their point of view. However, consumer representatives, courts, and all sorts of people set up in a judicial capacity, attract in a short order of time a special body of law. I am sure that in next to no time people who have anything to do with strata titles will say they are not interested in what the proposed Act says, but are more interested in what the referee says, because that will become the law.

The other day a man spoke to me about lay-bys in a shop. In the course of conversation he said that he was not interested in the law but was interested in what Mr Fletcher said could be done. Mr Fletcher had said that if the property is held for six weeks and the man paying the deposit has not paid for it in full at the end of that time, the owner can sell the property. As far as that man was concerned what Mr Fletcher said was law.

These bodies build about themselves a new set of laws and I am quite sure the referees will do that in this instance.

I know of two people who are just aching for the establishment of the referee system so that they can lodge complaints. One case will involve a complaint about me, so I am particularly interested in that one.

Hon. J. M. Berinson: Will it succeed?

Hon. G. C. MacKINNON: Hopefully not, because knowing what was coming and having read all the reports and spoken to the people who framed the legislation, I think I have covered my tracks. It is terribly difficult to cover one's tracks when making alterations with which the majority agree but one person disagrees. It is a very difficult situation.

We are dealing with human beings. Rumour has it that Mr Berinson has some knowledge of property management. I am quite sure he is well aware of the problems associated with personalities in property management. Those problems are infinitely more complex than those found in ownership or non-ownership and all the other rules affecting property management. These are just general statements I am making at present.

At one time I had to find some lawyers who understood the old Strata Titles Act. It is very difficult to find lawyers who are fully *au fait* with the Act. That is understandable, because it is a difficult Act. I was a member of Cabinet when it was accepted. None of us knew anything about strata titles. With the little knowledge we were able to glean from legislation in NSW, we were able to at least come up with something.

Obviously our present legislation has some real holes in it because we are dealing with situations that vary considerably. We can be dealing with duplexes or very expensive operations involving as many as 80 apartments. A person might be running a building worth several thousand dollars or one worth many millions of dollars. Many strata title companies in Perth today are worth in excess of $10 million. At the same time, many would be worth under $100 000. We have a tremendous variation. As I have said, in many of them we can find people who really should not be operating in that situation, people who should live in individual houses. So, I started with the title and I said that the emphasis should be on how to manage the people.

I come now to the definition of "proprietor". Fortunately, this is clarified a little in the schedule, but I would like the Minister to make a note that under the definition of "proprietor" we are told that it means the person who is for the time being registered under the Transfer of Land Act as proprietor of an estate in fee simple or an estate for life in a lot. However, the schedule indicates that with a multiple proprietorship, a proprietor becomes the one elected by the people.

The proprietors might consist of a husband and wife or a family trust. Because the Minister has a legal background, he would be more aware of the ramifications of all this. But let us consider a situation which I came across recently where there was a call for members to be appointed to the council and some nominations were received as

well as some objections because someone believed that someone else was not a proprietor. There is no way this can be proved without a search of the titles. Imagine that it is then found that one of those people duly elected to the council is a member of a family trust and another is one of a husband and wife team of which perhaps the wife owns the major portion of the unit and the husband owns the rest. Consider the problems caused when a legalistic person pops up and says that one of them is not a proprietor.

The definition of "proprietor" indicates that a person must be a proprietor under the Transfer of Land Act. However, in the schedule we find, on page 143, that co-proprietors may vote by proxy jointly appointed by them and in the absence of such a proxy are not entitled to vote on a show of hands except when the unanimous resolution of proprietors is required by the Act.

The problem is that I would think that the majority of the more expensive strata title units are owned by more than one person, and frequently by companies. This presents problems when a legalistic fellow comes along to the annual general meeting. I am trying to convey to the Minister that the mechanics of managing these sorts of organisations present serious difficulties.

I am very worried that unless this legislation makes things fairly clear-cut, we will finish up with all strata title companies being run by professional managers. I am worried that we will no longer see ordinary people involved in them. We should be ashamed of that. Many strata title companies involve people who are retired or near retirement, and they take a great interest in the running of the company and enjoy being able to save money by doing all sorts of work themselves for the strata title company. If we make the law too difficult, if we make it too easy for trouble makers to create difficulties, we will have a problem getting anyone to take a role in the management of these companies. I would like the Attorney to give thought to this aspect of the legislation.

On page 7 we can find a definition of "unanimous resolution" and I have already mentioned that one of the real difficulties here is the mischievous person who objects just for the sake of objection. It has been my unfortunate experience that in all those strata title companies with which I have had some association, one such troublemaker always seems to pop up. Clause 51 provides an easier procedure where a unanimous resolution is required, and I am highly delighted to see this provision.

Let me say, if I have not already said it, that this is a very good piece of legislation. Most matters which should be dealt with have been dealt with. This legislation has had a long gestation period, but it has managed to cover most problems.

On page 8 we find clause 3(2) which provides that the boundaries of any cubic space referred to in paragraph (a) of the definition of "floor plan" in subclause (1) are as outlined in the rest of the clause. The difficulties which are associated with using the outside of a wall rather than the centre of a wall, and the outside of a floor or ceiling rather than the upper surface of the floor and the under surface of the ceiling are all quite serious. I imagine the clause has been framed this way after some mature consideration. I am pointing out though that this area does present difficulties.

Perhaps when the Minister replies he could explain clause 3(6) because I find it a little difficult to follow. It is probably a matter which lawyers find tremendously easy. The subclause states—

> Except in so far as the context or subject-matter otherwise indicates or requires, it is a sufficient compliance with any provision of this Act requiring an instrument to be accompanied by another instrument if that other instrument is endorsed on the first-mentioned instrument.

I got confused between the first instrument and the fourth instrument. I would appreciate the Minister explaining it in simple language.

Most of the Bill deals with the consolidation of lots, and most of that aspect has been dealt with by Hon. Ian Medcalf and I will not repeat it. I refer now to page 18, clause 11(1)(a)(i) which states that in respect of each lot there shall be implied—

> an easement for the subjacent and lateral support thereof by the common property and by every other lot capable of affording support;

This matter presents very serious problems when it is required to make interior alterations to an existing structure. It is taken to mean that each lot in the place depends on the wall of one, or the floor of one lot above depends on the strength of the floor below. It has to do with which walls are load-bearing and walls which are not. It is not so bad where a building is so constructed that the exterior walls are the load-bearing walls. It becomes complex when the interior walls are the load-bearing walls. I know of one building where that is the case where a series of walls are parallel to one another at 12-foot or 14-foot centres. They are solid brick and reinforced concrete and all the

others are curtain walls and cosmetic walls of one sort or another. Joining two units laterally or vertically presents serious problems in relation to subjacent and lateral support.

I refer now to clause 11(1)(b) which states—

> as against the proprietor and to which his lot shall be subject—
>
> (i) an easement for the subjacent and lateral support of the common property and of every other lot capable of enjoying support; and

This affects the joining of lots by breaking through walls. Once properties get on in years and people want to make them bigger serious difficulties arise in securing the necessary unanimous resolutions. This could become more complex now that the walls themselves become common property rather than the centre of the walls, and only the inside of the walls become the boundary of the cubic space rather than the centre of the wall. Subparagraph (ii) goes on to say that allowance must be made for the walls becoming easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, etc. That does not apply to many buildings, but there are some in which the walls are so designed.

I wonder if the Minister would have a look at subclause (2) on page 19 which states—

> A proprietor, mortgagee in possession or occupier of a lot shall not do any thing or permit any thing to be done on or in relation to that lot so that—
>
> (a) any support or shelter provided by that lot for another lot or common property is interfered with;

Would the Minister consider adding the words, "To the detriment of other lots"? I would be prepared to put an amendment on the Notice Paper to that effect.

Hon. J. M. Berinson: Can I ask you to elaborate on that suggestion?

Hon. G. C. MacKINNON: I will do so in a moment. This is in no way a party-political Bill. It is a measure which has grown out of a need and it has been considered by successive Governments. It probably started with Sir David Brand's Government and this is probably the fourth Government which has considered this matter. It is a totally non-party Bill. I am quite positive the Minister in charge treats it in exactly the same way. I have no desire to score any points; I simply ask him to look at it.

Subclause (2)(a) refers to "any support or shelter provided by that lot . . . is interfered with". In other words, a proprietor or mortgagee cannot do anything to a lot, but I think the clause should be amended to read that they cannot do anything if it is to the detriment of other lots. It should be made clear that it can be done and should be encouraged if it is to the advantage of other lots.

Hon. J. M. Berinson: Is it not for the proprietor of the other lot to make up his mind whether he wants to be advantaged?

Hon. G. C. MacKINNON: I think it should be spelt out for the referee. There are people who, if one wanted to pave the foyer with $10 notes at the rate of two a week to any resident, would object even if God were giving them out. There are some most peculiar people around. I may be exaggerating in that respect because nobody treats money so disrespectfully. I am sure Mr Berinson would agree with me as a Scotsman on that point. We have to deal with some peculiar people so we have to spell out for them that if the matter goes before the referee it may be approved provided it is not to the detriment of other lots. I ask the Minister to get his advisers to look at that and consider it.

Subclause (2)(b) goes on to refer to the passage or provision of water, sewerage, etc., "for the time being in the lot is interfered with". I think the words "to the detriment of other lots" should be added to the end of that paragraph as well. I ask the Minister to put it to his advisers. Perhaps they could ring me and we could have another talk about it because I am quite sure members who live in ordinary houses, as most people do, are finding this extremely tedious. Perhaps I could elaborate on that at some other time.

Clause 18 deals with the acquisition of additional common property and refers to a unanimous resolution. It states—

> A strata company may, pursuant to a unanimous resolution, accept a transfer or lease of land, not being a lot within the parcel, which is contiguous to the parcel . . .

I made a note of reasonableness of resolution. A shining example of the most reasonable behaviour would be objected to by some people. Under clause 51, one can take reasonable behaviour to the referee and hopefully spell out to the referee that he must be pretty reasonable about that sort of behaviour.

There are a lot of technical matters in relation to the variation of the strata scheme upon the destruction of a building. Of course, there are terminations of strata schemes. One must look forward to the day when any strata title scheme will have to be terminated and rebuilt, redesigned, or something. So allowance has to be made for all those sorts of things. Thank goodness that the one

or two in which I am interested, seeing as I only intend to live until 2000, will last after that and I will not be involved, as the chairman, in their destruction, notional or physical, because I would hate to go through that. Painting and altering them is quite enough for me.

Clause 35 on page 54 states—

> A strata company shall—
>
> (a) enforce the by-laws;
>
> (b) control and manage the common property for the benefit of all the proprietors;

I have become more and more intrigued as years go by, that politicians and draftsmen can write lovely sentences like "control and manage the common property of all the proprietors". They write those sentences with so much ease and facility. Obviously they have run nothing more than an afternoon tea party because it is my experience that once one begins to spend money, it is incredible how many different points of view one gets as to what is to the benefit of the proprietors. It does not matter what it is. The arguments that ensue from that sort of simple statement are legion and the differences in the points of view really leave one gasping. A thing that one considers to be of absolute benefit to everybody will be pointed out by someone as being of no benefit and therefore it is not to anyone's benefit. I point out that it is not as easy as it sounds. I am delighted with paragraph (c) which states—

> keep in good and serviceable repair (which for the purposes of this paragraph includes the making good of inherent defects, and, where necessary, renewal or replacement) . . .

I have an example that would be very dear to the heart of Hon. Graham Edwards. It is a building where the stairs up which furniture is carried include a group of steps which lead to a landing of about four feet by about six feet. It is used by ambulances and the like. Recently there was an argument about whether a ramp ought to be placed in that position. It lends itself ideally to a ramp because the ground running away from the foot of the stairs runs up at an angle of about one foot in 10. It then turns and goes down. One could run a ramp out and give easy access. I am sure Mr Edwards does not mind me talking about this because I know of his interest in this sort of accessibility. I would think that the inherent defects in that case were made good because there is no way one can get to that building. Because the steps are four inches and three inches, there is a bit of a bumpy ride. Yet, the people in authority shied clear of it under the old Act because it would have meant a special resolution being passed by at least 75 per cent and probably would have included a special levy. I would support it under the new legislation and I am sure I would have the wholehearted support of Hon. Graham Edwards for making good a defect. I am sure Hon. Graham Edwards would do so because I know his views on these matters.

Hon. Graham Edwards: You have discussed that place with me.

Hon. G. C. MacKINNON: That is right. People who suffer a disability in a dramatic sense, such as Mr Edwards, are not affected. Those affected are old people who need a wheelchair and others who are being taken to hospital.

Hon. Graham Edwards: Age will find them out.

Hon. G. C. MacKINNON: Yes, I am becoming increasingly aware of that as I get another day older and deeper in debt. My problem is: Who makes the judgment? I sincerely hope that the Minister will provide me with some answers in his speech so that, if ever the referees look at these speeches, they will be sympathetic to what Hon. Graham Edwards and Hon. Graham MacKinnon considered to be a serious proposition.

Page 71 of the Bill deals with councils. Clause 44 (1) states—

> The functions of a strata company shall, subject to this Act and any restriction imposed or direction given at a general meeting, be performed by a council of the strata company.

I get a feeling, reading the Bill—I wonder whether the Minister will make specific reference to this when he replies—that there could be a little more protection for councillors in the measure. I think it is important for strata companies to have a council and to be able to secure a council. That is not as easy as it sounds. It is all right for some buildings in which there are only the minimum of proprietors as is defined earlier in the Bill. They form the council and appoint a chairman to run it. They have an annual general meeting and give the chairman a bit of curry if he has not been doing the right thing or a pat on the back if he has. It does not work like that in big organisations. It is surprisingly difficult, in many cases, to secure a quorum of a council. I get the feeling that the council could be given a little more protection.

Hon. J. M. Berinson: In what way?

Hon. G. C. MacKINNON: From mischievous behaviour. I think that is covered later. I would like to hear the Minister's views on it because what we say here will have a bearing on the referees.

Hon. J. M. Berinson: I am not clear. What sort of further protection are you talking about?

Hon. G. C. MacKINNON: I will deal with that in a moment. I am aware of a couple of companies in which people are waiting anxiously for the enactment of the legislation so that they can report councillors to referees. Here I am not talking personally, but I know of examples. It is not always possible to do things strictly by the book. It may be required, in some circumstances for two tenders to be obtained. I have had the experience where there has been great difficulty in getting two tenders. We had to almost dragoon someone into giving us a second tender, which we finally did get.

It is essential that two tenders are obtained. What are the liabilities of the councillors if they employ someone who is extremely trustworthy to do a job without going through the meticulous details which are required? I think there is a clause in this legislation which says that this sort of thing would be done in good faith. However, I would like the Minister to ask his advisers if they feel that the councillors would be adequately covered under these circumstances.

I am not sure what is meant by clause 47, but it reads as follows—

> (1) Unless otherwise determined by a special resolution of the strata company or, in an emergency, authorized by the referee, the council shall not, in any one case, undertake expenditure exceeding the sum obtained by multiplying the prescribed amount by the number of lots that are the subject of the strata scheme.

Perhaps the Minister will give an example which will include the figures in order that it is clear in the minds of members what is meant by this clause.

The clause dealing with insurance is routine, and it is similar to the appropriate section of the old Act.

With regard to rates and taxes, I know that one or two members will mention this matter at a later stage. The only area about which I am concerned with regard to rating is that involving rating on a differential basis; that is, the higher the value of the property, the more rates one pays. I understand that there are some areas where that has not applied in the past and people have been cross about it.

I refer members to page 98 of the Bill and to clause 78(1), which reads as follows—

> Where an application is made to a referee for an order under this Part in relation to a strata scheme, the strata company for the strata scheme has, in relation to a referee, the same duties under section 43 as it has under that section in relation to a proprietor.

Under this clause a person who wants to view certain books of a strata company must have them made available to him, and this can be quite a problem. I recall one case where an individual demanded to see certain records and someone had to sit with him while he went through the minutes. It can be a terribly arduous and costly task unless someone volunteers to sit with the complainant. A fee should be charged to the complainant for that sort of privilege. If this were done a young person could be employed to sit with the complainant while he studied the books and took as many hand-written copies as he might want of the information he requires. The penalty for neglecting or failing to perform such a request is $500, and that is a severe penalty.

Clause 79 refers to the procedure after the referee receives application. Problems arise in having someone who is prepared to act on the council, especially if life is made to be too difficult for the councillors. It only takes one or two difficult people at an annual general meeting and one has a situation where people say it is not worth the trouble of attending such meetings. This could be in spite of the fact that they have a $200 000 investment in an apartment, but they can say that that investment cannot be ruined and, in that case, they will opt out from attending meetings.

Fortunately, clause 79(3) states as follows—

> A referee may, without being obliged to comply with subsection (1) (c) or (d) and notwithstanding that a time specified under subsection (1) (d) may not have expired, by order dismiss an application for an order under this Part if—
>
> > (a) the application is frivolous, vexatious, misconceived or lacking in substance;

I am delighted to see this clause in the Bill, although it will depend on the attitude of the referee. I must admit that I am a little worried, not about Mr Berinson's ability to pick a referee, but about his Government's choice of referee—we will be lucky because the Government will not be in power all the time.

Hon. P. H. Wells: That is if there are enough referees available.

Hon. G. C. MacKINNON: There are not really many strata companies.

Hon. P. H. Wells: There are 9 000.

Hon. G. C. MacKINNON: Really! I did not think there would be that many.

I ask the Minister to request his advisers to have another look at clause 84 to make sure that it does

not make life difficult for the councillors. This clause reads as follows—

> (1) A referee is empowered to make an order that—
>
> (a) requires a party to the dispute before him to pay money not exceeding the sum of $1 000 to a person specified in the order;

I must admit that if, on examination of the Bill, I find myself subject to that penalty I will not be able to relinquish my position quickly enough on the strata title company in which I am involved. I ask the Minister to look into this matter. If a chairman is elected for 12 months—under the old Act he is elected at each meeting, which was pretty tedious—will the penalty of $1 000 apply?

I am sorry to hold up the House in such a boring way, but this is a tremendously involved Bill and there are many strata title properties which are worth $1 million. We are not talking about chickenfeed. I am not apologising for taking the time of the House, but I realise it is an effort for those members who have remained in this House to pay attention.

Clause 111(1) reads as follows—

> Notwithstanding section 36, where the strata company is the respondent to a successful appeal to the District Court under this Division by the proprietor of a lot, the strata company may not levy in respect of that lot a contribution towards the expenses of the strata company in relation to the appeal.

Does it mean that council members will be liable? Subclause (2) reads as follows—

> Notwithstanding section 36, where an order against a strata company is made under this Division by the District Court on the remittal to that court of an application of the proprietor of a lot, the strata company may not levy in respect of that lot a contribution towards the expenses of the strata company in relation to the application and the remittal.

If a levy cannot be struck, who pays it?

Hon. J. M. Berinson: That does not preclude a levy against other proprietors.

Hon. G. C. MacKINNON: Does it apply to an individual proprietor?

Hon. J. M. Berinson: That is right.

Hon. G. C. MacKINNON: Strata companies are currently facing a problem. Previously it was possible for a strata company to levy in excess of expenses, and it was entitled to invest the excess.

One of the problems about this tax evasion with regard to the big boys is that the tax people have caught up with these little investments. The strata company with its money invested against a rainy day has to pay income tax. It no longer pays the strata company to have a surplus invested against the necessity for a coat of paint or something like that. One lives from hand to mouth. It is simply not profitable any more to have a surplus invested.

Hon. J. M. Berinson: This is counted as income, is it?

Hon. G. C. MacKINNON: It is. One pays tax on it. Once I was caught for $12 000, quite innocently. It was almost a matter for the determination of the local Deputy Commissioner of Taxation. I can assure the Minister we do not have any surplus any more; we live from hand to mouth. This is absurd from the business point of view, but that is the taxation structure. In order to stop all the tax evasion by the big fellows, these little companies are caught up.

Political parties are caught up. No longer can local branches keep a few bob in an interest-bearing account because it is counted as income also. I am sure Mr Berinson is aware of that.

Hon. J. M. Berinson: Political parties as such are not taxable, are they?

Hon. G. C. MacKINNON: Political parties as such are not, but the local branches are. If they have little amounts scattered around and invested for the next election they have to pay income tax on them, too. That is the way the system works. These are the things which get caught up in this business of tax evasion.

Hon. J. M. Berinson: I am glad I came tonight; I am learning a lot.

Hon. P. H. Wells: We are not charging as much as you.

Hon. G. C. MacKINNON: I am giving it away for nothing. Anyway, if one looks at that from the point of view I have, that is the position.

Clause 117 reads—

> No action shall lie against a referee, including his delegate, on account of any proceeding taken, any publication made or anything done under the authority of this Act or taken, made or done *bona fide* purportedly under the authority of this Act.

I wonder if the referee has plenty of protection against actions taken?

The schedules are extremely interesting and need to be read in close conjunction with the Bill as well. I have had these checked against the current by-laws. This is where the Minister will probably direct my attention to the protection of council members.

Clause 4 (13) of schedule 1 at the bottom of page 136 reads—

> (13) All acts done in good faith by the council shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, be as valid as if that member had been duly appointed or had duly continued in office.

That probably also covers what I was saying about proprietors.

At the foot of page 138, there is provision for the appointment of a chairman, a secretary and a treasurer of a council. I am delighted to see that. We no longer have to go into that at the end of the meeting, seeing that everyone is there, and ask someone to act as chairman. It was one of the peculiarities of the old Act.

I am delighted to see on page 139, clause 8 of schedule 1, details of the meeting of the council and the way in which matters are conducted. It is laid out very carefully and well.

Most of the matters have been clarified. I notice that I have written in my notes, after reading the Bill five or six times, "Sounds okay", "Good", and even on one or two occasions, "Very good". I have even given some provisions an elephant stamp, which I learnt from my grandchildren.

I wonder if the Minister would look at page 144, where it refers to keeping animals. Would he consider inserting after "keep any animals" the words "without prior permission from the council"?

Hon. J. M. Berinson: That could not happen because as it is presently drafted the owner or occupier is only precluded if the council positively gives him notice that he must not.

Hon. G. C. MacKINNON: One can have a rule where one does not keep animals. Take a canary, for example. Say the council agrees a canary is perfectly all right. Is it necessary, or is that covered? I ask it should be put in.

Hon. J. M. Berinson: As I understand it, this provision does not require an application for permission. It establishes a situation where, if he brings in an animal, he cannot keep it there if he is positively directed not to in writing. It does not require him to apply for permission first.

Hon. G. C. MacKINNON: It was suggested to me by a person who went over it very carefully. I know of a case where there is a blanket ban on pets in a particular strata company, but one or two ladies have applied for canaries or budgies which have been allowed with permission of the council. The Minister might look at this and let me know.

Hon. J. M. Berinson: I think I am right in suggesting that that schedule in any event is subject to amendment by the corporation.

Hon. G. C. MacKINNON: I am speaking from bitter experience. If it is not written in black and white one can waste an hour at an annual general meeting, but if one can turn it up and say that Mr Berinson said he wrote into the Act, "provided one has prior permission", that finishes the argument and saves an hour at an annual general meeting. Those meetings can be pretty tough.

Hon. P. H. Wells: What about in years to come?

Hon. G. C. MacKINNON: I will give him a special mention if he solves it.

Hon. J. M. Berinson: I would deserve it if I could.

Hon. G. C. MacKINNON: May I conclude by saying that I consider this to be a very good piece of legislation? It seems to me to be very even handed. There is over-emphasis on mechanical details, as I mentioned when I started. That is done by the subdivision of land into spaces and that sort of thing. It should be to the benefit of the occupants and their idiosyncrasies, particularly the idiosyncrasies of those who happen to be elected president or chairman of the body corporate. I do not exclude myself from them.

I do not exclude myself from those idiosyncrasies. The Bill lists matters in far greater clarity after nearly 20 years of experience. Provided the referee gets off to a good start and he does not set up a total body of law in his own right but acts as he should in solving minor difficulties and resolving matters without their going to court, the provision could be a very good thing indeed. I sincerely hope that this Bill does something towards solving the problems we have experienced over the last few years with some of the matters associated with the management of these large capital investment structures, and I wish it well.

HON. P. H. WELLS (North Metropolitan) [8.41 p.m.]: This week a person telephoned me. This person had before him a contract in connection with a shop in a shopping centre which had recently been developed. That shopping centre comprises 11 shops, 10 of which are small shops. The other shop is a large food shop. From what was explained to me, the large shop has an area equivalent to the area of the other general shops, so each proprietor of the general shops has a unit value of one-eleventh which means the owners of the small shops pay ten-elevenths of the rates and the costs related to that strata plan. The food store, which has a large area, pays one-eleventh. Therein lies one of the many problems of the

existing Act. The situation of individual owners being charged in excess of a reasonable proportion of the rates, taxes, and maintenance of individual strata units compared with those other people within the strata complex has been remedied by clause 16 of the Bill in terms of the right to have the entitlement redistributed. This situation was first brought to my attention early in the piece and I made a speech on this matter back in 1982. I am sorry that Hon. Peter Dowding is not in the House to listen to my reading it back because on that occasion he continually interjected on me as if I knew nothing. It is interesting to go back to *Hansard* of 20 April 1982 when I said on page 760 the following—

> A board which could hear appeals already exists. We would be justified in having an arbitrator, as I suggest that the appeals board be the metropolitan valuations appeals board, which presently operates under the Land Valuation Tribunals Act 1978. An amendment to the Act would provide the opportunity for appeals against disputed share entitlements anywhere in the State. The board could decide whether an appeal is justified, in terms of having an arbitrator appointed.

I raise that issue because many people within my electorate have raised the problem of the high proportion of rates they must pay. In relation to one set of apartments that was mentioned the Valuer General had actually been through the block and had established a gross rental value on every unit, but because the area was rated on unimproved value the distribution of rates was according to the entitlement for each lot; and because of the way the developer was able to allocate the blocks under the old strata title it turned out that the owner of one of these units was paying $800 more than he would have if the lot was rated under the gross rental scheme.

That is why I was reported in the *Stirling Times* of 25 May 1982 as follows:—

> The Government should set up an appeals board with the authority to appoint an arbitrator. The problem could then be dealt with in the particular region in which it arose.

It is pleasing to see that that area of the legislation which has caused so many problems and so much cost to property owners has been dealt with in a very real way by this Bill. Members may not have had a lot of experience in this area, but let me recount an illustration. As often happens now with flat developments, one-bedroomed flats may be on the ground floor, two-bedroomed flats may be on the second floor, three-bedroomed flats may be on the third floor, and a penthouse may be on the top floor. Because the developer has the right to decide the unit entitlement of each unit he could well say "Right, there is a total of 50 flats, including the penthouse; I will make it one-fiftieth each". He might decide to use the figure at which the unit has been purchased, but sometimes that price becomes inflated because furniture is put into the unit in order to sell it at a greater price. It does not matter what he does; once it has been decided, the person with the one-bedroomed flat could be paying exactly the same as the person on the penthouse floor.

Hon. P. G. Pendal: For rates?

Hon. P. H. WELLS: That is right, for rates, maintenance, water, and all those costs incurred by the body corporate. In fact, in Hon. Phil Pendal's electorate the situation is worse than in my area because in his electorate there is the situation where a commercial development—

Hon. P. G. Pendal: They call them composites.

Hon. P. H. WELLS: I do not have that situation much in my area, but I am certain the member will explain his situation to us. In my area there are dwellings of various sizes and the owners of apartments or flats are paying the same rates and maintenance expenses. Under the existing legislation a unanimous decision is required before the rates system can be altered. A unanimous decision is nearly impossible in regard to changing the law that says one must pay double or triple rates. I do not want to pay increased rates. The developer could say "You bought it at that cost"; therefore we cannot ever get a unanimous decision.

Clearly, the three provisions of this Bill cover that situation. One is that the body corporate can seek a unanimous decision to have the system changed. If this fails there is the mechanism for a special decision which requires approval of 75 per cent of the proprietors of the strata corporation. If that situation fails the Bill provides that one may deal with the referee. Then it lays down clearly that all those companies, which are registered once the Bill is proclaimed, will require to have a written land valuation which distributes rates in proportion to the valuation of the property. That is a sensible approach to the problem. Given the figures provided in the Law Reform Commission report, I estimate there are approximately 11 500 bodies corporate in Western Australia.

Hon. Neil Oliver: There would be a lot more than that.

Hon. P. H. WELLS: No. The Law Reform Commission report as at 30 June 1982 gives the number of plans at 9 689. It also lists the number

of strata plans. I suspect the number is growing at a rate of 600 to 700 a year on current trends. In excess of 52 000 units exist and the rate is growing currently at around 5 000 units a year.

A point mentioned in the Law Reform Commission report is that duplexes used to represent approximately 90 per cent of bodies corporate or strata plans but that number is greatly decreasing. In fact, the report indicates that the level dropped from 90 per cent to between 75 and 80 per cent. There has been an explosion in the number of strata titles.

This Bill will meet a great need. In its early stages in regard to those 52 000 units currently existing which are rated on the unimproved value of the property, I suggest that unless the bodies corporate pass a unanimous decision or have a special decision passed immediately many actions will go to the referees to have the unit entitlement changed. I would expect the City of Stirling and the Shire of Wanneroo contain a large number of strata titles. In other areas there will be appeals where property is rated on gross rental values and where this is a problem—I suspect in those cases problems exist—appeals to the referee will be fewer. The people concerned are from areas like Scarborough where there are many complaints; but complaints fall right across the board where these are rated on unimproved value. Those people feel currently that they are paying a disproportionate amount of rates and taxes compared with the value of their dwelling. They feel it is unfair that the distribution of rates has been levelled in a very unfair way, and that a person who occupies a whole floor can pay exactly the same rates as somebody occupying a unit which has one-quarter or one-tenth of the floor area of the strata title building.

Therefore, I expect there to be an explosion in terms of the number of claims to referees and I trust that the Government is anticipating, and making some studies of, the likely numbers of people who will be seeking during that transitional period some justice.

This Bill will bring justice to individual property owners who for many years have been paying an unfair proportion of rates.

I welcome the referee approach because I can see no other solution to the problem. I discussed this matter with the Valuer General and tried to reach a solution myself. However, I draw the Attorney General's attention to a small matter in terms of the definition. I know that the Bill carries a definition of the "land valuer" who carries out the valuation. I presume he will be a licensed valuer.

I notice, also, that the entitlement change will be made under the Land Valuation Tribunal. I presume that will be done under the Land Valuation Tribunals Act 1978. I wonder why that was not included in the definitions in this Bill. Is it considered that land valuations will get caught up in the one shop credit tribunals set-up? I assume that will not happen. Clause 16 states that the Land Valuation Tribunal will deal with appeals and, in fact, the first approaches will be for the change of units of the tribunal, as is covered under clause 16. If the body corporate passed a motion that there should be a change of entitlement, clause 16 provides that that should occur before the Land Valuation Tribunal. When I looked for the definition of the Land Valuation Tribunal I found there was no such definition. I assume that we accept that body under the Land Valuation Tribunals Act. However, I cannot understand why it was not included among the definitions when it was considered acceptable to put in definitions such as "licensed values".

Hon. Neil Oliver: It has to be in the short title of the Bill, surely.

Hon. P. H. WELLS: It is not included in the short title of the Bill. However, I assume it does deal with those matters.

The other thing I noticed was that, under the Land Valuation Tribunal, if that is the tribunal to which we are referring in the Bill, it is provided that there should be an allocation of expenses. I remember when I first looked at this area that I thought that the situation could arise where somebody could make an appeal which would be considered to be a waste of the tribunal's time. I gather that a person cannot make an appeal unless that approach is made through the body corporate. I wonder what provision there is, under the referees' set-up, for stopping frivolous appeals. I presume that, if someone made a frivolous application to the Land Valuation Tribunal, for example, to change unit entitlement and, which application was totally unrealistic, that person would run the risk of having costs levied against him. I suspect that the provisions under the Land Valuation Tribunals Act take account of that because that Act includes the provision that the tribunal may or may not award costs.

A a referee cannot make an allocation of costs, but he has to recognise an application as a trivial one at an early stage before he wastes money and time by proceeding with it. However, I suspect that a referee would have to do a fair amount of work on an application before he is able to decide that an approach is a trivial approach. Certainly, if we are talking about unit entitlements, he would have to look at the entitlement of all those within

the body corporate, he would probably have a look at the books and would have to make a number of inquiries. That would involve a certain amount of expense.

I wonder whether someone has given consideration as to how frivolous appeals will be handled. They take up a lot of time and are very costly. At the moment, about 50 000 appeals are waiting to be heard and they are increasing at the rate of 5 350 a year. Many people make frivolous appeals to a referee. People ring me on occasions and complain, but some of these complaints are quite frivolous when they are checked out.

Sometimes we spend a lot of time checking it out before deciding that we have been taken for a ride and that the complaint is frivolous. I wonder how the Government proposes to deal with what may become quite a large task for referees. Certainly with the land tribunal there is a filtering effect. Firstly, a cost factor will be passed on; secondly, there is a filtering through the land valuation tribunal. That is a sort of protection, but I wonder whether there has been any consideration of the use of the arbitrator.

It appears that many other areas of the Bill follow the report of the Law Reform Commission. The report highlights the big task of such a commission. The concept of this Bill was first raised in 1977. Since then, members of Parliament have continually asked when it would be introduced. Over eight years later it has found its way into this House.

Hon. Neil Oliver: I am pleased at the way the Minister is going to answer your question, because he has taken down every point you make!

Hon. P. H. WELLS: I wonder whether he will be able to answer the next question. I am reminded of another Bill that took about the same time, the Bail Bill. Four years after it was passed it became law. I wonder whether the Government, having spent eight years in putting this legislation together, can give me any indication of how long it will be before it is promulgated.

Hon. J. M. Berinson: The main potential delay at the moment is in the debate itself.

Hon. P. H. WELLS: Is the Attorney perhaps suggesting that the examination of the Bill is not a function of the Parliament?

Hon. J. M. Berinson: You know I would not suggest that.

Hon. P. H. WELLS: Then perhaps the Attorney will be able to answer the question that I pose. It seems to me that some of the Bills do get passed. Often there are quite legitimate reasons for certain delays—for example, the need to examine legislation. I suggest to the Attorney that 50 000 people are interested in the outcome of this legislation, and that something like 11 500 bodies corporate will be interested in understanding it. Those people will certainly be interested in it when it becomes law.

A range of ordinary people throughout our community have an interest in this legislation. Last week I met one of a group which was meeting at the local kindergarten. They were just ordinary people who had elected to live in a body corporate. What effort will there be to explain in simple terms the changes to the legislation to enable those bodies corporate to understand the new requirements that have been put into this legislation? Sometimes when we make laws we expect everyone to read the Act and understand it. Recognising the large number of people who have chosen to live in strata title units, the Government should make some effort to put together some material that would explain the operation of the Act and would give some guidance to members of bodies corporate so that they can understand such a complex Bill.

Hon. Neil Oliver: I hope you are not referring to the material we have already had?

Hon. P. H. WELLS: No, I am suggesting, as the Attorney knows, that a sensitive Government would be anxious to provide those people with some sort of information that would be a guide to them in understanding the Act.

I suggest to the Attorney that most people do not understand the Act; they do not understand its operation. When I first picked up the legislation, it seemed to be complex. The people who live in these units have waited for some change in the legislation. I suspect that is the reason why it took eight years for the law reform people to sort out some of the problems that exist in these areas. I do not think they have handled all the problems, but the Bill is a big step forward in assisting those people by giving them equal rights and outlining the methods under which they operate. I trust that advance will not be lost by churning out a piece of legislation and telling people that is what they have to live by. That would be wrong. We need to have a little more consideration of the Bill.

I support the Bill.

HON. P. G. PENDAL (South Central Metropolitan) [9.05 p.m.]: Most of the comments that I wanted to make have now been made and I will be mercifully brief. I represent in this Parliament a province which has perhaps numerically more strata titles than any other in the State, with the possible exception of Metropolitan Province. I congratulate the Government on its move to bring

forward the legislation. The Attorney General is aware that I have been keenly awaiting its introduction because many of the anomalies in the current Act have adversely affected my constituents for a long time.

I take the opportunity to commend the Law Reform Commission for its part in bringing about this legislation. It is perhaps easier for the average member of Parliament to refer in the first instance to a report of an independent body of that kind. Secondly, it makes the task that much easier to have the clause-by-clause notes provided to members, as has been done on this occasion. Whether that is due to the work of the Attorney General or the commission, I am not sure, but in any case I extend my thanks for the provision of those papers.

As described by Hon. Peter Wells, it is true that we are dealing with a piece of legislation that has enormous consequences for the lives of many ordinary people. The legislation is highly complicated. As a legislator, to the extent that, I am able to understand it, I give it my full support.

I will comment on clauses 14 and 71. Clause 14 deals with the unit entitlement of lots. That matter has been canvassed fairly well by the previous speaker. My interest in this matter came about because a constituent in South Perth currently pays in the order of $2 200 in local government rates alone because of the anomalous situation in the current Act which allows residential unit owners within a composite building to bear a disproportionate share of the financial burden. In this case, my constituent and his wife occupy part of the building which has a number of residential units but which is predominantly occupied by commercial undertakings. Therefore, that individual and many others will find a great deal of relief in the passage of this legislation.

The second area to which I wish to refer, and because of previous speakers I have no desire to spend more time on clause 14, relates to the new provision under this Bill for the appointment of referees. That begins at clause 71 and we have heard considerable comment on that matter tonight from Hon. I. G. Medcalf and, more particularly, from Hon. Graham MacKinnon.

I cannot claim to speak from personal experience, as Mr MacKinnon has tonight, and therefore I cannot necessarily disagree with many of the fears he has expressed regarding the way in which the referees will go about their jobs. It may be that the fears he expressed will become more apparent to us. I guess that when a Bill is as complicated as this the Government must be prepared to bring it back for amendment at appropriate times. However, it is an important breakthrough for the owners of strata title units to now have access to the referee mentioned by the Attorney General. Certainly I have had many approaches from my constituents, again in South Perth, who believe that the absence of a proper arbitration system within the Strata Titles Act has been to their detriment. Notwithstanding those fears which Mr MacKinnon probably rightly has, I welcome this provision of the Bill.

I am concerned at the apparent intention of the Government to perhaps institutionalise the system of referees into the Public Service a little more than I would have preferred. It is unclear to me at this stage because of the comments by the Attorney General in reply to a question without notice I asked, and it is also unclear to me as a result of reading his second reading speech, just what sort of Public Service creature the referee or referees will be. If it is going to be the case that we shall have a full-time appointment of a strata titles referee who works in the Crown Law Department and, over a period of years is seen to build up his own support staff, I would have some reservations about proceeding down that track.

I say that because the Attorney General knows that I put to him a proposition that perhaps the referee's position should be confined to retired members of the legal profession. It cannot be open to other people because the clause demands that the person appointed shall have qualifications as a legal practitioner or magistrate. The suggestion I make is not inconsistent with the words contained in clause 71. It seems to me that we may well save the State—and therefore the taxpayer—a great deal of money if we have a more informal type of referee system whereby a panel of a dozen retired legal practitioners, qualified under the provisions of clause 71, were nominated, who from time to time may be called upon by the Attorney General, the Under Secretary for Law, or whoever carries out the enforcement of the proposed Act. That pool of retired legal practitioners would be available when called upon. In those circumstances we would be likely to get a vastly more inexpensive system.

I am aware that one of the previous speakers—I think it was Mr Medcalf—said that we must be wary of any cheap forms of justice. I guess that the Attorney General and anyone else concerned with proper decisions being made at law, are always reluctant to see half-baked schemes brought into effect which may bring about that "cheap justice" to which Mr Medcalf referred. However, I do not think the suggestion I have made needs to be out of step with that sort of sentiment. I think it is possible to make use of a

panel of retired lawyers, perhaps paying them so much per sitting. We could still ensure that people were not getting the "cheap justice" Mr Medcalf had fears about, but a very good form of justice that would be inexpensive to those people living in strata title units who need access to a method as uncomplicated as possible for settling disputes between owners of units.

I ask the Attorney General particularly to make some reference to that proposition in his second reading reply and to indicate whether the Government has firmed up in its opinion that a formal full-time structure for the referee system shall be in place, or whether it might be prepared to look at the system I have suggested.

With those two very general remarks I am happy to give my support to the Bill and not to proceed with any further comments. I am able to do so because several of the previous speakers on the Opposition side have covered some of the areas which were of greatest concern to my constituents.

I implore the Attorney General to be prepared to bring the proposed Act back should occasions arise, as under the present Act, when great anomalies and financial disadvantages become evident to the people of whom I have spoken.

I do not think anyone in Western Australia would assume or accept that $2 200 in local government rates—forgetting the other rates and charges and maintenance costs—is reasonable. Yet the individual to whom I referred, and others like him of whom there would be hundreds if not in the low thousands, have had to wait for many years since the problem was identified. I hope that if any new financial detriment becomes apparent in the new Act, the Minister will be prepared to act more quickly than has been the case in the past. That is not a criticism of the Attorney; I know he was not prepared to bring the amendment to the House piecemeal and that his desire was to make a total approach to the legislation consistent with the recommendations of the Law Reform Commission.

I support the Bill.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [9.19 p.m.]: It has been pointed out by a number of previous speakers that the Bill before the House closely follows the recommendations of the Law Reform Commission. I make the point, however, that it does not follow the commission's recommendations slavishly and that the report of the commission has been subject to very close review. That exercise has been very greatly assisted by the Crown Solicitor and other legal officers working under his guidance, and I want to record my appreciation and respect for their assistance in this matter. It is typical of their assistance in many other areas.

I also take this opportunity to pay tribute to the office of Parliamentary Counsel. This is a large Bill; it covers substantial new areas and it involves a fair level of complexity. It has had to be prepared under circumstances of very great pressure on Parliamentary Counsel and that arose for two reasons: In the first place I was very anxious to have this Bill in a condition to put through the Parliament during the current session so that its rating provisions in particular could take effect from the 1985-86 financial year.

Hon. P. H. Wells: That means we will get it before June.

Hon. J. M. BERINSON: That is my fervent hope. Secondly, the work on this Bill coincided with other very substantial and complex measures which Parliamentary Counsel had to deal with at the same time. One cannot always measure these things on a statistical basis, but it might give some indication of the work of that office if I tell the House that, by about the third week of March this year, something over 1 100 pages of Bill draft had been completed by Parliamentary Counsel in this calendar year alone. That is a volume of work which, on some occasions, has not been equalled in a full calendar year.

I mention these matters mainly for the purpose of expressing my appreciation and the appreciation of the Government for the efficient work of Parliamentary Counsel under the heavy load which they have been bearing with restricted resources.

Tonight I have tabled with the Clerk, and have already provided to Hon. Ian Medcalf, a copy of several pages of amendments. There are just over three pages of amendments in all. They are all strictly matters of drafting correction and I shall be circulating members tonight with copies of these amendments, together with informal explanatory notes in relation to each of them.

I hope that members will not, as would on other occasions perhaps be appropriate, take these amendments as a basis for criticism of the work of Parliamentary Counsel. On the contrary, I regard them as another indication of Parliamentary Counsel's great anxiety to produce the best possible legislation for the Parliament in spite of the heavy stress and great difficulties under which they have recently been working. I shall arrange for all members to have these amendments so that they may look at them overnight. I am sure they will find, on examination, that they confirm my

description of them as merely technical and drafting matters.

Hon. Graham MacKinnon brought an awesome amount of practical experience to bear in this debate, and I confess at the outset that I have no prospect of keeping up with him, especially during the second reading. Hon. Neil Oliver said I was studiously making copious notes. He was good enough to understand that to mean that I would now launch into an explanation or similiar detailed response to the very many matters that Mr MacKinnon raised. I did have some fleeting optimistic expectations that I would be able to do that, but they only lasted for Hon. Graham MacKinnon's first 14 questions. After that it occurred to me that it would be more appropriate if I invited him to again raise the matters at the relevant stages of the Committee debate, which I now propose be held tomorrow in view of the circulated amendments. Hon. Graham MacKinnon can take it that his references tomorrow need not be as expansive as they were tonight, as we now have some background of what is in his mind. However, I frankly confess that it would be beyond me to attempt a detailed response on the very many items he raised.

Just in passing I must say that I hope very much that there will not be an overnight slump in the market value of strata title units in Western Australia. Anyone who heard Mr MacKinnon's exposition of the headaches associated with having anything to do with strata units would be rushing to flog them off if he had them.

Hon. G. C. MacKinnon: Perhaps I made it sound a little worse than it is.

Hon. J. M. BERINSON: I think perhaps Hon. Graham MacKinnon did; but, in any event, I content myself with the hope that the boom will not burst overnight on the strength of some of his miserable experiences.

In the course of bringing his practical experience to bear though, Mr MacKinnon gave us some very helpful guidelines. One of them is to be found in his statement that there are some problems in this area for which there are and will be no answers. The truth of the matter is summarised very well in that statement.

We are dealing with a very large number of units, with very large numbers of people, and with very different sorts of circumstances. The possibilities for problems are limitless in a sense, and I would not want anyone to think that this Bill is presented to the Parliament with any confidence or assertion that it will now solve all existing problems and strata units in future will be problem free. That will not happen just because of the personal, human frailties which are brought to bear in the relationships which strata units create. However, I do proceed in an optimistic way to suggest that at least this Bill is a very great improvement on the Act which it seeks to replace; that it reflects study of past problems and experience; and that it has reasonable prospects of doing a significantly better job.

On that modest basis it is, nonetheless, well worth the support which has been expressed generally.

Mr Wells suggested that some sort of explanatory pamphlet should be prepared and made available for interested persons. I am happy to convey that suggestion to the Minister for Lands and Surveys, who is now responsible for this legislation and I am sure he would be interested to pursue this possibility.

Mr Wells asked also for some indication as to when this Bill might see the light of day in terms of implementation. He was unkind enough to raise again that gruesome spectre of the Bail Act, a piece of legislation which constantly appears to haunt me as its promulgation remains deferred.

In a sense, one aspect of the difficulties which we experienced with the Bail Act will recur, and that is that this Bill will require very substantial work in relation to the drafting of regulations. For the reasons I have given in an attempt to get the Bill through this session, I propose that a high priority be given to the preparation of those regulations. The aim, as it has been throughout, is to get this legislation in place and operating in time for the 1985-86 financial year, and that will mean that we will effectively have three months in which to prepare the regulations. I am hopeful that that can be done and I will be trying very hard to find the necessary resources to ensure that it is done.

All speakers made the point which I think I made in my own second reading speech—although I do not remember now whether I did—that we should be flexible in our approach to this matter, and that the Government should be prepared to review the Act again on the basis of reasonable experience with it. That is certainly the approach we have taken and it is in that spirit that I suggest members should exercise some restraint about attempting to put forward too many substantive amendments at this stage. To have reached the current stage has involved a very long period of consideration and gestation. Because of the complexity of this Bill, it contains an element in which

one is obliged to say, even if one has some choice, "Take it on trust", in that we are working on the basis of a recommendation prepared over many years and on the basis of very substantial input from people in the industry as well as individuals who have been affected. There has been a real public input in that sense on the question of strata titles and that has been carefully considered.

This input has not been handled as a matter of form. The commission itself dealt with it very seriously and I point out to the House that the representations which came to me after the report was produced and which in turn were the subject of advice by the Crown Solicitor were also taken seriously. On the whole we have done about the best job that can be achieved as a first major effort, but I certainly have no hesitation in assuring those members who sought such an assurance that I would look to a further review of this legislation certainly in no more than two years' time and preferably earlier than that if problems in the referee area or any other area emerge.

I thank all honourable members for their contribution to this debate. It has been very positive and helpful. To the extent that I can pursue in greater detail during the Committee stage some of the questions that have been raised but not yet answered, I will be happy to clarify those matters.

Question put and passed.

Bill read a second time.

ABORIGINAL LAND BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon. J. M. Berinson (Attorney General), read a first time.

Second Reading

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [9.35 p.m.]: I move—

That the Bill be now read a second time.

I am pleased to be able to introduce into the Legislative Council the Aboriginal Land Bill 1985.

This historic legislation represents a moderate and practical approach to Aboriginal land tenure questions. The neglect of previous Administrations is well known in the History of Aboriginal development. This legislation does not dwell on those shortcomings. It seeks to recognise Aboriginal traditional connections to land and to present the most disadvantaged group in our community with a tangible and secure base for their future development without harming anyone else.

The legislation fulfils a governmental commitment to provide a rational and fair system for Aboriginal people to seek title to land with which they have had either a traditional affinity or long residential association or use. This legislation has been arrived at by diligent and sincere processes, involving a wide range of community interests and viewpoints.

The use of a drafting committee consisting of representatives from organisations most likely to be affected by the legislation, has enabled the accommodation of views in this process from the very first statement of principles issued by this Government on 17 September 1984.

Before commencing to describe the provisions of this legislation, I wish to place on record the appreciation of the Government to all organisations which took part in this process. It is pleasing to note that many of these organisations have been able to publicly endorse the course being charted in this Bill.

This Bill reflects the commitment and integrity of the organisations involved and will stand as a useful example of the way in which future Governments might incorporate community views in the drafting and legislative process.

The drafting committee consisted of:

The Chamber of Mines of WA (Inc);

the Primary Industry Association of WA (Inc);

the Pastoralists and Graziers Association of WA (Inc);

the Australian Mining Industry Council;

the Aboriginal Advisory Council;

the Aboriginal Lands Trust;

the Federation of Aboriginal Land Councils;

the Association of Mining Exploration Companies;

the Australian Petroleum Exploration Association; and,

the Commonwealth Government.

Formal discussions also took place with the Northern Territory Government, representatives of the Australian Fishing Industries Council, the Country Shire Councils Association, some shires, and other Aboriginal groups.

Innumerable hours of effort and consultation have been put into producing a document and approach which is now presented for the consideration of the House.

The manner in which this Legislature has in the past sought to address Aboriginal problems is reflected in a very sorry history in which subju-

gation and paternalism have operated hand in hand.

From the formal establishment under Imperial regulation of the reserve system in the 1860s and with the spread of missionary activities as early as the 1830s, land has been seen as a necessary part of policies which date from as early as the 1830s, and land has been set aside for the exclusive use of Aborigines. There is therefore nothing new in the proposition that land should specifically be made available for Aborigines. Control over land set aside in the past has remained firmly with the Government or other non-Aboriginal agencies, such as missions.

Currently, the Aboriginal Planning Affairs Act 1972 vests control of reserves under the Aboriginal Lands Trust. The trust is ultimately, however, an advisory body to the Minister.

The Government is proposing a new approach which will relinquish ministerial and other control over reserves, and vest the land area of reserves in Aboriginal land owners. At the same time, as Aborigines gain rights with respect to land, they will also incur responsibilities; for example, the payment of local shire rates. The Bill is seeking to equalise the landholding tenure system for Aboriginal people. Nothing could be so unequal or racist as a system which contains Aboriginal people to live on a reserve. No other Australian is required to live on a reserve under ministerial control where Aboriginal people only have a subsidiary advisory role through agencies such as the Aboriginal Lands Trust.

The Aboriginal Lands Trust will be abolished and its advisory functions replaced by the Regional Aboriginal Organisations which, under the provisions of the Bill, will be chosen by a method selected by Aboriginal people and best suited to their regional requirements.

The Government's view is that the proposal will be a positive step towards removing currently existing oppressive elements of paternalism which are akin to a system of apartheid. The continuation of ministerial control over reserves and the lives of Aboriginal people is one which denies a lack of trust in Aboriginal people to manage their own affairs. In 1985 this is no longer an acceptable approach.

Before moving to describe the scheme of the Bill, it is important to make some comments in respect of the Commonwealth Government's preferred position. The Commonwealth Government has made clear the principles on which it proposes to legislate later this year. No doubt its position has moved much closer to that proposed in this legislation than many would have considered possible earlier this year.

The Western Australian Government has achieved major concessions from the Commonwealth's initial and preferred position. Equally, however, there is no doubt that the interests of the Western Australian community will not be well served by central legislation in this matter.

The one thing that cannot be denied is that, if the Federal Government legislates in a way that disadvantages our State, it will have done so as a result of our inability to pass legislation that fills a vacuum into which Federal legislation can flow.

The Federal legislation will not suit the State in critical areas such as access, the duration for which the claim period for Aboriginal land will run, the methodology for the distribution and collection of royalties that may accrue from mining development on Aboriginal land, and the potential for unsatisfactory central control in the area of sites protection.

The opponents of this legislation will say that the Federal Government will not be able to legislate to affect us and that we should simply rely on those sections of the Constitution which speak about the inability of the Federal Government to resume land unless just compensation is paid. This view entirely neglects two important factors.

The first is that the Commonwealth may choose to resume land that the State does not want to become Aboriginal land. It may choose to do so on the basis that it will compensate appropriately for that land. Secondly the related difficulty comes when some assessment of the value of land is undertaken by the Commonwealth. Just compensation will certainly be open to argument and in the case of desert land, a valuation will be very difficult to achieve. This will inevitably lead to debate in Federal arenas, not known for their sympathy to State views.

The Federal Government's position is not presented to this House as a threat. It is presented on the basis that there is sufficient uncertainty about it for us to ignore the Federal prospect in favour of a more certain and acceptable State approach.

In any event, the responsibility of this Legislature is clear. Western Australian land tenure legislation should be considered and dealt with in a truly Western Australian context.

I shall now outline the scheme of the Bill.

Aboriginal Land Corporations: The scheme of the Bill is to vest title in local Aboriginal groups which are to be called Aboriginal Land Corporations. The corporations must consist of at least

seven adult Aborigines. The administration of incorporating such groups will be carried out by the registrar of the Aboriginal Land Tribunal. Existing Aboriginal bodies incorporated under the Associations Incorporation Act will be able, with the concurrence of the registrar, to convert to corporations under the provisions of the Aboriginal Land Bill.

Regional Aboriginal Organisations: The Bill creates nine Regional Aboriginal Organisations covering the entire area of the State. The Regional Aboriginal Organisations are to provide services and assistance to Aboriginal Land Corporations. The executive of the initial Regional Aboriginal Organisation will consist of ministerial appointments. There is an 18-month period in which the interim Regional Aboriginal Organisation executive will consult with Aborigines in its region to ascertain the preferred method of selection/election of future executives. The preferred system will be promulgated on a region-by-region basis by regulations approved by the Minister with special responsibility for Aboriginal Affairs.

Vesting of current reserves: All Aboriginal reserves, including Community Welfare reserves set aside for Aboriginal people, which are described in a schedule to the Bill, will vest automatically in one of the Regional Aboriginal Organisations in trust for ultimate distribution to Aboriginal Land Corporations.

Land claimable and protection of existing interests: Apart from the vesting of current reserves all vacant Crown land, mission lands originally granted for Aboriginal purposes, and limited areas within pastoral leases for residential living will be claimable. The holders of existing rights which may be affected by a land claim—for example, adjacent landholders—will have the right to appear before the tribunal and the tribunal must be satisfied that the enjoyment of such rights is protected before a land grant is recommended.

Grants of land will always be subject to the protection of rights in existence at the time of claim, including lease arrangements entered into between the Aboriginal Lands Trust and Aboriginal communities over reserves. Otherwise no private land, land leased from the Crown, or land which the Crown has contracted to sell or otherwise create a substantive interest, will be available for claim.

Basis of claim: In order to succeed an Aboriginal Land Corporation will have to show the majority of its members have—

(a) An entitlement to the land in accordance with local Aboriginal tradition; or

(b) a long association with the land by residence or use of those members; or

(c) the corporation has specific proposals for the use of the land—that is, needs-based claims.

Assessment of claims: All claims will be assessed by an Aboriginal Land Tribunal which will be constituted by a Supreme Court judge commissioned for the purpose. The judge will make recommendations with respect to an application to the Government of the day which must make the ultimate decision as to whether or not a grant will be made. In making recommendations and in deciding to make a grant the tribunal or the Government may recommend the imposition of, or impose respectively, conditions specifically with respect to the protection of the existing use and enjoyment of any interest or right affecting the land claimed or other land. In the case of unallocated land the tribunal cannot make a recommendation in favour of a grant unless the grant is capable of accommodating the future use or management of that land or land contiguous to it or in the vicinity of the proposed grant land.

Tenure: Aboriginal land will be held under freehold title issued by the land Titles Office. Such land may not be sold or mortgaged without prior consent of the Minister with special responsibility for Aboriginal Affairs. The Bill sets out criteria pursuant to which such discretion may be exercised.

Time limit: Because the Bill allows for ongoing consultation with Aboriginal people as to how they may wish to elect or select members of the executive of the Regional Aboriginal Organisations, the period in which land claims may be made will run for four years from the expiration of the initial 18-month period from proclamation.

Access for hunting and fishing: Aboriginal people will be able to apply for rights to hunt and fish on public land—that is, land held by public authorities—providing they can establish a traditional entitlement. It is not planned to amend section 106(2) of the Land Act which allows Aborigines the right to hunt and fish in their traditional manner on unenclosed and unimproved parts of pastoral leases.

Application of laws: All existing laws including local government laws and laws with respect to resumption of land will apply to Aboriginal land granted under the legislation. Local council rates will be charged. That is not currently done for Aboriginal reserves. The current system of requir-

ing entry permits to existing reserves will be phased out over a five-year period.

Aboriginal land used for commercial pastoral purposes is to be subject to supervision by the Pastoral Board on the same terms and conditions as for a pastoral lease under the Land Act.

No public lands, for example, land vested in Government authorities, national parks, forest reserves, public roads, stockroutes, foreshores, etc., will be available for claim.

Future use for public purposes: Before it is able to recommend a land grant the tribunal must be satisfied that the requirements for future use or management of the land for public purposes are able to be accommodated. Conditions may be imposed with respect to any land granted.

Protection of the interests of pastoral lessees: Up to two excisions will be allowed for pastoral lessees where cattle are run and one in the case of sheep run pastoral leases. Any excision must not unreasonably affect the economic viability of a pastoral lease. Other more detailed criteria which must be referred to are set out in the Bill.

Land, the subject of a pastoral lease as at 17 September 1984 will not be available for claim, even if the pastoral lease is subsequently forfeited to the Crown—that is, Aboriginal pastoral lessees will not be able to convert to Aboriginal freehold title. Compensation will be payable to the pastoral lessees for any area excised.

National parks and conservation reserves: It is proposed to amend the Conservation and Land Management Act to allow—

(a) Aboriginal representatives to sit on the statewide policy forming Conservation and Land Management Authority; and

(b) joint management of selected national parks and conservation reserves will be allowed.

General access to Aboriginal land: The general laws of trespass and constraints on access applicable to all other landholders will apply to Aboriginal land. There will no longer be a general requirement to obtain a permit to enter onto Aboriginal land. There will be a right for the holders of existing interests, who require access across Aboriginal land for the enjoyment of those interests, to obtain access rights from the tribunal.

Access to Aboriginal land for mineral and petroleum exploration and production: The Mining and Petroleum Acts will contain specific provisions for access to Aboriginal land and access across Aboriginal land for mining and petroleum purposes.

In essence these provisions are designed to ensure protection of sites of special significance and improvements. There will be no power of veto and the principle of Crown ownership of minerals will be maintained. Compensation will be payable in respect of damage—including social disruption—to residential areas and improvements, and will not be linked to the value of minerals or petroleum or to spiritual or religious factors.

In order to preserve the State's position *vis-a-vis* the Commonwealth, the Bill provides that the Act will automatically be repealed upon a Commonwealth law—

> conferring rights with respect to granting land claims to Aboriginal people; and/or
>
> conferring additional rights, powers or privileges in relation to land granted to Aboriginal people under the provisions of this Bill.

This Bill should be read in conjunction with the Acts Amendment (Aboriginal Land) Bill 1985, the Mining Amendment Bill 1985 and the Mining Amendment Bill (No. 2) 1985.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. N. F. Moore.

ACTS AMENDMENT (ABORIGINAL LAND) BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon. J. M. Berinson (Attorney General), read a first time.

Second Reading

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [9.52 p.m.]: I move—

That the Bill be now read a second time.

The introduction of the Aboriginal Land Bill 1985 requires consequential amendments to the Aboriginal Affairs Planning Authority Act 1972, the Conservation and Land Management Act 1984, the Land Act 1933, and the Petroleum Act 1967. The amendments to the Aboriginal Affairs Planning Authority Act propose the abolition of the Aboriginal Lands Trust as well as the repeal of part III, dealing with reserves. Part IV of the Bill preserves the requirements for entry permits to currently existing Aboriginal Affairs Planning Authority reserves until the end of the four-year claim period proposed under the Aboriginal Land Bill.

The amendments proposed to the Conservation and Land Management Act involve increasing the number of members of the Conservation and Land

Management Authority by two. Both of those appointments are to be Aboriginal people. This will have the effect of ensuring the Aboriginal voice is heard when policy decisions are made with respect of the authority's functions. Additionally a new division 2A is proposed which establishes the functions of the management committees when national parks, nature reserves, marine parks, or marine nature reserves are selected under the provisions of the Aboriginal Land Bill as special management areas. During the currency of the vesting of such areas as special management areas, the functions of the Conservation and Land Management Authority will be suspended in favour of the functions carried out by a management committee.

The proposed Land Act amendments extend the functions of the Pastoral Board to Aboriginal land where that land is being used for commercial pastoral purposes pursuant to the provisions of the Aboriginal Land Bill.

The other amendments proposed to the Land Act deal with the grant of easements over Crown land—for this purpose, including pastoral leases—in order to ensure access by Aboriginal people to Aboriginal land. The Petroleum Act is currently subject to the provisions of the permit system with respect to petroleum exploration activities over Aboriginal reserves. That system is maintained as far as is relevant by clause 21(4). There will be no future relevance for such a provision as is currently contained in section 7(2) of the Petroleum Act upon the introduction of the Aboriginal Land Act. There will be consequential amendments to both the Mining Act and Petroleum Act which take up the question of entry by petroleum and mining explorers and developers on Aboriginal land.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. N. F. Moore.

ACTS AMENDMENT (BETTING CONTROL) BILL

Introduction and First Reading

Bill introduced, on motion by Hon. D. K. Dans (Minister for Racing and Gaming), and read a first time.

Second Reading

HON. D. K. DANS (South Metropolitan—Minister for Racing and Gaming) [9.56 p.m.]: I move—

That the Bill be now read a second time.

This Bill has one simple objective: To change the law to allow bookmakers to operate oncourse from 12.00 midday on Anzac Day. At present both oncourse and offcourse totalisators operate from 12.00 noon. However, the Betting Control Act and the Anzac Day Act when read together prevent bookmakers from taking bets before 1.00 p.m. on both local and Eastern States events. The Bill now before the House will amend the Betting Control Act to overcome this inequity.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. G. E. Masters (Leader of the Opposition).

ACTS AMENDMENT (STRATA TITLES) BILL

Second Reading

Debate resumed from 20 March.

HON. I. G. MEDCALF (Metropolitan) [9.58 p.m.]: This Bill is complementary to the Strata Titles Bill and contains changes which are necessary in other Acts relative to that Bill, which has passed the second reading stage in this House.

The Bill contains terminology changes in regard to the Land Act and the Land Tax Assessment Act. The second reading speech of the Minister was very brief and did not refer to the important change in the Sale of Land Act. It was referred to very briefly in the Minister's second reading speech to the Strata Titles Bill, but the particular change takes effect in this Bill.

The change which takes effect in the Sale of Land Act really is a very important change because it brings strata titles within the scope of the Sale of Land Act, which is an Act which protects the purchasers of subdivisional land where land is subject to a mortgage, and has certain specific provisions which enable purchasers to pay out mortgagees.

The previous Sale of Land Act excluded strata title purchasers who therefore did not have the benefit of the various sections of the Sale of Land Act designed for the protection of purchasers. This Bill now reverses the previous policy. Strata title purchasers will now be included in the Sale of Land Act.

The effect of the inclusion is firstly that a person in future will not be entitled to sell two or more lots in a subdivision under the Strata Titles Act unless he is the owner or the agent of the owner of the strata title, or unless he sells the unit as one of two or more lots in a strata title subdivision, or he is presently entitled to become the owner. In other words, it will generally protect the purchaser where he is dealing with someone who is not the owner.

The other major effect of the inclusion by this Bill of strata titles in the Sale of Land Act is that

the person cannot sell mortgaged land unless the contract provides that the consideration for the sale shall be satisfied to the extent of the mortgage debt by the purchaser, assuming the mortgage debt. That means that the purchaser can pay the balance of the purchase price by paying the person to whom the mortgage money is owed; that is the mortgagee. This is a very significant step and one which will overcome quite a few problems.

However, that last provision does not apply, so the Sale of Land Act says, if the deposit and purchase money is paid to a solicitor or agent. It does provide now to strata title owners quite a measure of protection which they did not have before.

There is a further provision in the Strata Titles Bill itself, a provision to which I referred when discussing that Bill, which provides additional protection if the units are pre-sold in a strata title subdivision. In those cases the deposit and purchase money must be paid to a solicitor or real estate agent. This is an advantageous change which is long overdue.

About 12 months ago I asked the Minister why these provisions could not be incorporated in the Sale of Land Act, and why strata title units in the old form could not be incorporated. He replied that he was waiting for a comprehensive Bill—the Bill which we now have before us, and which we hoped would be brought in last year.

In the meantime quite a few people may well have been prejudiced by this delay. That is regrettable. Nevertheless, it is a good thing that the Bill is here at last.

In future, where the owner of a strata title is buying from a developer who does not have any title, or from an agent who is speculating, the purchaser will have the protection of the Sale of Land Act and only the owner or the agent of the owner will be authorised to sell. There will be certain protections to enable a mortgage which normally exists in a strata subdivision to be paid off by the purchaser.

The alternative of not having this provision, which has unfortunately affected many people in the past, is that people purchase a title to a strata unit from someone who is not authorised to sell it. They discover that the unit is already encumbered by mortgages, and after paying the purchase price to the person from whom they bought the unit, they discover they can only have it if they pay off the mortgage as well.

So they pay twice. Many people have found themselves in this situation, and practically nothing could be done about it, particularly where the vendor was a man of straw, a person of no means, or was in receivership or liquidation.

For the very obvious reasons I have mentioned we support the Bill.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Hon. John Williams) in the Chair; Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clauses 1 to 10 put and passed.

New clause 11—

Hon. J. M. BERINSON: I move—

Page 4, after line 19—To insert the following clause—

Section 24 amended.

9. Section 24 of the Valuation of Land Act 1978 is amended by deleting "section 21 of the Strata Titles Act 1966" and substituting the following—

sections 62 and 63 of the Strata Titles Act 1985 .

New clause put and passed.

Title put and passed.

Report

Bill reported, with an amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. J. M. Berinson (Attorney General), and transmitted to the Assembly.

CONTRACTS OF EMPLOYMENT BILL

Second Reading

HON. G. E. MASTERS (West—Leader of the Opposition) [10.09 p.m.]: I move—

That the Bill be now read a second time.

I bring before this House today a Bill for an Act to restore to individuals the right of employment freedom. This legislation will permit employees and employers to enter into a voluntary written agreement for wages and other terms and conditions of employment outside awards.

When one adult in every 10—and one young person in every four—is looking for a full-time job, the State cannot sit back and advocate support for a system that has failed.

The Liberal Party offers to the people of Western Australia a fresh new approach to the State's employment system. This Bill, presented to members today, is quite capable of creating thousands

of new jobs particularly for the young people in our community. Indeed, recently a managing director of a "fast-food" enterprise throughout Australia has said that his firm will employ and train 1 000 young people in new jobs if he is permitted to offer them wages of $90 per week—a wage double that for which most of those young people would be eligible under unemployment benefits.

The current industrial and employment reality is that 15 900 young people, through no fault of their own, may never enter the permanent work force. In February, it was estimated that 7 100 young people were seeking their first full-time job and a total of 61 300 people were seeking a full-time or part-time job.

Young people have become utterly frustrated and disillusioned by a system which denies them the right to work under mutually agreed arrangements. Also, many adults, including housewives and single parents, are searching for part-time employment at times best suited to their family life and their children.

Many people would welcome greater flexibility in their working arrangements. Some parents have offered to pay thousands of dollars to get their children into a trade. It shows how desperate the situation has become. Possibly there are hundreds of parents who would be willing to make the same sacrifice if they had the money. Certainly many small business employers have said, "We can make more jobs, we want to train young people, but for goodness sake let us have some flexibility in wage-fixing and working arrangements".

The Liberal Party believes that a fundamental right in our society is each person's right to work. This right is being steadily eroded by the inflexibility of the centralised wage-fixing system, which is unable to cope with the diverse needs of modern society. It is a right which, because of that erosion, is being steadily denied to people of all ages, especially to young people.

The plain reality is that we presently live under a harsh, ruthless wage-fixing system which restricts our right as individuals to make private arrangements for employment. This system is at odds with any meaningful effort to genuinely reduce unemployment.

The number of people currently out of work substantiates our claim that unemployment continues to be a social crisis in Australia generally, and equally in Western Australia.

The unemployment rate of 25.7 per cent in the 15-19 years age group is more than three times the unemployment rate for the rest of those out of the workplace. The Liberal Party will not, and this ALP Government should not, accept a situation that perpetuates unfairness and deprives people of their basic rights.

We are not prepared to tolerate the division of society between the haves—those with jobs—and the have nots—those without jobs.

Unemployed people well know a lesson which this Parliament needs to appreciate. This lesson is that the centralised wage-fixing system can only improve the wages and conditions of the employed. It cannot help the unemployed.

The Liberal Party announced its "Employment Freedom" policy in January at a breakfast gathering of unemployed youth, community leaders, and business employers. This new and carefully considered initiative was received with a warm welcome of awareness.

At that time, the Liberal Party made a commitment to introduce this Bill into State Parliament in 1985. Employment freedom will re-introduce freedom and flexibility, return individual's rights to them and put industrial relations back where it should be—in the workplace.

It is for these reasons that we introduce this Bill for an employment freedom Act to implement the voluntary work agreement, to remove divisions from our society and to create opportunities, especially for young people.

We in the Liberal Party do not believe that any series of amendments to the industrial system or that massive increases in Government training expenditure can reasonably and responsibly be presented as the universal remedy for the unemployment problem confronting this State. Unemployment is a crisis of such alarming proportions as to require decisive action to resolve it.

In its commitment to full employment the Liberal Party believes new ideas are needed. Incentives to improve productivity should be encouraged in order to expand the jobs market and lift our standards of living.

One practical way to achieve that desire is to implement the voluntary work agreements advocated by the Liberal Party in this Bill for an employment freedom Act. These employment freedom work agreements will be implemented as an optional alternative to the existing industrial relations and employment system. The voluntary work agreements ensure that the broader interests of the community are safeguarded. It will be an adjunct to Government employment programmes, wage subsidy incentives, apprenticeships and other such schemes. The Liberal Party sees the Government's role as fostering economic stability and enhancing employment opportunities.

The rigid application of the arbitration system under past Liberal Governments and the existing Labor Government has shackled employees and employers to the stage where the right to work and the freedom to negotiate work conditions and job security are severely limited. Through this Bill, and our commitment to voluntary work agreements, the Liberal Party and this Parliament can introduce that freedom and flexibility for which there is a self-evident community interest, desire and need.

All employment and economic policies of the Liberal Party of Western Australia have three basic objectives—

(1) full employment;

(2) an improved standard of living for Western Australians; and

(3) a secure future.

The Bill presented today for an employment freedom Act is designed specifically to assist in the achievement of those goals.

There is solid evidence to support the proposition that employment freedom through voluntary work agreements as an optional alternative to the existing industrial and employment system, will generate new employment opportunities.

Employer groups and employers understand this better than anyone. They are after all the job makers of the future and the hirers of labour.

I will now cite a sample range of statements from these people and from policy-thinkers in this field, each of whom supports the voluntary work agreement proposal and hence this Bill for an employment freedom Act—

(i) The McDonald's Hamburger Chain could employ 1 000 more 15-year-olds if the rate of pay was cut to $90 a week. The high cost of employing juniors was a major cause of youth unemployment.

Paying $90 a week to 15-year-olds would not be slashing wages—it would be doubling the dole they get now.

(Mr Peter Ritchie, head of the Australian Branch McDonald's Hamburger Chain, March 1985.)

(ii) The artificially high level of wages for juniors makes our youths much less competitive in the labour market than they should be. Greater flexibility in the setting of junior wages or at least more frequent reviews by industrial tribunals would help the ability of juniors to get jobs.

(Confederation of Western Australian Industry, October 1984.)

(iii) The attractiveness of youth labour compared to adults will largely depend on youth wages and other labour costs in relation to their productivity.

(State Employment Task Force, November 1983.)

(iv) The evidence on the direction of effects of changing labour costs is probably not open to dispute—higher labour costs lower employment and increase unemployment.

(P. W. Miller, CEPR discussion paper No. 65, March 1983.)

(v) Tribunals should get out of the way so that proper bargaining processes may develop in an understanding of mutual interdependence of economic interest.

(John Stone, Secretary of the Treasury, Shann Memorial Lecture, August 1984.)

(vi) Although the Government is prepared to deregulate financial markets it will not deregulate the labour market to allow greater freedom for individual employers and employee groups to negotiate mutually beneficial working arrangements.

(Prof. Michael Porter and others, Centre of Policy Studies, 1984.)

(vii) . . . . junior labour has trouble competing in the labour market at their prevailing wage rates . . . .

What is needed is a greater degree of adaptability in the labour market in order to achieve economic recovery.

(Treasury Economic Paper No. 4, 1979.)

(viii) Voluntary contracts should be a non-party political reform to address the ever-increasing rigidity, coercion and insanity of the centralised wage-fixing system.

(James MacDonald, W.A. State President, Australian Small Business Association, October 1984.)

(ix) A remarkable deal between unions and employers in the electrical contracting industry has drastically cut the wages of new apprentices, but given a chance to thousands of young people to learn a craft.

(*Daily Telegraph*, London, October 1984.)

(x) The disproportionate rise in teenage unemployment is due to teenagers' less

> competitive position, made worse in a time of excess supply. Employers will prefer to employ adults rather than teenagers and retrenchment practices will be affected in the same way.
>
> (Bureau of Labour Market Research, Report No. 3, 1983.)

This Bill for an employment freedom Act is consistent with both the aspirations of the employers and the needs of the unemployed seeking work. We have carefully investigated each of the available avenues and are convinced that the proposal, put to the House today, in this Bill for employment freedom is a positive step along the road to full employment; a step towards improved living standards; and a step towards a secure future.

The voluntary work agreements advocated by the Liberal Party of Western Australia are intended as an optional alternative to the existing industrial relations and employment system; not to replace the existing system but as an alternative, mutually agreed, suitable to all concerned, and decided at the workplace.

An important dual role for unions is envisaged with the introduction of voluntary work agreements when this Bill for employment freedom is enacted. First, they will be able to assist employees to retain their existing rights and privileges against unscrupulous employers by their ability to have a dispute referred to the Industrial Relations Commission. Second, there will be no barrier to a union providing assistance to any employee, new or existing, who may wish to negotiate a voluntary work agreement with an employer.

The essence of the employment freedom process is that industrial relations is put back into the workplace where it belongs; and the workplace includes unions.

I turn now to refer in more detail to the proposed legislation.

Title: The short title of the Bill is the Contracts of Employment Act 1985. The use of this title reflects the voluntary nature of the work agreements which will be binding in law on both employee and employer according to the terms entered into and as declared in the form pursuant to the schedule in this Bill.

Objects: The objects of this Bill are—

(1) To promote and encourage employment particularly the employment of young persons;

(2) to enable employers and employees to enter into binding contracts of employment, with wages and conditions of employment that they mutually agree upon, notwithstanding the conditions of an award;

(3) to enable employees to accept wages and conditions of employment that are attractive to them, notwithstanding the conditions of an award;

(4) to facilitate and encourage flexibility in the labour market and in wage determination by allowing wages and conditions of employment to be set appropriate to the actual workplace; and

(5) to safeguard in matters relating to employment the liberties and rights of the individual.

Interpretation: The most significant definition to be introduced is that of "contracts of employment". A contract of employment means an agreement in writing voluntarily entered into by an employer and an employee by which the employer engages the employee to do work for a specified period of time and which expressly excludes—

(a) The operation of section 114 of the Industrial Relations Act 1979;

(b) the jurisdiction of the commission under the Industrial Relations Act 1979;

(c) the operations of all awards and orders made by the commission; and

(d) the jurisdiction of all industrial magistrates appointed under the Industrial Relations Act 1979.

Essentially, this definition defines voluntary work agreements as contracts of employment and then renders them outside the jurisdiction of the existing centralised and restricting arbitration system.

Later provisions make these contracts of employment binding in law on both parties, employer and employee, and establish simple protective measures which ensure that both the employee's interests and the broader interest of the community are safeguarded.

Remainder of the Bill and the schedule: The Bill includes minimum conditions of employment in respect of sick leave and annual leave to which an employee employed under a contract of employment is entitled. This provision is taken from sections 59 and 60 of the Factories and Shops Act 1963.

It will ensure that an employee party to a contract of employment will be allowed annual leave as per a shop assistant—that is, four weeks—and sick leave of up to one week for each calendar year of employment, with any accumulation not to exceed two weeks. Satisfactory proof of the ill health causing non-attendance must be produced.

The Bill stipulates the maximum number of hours to be worked in any one day or week, after which appropriate award rates for overtime will apply. For example, if the working week of a person was 40 hours, a four times 10-hour day could be agreed before overtime applied. If more than 10 hours per day are worked or the fifth, sixth, or seventh day is worked then normal overtime will apply.

Additionally and importantly there is an in-built protection for existing employees against possible abuse by unscrupulous employers. An existing employee can refer such a case to the Industrial Relations Commission for determination.

An employer will not be able to change the existing conditions of employment without the employee's consent. Any attempt to do so can be the subject of an appeal to the Industrial Relations Commission. In other words, existing arrangements cannot be unreasonably altered.

The schedule in this Bill is the form containing the terms and conditions of the contract of employment in a declaration that must be signed by every party to that contract. This makes the contract of employment binding in law.

The Bill deliberately sets no minimum wage. It will be suggested by its opponents that this Bill may lower the standard of living, force people to accept lower rates of pay and go back to the bad old days of forced and low paid labour. Nothing is further from the truth. This is an option only and an option which must be mutually agreed to by both employee and employer.

People are now better educated and more aware of their rights and there are many community workers who are trained and equipped to advise a potential employee as to how best to use voluntary work agreements to enter into a contract of employment.

I have already mentioned the protective clauses in the legislation.

The rates of pay offered by employers will have to be well above the unemployment benefit to make it worthwhile for a person to abandon the unemployment benefit in favour of work. I have previously cited the example of the McDonald's hamburger chain which currently has 11 000 employees between the ages of 15 and 19 and is ready to employ 1 000 more 15-year-olds at the rate of $90.00 per week—double the unemployment benefit which they would otherwise be eligible to receive.

More jobs will become available. We will be lifting the living standards of thousands who have no jobs and no prospects.

Flexibility in working days and hours will mean more opportunities in hospitality industries such as tourism, liquor, catering, hotel, and entertainment. Currently, many hospitality businesses simply do not and cannot operate at certain times regardless of public demand, because of the huge penalty rates incurred. The Liberal Party and various study groups have investigated the situation and have concluded that, in each situation, market forces will determine varying wage levels according to the needs, the supply, and the demand of both the employee and the employer.

The social crisis of high unemployment: The crisis of unemployment generates other major social problems—with crime and family and mental breakdowns high on the list. These are the real matters confronting society. High unemployment statistics, as serious as they are, can only be the tip of the iceberg. There is ample evidence that high unemployment directly relates to increased crime, suicides, broken homes, community violence, drug addiction and alcohol abuse.

We asked ourselves: How does society cope with a generation of young people emerging from the education system with no hope of employment under today's inflexible industrial conditions? How does society cope with a generation of young people who will never know the thrill of personal achievement, the value of work, the reward for incentive, and the self-satisfaction of knowing they have fulfilled personal goals through their own efforts?

These are the issues to which the Liberal Party is directing community attention by introducing to this Parliament a Bill for an employment freedom Act.

Referral to the Tripartite Labour Consultative Council: On Tuesday, 19 February 1985, in question without notice, No. 255, I asked the Minister for Industrial Relations (Hon. Peter Dowding) whether he would refer the Opposition's employment freedom policy paper to the Western Australian Tripartite Labour Consultative Council. The Minister responded by saying in part that—

> I would not wish to prevent any organisation from having an opportunity to make comment to me about it, and I shall give it due consideration.

I ask the Government not to consign this Bill for an employment freedom Act to the bottom of the agenda, so preventing further debate on the Bill in this Chamber.

Mr Dowding has accused the Opposition of being silent when it comes to the point of putting up something that might be tested—we now do so.

The functions, as established by this Government, of the Tripartite Labour Consultative Council include—

(a) To consider and report to the Minister generally on industrial relations and other related matters and, in particular, on legislation or administrative action thereto; and

(b) To assist and report to the Minister generally on industrial relations and other related matters and, in particular, on legislative or administrative action thereto.

The Minister has had seven weeks to give consideration to my first request for the Minister to refer the Opposition's employment freedom proposal to the Tripartite Council.

I now respectfully, but with forceful and clear deliberation ask the Minister to submit this Bill for employment freedom to the Tripartite Labour Consultative Council.

Summary: Voluntary work agreements, pursuant to this Contracts of Employment Bill 1985, take an important and essential step towards full employment and towards enabling the unemployed to acquire workplace skills they would not otherwise experience.

The employment freedom concept captures these goals with a simple, modest, and rational approach.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. Fred McKenzie.

ACTS AMENDMENT (LOTTERIES) BILL

Second Reading

Debate resumed from 27 March.

HON. G. E. MASTERS (West—Leader of the Opposition) [10.31 p.m.]: The Bill before the House should be looked at carefully and in talking to it I need to draw attention once again to your statement, Mr President, to the Legislative Council. Undoubtedly this Bill contains a taxing measure; there can be no argument about that. It is estimated that $1 million could be raised as a result of a tax on the sale of tickets under the provision of this Bill.

On the other hand, of course, there are matters contained in the Bill dealing with beer ticket machines and the conduct of lotteries on licensed premises. Section 46 of the Constitution Acts Amendment Act states that this House may not amend a taxing Bill, and if this were truly a taxing Bill the Opposition in this House would not be in a position to suggest or consider any amendments to this legislation.

Nevertheless, because the Government has tacked onto a taxing Bill other matters you, Sir, have ruled that this Bill should not be regarded truly as a taxing Bill and that it can be amended by the Legislative Council if that is our desire. It is an important issue and I noted, Sir, that in your statement you made reference to this sort of "tacking on" process occurring before in this House and the seriousness of this action in the view of this Parliament. I wish to reinforce your comment by saying that the Opposition does not favour this type of Bill being introduced into this House. If there is a future practice by this Government of creating a "tacking on" measure the Opposition will certainly take some action, if that is required. I ask the Government to make sure, having heard your statement, Mr President, and having heard the statements from the Opposition, that it takes heed of what has been said and that this sort of Bill is not introduced into the House again.

I am sure that the Government has got the message that the Opposition is concerned and that this is not the sort of Bill it wants to see before the Legislative Council.

The Bill before the House empowers the commission to grant permission to religious, charitable, and sporting groups to conduct beer ticket machines. When I first heard the expression "continuing lotteries" I did not understand it, but I now understand that it means that tickets are pushed out from the machines in a continuing process and during that process every so often someone is lucky enough to draw a winning ticket, and he wins a prize. It is not a normal lottery where once all the tickets are sold a winning ticket is drawn. This refers to a continuing process.

At the moment tickets are sold by hand by sporting bodies for fund raising. I believe there are also vending machines in licensed clubs.

Hon. D. K. Dans: I have never seen them.

Hon. G. E. MASTERS: The Bill will allow permit holders—religious, charitable and sporting groups—to sell tickets in a premises other than their own. This probably is the most significant change because it will allow these organisations to go to hotels, taverns, or the like and do a deal with the management. They will ask if they can operate a beer ticket machine in the premises and will pay for the prizes and collect the balance. I guess the hotel or tavern licensee who is faced with this proposition will say, "What is in it for us?", and that the organisation concerned will say that by using the premises its members will provide

increased patronage. The management of the hotel or tavern will probably agree with the proposition and will allow the beer ticket machines to be installed.

The Minister may correct me if I am wrong, but my understanding is that when a person in a hotel receives a prize winning ticket he will collect his prize from the management, and that it does not necessarily mean that the prize will be beer. I understand it could be anything that is sold on the premises.

Hon. D. K. Dans: It could be cigarettes.

Hon. G. E. MASTERS: That will be the arrangement. From my discussions with many sporting and charitable groups I have been led to believe that these proposals are strongly supported by them because at the moment many of the organisations concerned do not have their own licensed premises and, therefore, do not have access to these machines. Therefore, some clubs have a great advantage over those clubs which do not have these machines.

The tickets can be purchased only from a licensed supplier who must gain a licence from the appropriate authority. I understand that the licence must be renewed every 12 months.

Under this Bill a tax of five per cent of the face value of the tickets will be levied. In his second reading speech the Minister said the Government hoped to receive between $800 000 and $1 million as a result of this tax. I made reference to this point earlier in my remarks when I said this Bill is, indeed, a taxing measure; but because of the tacking on of other measures which I have raised, the Bill should not be regarded as a taxing measure in this instance.

The Opposition is not at all happy with the taxing arrangement of five per cent. Many licensed clubs are already operating beer ticket machines, or what we would call continuing lotteries, and they are not required to pay the five per cent levy. Therefore, the five per cent levy will be an imposition on some clubs which operate beer ticket machines.

I know that many licensed clubs are kicking up a fuss over the Bill. On the other hand, I know that the hoteliers and the Western Australian Hotels Association Inc. are strongly in favour of the proposal; obviously, the Opposition has spoken to those groups about the legislation.

We are saying that the Government again seems to be expanding the gambling area. It is allowing the installation of gambling machines and is in the process of taking a rake-off. I wonder how much further we can go with these gambling schemes. There is only a certain amount in the dollar to be spent on gambling and yet almost every three months the Government introduces another gambling measure. Another Bill has been presented to the House tonight, dealing with the game of two-up, in which the Government proposes to expand the opportunities for people to gamble in Western Australia. I wonder where we shall end up.

Hon. D. K. Dans: Allowing them to gamble legally.

Hon. G. E. MASTERS: Yes, but because it will be legal more people will gamble and certainly more people in the hotels will use the machines than would otherwise. If the machines are properly displayed with bright glossy colours and are not camouflaged, people will put their coins in and have a go. More and more people are being encouraged to gamble in one form or another. I wonder how much further the Government can go in taking a percentage of this gambling money.

Hon. E. J. Charlton: Life is a big gamble.

Hon. G. E. MASTERS: But one does not have to gamble that way unless one wants to.

Hon. D. K. Dans: That is the point; one does not have to gamble unless one wants to.

Hon. G. E. MASTERS: We express grave concern that the Government is raising extra taxes from gambling. I do not intend to oppose the Bill or to put forward any amendments. We have had discussions with those people involved, that is the licensed clubs, hotels, and the public. There is mixed feeling about this Bill and in the circumstances the Opposition will not oppose it.

HON. P. H. LOCKYER (Lower North) [10.42 p.m.]: I also do not oppose the Bill but bring to the attention of the House some of the final figures to which Mr Masters has referred.

First of all, I welcome the Bill because it is tidying up a situation that licensed clubs of Western Australia have enjoyed for some time, and it is giving hotels the opportunity to install these machines. The point about which I am concerned is the five per cent tax. I will neither oppose the Bill nor seek to amend it. However, I hope the Minister will take some notice of figures, which I have spent most of the afternoon working out. The five per cent tax is a double dip because the Federal Government has already had its slice. I quote the following examples of these beer tickets and the price and profit structure in the tickets that the operator must have.

Firstly, there is the 2 000 series beer tickets. Income is 2 000 tickets at 20c each, which totals $400. From that the following prizes are given: 2 at $15, 2 at $10, 36 at $2, and 160 at $1, making a

total of $282 in prizes. Deduct this figure from the original income of $400, which gives a gross profit of $118. The cost of the tickets and hire of the machine comes to $35 and the normal net proceeds to the club are $83. However, it is then proposed to deduct the turnover tax of five per cent, which is $20. This brings back the net profit on the original outlay to only $63. The five per cent turnover tax has the effect of taking 31 per cent of the net profits which would normally go to the club.

It must be borne in mind that the people these machines are designed to help are mainly those in sporting and religious bodies. In addition as a result of the 20 per cent sales tax charged on the manufactured cost of the tickets the Federal Government will receive an additional sum; that is, from the person who physically manufactures and sells the tickets to the operator. This could range between $5 and $10 depending on the type of ticket. The tax becomes more expensive as the price of the tickets increases. For instance, on the 2 160 series the income is 2 160 tickets at 25c each which equals $540. The prizes are: 8 at $25, 4 at $10, 4 at $5, 12 at $2, and 200 at 50c which gives a total of $384. The gross profit to the club is $156, from which must be deducted the cost of the tickets and hire of the machine at $50, and the turnover tax of five per cent at $27. This leaves a net profit of $79. Once again the five per cent turnover tax has the effect of taking 25 per cent of the profits which would normally go to the club. In addition, the Federal Government takes 20 per cent sales tax on the manufactured price of the ticket.

I know what the Minister will say; he will say that the Government has to administer the system.

Hon. D. K. Dans: That is right.

Hon. P. H. LOCKYER: I am almost a mind-reader. But is it not a fairly hefty figure to impose bearing in mind that the Federal Government has already had its grab? Is it not excessive to take five per cent turnover tax?

I like the rest of the Bill. I would not be concerned if I thought hotels would profit by these machines, but when it involves mainly voluntary and church organisations I think the tax is excessive and the Government should carefully reconsider it.

Other than that, I support the Bill.

HON. TOM KNIGHT (South) [10.47 p.m.]: I agree with the comments made by the previous speakers and I also will support the legislation. As the Leader of the Opposition said, this legislation could be responsible for putting $1 million into the Government coffers. I do not believe it should go into Consolidated Revenue. Many sporting clubs have faced problems in the past and we have set a limit of $3 million from the sports Instant Lottery to assist the sporting organisations. I believe these funds should go back into sporting areas or towards private clubs; for instance, those that have suffered in past years after the Governments allowed them to set up and, through circumstances beyond their control and the Government's control, they have lost money and are not in a position to pay overheads and mortgages on the new buildings, facilities, etc., which have been installed for the benefit of the sports people.

Hon. Phil Lockyer spoke about what would be left after all the costs had been deducted and pre-empted what the Minister would say about administration costs. He put forward costings on these tickets but did not mention the administration costs incurred by the clubs. Someone has to fill in the forms, pick up the tickets, post the forms, buy stationery, and do the many other things required. The overall profit to the clubs will be very minimal, but the Government will make somewhere near $1 million, perhaps even more depending on how popular the machines are. The Government should look at some way of paying the $1 million into a scheme which will be of direct benefit to the community and sporting bodies.

The Government will gain kudos from doing this. It is of no use to put the money back into Consolidated Revenue and give it to hospitals, allocate it to health benefits, or the like, because that money is being taken from a specific sector. That sector is also being hit by the limit imposed in relation to the instant sports lottery. That limit on Instant Lottery funds cost those groups $2.6 million last year, which was money they would have received under the original legislation.

I ask the Minister to look at the basis for putting that money back where it belongs. I appreciate that administrative costs will be involved, but some of the $1 million will be left over and that should be given back to the clubs.

Bearing in mind the comments made by Hon. Phil Lockyer, after all the impositions have been met, the amount left to the clubs is minimal, and it makes one wonder whether this is a waste of time.

The clubs also oppose the levy, but they are not in a position to do anything about it, because this is a way in which they can recoup some of the money which they used to get when they were established originally.

I ask the Minister to look at assisting these clubs by channelling back to them the $1 million referred to.

HON. D. J. WORDSWORTH (South) [10.51 p.m.]: This legislation appears to allow the use of what seems to be little more than one-armed bandits.

Hon. D. K. Dans: It is similar to Instant Lotto, wouldn't you say?

Hon. D. J. WORDSWORTH: I am not a great believer in the Instant Lottery. However, recently I saw an article in the paper which illustrated this machine. I gather it will light up when one gets a winner; bells will ring, etc.

We objected strongly to one-armed bandits being installed in the casino, but it appears that we are now allowing them into the State through the back door. I do not understand exactly how this machine will work. I have received petitions from the relevant clubs in my electorate asking me to support the Bill so that the clubs can collect the money the machines will produce.

I wrote to the clubs asking them the fee which would be charged for the hire of the machines, whether the machines would be shared with other clubs, and the profit they expected to make. Needless to say, I did not receive a reply. Those people had been talked into signing the duplicate petition completely ignorant of what they would get. I suppose it is better to get something rather than nothing.

This machine might be even worse than a one-armed bandit. Hon. Phil Lockyer explained the nature of the prizes and it appears that one may win a 50c prize, but the prize will be in kind, not in money.

Hon. P. H. Lockyer: I was talking about the hand-held machines. I quoted the serial numbers. There are two different sorts of machines.

Hon. D. J. WORDSWORTH: An explanation has not been given as to the way in which these machines will work. However, I believe I am correct in saying that one will not receive money as a prize, but rather one will receive goods from the club. If I win a 50c prize, what will I get?

Hon. D. K. Dans: You will get two cigarettes!

Hon. D. J. WORDSWORTH: That is about it. I will not get a glass of beer for 50c. Do I have to save tickets or do I have to win two 50c prizes so that I will get a drink for $1? I do not know whether I can get a drink for $1.

Hon. D. K. Dans: Would you move in the Joint House Committee that we have one of these machines in the members' bar?

Hon. D. J. WORDSWORTH: It would have been a help had we had one over the last month. At least we would know what we are voting for.

I do not know how these machines will work. I gather they have been installed in clubs already. The club to which I belong sells little pieces of paper that one unrolls. As was the case in respect of two-up being held at race meetings, I guess the Government has had to legalise these machines also.

This matter has not been explained adequately and I would like to know how these prizes will be awarded. Will the people involved manufacture special bottles of whisky worth $5?

Hon. D. K. Dans: I think you had better leave it to the manager of the club to work that out.

Hon. D. J. WORDSWORTH: I ask the Minister to explain this matter more fully.

HON. TOM McNEIL (Upper West) [10.56 p.m.]: I also voice the concern expressed by members on this side of the House. The Government is putting its sticky fingers into this area once again, taking a percentage of turnover which would normally be going to people who want to run something for the benefit of their club or organisation.

The relevant figures have been quoted by Hon. Phil Lockyer, so I will not repeat them; however, we must bear in mind that the advent of this machine on club premises was intended to relieve clubs of the system where they issued tickets by hand.

Hon. D. K. Dans: Acting illegally.

Hon. TOM McNEIL: Maybe they were acting illegally, but clubs are facing bankruptcy every day and this was something which would enable them to raise finance. At the same time, it would release the barstaff from the problem of having to hand out tickets and take money. In a number of cases of which the Minister would be aware, the money in the box from which patrons take these tickets on an honorary system never balances; whether by accident or foul means one does not know.

The advent of these machines was seen as a means by which the bar staff would be relieved of the task of trying to police the system in operation currently.

We have heard about another system down at Esperance and I am sure Hon. David Wordsworth will whisper to the Minister later where he got those rolled up pieces of paper.

I consider that the figure of five per cent charged in respect of the tickets is excessive. The Government should see this legislation as a means of alleviating the problems faced by hotels, and sporting and religious groups which want to use these machines, and it could have introduced the

Bill without putting its fingers into the till in such an excessive way.

HON. D. K. DANS: (South Metropolitan—Minister for Racing and Gaming) [10.59 p.m.]: I thank the Leader of the Opposition and other members who have spoken in support of the Bill. I take very seriously the statement made by you, Sir, and the comments of the Leader of the Opposition. I assure the House that the Government had no intention to introduce a Bill which had two parts. I have already drawn the matter to the attention of the Crown Law Department and the Parliamentary Draftsman. Although in future it may involve a little more work, the same situation will not arise.

Let me start exactly where Hon. Phil Lockyer thought I might start. I do not know how he arrived at his conclusion. Obviously in any system such as this there will be administration costs and the Government must recoup those costs. I do not think—and it is too early to be definite—that the Government will make a great deal of money, if any, out of it.

I want to run over some points first so we may understand what we are talking about. Beer tickets machines are currently illegal. That is the first point. Like most of us, I belong to a couple of clubs. Perhaps I should put one matter to rest now; if any club, whether it be a football club, for Hon. Tom McNeil's or for my benefit, or a sailing club, thinks these machines will effect its economic salvation through beer ticket sales, be they sold over the bar or otherwise, it is wrong. It may as well forget the matter. If the hotel trade thinks this method will effect its salvation through a similar kind of machine it is wrong.

Hon. P. H. Lockyer: Did you say they are illegal in licensed clubs at the moment?

Hon. D. K. DANS: I said beer ticket machines are currently illegal.

Hon. G. E. Masters: I didn't know that.

Hon. D. K. DANS: The Government has introduced this legislation at the request of the Western Australian branch of the Australian Hotels Association to remove that illegality.

The Association of Licensed Clubs did naturally object to the five per cent levy. The Government has rejected that request because it believes any concessions to licensed clubs will be seen as a discriminatory act and therefore it is felt the levy should be applied universally to all liquor outlets. That is a fair approach.

I understand the problems facing clubs. Most of us belong to clubs. They are part of the changing aspects of our lives that go on from day to day.

I want to relate to the House the position in the other States so that members may be assured that this Government is not getting its greedy little fingers on more than it should. In Victoria the levy for charitable or community purposes is five per cent of the gross proceeds; and for sporting purposes—and that is what Hon. Tom Knight is interested in—it is eight per cent of gross proceeds. In Queensland where gross proceeds exceed $1 000, charitable organisations pay $5 and sporting and pastime clubs pay five per cent of the net profit. In South Australia all organisations except charitable bodies pay two per cent of the gross proceeds.

We must bear in mind how we apply the levy. The five per cent levy is directed at the users of the benefits—that is, clubs, hotels, etc.—and the levy is considered necessary for the purposes of administration and policing costs. I mentioned that matter earlier—and I recall it again in the second reading speech; I did not give the speech but I certainly read it. What all this amounts to in the course of the year is that a club member who was a pretty consistent user of the club and of the machines would pay an extra $2 a year. The legislation will enable clubs to raise money in a way which currently they cannot do.

Touching briefly on the question of prizes and method of payment, prizes will depend upon the publican as it will in regard to what community group, charitable or sporting club he chooses to support.

It is common knowledge that the Government was approached by a number of organisations seeking a monopoly on the tickets, and we had to think very carefully about that situation. One of the reasons we had to do some hard thinking in the area was that, for instance, many hotels in Albany, Esperance or Kalgoorlie were given the right to support a charitable or sporting organisation which they deemed necessary. So we did not allow any group, as much as we may have thought it beneficial in some areas, to have a monopoly.

I want to touch very briefly on significant parts of the legislation. Its aim is to remove the prohibition on the conduct of lotteries on licensed premises. In other words, it really allows the old pub keeper to have a fair go with the clubs. I do not think there is much wrong with that. The Lotteries Commission will be empowered to issue permits to charitable clubs and organisations to sell break-open tickets whether by machine or otherwise. Publicans will contract with the machines' sup-

pliers for the installation of beer ticket dispensing machines on their premises, and the publican will be able to nominate which club or charity is to use a particular machine. A club or charity permitted by the Lotteries Commission will purchase tickets from a licensed supplier—and Hon. Gordon Masters mentioned that matter—for use in dispensing machines. The club will collect the proceeds, pay the licensee for the prizes paid out and keep the profits. Cash prizes will not be permitted to be paid on winning tickets dispensed by machines. The reason for that is, as Hon. D. J. Wordsworth rightly mentioned, that it would become pretty close to a poker machine. Cash prizes are to be paid where break-open or any other raffle ticket is sold by, in, or over the counter of any licensed premises.

In the final analysis it depends whether one puts his money into that machine, and whether one wins a 50c prize on the luck of the draw, and how that prize is put together.

Some members would know that Parliament House has a very astute barman who occasionally runs a few little raffles to get rid of a few lines in the bar that do not sell very well. Raffles are an easy way of getting rid of items that have been sitting on the bar shelf for a long time.

The bottom line is this: Irrespective of the five per cent levy, clubs, charities and sporting bodies will now have access to finance that they previously did not have. I cannot see any of those clubs "doing" their money. In other words, they are certain to get a return on their investment and they will know precisely what that return will be. I do not think there is much wrong with that.

It only remains for me to say that the Government will keep a very close watch on its five percent levy and if we find that the administrative costs become far in excess of the amount that that five per cent levy returns it may have to be raised. On the other hand, if the amount is excessive perhaps we could look at it in the future to ascertain how we could adjust it.

I can say little more than to thank members once again for their support. The Bill will serve the purposes for which it was intended.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Hon. John Williams) in the Chair; Hon. D. K. Dans (Minister for Racing and Gaming) in charge of the Bill.

Clause 1: Short title—

Hon. G. E. MASTERS: I listened to the Minister speaking about vending machines as they presently exist in licensed clubs. In fact he said the machines are illegal. I draw his attention to the second reading speech by Hon. J. M. Berinson. The second paragraph states—

> These types of tickets are presently sold by sporting bodies by hand, and either by hand or vending machines on licensed club premises as part of their fund-raising activities.

When I read that I assumed that the Minister was saying that those vending machines were legal. Since that time, it seems that they have now been found to be illegal.

Hon. D. K. DANS: While the Lotteries Commission has been issuing permits, the Crown Law Department has advised, subsequently, that those permits are not legal. That is why I said they are illegal.

Hon. G. E. Masters: Then, if this legislation did not go through, those machines would have to be turfed out?

Hon. D. K. DANS: If the proposed amendment does not succeed there will be no more ticket machines at all.

Hon. D. J. WORDSWORTH: It would appear from the answer from the Minister that these machines are akin to one-armed bandits. I understand that, in these days of electronics, one does not pull a lever; one presses a button. How will there be 50c prizes? I presume that a token will be produced that one will take to the barman and he will either deduct that 50c from an account or one will collect a handful of tokens until, collectively, they have some value. I would be surprised if these machines, then, were not akin to one-armed bandits.

The public are entitled to know whether we are seeking the introduction of these machines via the backdoor. If the barman is not allowed to pay money as a prize, how will he supply that prize?

Hon. D. K. DANS: There would be some validity in what the member is saying if a cash prize were dispensed by the machine. I thought that was carefully explained. A cash prize cannot be dispensed by a beer ticket machine. However, there can be a prize. I am not sure whether it is a 50c prize; but the hotel or club would have to provide goods to the value of 50c, be it a bar of chocolate or a can of coke. The hotel or club would have goods to the value of 50c.

We took the right kind of advice. We have held consultations and our advice has been that it would not be wise to allow cash prizes to be paid out of beer ticket machines.

Hon. P. H. LOCKYER: I am concerned that I have inadvertently misled the member in relation to the 50c prize. I was quoting from the cards that people buy. I took the opportunity to speak to the president of the Western Australian section of the Australian Hotels Association. He assured me that, although these machines had never been challenged in the courts, they have been illegal.

The prizes from these machines range from a can of beer through to the massive prize of 12 "king browns"—that is, large bottles of beer. That is what I expect from licensed clubs and pubs and places which we allow to have those machines. If I owned a hotel and Hon. D. J. Wordsworth put a machine into that hotel on behalf of a sporting organisation or a church, I would expect people to get their winnings from my pub otherwise Hon. D. J. Wordsworth could take his machine elsewhere. I admit that I was shocked to hear that clubs in Western Australia have been operating illegally.

Hon. D. K. Dans: Out of ignorance.

Hon. P. H. LOCKYER: In that case I am more anxious than ever that the legislation should pass.

Hon. NEIL OLIVER: What is the definition of a one-armed bandit and what is the difference between a one-armed bandit and a beer ticket machine?

Hon. D. K. DANS: The difference is that one supplies cash prizes. I gave that explanation to Hon. D. J. Wordsworth. We took advice from the Crown Law Department. That advice was that cash prizes from beer ticket machines would make them akin to poker machines.

Clause put and passed.

Clauses 2 to 16 put and passed.

Clause 17: Part IVAA inserted—

Hon. E. J. CHARLTON: I move—

> That the Legislative Assembly be requested to amend Clause 17 by deleting paragraph (b) from the proposed section 111B(1).

Everybody who has spoken on this legislation has made a comment about the five per cent levy. I understand as well as everybody else understands that the Government will not be able to organise the policing of that levy as far as hotels are concerned. Beer ticket machines will not be introduced into our hotels without some cost being involved in running them.

We have seen an example of that today. I fully support the Bill and congratulate the Government on bringing it forward. It will allow hotels, particularly those in country areas, to give the opportunity to sporting and charitable groups to engage in legal fundraising activities. The Government will incur costs and so also will those participating in the operation of beer ticket machines. The point I make is that it is only fair that these provisions should be amended when appropriate. Decisions have been made and policies formed in the past where the charges for administration have been greater than the income derived. This is another example of the Government having a hand in the decision making process as far as revenue raising is concerned. When one considers the march that took place today, one realises it had a great deal to do with Government taxes and charges.

We have an opportunity to give sporting and charitable organisations the opportunity to raise funds, but the Government has immediately stepped in and said it will take five per cent off the top. We are not talking about business ventures; this is an opportunity for charitable and sporting bodies to raise funds and to encourage that fundraising in a legal manner in hotels. I fully support the Government's move in presenting the legislation, but it would be remiss of me not to put my point, particularly in view of the fact that every member who has spoken in this debate has commented that the five per cent tax is too heavy and that the Government should reconsider it. It seems to me that actions speak louder than words, certainly as far as the National Party of Australia is concerned, and the best way to take action in this case is to request an amendment.

We should allow the legislation to proceed, with the amendment, assess what the costs are after the system has been in operation for a period, and then levy the required amount.

I have seen these machines operating in clubs and I think that everyone involved appreciates what the Government is doing. I do not go out of my way to support the machines, because I would rather put my money on a racehorse. I also think one would have a better chance at Hon. Phil Lockyer's two-up games.

The Government should demonstrate to the public of Western Australia its willingness to reconsider this tax on sporting and charitable organisations. It should set an example in this instance. I am not being critical of the present Government, but the situation in which this State and nation find themselves has occurred over a long period when many different Governments have been involved.

Figures have been quoted which demonstrate that only a small profit will be made, on the one hand, by the organisations and, on the other hand, the Government could gain $1 million. It might cost the Government $1 million to control the activities of this scheme. However, in every walk

of life it is possible to put a figure on something and then to justify that figure. It could be said that the scheme will cost $2 million to operate and that could perhaps be justified. It depends on how extravagant one is in the operation of the scheme and how careful one is to avoid spending funds unnecessarily.

I think it is worthwhile calling on the Assembly to reconsider this clause and to delete proposed subsection 111B(1)(b), with a view to assessing the situation after the scheme has operated for a period.

I commend the amendment.

Hon. D. K. DANS: I ask the Chamber to vote against the move and to be realistic about this matter. I have pointed out that if the Bill is defeated, there will be no beer ticket machines at all. They will be illegal, and that is the bottom line.

With regard to the five per cent levy, the Government was first approached by the Royal West Australian Institute for the Blind (Inc.) and that organisation had done its homework reasonably well. The five per cent levy was built into its proposition. When we looked at the proposition it was found that the five per cent levy was pretty close to the mark. Again, that organisation was in no position to direct people towards a monopoly. The Royal West Australian Institute for the Blind and a couple of other organisations approached us and we did not want to be in a position to give *carte blanche* to the clubs and pubs, and say that the beer ticket machines may be installed but the profits will go in certain directions. We left that provision out and retained the five per cent levy.

I make one final comment on the subject of profit; I would not like to work out in percentage terms the profit for every $400 invested, whether that amount is $39, $40, or $41. By the same token I would not mind investing in something every day of the week which I knew would return an absolute profit expressed as that percentage. I would be taking no risk and it would be very good business. I have not heard any of the organisations, apart from my own club, raising a voice about this. The fact remains that the only good tax is the one somebody else pays. Had I set the tax rate at one per cent I am sure someone would be here tonight saying that we should knock it off. We have done our sums correctly and I repeat that I do not think the Government can operate this scheme for anything less than the five per cent levy expressed in the Bill. For those reasons I ask the Chamber to vote against the amendment.

Hon. G. E. MASTERS: I note that the amendment states that the Legislative Assembly should be requested to amend clause 17. In my earlier statement I made it absolutely clear that as far as the Opposition was concerned this is not a taxing Bill.

So far as I am concerned any amendment should be made in this Chamber, rather than by requesting an amendment. I am not suggesting that we should amend the Bill. However, in view of the President's ruling and the Leader of the Government's acknowledgment that this is not a taxing Bill, any move to amend should be made in this Chamber otherwise we are recognising it as a taxing Bill. By putting forward a request to the Assembly that the Bill be amended we are saying that it is a taxing Bill and that is the only way we can deal with it.

With due respect to Hon. Eric Charlton, it is the wrong way to approach the matter. I make it quite clear that the Opposition does not propose to support the motion.

Amendment put and negatived.

Clause put and passed.

Clauses 18 to 23 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. D. K. Dans (Minister for Racing and Gaming), and passed.

ADJOURNMENT OF THE HOUSE: SPECIAL

HON. D. K. DANS (South Metropolitan—Leader of the House) [11.31 p.m.]: I move—

> That the House at its rising adjourn until 2.15 p.m. on Wednesday, 3 April.

Question put and passed.

House adjourned at 11.32 p.m.

QUESTIONS ON NOTICE

GAMBLING: LOTTERIES

Commission: Members

713. Hon. TOM McNEIL, to the Minister for Racing and Gaming:

Would the Minister provide—

(a) the names of the members of the Lotteries Commission;

(b) the date of each member's appointment; and

(c) the date on which each member's term expires?

Hon. D. K. DANS replied:

(a) Name	(b) Date Appointed	(c) Expiry Date
Kakulas, T. P.	12/10/83	11/10/86
Claughton, R. F. (Hon.)	12/10/83	11/10/86
Silver, W. H.	12/10/83	11/10/86
Try, J. E.	1/7/84	30/6/87

GAMBLING: LOTTERIES

Commission: Audit

718. Hon. TOM McNEIL, to the Minister for Racing and Gaming:

As the last tabled report from the Audit Department on the Lotteries Commission is for the month of October 1984, would the Minister advise—

(a) when the next audit of accounts for Lotteries conducted in 1984 can be expected;

(b) why some reports have taken in excess of eight months to appear;

(c) why reports are tabled in batches covering periods from one to four months; and

(d) whether reports can be tabled on completion of the audit?

Hon. D. K. DANS replied:

(a) About 15 April 1985;

(b) and (c) Some delay occurred during the preparation of the Auditor General's first and second reports in the new format;

(d) yes.

TOURISM COMMISSION

General Manager: Functions

719. Hon. G. E. MASTERS, to the Minister for Tourism:

(1) What are the functions of the General Manager's position at the WA Tourism Commission?

(2) What are the functions of the Managing Director's position?

Hon. D. K. DANS replied:

(1) and (2) The positions of general manager and managing director are jointly responsible for the overall day-to-day planning and management of the commission's activities within the respective divisions of marketing, investment and regional development, research and planning, accounting and finance, human resources, and America's Cup unit. The general manager is also responsible for the secretarial duties of the commission.

TOURISM COMMISSION

Chairman: Mr Len Hitchen

720. Hon. G. E. MASTERS, to the Minister for Tourism:

I refer the Minister to question 685 of Wednesday, 20 March 1985—

(1) Did the Minister himself receive any adverse reports relating to the performance of Mr Hitchen in his role as Chairman of the WA Tourism Commission?

(2) If so, was it in writing or verbal?

(3) If in writing, will the Minister table the documents?

(4) If verbal, from who or whom?

(5) What course of action did the Minister take?

Hon. D. K. DANS replied:

(1) Yes.

(2) to (5) That information is privy to me, and is of a confidential nature. I am prepared to discuss this with the member.

TOURISM COMMISSION

Chairman: Mr Len Hitchen

721. Hon. G. E. MASTERS, to the Minister for Tourism:

(1) Since Mr Hitchen's resignation has the Minister received correspondence from

the tourist industry supporting Mr Hitchen?

(2) If so, will the Minister table that correspondence?

Hon. D. K. DANS replied:

(1) Yes.

(2) Yes.

MINISTER FOR TOURISM

Trips

722. Hon. G. E. MASTERS, to the Minister for Tourism:

(1) What intrastate, interstate or overseas trips has the Minister taken since attaining office in his capacity as a Minister of the Crown?

(2) What was the purpose for each trip?

(3) How long was the Minister away for each trip?

(4) What was the total cost of each trip?

(5) Was the Minister accompanied by staff?

Hon. D. K. DANS replied:

(1) to (5) The Government has adopted the same practice as its predecessor with respect to questions concerning ministerial travel.

This practice, outlined by the former Premier in answer to question 1045 of 1982, is, in part, as follows—

> As considerable research will be required to extract and collate the information requested, I am not prepared to place any further demands on staff who are otherwise fully committed. However, should the member have any reason to believe that travel or other expenditure of an unauthorised or unnecessary nature has been undertaken, then he should let me have specific grounds for his beliefs and I shall have them investigated.

GAMBLING: LOTTERIES

Gross Receipts

724. Hon. TOM McNEIL, to the Minister for Racing and Gaming:

From the audit of accounts of the Lotteries Commission for the month of October 1984—

(1) What gross receipts were derived from the—

(a) four standard lotteries conducted;

(b) nine Lotto draws; and

(c) seven Instant Lottery draws?

(2) What percentage of advertising costs for October 1984 were attributed to—

(a) standard lotteries;

(b) Lotto; and

(c) Instant Lotteries?

Hon. D. K. DANS replied:

(1) (a) $1 099 750;

(b) $4 857 917;

(c) $3 500 000.

(2) (a) 1.67%;

(b) 2.24%;

(c) 0.80%.

AGED PERSONS: SENIOR CITIZENS' CENTRES

Commonwealth Funding

728. Hon. P. H. WELLS, to the Minister for Employment and Training representing the Minister for Community Services:

(1) What funds have been received from the Commonwealth Government for each of the past five years towards senior citizen centres?

(2) Which centres were built from these funds?

(3) What was the break-down of fund allocations—

(a) Commonwealth;

(b) State; and

(c) local government?

(4) Will the Minister table a copy of the financial agreement with the Commonwealth for financing senior citizen centres?

Hon. PETER DOWDING replied:

(1) The following funds were received from the Commonwealth for approved projects for the following years—

	$
1983-84	580 745
1982-83	562 117
1981-82	321 834
1980-81	272 042
1979-80	304 329

(2) The following centres were constructed or had alterations funded from the above funds—

Harvey
Wanneroo (Milden Hall)
Bayswater
Bassendean
Osborne Park
Northam
Belmont
Pinjarra
Melville (Stock Road)
Morley
Kalamunda
Nollamara
North Beach
Scarborough
Inglewood
Kojonup
Girrawheen
Narembeen
Dianella
Ravensthorpe
Armadale
Harold Hawthorne
Esperance
Merredin
Manning
Swan (Midland)
Rockingham
Melville (Willagee)

(3) A breakdown of the funds is as follows—

	Local Authority	State	Common-wealth	Total
1983-84	268 270.02	82 102.14	580 745	931 117.16
1982-83	179 883.86	102 481.56	562 117	844 482.42
1981-82	124 580.29	36 336.31	321 834	482 750.60
1980-81	84 937.15	47 418.18	272 042	404 397.33
1979-80	100 321.63	51 842.70	304 329	456 493.33

(4) No formal agreement exists. The financing of senior citizens centres is arranged under the provisions of the States Grants (Home Care) Act.

733. *Postponed.*

TRAFFIC: ROUNDABOUTS

Drivers' Obligations

736. Hon. P. G. PENDAL, to the Attorney General representing the Minister for Police and Emergency Services:

I refer to the increased use in the metropolitan area of roundabouts at intersections and the practice of growing shrubs within them, and ask—

(1) Is it correct, as advised by the City of Canning in a letter to the Wilson Primary School P & C Association that—

(a) "traffic regulations required all motorists to give way to vehicles actually within the circle";

(b) that motorists "... should only be concerned with the roundabout section 90 degrees to the right"; and

(c) that motorists "... do not need to have a clear view ahead when approaching the obstruction but should be concentrating on safely negotiating the roundabout rather than concerning themselves with opposite direction traffic"?

(2) Is he aware that in Wilson a guard-controlled crossing for children is within a few metres of the roundabout, and thereby constituting a traffic hazard since motorists do not know what is ahead?

(3) Will he institute a review of this regulation?

(4) Will he also make a personal on-site inspection of the roundabout with parent and school representatives?

Hon. J. M. BERINSON replied:

(1) (a) Yes; regulation 608 of the Road Traffic Code provides that the driver of a vehicle entering a roundabout shall give way to a vehicle that is within the roundabout;

(b) No; regulation 608 is clear that the driver of a vehicle entering a roundabout has to give way to a vehicle that is within the roundabout and as some roundabouts are quite small a clear view of all parts of that roundabout is necessary in order to avoid any conflict;

(c) No; motorists should always endeavour to have a clear view ahead and unnecessary obstructions should not be placed in a position to reduce the view of a driver; some roundabouts are small and a vehicle can travel completely around it while another vehicle is entering; reducing the driver's vision causes danger; pedestrians can also be in danger if they are crossing at or near the

roundabout and may be obscured from a driver's view by shrubs.

(2) Yes.

(3) and (4) Officers of the Police Department's school crossings section have attended at the site location with members of the School Crossings Road Safety Committee, who represent both parents and school organisations, to make a personal on-site inspection.

Following this inspection, a submission was put to the City of Canning to replace the shrubs with suitable plants that would not restrict vision.

LOCAL GOVERNMENT: COUNCILLORS

Australian Citizenship

739. Hon. D. J. WORDSWORTH, to the Attorney General representing the Minister for Local Government:

(1) If a shire councillor is not an Australian citizen can he remain a councillor beyond his current term?

(2) Does a person have to be an Australian citizen to nominate for election as a shire councillor?

(3) If so—

(a) when did it become necessary;

(b) what steps does a British citizen have to take to formally become an Australian; and

(c) how long does it take?

(4) Could this prevent current shire councillors and "would be" candidates from nominating at the next election?

(5) What steps is the Minister taking to overcome the problems and to make the public aware of the new provision?

Hon. J. M. BERINSON replied:

(1) No.

(2) Yes, under section 65(1)(b) of the Local Government Act he must be an Australian citizen in order to be eligible to be elected as a member of a council.

(3) (a) The qualification was amended by Statute No. 42 of 1984;

(b) I believe application must be made in the normal way through the Commonwealth Department of Immigration;

(c) it is not within my knowledge to answer.

(4) Yes.

(5) I do not acknowledge a problem. Parliament was aware that the change was to be made when the legislation was introduced last year. I intend, however, to submit to Cabinet a proposal for a special advertising campaign generally on the subject of the electoral changes which will operate for the 4 May elections.

LAND: LEASEHOLDERS

Evictions: South Coast

742. Hon. W. N. STRETCH, to the Leader of the House representing the Minister for Lands and Surveys:

(1) Is the Minister aware that the Lands and Surveys Department is evicting leaseholders from some areas of the south coast?

(2) Is he further aware that the land concerned is in an area the subject of a current land-use report?

(3) Does this mean that the Lands and Surveys Department is not bound by the findings of the Watson-Christensen report?

(4) Does this eviction notice mean that the Government is pre-empting the findings of the above report?

(5) Does this action mean that the decision has already been made by the Government, and that the call for public submissions is a "window-dressing" public relations exercise?

(6) Does this mean that the submissions made by local and interested groups are a waste of time and money if the Government has already decided the outcome of the land-use study?

(7) If "Yes" to (6), will the Government recompense such groups for the money that they have spent in preparing their submissions?

Hon. D. K. DANS replied:

(1) and (2) If the member is referring to notice of termination of an annual renewable lease issued to D. R. & B. R. Beale at Broke Inlet, then the Minister for Lands and Surveys is aware of such notice and of the fact that the notice was issued at the request of the National Parks Authority in view of the proposals for the creation of the South Coast

National Park. However, in view of recent advice received from the Department of Conservation and Land Management that it will be some time before the relevant management plan is finalised and approved, the notice of lease termination has been withdrawn by the Lands and Surveys Department.

(3) to (6) No.

(7) Not applicable.

CRIME: NORTH METROPOLITAN PROVINCE

Statistics

743. Hon. P. H. WELLS, to the Attorney General representing the Minister for Police and Emergency Services:

Further to question 725 of Wednesday, 27 March 1985, will the Minister provide for the years 1982, 1983, and 1984 the number of recorded break-ins to property in the following areas—

(a) Scarborough;

(b) Karrinyup;

(c) North Beach; and

(d) Trigg?

Hon. J. M. BERINSON replied:

	1982	1983	1984
(a) Scarborough	167	336	271
(b) Karrinyup	38	64	85
(c) North Beach	30	60	73
(d) Trigg	19	23	38

QUESTIONS WITHOUT NOTICE

MINISTER FOR INDUSTRIAL RELATIONS

Interstate Trip: Mr J. J. O'Connor

652. Hon. G. E. MASTERS, to the Leader of the House:

Is the report I have received correct that the Minister for Industrial Relations is in the Eastern States and has travelled there with the Secretary of the Transport Workers Union, Mr John O'Connor, to consult with the Federal body of the TWU?

Hon. D. K. DANS replied:

The only knowledge I have is what I have read in the Press.

AGRICULTURE: RURAL SECTOR HARDSHIP

Motion: Resumption of Debate

653. Hon. C. J. BELL, to the Leader of the House:

In view of the very large demonstration by farmers and rural business people at Parliament House today, will he arrange for the resumption of the debate on the rural industry hardship motion currently on the Notice Paper so that the House may examine some of the serious issues raised?

Hon. D. K. DANS replied:

Debate on the motion shall be resumed at the appropriate time.

ROTTNEST ISLAND BOARD

Bike Hire: Takeover

654. Hon. P. G. PENDAL, to the Minister for Tourism:

Does the Minister endorse the decision of the Rottnest Island Board to take the bicycle hire business on Rottnest Island out of the hands of private businessmen?

Hon. D. K. DANS replied:

Under the circumstances outlined to me by the board, yes.

ROTTNEST ISLAND BOARD

Businesses: Takeover

655. Hon. P. G. PENDAL, to the Minister for Tourism:

This question is supplementary to that which I have just asked. Will the Minister give an unequivocal assurance to the House that other businesses at Rottnest Island will not be taken over by the board?

Hon. D. K. DANS replied:

No.

ROTTNEST ISLAND BOARD

Businesses: Takeover

656. Hon. P. G. PENDAL, to the Minister for Tourism:

This question is supplementary to those which I have just asked. In view of the fact that the Minister will not give an unequivocal assurance that other businesses on Rottnest Island will not be

taken over by the Rottnest Island Board, will he tell the House which other businesses are currently under consideration and are likely to be taken over by the board?

Hon. D. K. DANS replied:

Hon. Phil Pendal is labouring under a misapprehension that I am the Chairman of the Rottnest Island Board.

Hon. P. G. Pendal: I knew you weren't.

Hon. D. K. DANS: I will not give any assurances until such time as I can consult with the board. I do not know of any other businesses which are about to be taken over, but if Mr Pendal wants to know the reasons—I might say to the detriment of the people about whom he is asking his questions—that the board decided to take over the bicycle hire business for a short period, I suggest he put the question on notice and I shall give him a full and thorough answer.

ROTTNEST ISLAND BOARD

Bike Hire: Takeover

657. Hon. P. G. PENDAL, to the Minister for Tourism:

This question is supplementary to those which I have just asked. Was the decision by the board to take over the bicycle hire business—that is, to take it out of private hands—made independently of him and other members of the Cabinet?

Hon. D. K. DANS replied:

If Mr Pendal puts his question on notice, I shall give him a complete and thorough answer.

TOURISM COMMISSION

Chairman: Mr Len Hitchen

658. Hon. D. K. DANS:

I wish to table a letter in connection with question 721.

The letter was tabled (see paper No. 531.)

GAMBLING: TOTALISATOR AGENCY BOARD

Race Meetings

659. Hon. P. H. LOCKYER, to the Minister for Racing and Gaming:

Could the Minister inform the House whose decision it is for the Totalisator Agency Board to run a TAB race at country race meetings? For example, on the Saturday of the long weekend in June, no TAB race meeting is scheduled in the State. Is it possible for a country racing club to apply for a race meeting on that date?

Hon. D. K. DANS replied:

Those matters are decided by the TAB, but if the member would like to talk to me about this issue, I would be prepared to talk to the chairman of the board.

ROTTNEST ISLAND BOARD

Bike Hire: Takeover

660. Hon. P. G. PENDAL, to the Minister for Tourism:

This question is supplementary to those I have asked already in relation to the Rottnest Island Board. Will the Minister tell the House what he meant when he said "a short period" in relation to the decision of the board that the franchise of the bicycle hire business on Rottnest Island should be relinquished to it?

Hon. D. K. DANS replied:

As I understand the position from a Press report which the board issued, the matter will be reviewed within 12 months.