

Legislative Council

Wednesday, 29 April 1981

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

QUESTIONS

Questions were taken at this stage.

MEMBERS OF PARLIAMENT: OFFICES OF PROFIT

Inquiry by Joint Select Committee: Assembly's Resolution

Message from the Assembly received and read requesting the Council's concurrence in the following resolution—

That this House doth resolve—

(1) That, subject to the concurrence of the Legislative Council in the terms of this Resolution, the Joint Select Committee of the Legislative Assembly and the Legislative Council that was appointed by a resolution of the Legislative Assembly passed on 16 October 1980 and a resolution of the Legislative Council passed on 21 October 1980, be re-appointed for the duration of this Parliament to inquire as to—

(a) the suitability of the present law relating to members of Parliament holding offices of profit under the Crown, or having contracts or agreements with the Crown; and

(b) in the event of that law being considered unsuitable in any respect, what changes should be made in that law.

(2) That the Committee shall be authorized to function notwithstanding the adjournment or prorogation of Parliament.

(3) That the Committee prepare a report to each House of Parliament setting forth its findings and recommendations.

(4) That in carrying out its functions the Committee shall give particular attention to the recommendations in the Law Reform Committee's report of 9 March 1971, and to the changes in the law proposed in the Acts Amendment and Repeal (Disqualification for Parliament) Bill 1979 introduced during the Third Session of the 29th Parliament.

(5) That the Committee have power to consider and make use of the Records of the Joint Select Committee of the Legislative Assembly and Legislative Council appointed during the First Session of this Parliament.

(6) That the Committee consist of 9 members of whom 4 shall be appointed by the Legislative Assembly and 5 by the Legislative Council.

(7) That the Legislative Assembly be represented on the Committee by the following members namely—

Mr B. R. Blaikie

Mr J. G. Clarko

Mr J. J. Harman

Mr J. E. Skidmore

(8) That the Legislative Council be requested to appoint 5 members of the Legislative Council to serve on the Committee, and to appoint one of those members to be Chairman of the Committee.

(9) That in the absence of the Chairman from any meeting of the Committee the members present may appoint one of their number to act temporarily as Chairman.

(10) That the Committee shall have power to send for persons, papers and records, to adjourn from time to time and from place to place, and, except as hereinafter provided, to sit on any day and at any time.

(11) That the Committee shall not sit while either House is actually sitting unless leave is granted by that House.

- (12) That 5 members of the Committee, irrespective of the House by which they are appointed, shall constitute a quorum of the Committee and, so long as a quorum is present at any meeting, the members present shall be competent to exercise and perform all the powers, authorities and functions of the Committee.
- (13) That the Chairman, or person acting as Chairman, of the Committee shall have a deliberative vote only, and in any case where, at any meeting of the Committee, the voting on any question is equal, that question shall pass in the negative.
- (14) That the first meeting of the Committee be held at a time and place appointed by the Chairman.
- (15) That the Committee have leave to report from time to time on its proceedings.
- (16) That when the Committee has concluded its sittings a copy of its report, signed by the Chairman, shall be presented to each House by one of the members appointed by that House to serve on the Committee.
- (17) That the Chairman of the Committee shall have power to make arrangements with the Clerk of the Legislative Council for the provision of clerical assistance to the Committee.
- (18) That the foregoing provisions of this Resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders and that any member be entitled to sit on the Joint Select Committee notwithstanding the provisions of Standing Order 359.
- (19) That in respect of matters not provided for in this Resolution the Standing Orders of the Houses relating to Select Committees shall be followed as far as they can be applied.
- (20) That a message be sent to the Legislative Council acquainting it of this Resolution and requesting it to agree to the re-appointment of a Joint Select Committee in accordance with the terms of this Resolution and to take action accordingly.

Motion to Concur

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [5.04 p.m.]: I move—

That this House doth resolve—

- (1) To agree to the re-appointment of a Joint Select Committee of the Legislative Assembly and the Legislative Council in accordance with the terms of the Resolution transmitted to the Legislative Council by Message No.3 of the Legislative Assembly.
- (2) That the Resolution, so far as it is inconsistent with Standing Orders, have effect notwithstanding anything contained in the Standing Orders and that any member be entitled to sit on the Joint Select Committee notwithstanding the provisions of Standing Order 340.
- (3) That the Legislative Council be represented on the Joint Select Committee by the following members, namely—
 The Hon. N. E. Baxter
 The Hon. V. J. Ferry
 The Hon. R. Hetherington
 The Hon. N. McNeill
 The Hon. H. W. Olney.
- (4) That the Hon. N. McNeill be the Chairman of the Joint Select Committee.
- (5) That a Message be sent to the Legislative Assembly acquainting it of this Resolution.

Members will recall that, in October last year, a Joint Select Committee of the Legislative Assembly and Legislative Council was established to examine the question of disqualification for Parliament and to prepare a report to each House of Parliament on its findings and recommendations.

Representation from this House on that committee consisted of the following members—

The Hon. N. E. Baxter
 The Hon. V. J. Ferry
 The Hon. R. Hetherington
 The Hon. N. McNeill (Chairman)
 The Hon. H. W. Olney.

With the prorogation of Parliament in February this year, some doubt has arisen as to the continued legal standing of the Joint Select Committee and this motion now before the House is to formally reconstitute that committee.

Question put and passed.

NOISE ABATEMENT AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. D. J. Wordsworth (Minister for Lands), read a first time.

Second Reading

THE HON. D. J. WORDSWORTH (South—Minister for Lands) [5.08 p.m.]: I move—

That the Bill be now read a second time.

This Bill proposes several amendments to the Noise Abatement Act, including provision to enable new regulations promoting hearing conservation in industry to be established, to allow a power for more efficient administration of the Act and operation of the council, and to permit planning for prevention of noise health hazards to be one of the purposes of the Act.

The first amendment proposes to change the local authorities' representation on the Noise and Vibration Control Council and to allow for the amalgamation that has occurred of two organisations represented on the council.

Representation on the Noise and Vibration Control Council would be more meaningful by having a representative from the Local Government Association instead of the Local Government Department, and by having two representatives from the Confederation of Western Australian Industry (Inc.) instead of having one each from the West Australian Chamber of Manufactures (Inc.) and the Western Australian Employers Federation (Inc.).

A second amendment makes provision for the appointment of a chairman to the council and overcomes a consequential anomaly. At present no person, other than the Chairman of the Noise Abatement Advisory Committee, is eligible to hold membership of both this committee and the Noise and Vibration Control Council. This amendment will allow the chairman of each body to hold membership of the other body. The Chairman of the Noise Abatement Advisory Committee contributes highly to the effectiveness of the council.

The next amendment allows noise standards to be prescribed for the guidance of town planners, traffic authorities, and designers of equipment, machinery, and other noise-emitting manufactured goods.

At present there is no power in the Act to prescribe noise standards for various noise-

emitting situations, equipment, machinery, etc., as the Act is based on the nuisance of noise, and action is based on a complaint situation.

No provision exists to deal with noise prevention at the planning and design stage and such standards as are proposed aim to achieve this prevention.

Informed opinion is that noise should be controlled at its source by designing specifically to lessen the creation of noise rather than trying to suppress it by external means once it has been created.

Setting standards of upper acceptable levels of noise for different circumstances will give design engineers, town planners, traffic authorities, etc., a base from which to start controlling the creation and emission of noise in the planning and designing stage.

As part of this plan a number of committees have been set up to consider and report on noise abatement problems associated with traffic, industrial and domestic appliances, and construction and demolition operations.

Other committees responsible for the preparation of regulations covering noise abatement planning, community noise, noise zoning classification, and Claremont Speedway also have been formed, the latter three having completed their study.

Another amendment grants police officers limited power at limited times of the day to take effective action to have an offending noise ceased or lowered to an acceptable level.

The procedure to be followed by local authority noise inspectors may be effective for recurring, long-term noise, but would be totally ineffective for single events such as noisy parties, loud music, etc.

It is considered that police assistance in abating noise nuisance in most cases would have an immediate effect and provide a suitable supplement to local authority intervention.

Unattended false alarms, usually burglar or fire alarms in industrial or commercial premises in residential areas, can cause considerable nuisance and, indeed, continue to ring all night. At present there is no effective means of abating this nuisance and an amendment provides for this.

A further amendment proposes to permit drafted regulations regarding conservation of hearing in industry to be made.

Noise-induced hearing loss may not be the most serious occupational health hazard in Western Australia, but would appear to be the most common. This refers to the noise-induced hearing

loss caused by repeated daily exposure to noise in occupational situations.

Although the Noise Abatement Act was initially enacted to provide for the control of industrial noise, the way in which the Act is framed does not provide for the introduction of appropriate regulations.

Draft regulations to promote hearing conservation in industry, modelled on those prepared by the National Health and Medical Research Council and incorporating modern Australian standard practices, have been prepared and discussed widely with industry.

Such regulations will require employers in industry to have the noise levels, and exposure of their employees to noise, measured and evaluated to determine the likelihood of noise-induced hearing loss occurring.

Provision is made also in the regulations for the employers to implement an established hearing conservation programme where it is established that a noise hazard exists.

The programme places the onus on the employer to—

- effectively reduce noise hazards;
- provide employees with suitable protective equipment;
- clearly mark hazardous areas and machinery, warning employees that hearing protection is needed;
- seek co-operation of employees in adhering to programme requirements; and
- monitor the effectiveness of the programme by testing the hearing of workers.

The Act has been amended to adequately provide for such regulations.

A great deal of detail, concerning measurement, evaluation, and control of noise, and also the duties of employers and responsibilities of employees, are matters of such substance that they must be prescribed in the Act.

An additional part in the Act to give the necessary power to carry out the proposed actions has been included in this Bill.

The penalties in the present Act do not provide sufficient deterrent and do not conform with penalties introduced under similar Acts in other States of Australia. A considerable increase in the penalties for offences is proposed. For a variety of reasons there is good sense in ensuring that the penalties conform with those of other States.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. Peter Dowding.

MINING AND PETROLEUM RESEARCH BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. I. G. Medcalf (Leader of the House), read a first time.

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [5.16 p.m.]: I move—

That the Bill be now read a second time.

Legislation was enacted in 1977 which established the Solar Energy Research Institute of Western Australia. The institute has flourished and grown to an extent that it is now financing some 45 solar energy research projects in this State.

The Government has been conscious of the need to develop research within this State for the mining and petroleum industries as much of the research required for these industries is now done interstate or overseas. This could well mean duplication or overlap of both effort and the use of sophisticated equipment.

This Bill therefore seeks to establish a mining and petroleum research institute in the same successful pattern as used for the Solar Energy Research Institute. That is to say, the new institute will be essentially a funding and co-ordinating institute to assist the Government with its aim to promote and co-ordinate research and expertise into all aspects of the mining and petroleum industries.

Initially, emphasis is being placed on processing because, although Western Australia has become a world-recognised source of minerals, in the 80's we must develop new technologies and methods through bold, imaginative, and practical research in order to process more of our minerals before export. This would provide more employment and contribute increasingly to the State's economy.

Research is required also in this State into the methods of locating and testing concealed deposits of minerals and energy resources.

In its role of co-ordinating research, the institute will encourage the industry to do more research to improve the efficiency of its operations through the research facilities available within Western Australia. These facilities are quite diverse; there is much sophisticated research equipment not fully utilised due to lack of research funds or projects.

The funding of projects will no doubt create employment for some of our post-graduate research workers, and prevent the necessity of

many of them having to move away from the State for suitable employment. This will, in turn, create employment for technicians and less skilled persons.

A detailed survey inventory has been made of research facilities available in our post-secondary institutes and in some private laboratories within the State. Also, a survey has been made of research of the proposed type in other States, but it is clear that Western Australia will be a leader in this field, as it was in the solar energy research field. The only other similar research organisation in Australia is the Australian Minerals Industry Research Association.

All those with whom discussions were held are enthusiastic about the concept and are willing to co-operate. The most appealing benefit to the research workers will be having an institute which will co-ordinate research activity without interfering with their own autonomy, or *modus operandi*.

At present there is, in some areas, a communications gap between the researchers and industry, and many see the proposed institute as providing the necessary catalyst and link between them.

The main features of the Mining and Petroleum Research Bill are very similar to those of the Solar Research Act.

The Western Australian mining and petroleum research institute will be a statutory corporation with the normal powers and responsibilities of a body corporate.

Although it must be a statutory body, the intention is that its development and operation will be as far removed as possible from the Government's influence, and that it will work in conjunction with industries and scientific institutions.

The functions of the institute are—

- to encourage the development of the mining and petroleum industry within Western Australia by fostering and promoting all aspects of mining and petroleum research;
- to undertake research projects in its own right, or in conjunction with other persons;
- to co-ordinate, where appropriate, mining and petroleum research projects in Western Australia;
- to receive funds from Government, industry, sponsors, or other sources, and allocate such funds to approved research projects undertaken by outside organisations;

to monitor and evaluate all mining and petroleum research; and

to promote a public awareness of matters relating to mining and petroleum research.

In performing its functions, the institute will be subject to the Minister.

The directors shall be appointed by the Governor on the nomination of the Minister. The Minister will appoint one of the directors as chairman, and there are the usual provisions for the appointment of acting directors and acting chairman, and provision for the remuneration of directors.

The Bill makes provision to establish a mining and petroleum advisory committee and sets out its functions.

As advisers to the board, it will have representatives from the Confederation of Western Australian Industry, Chamber of Mines, Australian Petroleum Exploration Association, University of Western Australia, Murdoch University, Western Australian Institute of Technology, CSIRO, and the Department of Resources Development, as well as such persons, if any, as the Minister may consider appropriate.

This advisory committee should contain the best current active operators in industry and research, who will be able to advise the board on research goals, funding policy, assessment of proposed research projects, and any other activity of the institute.

The Government is aware that in the field of research it is easy to spend money without deriving full benefit from it. This has been recognised, and to ensure that this situation does not arise, provisions have been made for the institute to be—

- subject to effective control and management;
- subject to scrutiny by numerous outside bodies through the advisory committee;
- subject to examination and report by the Auditor General on its financial statements and accounting.

It is the Government's policy that as high a percentage as possible of the institute's funds should be directed towards research and not administrative and overhead expenses.

The Solar Energy Research Institute has set a fine example in maintaining its administrative expenditure at a very low level, and the proposed new institute should follow its example.

In consequence, the Department of Mines, in a similar manner to the State Energy Commission,

will provide the bulk of the administrative and other support required by the institute, particularly in the formative period.

The Government has already indicated that it will support the institute with an initial funding allocation. It is hoped that this will attract matching funds from the industries, sponsors, and other sources of funds, such as the National Energy Research, Development and Demonstration Council, Australian Water Resources Council, Australian Research Grants Commission, and the Australian Minerals Industry Research Association. The first objective would be to obtain support from these sources to match the Government contribution dollar for dollar.

In the last financial year the Solar Energy Research Institute was funded for \$800 000 by the Government, which attracted \$225 000 from other sources, together with the use of many facilities and expertise which has not been costed into the projects, but probably could be equivalent at least to the amount of money distributed.

It is not proposed for the institute to establish its own laboratories, but instead to channel research funds where the facilities are available in Western Australia. The laboratories at the University of Western Australia, Murdoch University, Western Australian Institute of Technology, Western Australian School of Mines, CSIRO, Government departments, and many private operators are capable of doing a large amount of research, given the necessary funds.

If equipment for a particular type of research is not available in any of these laboratories, the institute would consider establishing the equipment in one of them, provided there would be use for it in the long term.

The institute, through its board and advisory committee, would keep in touch with mining and petroleum research throughout the world, and so ensure that the institute did not duplicate or overlap with research being done elsewhere. Also, it could keep industry advised of any progress elsewhere which may be beneficial to this State.

It is not the intention of the institute to establish its own library, as it would be housed with the Mines Department in Perth, where excellent libraries exist and are available to the public. The institute would supplement these libraries with publications and its own reports as considered necessary.

It is proposed to move quickly to set up the board and advisory committee, so that applications may be called for funding of the research projects to commence as soon as possible.

Applications may be submitted by research workers in tertiary institutes, Government research organisations, private companies, or individual persons.

Such applications will be referred to the advisory committee by the board for assessment before allocating funds to suitable projects.

It is unfortunate that research in the mining and petroleum industries has been neglected for so long when compared with research funds being used in wheat, wool, and forestry industries. For this reason, the Government has decided to set an example by initiating and providing funds for this research institute.

In conclusion, this Bill establishes a funding institute which should assist all phases of our mining and petroleum industries. With an emphasis on processing, it could open the way for treatment of our minerals before export, leading to industrial development and the improvement of the economy of this State. All persons involved in research and industry have reacted favourably to the proposal, and the Government is confident that in this State we have the expertise available to develop the concept to the ultimate benefit of all.

I commend the Bill to the House.

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

LIQUEFIED PETROLEUM GAS SUBSIDY AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. I. G. Medcalf (Leader of the House), read a first time.

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [5.26 p.m.]: I move—

That the Bill be now read a second time.

Members will recall that, following the enactment of the Liquefied Petroleum Gas (Grants) Act 1980 by the Commonwealth Parliament, complementary State legislation was passed by this House, and received the Royal assent on 5 November 1980, having retrospective effect from 28 March 1980.

Amending legislation was passed by the Commonwealth Parliament and received the Royal assent on 17 December 1980. This extended the scope of the Commonwealth Act so that the \$80 per tonne Commonwealth subsidy applies to commercial and industrial customers in

areas where natural gas is not readily available, with effect from 30 September 1980.

This Bill now provides complementary legislation to amend the Liquefied Petroleum Gas Subsidy Act 1980 in a like manner.

The scheme in the current legislation provides for the subsidy of LPG used by householders, non-profit, residential-type institutions, and schools, for a period of three years to allow time for them to adjust to the rising prices of LPG and, where possible, to convert to more readily available alternative fuels, such as natural gas and electricity.

The Bill recognises that other users are disadvantaged relative to their counterparts in areas where natural gas is available. It therefore provides for the subsidy to be extended to LPG consumers in industry and commerce broadly defined, which will enable such users to adjust and, where possible, to convert to alternative fuels. In some areas the subsidy may apply only for a limited time until reticulated natural gas becomes available.

As previously stated, this Bill will have retrospective effect from 30 September 1980 except for the amendment to section 13(3), which will come into effect on the day after the day on which this Bill receives the Royal assent. This exception has been introduced because that section has penal implications, and members of the public should therefore receive some warning of the change of law.

The Bill provides the necessary adjustments, extensions, and alterations to section 3 of the principal Act which is the interpretation section.

Provision is made for the Minister for Business and Consumer Affairs to declare those areas in which natural gas is available and thus ineligible for the subsidy and also those industries which are ineligible for the subsidy.

It is emphasised, however, that the provisions of this Bill will not affect the position of those users of LPG previously declared eligible for the subsidy, regardless of location.

Automotive use will remain ineligible, except when the LPG is used for forklift trucks or similar factory or warehouse vehicles. Similarly, users in the petrochemical industry and those engaged in oil and gas production and refining will be expected to negotiate prices freely with the LPG producers. It is therefore intended that the subsidy will not be extended to those users.

Extension of the subsidy should not be allowed to encourage the large-scale use of LPG by new users. Where industries consider large increases in

use of LPG for material processing, etc., their assessment of alternative energy supplies must be made at full market prices.

These matters will receive close attention from officers of the Department of Business and Consumer Affairs when assessing future developments.

The Bill provides for an extension of section 13(3) of the principal Act, and is intended to clarify the actions which an authorised officer may pursue under that section.

In no way do these amendments change the position whereby payment of the subsidy to registered distributors is conditional in all cases upon the benefit of the subsidy being passed on to the consumer.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. D. K. Dans (Leader of the Opposition).

BILLS (2): INTRODUCTION AND FIRST READING

1. Reserves Bill.
2. City of Perth Endowment Lands Amendment Bill.

Bills introduced, on motions by the Hon. D. J. Wordsworth (Minister for Lands), and read a first time.

COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) BILL

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [5.33 p.m.]: I move—

That the Bill be now read a second time.

This Bill is the first of three Bills that I will be introducing today, pursuant to the obligations of this State under a formal agreement entered into between the Commonwealth and the States on 22 December 1978. That agreement sets out the obligations of the parties in respect of a scheme for the Commonwealth and the States to enact co-operative legislation establishing a uniform system of law and administration regulating companies and securities in the six States and the ACT.

Members will be aware of various public statements relating to the proposed scheme including the debates on the National Companies and Securities Commission (State Provisions) Bill on 20 August last year. The implications of the proposed scheme also have been widely reported by the media and in financial publications.

Before dealing with the Companies (Acquisition of Shares) (Application of Laws) Bill, I will make some general remarks.

Most members of this House will be aware of the undesirable practices in the securities market which became apparent during the mining boom in the late 1960s and early 1970s. Many of the practices were documented in the report of the Senate Select Committee on securities and exchange entitled "Australian Securities Markets and their Regulation".

In 1976 negotiations between the Commonwealth and the States were commenced with a view to establishing a co-operative scheme for the uniform regulation of companies and the securities market.

The concept underlying the proposed scheme was that the Commonwealth and the States would co-operate in the establishment of a comprehensive Australia-wide scheme. On 22 December 1978, the formal agreement was concluded by the Commonwealth and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania. A copy of that agreement appears in the schedule to the National Companies and Securities Commission (State Provisions) Act 1980.

One of the main features of the agreement was the establishment of a Ministerial Council comprising Ministers of each of the six States and the Commonwealth.

The functions of the Ministerial Council, outlined by subclause 21(1) of the agreement, are to consider and keep under review the formulation and operation of the substantive companies and securities legislation provided for under the agreement, and to exercise general oversight and control over the implementation and operation of the scheme.

The Ministerial Council is responsible for approving all the legislation that is required to give effect to the co-operative scheme before that legislation is introduced into the various Australian Parliaments.

Another feature of the agreement was to make provision for the formation of an executive body called the National Companies and Securities Commission or, more commonly, the NCSC, which, subject to directions from the Ministerial Council, is to have responsibility in all States and participating Territories for the administration of the substantive companies and securities laws which will apply under the scheme.

Pursuant to the agreement, the Commonwealth in 1979 passed an Act in terms approved by the

Ministerial Council which established the NCSC and which gave it powers in relation to the Australian Capital Territory.

Under the agreement each State is to pass complementary legislation to give the NCSC similar powers in relation to State companies and securities laws. The National Companies and Securities Commission (State Provisions) Act passed by the Western Australian Parliament in November last year achieved that purpose for Western Australia. That Act will be proclaimed to come into effect as soon as the first substantive companies and securities laws required by the co-operative scheme become operational.

Although the NCSC will be responsible for the overall administration of the scheme legislation the agreement provides for a continuation of the existing roles of State Administrations.

This role is to be maintained through delegation on the part of the NCSC. In exercising its powers the NCSC is required to have regard to developing, to the maximum extent possible, a decentralised capacity and therefore most of the functions of the NCSC under Western Australian companies and securities laws will be delegated to the Western Australian Commissioner of Corporate Affairs.

In recognition of the need for uniform companies and securities laws to apply throughout Australia, the agreement requires each party to pass legislation applying uniform companies and securities laws in its jurisdiction and in a form which will provide that, to the maximum extent possible, uniformity between the companies and securities laws of each jurisdiction will be maintained.

Subclause 8(b) of the agreement requires the uniform companies and securities laws which will be applied in each jurisdiction to be substantially in accordance with the companies and securities laws currently applying in New South Wales, Victoria, Queensland, and Western Australia. The agreement requires all the initial legislation to be approved by a unanimous decision of the Ministerial Council prior to introduction into the various Parliaments.

As a first step towards the introduction of uniform companies and securities laws the Commonwealth has passed substantive laws regulating the acquisition of company shares and the securities industry in the Australian Capital Territory. Those laws are in a form which has previously been approved by a unanimous decision of the Ministerial Council.

Under the agreement each State is now required to introduce legislation into its

Parliament applying the substantive provisions of those Commonwealth laws as laws of the State, making such changes only to the Commonwealth Act as are required to reflect local legal and administrative requirements. The Companies (Acquisition of Shares) (Application of Laws) Bill 1981 will achieve this purpose in respect of laws regulating the acquisition of company shares.

The State Bills which apply as laws of the State, the Australian Capital Territory laws regulating companies and the securities industry are known as "application of laws" Bills. For convenience, and so as to distinguish between the ACT laws as applied in each State and the ACT laws themselves, the ACT laws as applied in each State will be known as "codes".

In addition to providing for uniform companies and securities laws, the Application of Laws Bills of each State will ensure that the substantive companies and securities laws of each participating jurisdiction remain uniform by automatically applying in each State any amendments to the substantive companies and securities laws enacted by the Commonwealth in respect of the Australian Capital Territory. It is noted, however, that under the terms of the agreement, the Commonwealth is not free to amend its ACT legislation which forms part of the scheme, without the approval of a majority decision of the Ministerial Council.

The substantive companies and securities laws are being introduced in two packages with most of the scheme legislation including the Bill currently before the House, and two further Bills which I will introduce later today, forming part of the first package. This first package comprises laws regulating the securities industry, controlling company take-overs, and dealing with matters relating to the general interpretation of the scheme legislation and other technical matters. The Companies Bill will come in the second package.

The reason for the introduction of two separate packages is that there has been widespread demand for early introduction of legislation to regulate company take-overs. In response to this demand the Commonwealth has secured the passage, through the Commonwealth Parliament, of Bills regulating company take-overs and the securities industry in the Australian Capital Territory, and a number of other Bills which are necessary and desirable for the effective operation of those laws.

These Bills are—

- (1) the Companies (Acquisition of Shares) Act 1980;

- (2) the Companies (Acquisition of Shares) (Fees) Act 1980;
- (3) the Companies (Acquisition of Shares) Amendment Act 1981;
- (4) the Securities Industry Act 1980;
- (5) the Securities Industry (Fees) Act 1980;
- (6) the Securities Industry Amendment Act 1981;
- (7) the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980; and
- (8) the Companies and Securities (Interpretation and Miscellaneous Provisions) Amendment Act 1981.

I will now proceed to deal specifically with the Bill. The principal purpose of this Bill is to apply the substantive provisions of the Commonwealth Companies (Acquisition of Shares) Act 1980, as amended from time to time, as laws of Western Australia regulating company take-overs.

Copies of the Commonwealth Act and the 1981 amending Act, also clause notes explaining the provisions of the Bill, are available to members who may require them.

As I have mentioned previously, the substantive provisions of the Commonwealth Act, altered to comply with local, legal, and administrative requirements and applied as laws of the State will be known as a "code". Thus, the laws regulating take-over activity and applying in Western Australia by virtue of the Companies (Acquisition of Shares) (Application of Laws) Bill will be known as the Companies (Acquisition of Shares) (Western Australia) Code. Clause 11 of the Bill permits the printing of the provisions applying in Western Australia and known as the Companies (Acquisition of Shares) (Western Australia) Code and copies of the code have been distributed to members.

Apart from some technical alterations to take into account legal and administrative differences peculiar to Western Australia, the provisions of the code mirror the provisions of the Commonwealth Companies (Acquisition of Shares) Act 1980 as amended.

The code reflects a number of policy decisions which were taken by a meeting of the relevant Ministers at Maroochydore in Queensland in May 1978. Account has also been taken of submissions which have been made by the public in relation to the legislation. Drafts of the legislation have been released twice for public exposure and each time the provisions have been revised.

The code will supersede the Western Australian Company Take-overs Act 1979 which will continue to apply only in relation to take-overs

pending under the Act and not completed as at the date the code comes into operation.

The Company Take-overs Act was introduced as an "interim" measure pending the introduction of the co-operative scheme legislation and the provisions of the code are substantially the same as those of the Western Australian Company Take-overs Act 1979, that Act being based upon an early draft of the Commonwealth Companies (Acquisition of Shares) Bill.

If members will turn to the *Hansard* debates for 1979, they will find on pages 5808 to 5811 a detailed explanation by me of the objects of the Company Take-overs Act 1979 and, as the code is substantially the same as the Company Take-overs Act 1979, I do not propose to travel over that ground in detail again. Shortly stated, the policy behind the Companies (Acquisition of Shares) Code can be reduced to five basic principles—

- (1) An acquisition of shares which has the practical or potential effect of changing the control of a company must be treated as distinct from an everyday acquisition of shares.
- (2) Where a person wishes to gain control of a company, he should be obliged to disclose his identity to the shareholders and directors of the target company.
- (3) Where a take-over offer is made, the shareholders and directors of the target company should have a reasonable time in which to consider the take-over offer.
- (4) The shareholders of a target company should have information before them which is sufficient to enable the shareholders to make a reasonably informed decision on the merits of the offer.
- (5) As far as practicable, each shareholder in a target company should have an equal opportunity to participate in any benefits offered by a person desiring to take over the company.

The Companies (Acquisition of Shares) (Western Australia) Code is not concerned with small proprietary companies with less than 15 members, or target companies whose members unanimously agree that the provisions of the code do not apply. It takes effect where a person or persons acquire more than 20 per cent of the shares in other types of companies.

Although the 20 per cent figure was chosen as one which represents the approximate point where a change in control occurs or is likely to occur in a public company, the code does permit a

percentage less than 20 per cent to be prescribed by regulation if experience shows a lesser percentage to be desirable. In this respect, the code differs from the Company Take-overs Act.

The basic prohibition on the acquisition of more than 20 per cent of the shares in a company is set out in clause 11 of the code and applies unless that acquisition is conducted in one of three ways.

Firstly, the prohibition does not apply if the acquisition is by means of what is known as a "creeping" take-over; that is, if the person acquiring the shares acquires no more than 3 per cent of the shares in the company—or 3 per cent of the shares in a relevant class of shares in the company—in any six-month period.

Secondly, the prohibition does not apply if the acquisition proceeds by way of a take-over scheme constituted by formal take-over offers to shareholders.

Thirdly, the prohibition does not apply if the acquisition proceeds by way of a take-over announcement made on the floor of a Stock Exchange.

A number of other exemptions are set out in clauses 12 and 13 of the code in respect of situations where it is not considered appropriate to apply the code. In addition clause 57 grants to the NCSC a general power to exempt persons from the provisions of the code.

The formal take-over scheme procedure requires an offeror to make written offers to all eligible shareholders. The shareholders are to be provided with information which is material to the offer, both by the offeror and by the directors of the target company. The take-over scheme procedure must be used if shareholders are to be offered any consideration other than cash.

The offeror must firstly dispatch offers in the prescribed form to all holders of shares in the company or in any relevant class. This written offer must be accompanied by a "part 'A' statement" which contains detailed information about the terms of the offer, the offeror, and other material.

Following receipt of a take-over offer the target company must prepare a "part 'B' statement". This contains the recommendations—if any—of the directors of the target company. Where the offeror is related to the target company, the directors of the target company are obliged to obtain an independent expert's report on the offer and this must be circulated to the shareholders.

The take-over announcement procedure is available only if an offeror wishes to acquire 100

per cent of the shares in a listed company or a relevant class of shares in a listed company for a cash consideration. Subclause 17(3) of the code provides that an offeror will not be able to use this procedure unless his stake in the target company is less than 30 per cent at the time the bid is initiated.

An offeror using this procedure will cause an announcement to be made on the floor of the home Stock Exchange of the target company to the effect that for a period of one month the offeror's broker will be prepared to acquire on behalf of the offeror any shares in the target company, or in the prescribed class of shares, for a specified cash price.

Acquisitions pursuant to a take-over announcement may be effected only at official meetings of a Stock Exchange and must be carried out through the agency of a stockbroker who is a member of the Stock Exchange.

The offeror must prepare a "part 'C' statement" providing detailed material about the terms of the offer and the offeror. The offeror must despatch that statement to all shareholders in the target company or the target class.

After the "part 'C' statement" has been despatched, the target company must prepare a "part 'D' statement" which will contain information about the target company and the directors' recommendations, if any.

The Companies (Acquisition of Shares) (Western Australia) Code contains a number of general safeguards, applying to both types of take-over offer, which are designed to curtail some abuses which have occurred in recent years.

In addition, the commission is given a new power not previously appearing in the Company Take-overs Act. Clause 60 of the code empowers the commission to declare an acquisition of shares made whilst a take-over bid is pending or any conduct that occurs in the course of a take-over bid, to be "unacceptable conduct".

The commission cannot make such a declaration unless it is satisfied that as a result of the acquisition of shares or the conduct—

- (a) the shareholders and directors of the company did not know the identity of a person who proposed to acquire a substantial interest in the company;
- (b) the shareholders and directors of a company did not have a reasonable time in which to consider a proposal under which a person would acquire a substantial interest in the company;

- (c) the shareholders and directors of a company were not supplied with sufficient information to enable them to assess the merits of a proposal under which a person would acquire a substantial interest in a company; or

- (d) the shareholders of a company did not have equal opportunities to participate in any benefit accruing to shareholders under a proposal under which a person would acquire a substantial interest in a company.

Where such a declaration is made, any resulting acquisition of shares is deemed to have been a contravention of the code.

The code makes specific provision for a person whose acquisition or conduct has been declared to be unacceptable to apply to the Supreme Court for a review of the commission's decision. The power of the commission to declare conduct unacceptable was provided as a response to numerous submissions by members of the business community calling for the commission to be given discretion and a degree of flexibility appropriate to a take-over situation.

Clause 4 of the Companies (Acquisition of Shares) (Application of Laws) Bill applies the provisions of the Commonwealth Companies (Acquisition of Shares) Act 1980, as they may be amended from time to time, as laws of the State regulating company take-overs. As such, it is the key provision of the Bill.

Members will notice that clause 4 does not apply sections 1 to 5 of the Commonwealth Act. This is because those provisions are relevant only to the application of the Commonwealth Act in the Australian Capital Territory. In their place clause 11 permits the printed code to contain the provisions set out in schedule 4 of the Bill. Those provisions are introductory in nature and adapt the applied provisions of the Commonwealth Act for use in Western Australia.

Clause 4 of the Bill also adapts the applied provisions, in the manner specified in the first schedule of this Bill, to comply with local requirements. For example, references in the Commonwealth Act to the "ACT Companies Ordinance 1961" are replaced with a reference to the "Western Australian Companies Act 1961".

Clauses 6 and 7 of the Bill apply regulations made under the Commonwealth Companies (Acquisition of Shares) Act as regulations made under the code. Clause 9 applies fees regulations made under the Commonwealth Companies (Acquisition of Shares—Fees) Act 1980 as regulations made under the Bill. Those

regulations are applied as laws of the State in the same manner as the provisions of the Commonwealth Act are applied.

Clause 15 of the Bill overcomes any local problems which might arise as a result of the amendment of the Commonwealth Companies (Acquisition of Shares) Act 1980. As amendments to that Act will apply automatically as laws of the State, amendments to the first schedule may need to be made in order to adapt the amendments to the Commonwealth Act to meet local requirements. The Bill meets this requirement by providing for regulations to be made amending schedule 1.

Power to amend the provisions of schedule 1 by regulations will be necessary to allow amendments to the Commonwealth Act to be implemented quickly in the State, and to maintain uniformity with the laws of other participating jurisdictions.

Clause 15 also makes similar provision in relation to amendments of the Commonwealth regulations.

Transition from the provisions of the Western Australian Company Take-overs Act 1979 to the provisions of the code is dealt with by clause 16. Take-overs commenced under the provisions of the Company Take-overs Act, and not completed at the commencement of the code provisions, continue to be regulated by the provisions of the Company Take-overs Act 1979.

Clause 18 of the Bill empowers the Supreme Court to resolve any difficulty in relation to the application of the provisions of the Companies (Acquisition of Shares) (Western Australia) Code to any particular situation which may arise by virtue of the operation of the Bill.

The provision will act as a safety valve in relation to any difficulties that may arise by virtue of the application of the Commonwealth Act and the various regulations.

Conclusion: The introduction of the first package of companies and securities legislation, of which the Bill forms a part, is significant for a number of reasons. Firstly, it represents the most ambitious co-operative scheme ever undertaken as a joint enterprise between the Commonwealth and the States. Secondly, I make the point that it is the increasing maturity and sophistication of the Australian economy as a whole and the securities market in particular which has given rise to the demand for the scheme legislation.

Henceforth, we will see a national approach to the regulation of company take-overs and the securities market.

The scheme legislation is designed to promote a more equitable business environment and to promote investor confidence.

The Bill now before the House has been approved by the Ministerial Council for introduction into the Western Australian Parliament. Similar legislation has been approved for introduction into each of the other five State Parliaments.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. H. W. Olney.

SECURITIES INDUSTRY (APPLICATION OF LAWS) BILL

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—
Attorney General) [5.55 p.m.]: 1 move—

That the Bill be now read a second time.

The Securities Industry (Application of Laws) Bill is the second Bill that I am introducing today to meet the obligations of this State under the agreement entered into between each of the States and the Commonwealth on 22 December 1978.

Earlier today, when introducing the Companies (Acquisition of Shares) (Application of Laws) Bill, I gave a detailed explanation of the agreement and the operation of the co-operative scheme and I do not propose to cover these matters in detail again.

The Securities Industry (Application of Laws) Bill will apply the substantive provisions of the Commonwealth Securities Industry Act 1980, as amended, as laws of Western Australia. The Bill operates in essentially the same manner as the Companies (Acquisition of Shares) (Application of Laws) Bill.

The applied provisions will be known as the Securities Industry (Western Australia) Code. Copies of the Commonwealth Act and the code and clause notes on the Bill and the code are available to members who may require them.

The substantive provisions of the Commonwealth Act provide the content of the Securities Industry (Western Australia) Code and that code will supersede the Western Australian Securities Industry Act 1976, and the Securities Industry (Release of Sureties) Act 1971.

The purpose of this new securities industry code is the protection of the investor in the securities market through a licensing system and various requirements calling for the disclosure of material information.

It penalises the manipulation of the securities market through improper conduct. The legislation provides for the licensing of Stock Exchanges and provides a mechanism for regulating the internal workings of those exchanges. It licenses people involved in the securities industry, including dealers in securities, investment advisers, and their representatives, and provides also for the establishment of fidelity funds by Stock Exchanges.

It creates a number of criminal offences, mostly associated with "market rigging" and insider trading.

The code is firmly based on the foundation provided by the existing securities industry legislation of New South Wales, Victoria, Queensland, and Western Australia. A detailed explanation of the provisions of the code is contained in the clause notes, which are available to members. There are, however, some general matters that I would like to draw to the attention of members.

The present special investigations provisions have been redrafted in accordance with the agreement. The code provides that special investigations may be instigated by the Ministerial Council or an individual Minister, or the NCSC may request the Ministerial Council to direct that an investigation be held.

New provisions have been added to allow evidence gathered in an examination to be admissible in both civil and criminal proceedings against the person examined and against other persons. There are certain safeguards when admitting evidence against other persons in criminal trials.

The code provides for the registration of Stock Exchanges and requires that the NCSC must be notified of any amendments to the business or listing rules of the exchange. The Ministerial Council may subsequently disallow these amendments. The NCSC has been vested with a new power to prohibit the trading of securities on a Stock Exchange.

The licensing provisions of the code require that licences be held by a dealer, a dealer's representative, an investment adviser, and an investment representative. The NCSC is required to maintain a register of licence holders and is empowered to revoke or suspend a licence. The conditions which may be imposed on the granting of a dealer's licence have been extended. In particular, there are new conditions relating to the financial position of the holder of a licence.

The Bill regulates conduct in the securities industry. Certain representations are prohibited

and persons who recommend securities must disclose their interests in those securities. A dealer is prohibited from dealing with another person as principal without first informing the other person of that fact. The Bill prohibits short selling and sets out detailed requirements to regulate the use of clients' moneys by a dealer.

Provisions are contained in the Bill relating to the accounts which must be kept by dealers.

A register of the interests of licence holders and financial journalists is required to be kept under the code. This register may now be kept at any place in Australia which is covered by the scheme.

The NCSC is authorised to require the production of books and the disclosure of specified information by a wide range of persons. This power will assist the commission more effectively to administer the take-overs and securities industry codes.

Provision for Stock Exchange fidelity funds has been continued in the new code.

Provisions equivalent to those in the Western Australian Securities Industry (Release of Sureties) Act 1976 have been included so as to permit the release in certain circumstances of bonds and sureties provided by the holders of licences under the code.

Provisions which deal with the trading of securities have been expanded to include a provision on the dissemination of information about illegal transactions. The stock market manipulation provisions have been redrafted.

New provisions have been included in relation to court orders. The NCSC is given certain powers to intervene in proceedings to apply to the court for orders prohibiting persons subject to investigations from taking property out of Australia.

In addition to applying the substantive provisions of the Commonwealth Securities Industry Act 1980, as amended, as laws of the State the code also operates to apply, as regulations under the code, the regulations made under the Commonwealth Act, and fees regulations made under the Commonwealth Securities Industry (Fees) Act 1980. Those regulations will be applied in the same manner as the provisions of the Commonwealth Securities Industry Act 1980 are applied. Amendments to the Commonwealth Securities Industry Act 1980 are applied automatically in the same way as amendments to the Commonwealth Companies (Acquisition of Shares) Act 1980 are applied.

Part III of the Bill excludes the operation of the Securities Industry Act 1975 and sets out any necessary transitional provisions.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. H. W. Olney.

Sitting suspended from 6.02 to 7.32 p.m.

**COMPANIES AND SECURITIES
(INTERPRETATION AND
MISCELLANEOUS PROVISIONS)
(APPLICATION OF LAWS) BILL**

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [7.32 p.m.]: I move—

That the Bill be now read a second time.

This Bill is the last of the three Bills which I have introduced today to meet the obligations of the State in respect of the co-operative companies and securities scheme. To ensure that the scheme legislation is uniformly interpreted by the courts in each jurisdiction, a special interpretation code has been enacted. The Bill applies this special interpretation code by applying the provisions of the Commonwealth Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 as amended, as laws of Western Australia regulating the interpretation of scheme legislation.

The applied interpretation laws will be known as the Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code. Members have received copies of the code and the Commonwealth Act and clause notes are also available to members. The clause notes on the code and the Bill explain in detail the respective provisions of the code and the Bill and I do not propose to deal with their provisions in detail. I would, however, wish to make some general comments.

The interpretation code will govern the interpretation of the Companies (Acquisition of Shares) (Western Australia) Code and the Securities Industry (Western Australia) Code. In addition, any other code, including the companies code still to be introduced, may specifically adopt the interpretation provisions of the interpretation code.

The interpretation code also governs the interpretation of the Western Australia National Companies and Securities Commission (State Provisions) Act 1980, save for sections 1, 2, 3, 4, 20, 21, and 22 of that Act. These sections are excluded as they are the operative provisions of

that Act and remain subject to the Western Australian Interpretation Act 1918.

The provisions of State application of laws Bills, as distinct from the provisions which those Bills apply, will not be interpreted according to the interpretation code, and will remain subject to the Western Australian Interpretation Act 1918.

The Bill has been approved by the Ministerial Council for Companies and Securities for introduction into the Western Australian Parliament. Similar legislation has been approved for introduction into each of the other five State Parliaments.

When legislation relating to the interpretation code has passed through each State Parliament one uniform set of interpretation laws will apply generally throughout each participating State and Territory to the substantive legislation forming part of the co-operative scheme.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. H. W. Olney.

JURIES AMENDMENT BILL

Second Reading

Debate resumed from 28 April.

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [7.36 p.m.]: We were informed yesterday by the Opposition that it had no objection to this Bill and that is very gratifying because the Bill simply deals with procedural matters in relation to juries. The idea is that in the future those people who will serve as jurors will be selected by a process using a computer. At the present time we are using the Treasury computer, but in due course possibly another computer will be used.

This will revolutionize the present difficult situation whereby a draft jury roll has to be prepared for each district in the State and a written record must be kept and many notices must be sent out for the purpose of advising people they are liable for jury service.

The other day the Hon. Phillip Pandal made some comments about the Bill and I noted them with interest as they were very appropriate. He pointed out that the Bill will save a great deal of man-hours and time and save effort and expense in relation to the system of advising jurors of their liability for jury service. In future, instead of sending out notices to a whole host of people who are eligible for jury service, all of whom have to apply if they want exemption, the only people who will receive notices will be jurors who are in fact called upon to serve. So the numbers will be

greatly reduced just as will be the amount of work and effort, and consequently expenditure by the State will be reduced. If only 120 jurors are required for one particular week, in future only 120 notices will go out instead of the thousands which go out now.

Those jurors who receive the notice will still have an opportunity to claim an exemption from service. This will greatly reduce the effort in processing the replies received from those jurors who are still claiming, and are entitled to claim, exemption from service.

The Hon. Phillip Pandal also referred to the problems of small businessmen who in many respects are put to a great deal of difficulty and trouble by having to serve on a jury when their services are required to look after their businesses, their staff, and their customers. This applies to a large number of people who are called upon to serve on juries. He did say there are probably other people who are presently exempt and ought to be exempt. This Bill does not in any way change the exemptions for service, which the member was aware of. But he asked me to take into account his comments when at a later time we revise the exemptions from jury service. I can assure him his comments will be taken into account and later in the year, certainly during this current Parliament, we will introduce a Bill dealing far more comprehensively with juries. It will deal with all aspects of jury service including exemptions from service and it is very likely that it will include a new list of persons who are exempt as some of the old categories may be taken out. I think people who work in the Wyndham Meat Works are exempt. There are all sorts of strange categories which are there from historic times.

This matter has already been examined by the Law Reform Commission and I gave an undertaking to a member in the previous Parliament that we would be taking some action in this regard. We will be doing that and we will take into account Mr Pandal's comments.

I thank members for their support of the legislation.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. I. G. Medcalf (Attorney General) in charge of the Bill.

Clauses 1 to 6 put and passed.

Clause 7: Section 14 amended—

The Hon. I. G. MEDCALF: I have an amendment on the notice paper in relation to this clause. It is purely a nominal amendment in order to accommodate comments made by the Chief Electoral Officer, who has the responsibility in the first place of producing the names. He has asked that he be given a little more time to carry out his task, particularly in an election year. The Bill before the Chamber refers to the month of March and the Chief Electoral Officer has pointed out that he will not have sufficient time to carry out his duties in an election year and, instead of the first day of March being nominated he has suggested that a more appropriate date would be the last day of April. That will give him two months after he receives notification from the Sheriff. Therefore, I move an amendment—

Page 4, lines 8 to 10—Delete paragraph (b) and substitute the following paragraph—

(b) in subsection (2), by deleting "In the month of November" and substituting the following—

"Before the last day of April" ;

Amendment put and passed.

The Hon. I. G. MEDCALF: I move a further amendment—

Page 4, lines 17 to 19—Delete paragraph (d) and substitute the following paragraph—

(d) in subsection (3), by deleting "February in the next succeeding" and substituting the following—

"April in each";

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 8 to 30 put and passed.

Title put and passed.

Bill reported with amendments.

ADJOURNMENT OF THE HOUSE

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [7.47 p.m.]: I move—

That the House do now adjourn.

Legal Aid Commission: Costs

THE HON. J. M. BERINSON (North-East Metropolitan) [7.48 p.m.]: I wish to raise a serious matter relating to the administration of legal aid. As members would be well aware, the purpose of legal aid is to provide legal representation for people who could not otherwise afford it. Put another way, it exists to make legal services less expensive.

A case brought to my attention recently indicates that certain legal aid procedures make legal costs more expensive rather than less. This has sufficiently serious implications to justify the attention of the House.

In the case in question a litigant seeking damages for personal injury applied for and was granted legal aid. He since has been faced with legal costs at least \$800 more than if he had never sought aid at all.

The circumstances in which this situation arises are not peculiar to the particular case. As I understand the position it reflects a basic flaw in the approach of the Legal Aid Commission, and this could be costing the commission as well as its clients many thousands of dollars each year in excessive payments to private legal practitioners.

Some background detail is necessary to show the nature of the problem, and I will attempt to provide this as briefly as possible. Firstly, it should be understood that with the notable exception of criminal work, almost all charges for legal services are subject to a specified maximum charge. These maximum charges are to be found, for example, in the various scales of court costs and the Solicitors' Remuneration Order. Charges above the fixed scales can be made only by prior written agreement between the client and his solicitor. A client who is dissatisfied with an account can have it considered by a taxing officer of the relevant court, and that officer will reduce the account if it is more than the appropriate scale permits.

A second principle applying generally to the taxation of litigation costs is that the same scale of costs applies as between party and party on the one hand and solicitor and client on the other.

As a broad generalisation this means that where a party loses a case in court, the costs he will be obliged to pay to the other side and the costs due to his own solicitor will be about the same. Looking to the application of these rules to the work of the Legal Aid Commission, this is what we find: When the commission grants aid to an applicant and when it is unable to handle the work through its own staff solicitors it approves an assignment to a private practitioner. The effect of such an assignment is that it is the commission which becomes the client of the solicitor in respect of the primary liability to meet his fees.

If the solicitor charges too much it is the commission which theoretically has access to the taxing officer for redress. Conversely the actual client does not have such access since he is not the party contracting for the solicitor's services. I am informed by the Legal Aid Commission that its

right to have an account taxed is never exercised. Instead, it relies on the review of accounts by an internal assessment committee. For present purposes it is necessary to add only that by the combined effect of sections 39 and 44 of the Legal Aid Commission Act a recipient may be required by the commission to pay all or some of his own costs. The decision of the commission as to the extent of that contribution appears to be final.

In the case in question there was the following consequence of events: The client applied for legal aid to pursue a claim for damages on account of personal injury; aid was granted subject to later consideration of the client's contribution; the client's case succeeded; and he was awarded approximately \$15 000 damages plus costs. As the next step in the process, costs as awarded were taxed at \$2 759, and these were paid to his solicitor. The client's solicitor then submitted a further account for \$1 296 which was described as being for work not covered by the taxation of costs, but as I will attempt to explain, at least \$800 was for work already paid for or not entitled to be charged.

The commission's review committee, however, allowed the claim in full and required the client to pay it in full. This decision as to client contribution was no doubt influenced by the damages recovered and, provided the charges were proper, the commission's stand in that respect was unexceptionable. However, assuming for the moment that an overcharge was involved the client has nowhere to go to seek amends. He cannot go to a taxing officer because he is not the solicitor's client for the purposes of costs.

The commission's decision is final by the effect of section 44 of the Act. There is no independent avenue for appeal against its accuracy, although the client can and has appealed against the contribution levied against him. The problem is that even if that appeal is allowed, the client will not pay the overcharge, the commission will. In my view that is equally undesirable.

To indicate the nature of the overcharges I refer to the bill of costs in question. It is drawn up in three parts. The first covers the period prior to the issue of the writ in August 1978 and amounts to \$1 296. The second part covers the period from the issue of the writ to judgment and coincides with the \$2 759 awarded on taxation. The third part is described as "solicitor-client costs additional to party-party costs awarded on taxation" and amounts to \$406. The commission approved the claim in full and required the client to pay the whole account involved after allowance for the 10 per cent discount applying to legal aid arrangements.

The bill of costs covers 10 typewritten pages, and I can do no more here than indicate examples of items which on my understanding should not have been charged by the solicitor and should not have been agreed to by the commission.

Firstly, there is an apparent basic misunderstanding of the function of the scale of costs in that only work from the issue of the writ to judgment has been treated as included in the costs of the action as taxed. Included in the first part of the bill for \$1 296 are numerous items which can be understood only as part of the so-called "getting up" of the case, although they occurred before the issue of the writ. Examples are attendances on the client for instructions, preparation of proof of evidence, attendance on persons described as witnesses, and requests for and consideration of various medical reports. These alone were allowed by the commission at over \$400 although they already appear to have been covered by the allowance of \$1 119 for "getting up" in the taxed costs of the action.

Other items are at least as questionable. In particular the solicitor was allowed \$415 by the commission for about six hours' attendance as an observer only in a related petty sessions prosecution by the Factories and Shops Branch. The value of that exercise whether it was specifically authorised by the commission and—in any event—the scale of charges applied to that six hours of attendance, all appear to justify closer scrutiny than was apparently applied.

Other smaller items also are obviously incorrect. To give only one example I refer to a charge of \$10 for company and business name searches. That is clearly a disbursement which should have been charged against the losing party.

Similar considerations apply to the third list of charges amounting to \$406 to which already I have referred. Charged by the solicitor and approved by the commission is the amount of \$60 for the drawing of the account between them. That account is not the same as a bill of costs for taxation where a charge is in fact appropriate. Simply it is an account between a solicitor and client, and on well-established principles no charge may be made for that.

Again there are amounts for the service on other parties of various documents. These also should have been charged as disbursements in the taxed costs and should have been paid by the losing party in the action, but they were omitted from the bill for taxation. That was an apparent error by the solicitor and he, not the client, should have met the cost of that error.

In the third list are further charges for letters and attendances on the client, on witnesses, and on briefed counsel during the course of the action itself. On the face of it all these were, or should have been, covered by taxed costs against the losing party.

In passing, I mention another category of charge, the appropriateness of which I would regard at best as doubtful. I refer to the total of \$120 for letters or attendances on the Legal Aid Commission itself in connection with the grant of aid. Those costs clearly are not the responsibility of the losing party. On the other hand, given the enormous value of the legal aid system to the profession, I wonder whether charges of this kind ought to be rendered or accepted.

In summary—and I apologise if the explanation has been difficult to follow—a client has been levied with an account for \$1 300 and on the face of it as much as two-thirds of that was an overcharge on the normal rules applying to legal costs. I emphasise again that my concern is not only for the effect on the particular client, but also the doubt which this casts on the costing procedures of the commission. Bear in mind that had the client not been asked to pay, the commission itself would have paid at the same apparently excessive rate. This, I find on further inquiry, is because the commission has never applied to itself the basic rule that party-party and client-solicitor costs are the same in the absence of a prior written agreement to the contrary. Instead there is an apparent acceptance that time and procedures ought to be paid for on some such basis as the solicitor's remuneration order, though less generous scale costs would otherwise apply.

This attitude helps explain some odd events which have come to attention from time to time. As one personal example, I recall an instance in the Local Court about 18 months or two years ago. I was involved in an application for a new trial, which is a so-called chambers procedure, and it went on for a considerable time. It took a whole half-day's argument and two or three further attendances. Mr President, I am sure you will be happy to learn, as will other members of the Chamber, that we succeeded in our application and got a new trial. My pleasure about that was rather clouded later when we had the new trial and lost; but that is beside the point.

We won the application for the new trial and not only did we get that, but we got taxed costs as well. We turned up to the taxing officer and ended up with an award, which I do not remember exactly, but I think was in the order of \$150. On the way out of the court I said to the solicitor for the other party something to the

effect "It is just as well we do not often win cases of this sort or we would be broke in a short time", to which he responded "Yes, \$150 is not much, is it? As a matter of fact, we have already been paid more for our appearance by the Legal Aid Commission." I asked him how much that was, and he told me he had been paid \$450. I said "That is a bit odd, isn't it? I thought party-party and solicitor-client costs were the same" to which he replied "That would not be reasonable; you know how much time we have spent."

I confess until this latter case came to attention that event had slipped from my memory, but obviously it is an example of the acceptance by the commission of the same sort of costing procedures which I have already suggested are very doubtful.

The Hon. H. W. Olney: Have you given up winning cases now?

The Hon. J. M. BERINSON: I found it quite easy to give up winning—in most instances that was taken out of my hands.

There is never a Legal Aid Commission report which does not refer to or imply the inadequacy of funds to meet the demand. In a sense that will always be true, irrespective of the sum provided. The fact of the matter is that law is an area where demand is very elastic and it could be readily increased by any incentive to lawyers to encourage litigation.

Even so, the argument is self-evident that the legal aid system must make best possible use of the funds at its disposal. This cannot allow even a possibility of the sort of over-payments which on my understanding might now will be occurring in the ordinary course of events.

As a practical suggestion to the Attorney General, I propose that he submit for the independent assessment of taxing officers, both the particular case to which I have referred and a number of other accounts previously approved by the commission.

To that I wish to add only this: I have no wish to detract from the value of the honorary work of lawyers in the various committees of the

commission. On the other hand it is difficult to avoid some concern that the predominance of active private practitioners in the committees—and in the commission itself for that matter—must colour their approach to the commission's activities.

In bringing this matter to the House I have deliberately refrained from reference to the name of the client, the solicitor, or any of the commission officers involved. I am not seeking notoriety for the particular case, nor am I suggesting bad faith or malpractice in any culpable form. All parties in fact have been most co-operative in my inquiries and I have no wish to abuse their confidence. The real point of concern is with the possibility that certain unwarranted practices may have developed in the area of remuneration for legal aid, and that ought to be the subject of a prompt and proper inquiry.

I commend that matter to the Attorney General and I invite him to report to the House in due course.

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [8.08 p.m.]: I take it from what the honourable member has said that he has not only reported this case to the Legal Aid Commission but also has discussed it with the commission in detail and given it the opportunity to comment; and therefore, we have not received only one side of the argument, and he has given a fair evaluation of the case after giving the Legal Aid Commission the opportunity to comment on it.

The Hon. J. M. Berinson: I have not put as full an analysis to the commission as I have put in this Chamber, but I pointed out the general problem and discussed the matter with it.

The Hon. I. G. MEDCALF: I shall take up this case with the commission because naturally I want to hear what it has to say about it.

Question put and passed.

House adjourned at 8.09 p.m.

QUESTIONS ON NOTICE

HEALTH: DISABLED PERSON

Mr Frank Sticca

214. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Health:

- (1) Following the announcement that Mr Frank Sticca, a paraplegic, has been evicted from the quadriplegic centre, will the Government take any action to assist him?
- (2) Are there any alternative facilities similar to those at the quadriplegic centre available for Mr Sticca to utilise?
- (3) Are the alternatives available at rates within reach of those receiving the full invalid pension?
- (4) Could the Minister advise whether the Government—
 - (a) will assist Mr Sticca with his present predicament; and
 - (b) if so, will he advise how it proposes to achieve this end?

The Hon. D. J. WORDSWORTH replied:

- (1) This is a matter between Mr Frank Sticca and the board of management of the quadriplegic centre.
- (2) There are no comparable facilities similar to the quadriplegic centre which offer care plus workshop facilities.
- (3) Public nursing homes and hostels are available at rates within the reach of those receiving full invalid pension.
- (4) (a) and (b) Whilst there are no other facilities specifically for paraplegic or quadriplegic patients, such patients are at times accommodated elsewhere. At Mr Sticca's request, the assessment services provided by the Government would be available to assist him to find suitable alternative accommodation.

WOOD CHIPPING

Chip Logs

215. The Hon. J. M. BERINSON, to the Minister for Forests:

On the figures given in the answer to question 26 of 25 March 1981, the total

volume of chip logs taken by the WA Chip and Pulp Co. Pty. Ltd. from Crown land from 1975 to 1980 amounts to 1 926 155 m³. At 74c per m³, the royalties received by the Forests Department should have amounted to \$1 425 355. However, according to the Forests Department annual reports 1975 to 1980, the total chip log royalties received amounted to only \$1 300 250. How is the apparent under-payment of \$125 105 accounted for?

The Hon. D. J. WORDSWORTH replied:

The reasons for the apparent underpayment referred to by the member are—

- (1) Royalties for chip logs were not recorded separately in the annual report for 1975-76.
- (2) The volume of chip logs shown in an annual report cannot be reconciled with revenue received in that financial year. Payment for the month of May is sometimes received after books of account for that financial year have been closed. The payment for June always is received in the following financial year.

INSURANCE

SGIO

216. The Hon. J. M. BROWN, to the Minister representing the Treasurer:

What annual contributions to Treasury, if any, were received from the State Government Insurance Office for the year 1979-80, which represented the assessed tax calculation in accordance with the Federal Income Tax Assessment Act?

The Hon. I. G. MEDCALF replied:

The contribution in lieu of tax payable by the State Government Insurance Office is assessed on audited financial statements for the previous financial year. Currently the statements for 1979-80 are being examined by Treasury to assess the contribution payable. An amount of \$5 712 000 was allowed in the Consolidated Revenue Fund Estimates for 1980-81 being an estimate of the contribution payable on transactions for 1979-80.

RAILWAYS

Crossings: Bridges

217. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Transport:

In view of the increasing traffic build-up, particularly during peak hours, at the following railway level crossings—

- (a) Lord Street, Perth;
- (b) Great Eastern Highway, East Guildford; and
- (c) Albany Highway, Stokely;

when does the Government propose to improve the traffic flow and make the crossings safer by providing over-bridges as recommended in the ELRAIL report at page 29?

The Hon. D. J. WORDSWORTH replied:

- (a) to (c) These level crossings are already equipped with boom gates. The Government does not intend to provide bridges at these locations in the immediate future.

STATE FORESTS

Forests Department

218. The Hon. J. M. BERINSON, to the Minister for Forests:

- (1) How many professional officers are currently employed by the Forests Department?
- (2) How many of these officers have professional qualifications in areas other than forestry?
- (3) In what areas are the officers referred to in part (2) qualified, and how many such officers are there in each category?
- (4) What amount was spent by the Forests Department in 1979-1980 on—
 - (a) recreation and tourism;
 - (b) fauna research;
 - (c) dieback research; and
 - (d) hydrological research?

The Hon. D. J. WORDSWORTH replied:

- (1) 100.
- (2) Forestry plus other qualifications—2. Qualifications—not forestry—24.

- (3) Diploma of Education—1.
Bachelor of Arts (Econ.)—1.
Ph.D (Mathematics/Physics)—1.
Ph.D (Botany)—1.
Ph.D (Plant Pathology)—1.
B.Sc. (Biology)—1.
B.Sc. (Agriculture)—2.
Ph.D (Zoology)—1.
Dip. Cart.—17.

- (4) (a) and (b) The information sought by the member is not available in the form requested.

TRAFFIC: MOTOR VEHICLES

Insurance Trust

219. The Hon. J. M. BERINSON, to the Minister representing the Minister for Local Government:

What was the actual or estimated surplus or deficit of the Motor Vehicle Insurance Trust for the six months to 31 December 1980?

The Hon. I. G. MEDCALF replied:

I am advised that the deficit at 31 December 1980 was \$3.317m.

220. This question was postponed.

TRAFFIC: MOTOR VEHICLES

Insurance Trust

221. The Hon. J. M. BERINSON, to the Minister representing the Minister for Local Government:

How many persons are employed by the Motor Vehicle Insurance Trust, and what was the number at 30 June in each of the last three years?

The Hon. I. G. MEDCALF replied:

I am advised that 68 persons are presently employed and that for the past three years the numbers of employees were as follows—

30 June 1978—64
30 June 1979—65
30 June 1980—67.

EDUCATION

Pre-apprenticeship Courses

222. The Hon. P. G. PENDAL, to the Minister representing the Minister for Education:

I draw the Minister's attention to a letter to the Editor of *The West Australian* of 4 February 1981, and ask—

(1) Does the Minister's department see any merit in the suggestion for the re-introduction of a "junior technical-type of education for years 9 and 10, leading to pre-apprenticeship courses?"

(2) Could this suggestion be dovetailed into recent announcements concerning the conversion of the Bentley and Tuart Hill High Schools into senior colleges?

The Hon. D. J. WORDSWORTH replied:

(1) and (2) Consideration has been given over many years to the advantages and disadvantages of streaming students into special prevocational courses early in secondary school. The major disadvantage to such streaming is that students of age 12-13 are required to make choices which may greatly limit their future educational and vocational opportunities. The Education Department has adopted a policy of adapting courses to meet the needs of students of different academic capacity while, at the same time, students participate in broadly-based general education.

The new senior colleges will develop courses that specifically assist young people to make the transition from school to work. These courses will eventually be available both to students before they leave full-time education and to older students who, after leaving school, find they need to upgrade their education in order to obtain employment or to follow their chosen career path in such vocations as trade apprenticeships, the Police Department, the armed services, or the Public Service.

TRAFFIC: MOTOR VEHICLES

Insurance Trust

223. The Hon. J. M. BERINSON, to the Minister representing the Minister for Local Government:

In respect of staff housing loans by the Motor Vehicle Insurance Trust—

(1) Which staff members are eligible for such loans?

(2) On what terms are loans now granted in respect of—

(a) maximum amount;

(b) maximum term; and

(c) interest rate?

(3) How many loans are now outstanding, and what is their total value?

(4) What is the reason for staff loans?

The Hon. I. G. MEDCALF replied:

I am advised that the trust first advanced a housing loan in 1964, but has not made any loans for this purpose since July 1979, nor has it had an application for such a loan since that time.

The following information has therefore been supplied with respect to the period to July 1979.

The trust would, no doubt, review its policy if further applications were received.

(1) Those staff who had qualified for permanent appointment following satisfactory completion of a six months' probationary period.

(2) (a) Under the 1964 guidelines the maximum loan was \$12 000. However, where the value of the security was adequate and additional amounts were required to meet rising housing prices, amounts greater than that sum were advanced in seven cases. The largest loan has been \$25 000;

(b) the maximum term was the period that expired on the officer reaching age 60. However, if the officer resigned prior to age 60, he was obliged to repay the loan balance;

- (c) the interest rate was 3½ per cent per annum in 1964. This was increased to 5 per cent in 1976 and 5½ per cent in 1978.
- (3) Seventeen loans are still outstanding, having a total value of \$219 000.
- (4) The loans were introduced as an incentive for trained staff to remain in the service of the trust. The interest rates were compatible with those which applied generally to staff housing loans in the insurance industry.

TRAFFIC: MOTOR VEHICLES

Insurance Trust

224. The Hon. J. M. BERINSON, to the Minister representing the Minister for Local Government:

- (1) Does the Motor Vehicle Insurance Trust lend money on home mortgage to other than staff members?
- (2) If so, what are the usual terms of such loans in respect of—
 - (a) maximum amount;
 - (b) maximum term; and
 - (c) interest rate?

The Hon. I. G. MEDCALF replied:

- (1) I am advised that the trust lends money on home mortgage in the ordinary course of investment with a minimum of \$300 000 for any one loan.
- (2) I am advised that—
 - (a) the maximum amount of 60 per cent of the sworn valuation of the property;
 - (b) the maximum term is seven years;
 - (c) the interest rate is currently 15 per cent.

QUESTIONS WITHOUT NOTICE

AGNEW CLOUGH LTD.

Land

80. The Hon. LYLA ELLIOTT, to the Leader of the House:

Further to question 14 which I asked on 25 March concerning the land contained in the Wundowie Charcoal Iron Industry Sale Agreement and the

Minister's reply that the information was being collated and a reply provided as soon as possible, as it is now five weeks since I asked the question, would he advise whether it is intended to answer the question at all, and if so, when?

The Hon. I. G. MEDCALF replied:

I shall make an inquiry of the appropriate Minister concerning that matter.

ELECTORAL

Districts: Distribution

81. The Hon. J. M. BERINSON, to the Minister representing the Premier:

Referring to the Premier's announcement yesterday of the Government's intention to amend the State electoral system, the Premier indicated that the number of seats in the Legislative Assembly would be increased to 57. I ask whether he can clarify the distribution of those seats as between the metropolitan and non-metropolitan areas.

The Hon. I. G. MEDCALF replied:

I am obliged to the Hon. J. M. Berinson for supplying particulars of his question which was referred to the Premier. As advised by the Premier in his public announcement yesterday, details will be made public on the presentation of legislation to the Parliament next week.

FISHERIES

Lancelin

82. The Hon. TOM McNEIL, to the Minister for Fisheries and Wildlife:

- (1) Can the Minister advise when joint naval exercises are to be conducted off Lancelin utilising the naval gunnery and bombing range immediately north of that town?
- (2) Have fishermen been restricted from entering any area of the ocean adjacent or near the range during the period of these exercises?
- (3) How are fishermen advised of these restrictions and on whose authority is the advice given?

- (4) Has the Minister made the navy aware that preventing fishermen access to their fishing gear daily is prohibiting them from their livelihood?
- (5) Why has there not been negotiation to allow fishermen access for a limited period each day?
- (6) Has there been any representations to the Minister for Defence by the State Government to—
 - (a) ensure the bombing range is used on condition that the livelihoods of rock lobster fishermen are not affected;
 - (b) have a compensation agreement drawn up which will reimburse fishermen for their loss of income?

The Hon. G. E. MASTERS replied:

I thank the member for some notice of the question, the reply to which is as follows—

- (1) The Navy Office of the Department of Defence advises that the Lancelin naval gunfire support range is intended to be activated continuously for the following periods—

Midnight 3 May to midnight 5 May

Midnight 10 May to midnight 13 May

Midnight 1 June to midnight 6 June.

- (2) The Navy Office of the Department of Defence advises that fishermen are prohibited from entering the range when it is activated.
- (3) The Navy Office of the Department of Defence advises that fishermen are advised under authority of the Naval Officer Commanding Western Australia by the following methods—

- (a) Newspaper advertisements;
- (b) direct telephone advice to the WA Branch of the Australian Fishing Industry Council;
- (c) written advice to 29 separate organisations involved in fishing in the region;
- (d) the posting of notices in prominent places within local communities;

(e) warnings to mariners broadcast over Overseas Telecommunications Commission coastal radio stations.

(4) Yes.

(5) There have been discussions to seek that whenever practicable firings will be kept to a minimum and programmed to the afternoon. Currently the Navy Office is considering a request by fishermen to restrict the gunnery practice to a period after 11.30 a.m. each day to allow fishermen time to pull their pots before the range is closed.

(6) (a) Yes—very strong representations to the Federal Minister;

(b) Yes—that compensation in respect of loss of pots and associated gear should be made, but it is understood not in respect of loss of possible catch.

ELECTORAL

Districts: Gascoyne and Murchison-Eyre

83. The Hon. J. M. BERINSON, to the Minister representing the Premier:

In his announcement yesterday as to the Government's intention in respect of the amendment to the Electoral Districts Act, the Premier indicated that two electorates with statutory boundaries—namely, Kimberley and Pilbara—would have their boundaries amended. No mention was made of the other two electorates with statutorily-established boundaries; that is, Gascoyne and Murchison-Eyre. I ask: Are we to understand from that that no amendment of those latter two boundaries is intended?

The Hon. I. G. MEDCALF replied:

I am obliged to the member for supplying particulars of the question he intended to ask. The matter was referred to the Premier. As advised by the Premier in his public announcement yesterday, details will be made public on the presentation of legislation to Parliament next week.

ELECTORAL

Districts: Distribution

84. The Hon. J. M. BERINSON, to the Minister representing the Premier:

I can well understand the desire of the Government to keep as secret as possible its intentions in regard to the future entrenchment of the gerrymander in this State. At the same time the question as to the division of Assembly seats between metropolitan and non-

metropolitan areas is a simple one of fact. I ask the Leader of the House: If the Premier was prepared to make any statement at all in that respect, why is the Government not prepared at least to give us some advance notice of that quite primary and fundamental fact, and one of considerable importance to people who might wish to debate this subject in future?

The Hon. I. G. MEDCALF replied:

I have answered the question.
